
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

**The National Health Service Superannuation
Scheme (Scotland) Regulations 2011**

PART M

TRANSFER-OUT ARRANGEMENTS AND BUY-OUTS

Member's right to a transfer or a buy-out

M1.—(1) A member who leaves pensionable employment with a preserved pension has the right to require the Scottish Ministers to transfer or buy-out the member's rights under this Section of the scheme as described in this regulation.

(2) Subject to the following provisions of this regulation, the member may require the Scottish Ministers to use the cash equivalent of the member's rights under this Section of the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member;
- (b) to acquire rights under—
 - (i) another occupational pension scheme; or
 - (ii) a personal pension scheme,that satisfies the requirements of Chapter IV of Part IV of the 1993 Act;
- (c) to acquire rights under an arrangement that is a qualifying recognised overseas pension scheme for the purposes of section 169(2) (recognised transfers)(1) of the 2004 Act; or
- (d) in any combination of the ways described in sub-paragraphs (a), (b) and (c).

(3) The member must exercise the member's right under paragraph (1) in relation to each and every portion of the cash equivalent unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member's accrued rights to a guaranteed minimum pension; or
- (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the cash equivalent transfer value payment if section 96(2) (further provisions concerning exercise of option under s.95) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

(5) A member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme in accordance with paragraph (2) may exercise the right—

- (a) at any time before reaching age 60; or

(1) To which there are amendments not relevant to these Regulations.

- (b) at a later time if the member exercises the right to require a transfer on the transfer of the member's employment to a new employer as a result of a transfer of an undertaking to that employer.
- (6) A member may require the Scottish Ministers to use the cash equivalent of the member's rights under this Section of the scheme to purchase one or more buy-out policies or to acquire rights under a personal pension scheme only—
 - (a) if the member leaves pensionable employment on or after 1st January 1986; and
 - (b) if those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, only if a period of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.
- (7) Paragraph (8) applies where a member—
 - (a) leaves pensionable employment by opting-out;
 - (b) on so doing becomes entitled to a preserved pension under regulation E12 (preserved pension); and
 - (c) has at least 2 years' service before 6th April 1988.
- (8) In relation to the member's rights—
 - (a) the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of the member's rights that is attributable to service after 5 April 1988; and
 - (b) the member will acquire a right to the cash equivalent of the member's remaining rights only if the member actually leaves NHS employment before reaching age 60.
- (9) A member who leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E11 or a preserved pension under regulation E12 will be treated, for the purposes of regulations M1 to M5, as if the member had left pensionable employment with a preserved pension, except that—
 - (a) a member who requires the cash equivalent to be used to buy one or more buy-out policies must exercise the right to buy-out within 12 months after leaving pensionable employment; and
 - (b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, a personal pension scheme or a qualifying recognised overseas pension scheme must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

Exercising a right to a transfer or a buy-out

M2.—(1) A member who wishes to exercise the member's right to a transfer or a buy-out must apply in writing to the Scottish Ministers for a statement of the amount of the cash equivalent of the member's accrued benefits under this Section of the scheme at the guarantee date ("statement of entitlement").

- (2) In these Regulations, "the guarantee date" means any date that—
 - (a) falls within the required period;
 - (b) is chosen by the Scottish Ministers;
 - (c) is specified in the statement of entitlement; and
 - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of 10 days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(4) In paragraph (2) "the required period" means—

- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
- (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

Amount of member's cash equivalent

M3.—(1) Subject to the following provisions of this regulation, the member's guaranteed cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under this Section of the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971⁽²⁾.

(2) The Scottish Ministers must—

- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
- (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Scheme (Transfer Values) Regulations 1996⁽³⁾.

(3) Except in the case of a transfer payment accepted under regulation N5 (transfers in respect of members to whom regulation B6 applies who elect to rejoin this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1⁽⁵⁾ (member's right to transfer accrued rights to benefits to this Section of the scheme), plus the amount of the member's contributions to this Section of the scheme.

(4) If a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if this would be more favourable to the member.

(5) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) and (3); and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph that are in use on the date used for the calculation.

(6) In any case where the Scottish Ministers have directed, under regulation T7 (loss of rights to benefits), that part of a member's benefits under these Regulations is forfeited, the cash equivalent payable in respect of that member will be reduced by the capitalised value of the forfeited part of those benefits.

Applications for transfer value payments general

M4.—(1) A member who has applied for and received a statement of entitlement under regulation M2 may apply in writing to the Scottish Ministers for a transfer value payment to be made.

(2) 1971 c.56.

(3) S.I. 1996/1847.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation M5(2)).

(3) In these Regulations such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Scottish Ministers may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Scottish Ministers, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

Applications for transfer value payments: time limits

M5.—(1) Subject to paragraph (5), an application under regulation M4 must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 60.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the Bank of England base rate.

