
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 109

The National Health Service Superannuation Scheme
etc. (Miscellaneous Amendments) (Scotland) Regulations 2013

PART 2

AMENDMENT OF THE NATIONAL HEALTH SERVICE
SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 2011

Amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 2011

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011(1) are amended in accordance with this Part.

Amendment of regulation A2

3. In regulation A2(4) (interpretation)—

(a) after “the 2004 Act” in column 1 and the corresponding meaning in column 2 insert—

““the 2008 Act”	The Pensions Act 2008(2);”;
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(b) after “the 2008 Section” in column 1 and the corresponding meaning in column 2 insert—

““the 2010 Regulations”	The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(3);”;
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(c) after “assistant practitioner” in column 1 and the corresponding meaning in column 2 insert—

““automatic enrolment date”	The date referred to in section 3(7) of the 2008 Act;
“automatic re-enrolment date”	The date determined in accordance with regulation 12 of the 2010 Regulations (as modified by regulation 14 of those Regulations(4));”;

(d) for “pay period” in column 1 and the corresponding meaning in column 2 substitute—

““pay period”	In relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in
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(1) S.S.I. 2011/117 as amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.

(2) 2008 c.30.

(3) S.I. 2010/772.

(4) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

respect of which each payment is made in accordance with the terms of that contract;”.

Amendment of regulation B1

4. For regulation B1(2) (membership of this Section of the scheme) substitute—
- “(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—
- (a) automatically on commencing NHS employment;
 - (b) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and has given notice in accordance with regulation B5(1), on the date determined under paragraph (2) of that regulation;
 - (c) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 5 of the 2008 Act applies—
 - (i) on that person’s automatic enrolment date; or
 - (ii) on that person’s automatic re-enrolment date, except where the notice referred to in regulation B4(1) was given within the period of 12 months immediately preceding that date.”.

Amendment of regulation B2

5. In regulation B2(1) (age limits and restrictions on membership)—
- (a) in sub-paragraph (k)(ii), for “paragraphs (1) or (2)” substitute “paragraph (1)”;
 - (b) in sub-paragraphs (l)(ii), (m)(ii), (n)(ii) and (o)(ii), omit “or (2)”; and
 - (c) in sub-paragraph (l)(iii)(bb), for “(6)” substitute “(7)”.

Amendment of regulation B4

6. In regulation B4 (opting out of this Section of the scheme)—
- (a) omit paragraphs (2) to (4);
 - (b) for paragraph (5) substitute—

“(5) A notice referred to in paragraph (1) takes effect—

 - (a) from the first day of the pay period immediately following its receipt by the employing authority; or
 - (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.”;
 - (c) for paragraph (7) substitute—

“(7) A person who opts out of this Section of the scheme under paragraph (1) within one month of the date of commencing NHS employment is to be treated as never having been included in this Section of the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf of, that person before the opt out took effect must be refunded.”;
 - (d) for paragraph (8) substitute—

“(8) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—

 - (a) automatic enrolment date; or

- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.”; and
- (e) after paragraph (9) insert—
 - “(10) This regulation and regulation B5 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act⁽⁵⁾ and regulation 9 or 15 of the 2010 Regulations⁽⁶⁾ apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

Amendment of regulation B5

- 7. In regulation B5 (rejoining this Section of the scheme)—
 - (a) in paragraph (1)—
 - (i) for “paragraphs (3) and (4), a member” substitute “paragraph (3), a person”; and
 - (ii) before “rejoin” insert “join or”;
 - (b) in paragraph (2), for “member” substitute “person”;
 - (c) for paragraphs (3) and (4) substitute—
 - “(3) A person who has opted out may not rejoin this Section of the scheme during any period of absence from work for any reason.”; and
 - (d) for the heading to the regulation substitute—

“Joining or rejoining this Section of the scheme after opting out”.

Amendment of regulation B6

- 8. In regulation B6 (opting into this Section of the scheme: mis-sold pensions)—
 - (a) in paragraph (2), before “rejoin” insert “join or”; and
 - (b) in paragraph (3), before “rejoin” insert “join or”.

Amendment of regulation D1

- 9. For regulation D1(4) (contributions by members) substitute—
 - “(4) Before determining those pensionable pay bands or contribution percentage rates under paragraph (3), the Scottish Ministers must consider the advice of the scheme actuary.”.

