
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

**The National Health Service Superannuation
Scheme (2008 Section) (Scotland) Regulations 2013**

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.B

MEMBERSHIP

Eligibility

Eligibility: general

2.B.1.—(1) A person is eligible to be an active member of this Section of the scheme if conditions A to C are met and the person is not prevented by regulation 2.B.3 (restrictions on eligibility: general), 2.B.4 (concurrent employments) or 2.B.7 (restriction on further participation).

(2) Condition A is that the person is in NHS employment.

(3) Condition B is that the person—

(a) enters NHS employment on or after 1st April 2008; or

(b) entered NHS employment before that date and on that date was not an active member of the 1995 Section in that employment or any other NHS employment,

and meets any one of the other Section conditions in paragraph (5).

(4) Condition C is that the person has not reached age 75.

(5) The other Section conditions are that—

(a) the person has not previously been an active member of the 1995 Section;

(b) the person ceased to be an active member of the 1995 Section at least 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Section;

(c) the person ceased to be an active member of the 1995 Section less than 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Section and has received a repayment of contributions in respect of that membership;

(d) the person ceased to be an active member of the 1995 Section on or after 1st April 2008 on leaving NHS employment and before the person re-entered such employment—

(i) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 2011 Regulations; or

(ii) the person made an application under regulation M2 (exercising a right to a transfer or a buy-out) of the 2011 Regulations from which the person may not withdraw;

- (e) the person—
 - (i) ceased to be an active member of the 1995 Section on leaving NHS employment;
 - (ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section between the date of leaving that employment and joining this Section of the scheme; and
 - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment;
- (f) the person—
 - (i) ceased to be an active member of the 1995 Section before 1st April 2008 on leaving NHS employment;
 - (ii) became a deferred member of that Section on leaving that employment;
 - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; and
 - (iv) before the person re-entered such employment—
 - (aa) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 2011 Regulations; or
 - (bb) the person made an application under regulation M2 (exercising a right to a transfer or a buy-out) of those Regulations from which the person may not withdraw;
- (g) the person is a deferred member of the 1995 Section who has given notice for the purposes of regulation B4(1) or (2) (opting out) of the 2011 Regulations and—
 - (i) as a result of that notice has been treated as ceasing to be an active member of that Section; and
 - (ii) pursuant to that notice remains opted out of that Section for 5 years or more;
- (h) the person is a deferred member of the 1995 Section who has given notice for the purposes of regulation B4(1) or (2) (opting out) of the 2011 Regulations and following that notice, has ceased to be an active member of that Section for any one period of 5 or more years comprising the aggregate of—
 - (i) any period during which the person is not in NHS employment; and
 - (ii) any period during which the person is treated as never having been an active member of that Section in accordance with regulation B4(3) of the 2011 Regulations in respect of one or more later periods of NHS employment entered into after having given the notice for the purposes of paragraph (1) or (2) of that regulation;
- (i) the person—
 - (i) has given notice for the purposes of regulation B4 (opting out) of the 2011 Regulations and as a result of that notice all of that person's NHS employments ceased to be pensionable employment for the purposes of those Regulations;
 - (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
 - (iii) has been treated as ceasing to be in pensionable employment under the 2011 Regulations for a period of 12 months or more; or
- (j) the person—
 - (i) has given notice for the purposes of regulation B4 (opting out) of the 2011 Regulations and as a result of that notice all of that person's NHS employments ceased to be pensionable employment for the purposes of those Regulations;

- (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
- (iii) has, in respect of the NHS employments referred to in head (i), either received a repayment of contributions or exercised the right to a transfer payment under Part M of those Regulations,

but sub-paragraphs (d) to (f) do not apply if the Scottish Ministers have permitted such a person to rejoin the 1995 Section in the circumstances described in regulation B2(3) (age limits and restrictions on membership) of the 2011 Regulations.

(6) This regulation applies to any person who has previously been an active member of a corresponding health service scheme as though in paragraph (3) any reference to—

- (a) “the 1995 Section” includes a reference to that corresponding health service scheme; and
- (b) “NHS employment” includes a reference to—
 - (i) employment with an employer in respect of whom a direction has been made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967(1);
 - (ii) employment to which regulations made under section 10 of the Superannuation Act 1972(2) and having effect in England and Wales apply;
 - (iii) employment to which regulations made under article 12 of the Superannuation (Northern Ireland) Order 1972(3) apply;
 - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984(4) (an Act of Tynwald) applies; and
 - (v) employment with an employer with whom an agreement has been made under section 235 (superannuation of officers of certain hospitals) of the 2006 Act.

Eligibility: transitional

2.B.2.—(1) A person is eligible to be an active member of this Section of the scheme if—

- (a) the person is not prevented from being so by regulation 2.B.3 (restrictions on eligibility: general), 2.B.4 (concurrent employments) or 2.B.7 (restriction on further participation); and
 - (b) either—
 - (i) the Scottish Ministers have accepted that person’s option to join this Section of the scheme under Chapter 2.K (2008 Section Optants); or
 - (ii) that person meets all of the requirements in paragraph (2).
- (2) Subject to the following paragraphs of this regulation, the requirements are that the person—
- (a) is under age 75;
 - (b) was an active member of the 1995 Section on or after 1st April 2008;
 - (c) became a pensioner member of the 1995 Section on or before 1st October 2009;

(1) 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).