(3) In this regulation “Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998(4) is in force, any equivalent rate determined by the Treasury under that section.

(4) Paragraph (5) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to this Section of the scheme; and
- (b) it appears to the Scottish Ministers that the proceedings may lead to all or part of the member’s benefits being forfeited under regulation T7 (loss of rights to benefits).

(5) The Scottish Ministers may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(4) 1998 c.11.

(6) In any case where a direction is given under regulation T7 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.

(7) Subject to paragraph (8), if a transfer value payment is made in respect of a member's rights under this Section of the scheme, those rights are extinguished.

(8) If the member's rights described in regulation M1(4) have been excluded from the transfer payment, the Scottish Ministers will continue to be liable to provide the benefits described in regulation K2(7) (guaranteed minimum pensions).

Special terms for transfer out (bulk transfers etc.)

M6.—(1) If one or more members (the transferring members)—

- (a) leave pensionable employment;
- (b) join another occupational pension scheme; and
- (c) exercise a right to transfer to that scheme under regulation M2,

the Scottish Ministers may, after taking advice from this Section of the scheme's actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Scottish Ministers must calculate the amount of any transfer payment paid under this regulation taking advice from this Section of the scheme's actuary.

Member's right to transfer a preserved pension to the 2008 Section

M7.—(1) If a member meets the conditions referred to in paragraph (3) and subject to the following provisions of this regulation, the member may require the Scottish Ministers to use the cash equivalent of the member's rights under these Regulations to acquire rights referred to in the 2008 Section.

(2) A member's right to require the Scottish Ministers to use the cash equivalent of the member's rights in the way referred to in paragraph (1) may only be exercised once.

(3) The conditions referred to in paragraph (1) are that the member—

- (a) is entitled to a deferred benefit under regulation E12 (preserved pension);
- (b) may not join this Section of the scheme in respect of any further NHS employment by virtue of regulation B2(1)(i), (k) or (l); and
- (c) becomes an active member of the 2008 Section before attaining the age of 60.

(4) The Scottish Ministers must provide a member to whom this regulation applies with a statement of the amount of the cash equivalent of the member's benefits accrued in accordance with these Regulations at the guarantee date ("a statement of entitlement").

(5) In this regulation "the guarantee date" means any date that—

- (a) falls within the required period;
- (b) is chosen by the Scottish Ministers;
- (c) is specified in the statement of entitlement; and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(6) In counting the period of 10 days referred to in paragraph (5)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(7) In paragraph (5)(a), "the required period" means—

- (a) the period of three months beginning with the date that the Scottish Ministers receive notification from the member's employing authority that the member has joined the 2008 Section; or
 - (b) such longer period beginning with that date (but not exceeding six months) as may be reasonably required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (8) Subject to paragraphs (9) to (11), the member's guaranteed cash equivalent will be equal to the capitalised value of all of the member's rights to benefits accrued under these Regulations and any associated rights under Part I of the Pensions (Increase) Act 1971.
- (9) The Scottish Ministers must—
- (a) take advice from the scheme actuary before determining the factors to be used in the calculation of the member's guaranteed cash equivalent; and
 - (b) calculate and verify the amount of the guaranteed cash equivalent in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996.
- (10) Except in the case of a transfer payment accepted under regulation N5 (transfers in respect of members to whom regulation B6 applies who elect to rejoin this Section of the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(5) (which deals with the crediting of additional service upon transfer), plus the amount of the member's contributions to this Section of the scheme.
- (11) Any part of the cash equivalent that relates to the service before 29th January 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if this would be more favourable to the member.
- (12) A member who has received a statement of entitlement in accordance with paragraph (4) may apply to the Scottish Ministers for the cash equivalent of the member's rights under this Section of the scheme to be used to acquire rights under the 2008 Section.
- (13) An application under this regulation must be made in respect of each and every portion of the cash equivalent and shall be—
- (a) made in writing on the form provided for this purpose by the Scottish Ministers;
 - (b) made before the end of the period of three months beginning with the guarantee date; and
 - (c) irrevocable.
- (14) On the making of such an application—
- (a) a member becomes entitled to be credited with a period of pensionable service or an equivalent increase to the member's pensionable earnings in the 2008 Section in respect of the cash equivalent value of the member's benefits under this Section of the scheme calculated in accordance with whichever of regulation 2.F.17 or 3.F.17 of the 2008 Section apply to the member, and
 - (b) the member's rights under this Section of the scheme are extinguished on the day that the member is credited with a period of pensionable service or pensionable earnings in accordance with regulations 2.F.17 or 3.F.17 (transfers across from the National Health Service superannuation scheme for Scotland 1995) (as the case may be) of the 2008 Section.

Waiver of transfer payments

M8. If an occupational pension scheme waives payment of any cash equivalent or transfer payment that would otherwise be payable to it under regulations M1 to M6, the payment will nevertheless be treated as made for the purposes of these Regulations.