Amendment of regulation D2

- 10. In regulation D2 (contributions and other payments by employing authorities)—

(5) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

(6) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

- (a) in paragraph (7A), at the end insert (as full out words) “This is subject to paragraph (7B).”; and
- (b) after paragraph (7A) insert—
 - “(7B) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Scottish Ministers under paragraph (5)(a), in respect of a pension payable under regulation E7, and paragraph (5)(b), (d) and (e) may only be paid by a single payment of an amount determined by the Scottish Ministers on the advice of the scheme actuary: that payment must be made within one month of the date on which the pension under regulation E7 became payable.”.

Amendment of regulation E7

11. For regulation E7(2) (early retirement pension (redundancy etc. new starters and post transition)) substitute—

- “(2) Those conditions are that—
 - (a) the member has two years’ qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
 - (b) the member’s employing authority certifies—
 - (i) that the member has at least two years’ continuous employment determined in accordance with any terms and conditions applying to that employment; and
 - (ii) if the member’s employment is terminated by reason of redundancy, that the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to him in accordance with those terms and conditions;
 - (c) the member’s employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
 - (d) the Scottish Ministers certify—
 - (i) that the member’s employment is terminated by reason of redundancy; or
 - (ii) with the agreement of the employing authority, that the member’s employment is terminated in the interests of the efficiency of the service in which the member is employed; and
 - (e) the member makes a claim for the pension referred to in this regulation.”.

Amendment of regulation G6

12. After regulation G6(3) (widow’s pension when member marries after leaving pensionable employment) insert—

- “(4) Where the nominated partner referred to in G14 (surviving nominated partner’s pension) becomes the member’s widow on the member’s death, the widow’s pension will, if it would be more beneficial to the widow, be equal to the nominated partner pension that would have been payable if the widow and the member had not been married to each other.”.

Amendment of regulation G14

13. In regulation G14(5) (surviving nominated partner’s pension)—

- (a) after “other” insert “during any period of pensionable employment”; and

- (b) for “was not effective” substitute “becomes effective after all pensionable employment has ceased”.

Amendment of regulation H4

14. For regulation H4(5) (child allowance when member dies after pension becomes payable) substitute—

“(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent) the allowance—

- (a) for the period of 6 months beginning with the member’s death, will be the greater of—
- (i) the amount of the member’s pension calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment); and
 - (ii) the amount of child allowance that would otherwise be payable under these Regulations; and
- (b) following the period referred to in sub-paragraph (a), will be equal to—
- (i) one-third of the pension described in paragraph (2) if there is only one dependent child; and
 - (ii) two-thirds of the pension described in paragraph (2) if there are two or more dependent children.”.

Amendment of regulation K6

15. In regulation K6(1) (protected rights transferred to this Section of the scheme), after “Where” insert “, before 6th April 2012,”.

Amendment of regulation N1

16. In regulation N1(3)(b) (member’s right to transfer accrued rights to benefits to this Section of the scheme), for “(rejoining this Section of the scheme)” substitute “(joining or rejoining this Section of the scheme after opting out)”.

Amendment of regulation N5

17. In the heading to regulation N5, for “rejoin this Section of the scheme” insert “join or rejoin this Section of the scheme after opting out”.

Amendment of regulation Q13

18. In regulation Q13 (cancellation and cessation of options under regulation Q8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation Q8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning

after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

Amendment of regulation Q15

19. In regulation Q15 (effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11), in paragraphs (2) and (4), at the beginning insert “Subject to regulation Q13(5) and (6),”.

Amendment of regulation S1

20. In regulation S1(5) (suspension of pension on return to NHS employment)—

- (a) at the end of sub-paragraph (b) omit “and”; and
- (b) after sub-paragraph (c) insert—
 - “(d) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006(7); and
 - (e) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(8).”

Amendment of regulation S2

21. In regulation S2 (reduction of pension on return to NHS employment)—

- (a) in paragraph (9), for “Subject to paragraph (10), a” substitute “A”;
- (b) omit paragraph (10); and
- (c) in paragraph (12), after “paragraph (4)” insert “or (5)”.

New regulation T1A

22. After regulation T1 (claims for benefits) insert—

“Provision of information: continuing entitlement to benefit

T1A.—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part of, any benefit payable to that person.”.

(7) 2006 c.41.

(8) 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

Amendment of regulation U3

23. Omit regulation U3(3) to (6) (accounts and actuarial reports) and, in the heading to that regulation, omit “and actuarial reports”.

Revocation of regulation U4

24. Omit regulation U4 (cost sharing).

Amendment of Schedule 1

25. In Schedule 1 (medical and dental practitioners), for paragraph 14(5) substitute—
“(5) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.