(2) 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649.

(3) S.I. 1972/1073 (N.I. 10).

(4) 1984 c.8 (Tynwald).

- (d) has either—
- (i) returned to NHS employment since becoming a pensioner member referred to in sub-paragraph (c); or
 - (ii) commenced NHS employment for the first time; and
- (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in sub-paragraph (d).
- (3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the scheme from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 2011 Regulations—
- (a) E1 (normal retirement pensions);
 - (b) E3(3)(a) (lower tier ill health pension on early retirement (post 1st April 2008));
 - (c) E7 (early retirement pension (redundancy etc. new starters and post-transition)); or
 - (d) E11 (early retirement pension (with actuarial reduction)).
- (4) A person referred to in paragraph (2) is eligible to be an active member of this Section of the scheme from the day immediately following the longer of Waiting Period A and Waiting Period B, if that person is entitled to a pension under one of the following regulations of the 2011 Regulations—
- (a) E2 (early retirement pension on ill health grounds (pre 1st April 2008)); or
 - (b) E6 (early retirement pension (redundancy etc.)).
- (5) If a person referred to in paragraph (2) is entitled to a pension under regulation E3(3)(b) (upper tier ill health pension on early retirement (post 1st April 2008)) of the 2011 Regulations, that person is eligible to be an active member of this Section of the scheme from the day immediately following whichever of the following occurs last—
- (a) the anniversary of that person entering NHS employment; or
 - (b) the end of Waiting Period A.
- (6) A person to whom paragraph (1)(b)(i) or (3)(b) applies who is entitled to a lower tier ill health pension under regulation E3(3)(a) of the 2011 Regulations, ceases to be eligible to be an active member of this Section of the scheme from the date the Scottish Ministers make a determination that the person is entitled to an upper tier ill health pension in place of that lower tier ill health pension under regulation E4(3) (re-assessment of ill health condition determined under regulation E3) of those Regulations.
- (7) In this regulation—
- “Waiting Period A” means a period of two calendar years beginning on the day the person becomes entitled to the pension under the 2011 Regulations; and
- “Waiting Period B” means a period beginning on the day the person becomes entitled to the pension under the 2011 Regulations equal to the calendar length of—
- (a) any increase in the person’s pensionable service in the 1995 Section which has been applied in accordance with regulation E2(3) (early retirement pension on ill health grounds (pre 1st April 2008)) of the 2011 Regulations; or
 - (b) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(5).
- (8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—
- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;

(5) S.S.I. 2003/344, amended by S.S.I. 2005/445, 512 and 544, 2006/561, 2008/92 and 225 and 2011/211 and 364.

- (b) the “2011 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E3”, “E4(3)”, “E6”, “E7”, “E7(3)(a)”, “E7(3)(b)” or “E11” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 2011 Regulations; and
- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.

Restrictions on eligibility: general

2.B.3.—(1) A person who is entitled to the immediate payment of a pension under this Section of the scheme under a regulation that requires the person not to be in NHS employment may only be an active member in accordance with—

- (a) regulation 2.D.5 (partial retirement: members aged at least 55);
 - (b) regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased); or
 - (c) Chapter 2.G (re-employment and rejoining the scheme).
- (2) A person is not eligible to be an active member of this Section of the scheme if the person—
- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme before 1st April 2008 (except if regulation 2.B.2(1)(b)(i) (eligibility: transitional) applies to that person);
 - (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on or after that date (except if regulation 2.B.2(1)(b)(i) or (ii) (eligibility: transitional) applies to that person); or
 - (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
 - (i) to whom regulation 2.B.1(5)(e), (f), (g) or (h) (eligibility: general) applies; and
 - (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 Section has not been granted pursuant to regulation B2(3) (age limits and restrictions of membership) of the 2011 Regulations.
- (3) A person is not eligible to be an active member of this Section of the scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under section 1 (superannuation schemes as respects civil servants, etc.) or section 9 (superannuation of teachers) of the Superannuation Act 1972⁽⁶⁾ in respect of service in that employment.
- (4) A person who holds an honorary appointment and does not at the same time hold any other employment which entitles the person to be a member of this Section of the scheme is not eligible to be an active member of this Section of the scheme.
- (5) A person is not eligible to be an active member of this Section of the scheme if the person—
- (a) becomes entitled to an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members); and
 - (b) opts to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum).

(6) 1972 c.11. Section 1 was amended by section 8 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), by paragraph 6 of Schedule 8 to the Pension Schemes Act 1993 (c.48), paragraph 14 of Schedule 8 to the Scotland Act 1998 (c.46), S.I. 2000/2040, 2001/3649 and 2007/126. Section 9 was amended by sections 4(1), 8(3) and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and S.I. 2001/3649.

(6) Subject to paragraph (7), a person is not eligible to be an active member of this Section of the scheme in any future employment if the person—

- (a) ceases to be entitled to a lower tier ill health pension under regulation 2.D.8; and
- (b) becomes entitled to an upper tier ill health pension under that regulation on the date the Scottish Ministers make a determination under regulation 2.D.9(3) (re-assessment of entitlement to an ill health pension).

(7) A person to whom paragraph (6) applies is eligible to be an active member of this Section of the scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Scottish Ministers' determination under regulation 2.D.9.