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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 94**

**The National Health Service Pension  
Scheme (Scotland) Regulations 2015**

**PART 7**

Transfers

**CHAPTER 2**

Transfers values

*SECTION 2*

*Transfers out*

**Right to transfer value payment**

**133.**—(1) This Section applies to a member (M) unless M is—

- (a) an active member;
- (b) a pensioner member in respect of the pension to which M has become entitled; or
- (c) a pension credit member in respect of rights that are directly attributable to a pension credit.

(2) If Chapter 4 of Part 4 of the 1993 Act (transfer values) applies to M (see section 93(1)(a) of that Act), M is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of M under this scheme.

(3) If Chapter 5 of that Part applies to M (see section 101AA of that Act), M is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) In any other case, M is entitled to require payment as mentioned in paragraph (2) as if the rights had accrued to or in respect of M by reference to the pensionable service M is entitled to count under this scheme (and references to M's accrued rights or benefits are to be read accordingly).

**Application for statement of entitlement**

**134.**—(1) A member (M) who requires a transfer value payment to be made must apply in writing to the scheme manager for a statement of entitlement.

(2) M may withdraw the application by notice in writing at any time before the statement of entitlement is provided.

(3) The guarantee date is a date that—

- (a) is within the required period;
- (b) is chosen by the scheme manager;
- (c) is specified in the statement of entitlement; and

- (d) is not more than 10 days after the date on which M is provided with the statement of entitlement.
- (4) In paragraph (3), the required period is—
  - (a) the period of 3 months beginning with the date of M's application for a statement of entitlement; or
  - (b) such longer period (not exceeding 6 months) beginning with that date as may reasonably be required if, for reasons beyond the control of the scheme manager, the information required to calculate the cash equivalent or club transfer value cannot be obtained.
- (5) For the purposes of paragraph (3)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday must be ignored.

### **Application for transfer value payment**

**135.**—(1) A member (M) who has applied for and received a statement of entitlement may apply in writing to the scheme manager for a transfer value payment to be made.

(2) The application must be made before the end of the period of 3 months starting with the guarantee date.

(3) On making the application M becomes entitled to payment of an amount equal, or amounts equal in aggregate, to—

- (a) the amount specified in the statement of entitlement; or
- (b) that amount subject to any increase specified in regulation 136(2).

(4) In this Part a payment under paragraph (3) is referred to as “the guaranteed cash equivalent transfer value payment”.

(5) The application—

- (a) must specify the pension scheme or other arrangement to which the payment should be applied; and
- (b) must meet such other conditions as are required by the scheme manager.

(6) The application may be withdrawn by notice in writing to the scheme manager unless, before the notice is given, 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.

### **Transfer value payments: time limits**

**136.**—(1) The guaranteed cash equivalent transfer value payment must be made not later than—

- (a) the end of the period of 6 months after the guarantee date; or
- (b) if earlier, the date on which the member attains normal pension age.

(2) If the payment is made after the time specified in paragraph (1)(a), the amount of the payment must be increased by the relevant amount.

(3) The relevant amount is—

- (a) if the amount specified in the statement of entitlement (SEA) is less than the amount it would have been if the guarantee date had been the date on which the payment is made, the amount of the difference;
- (b) if—
  - (i) the SEA is greater than the amount it would have been if the guarantee date had been the date on which the payment is made, and
  - (ii) there was no reasonable excuse for the delay in payment,

interest on the SEA calculated on a daily basis starting on the guarantee date and ending on the date the payment is made at an annual rate of 1% above the base rate.

(4) Paragraph (5) applies if—

- (a) disciplinary or court proceedings against M are started before the end of the period of 12 months starting with the date on which M leaves the employment which qualified M for being a member of this scheme; and
- (b) it appears to the scheme manager that the proceedings may result in all or part of M's benefits being forfeited under paragraph 12 of Schedule 3.

(5) The scheme manager may defer making a payment under this Section until the end of the period of 3 months starting on the day the proceedings (including any proceedings on appeal) are finally determined.

(6) If a direction is given under paragraph 12 of Schedule 3 for the forfeiture of M's benefits, this regulation applies as if the SEA were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.

(7) Paragraph (8) or (9) applies if M is not entitled to an age retirement pension by virtue of regulation 71.

(8) If M's application specifies that the guaranteed cash equivalent transfer value payment is made to a registered occupational pension scheme or a registered personal pension scheme, the application may be made only if—

- (a) M became a member of the other scheme before the end of the period of 12 months starting on the day after the leaving date; and
- (b) the application is made not later than—
  - (i) the end of the period of 12 months starting on the day M became a member of the other scheme, or
  - (ii) if M became a member of the other scheme on or before the leaving date, the end of the period of 12 months starting on the day after the leaving date.

(9) If paragraph (8) does not apply, M's application may only be made before the end of the period of 12 months starting on the day after the leaving date.

(10) In paragraphs (8) and (9), the leaving date is the day on which M ceased to be in the pensionable service in which the rights accrued.

(11) M may require the scheme manager to make a club transfer value payment only during the period of 12 months starting with the day on which M becomes eligible to be an active member of the scheme to which the payment is to be made.

### **How transfer value payments may be applied**

**137.**—(1) If Chapter 4 of Part 4 of the 1993 Act applies to a member (M), M may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 95 of that Act.

(2) In any other case, M may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 101AE of the 1993 Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) Benefits attributable to—

- (a) M's accrued rights to a guaranteed minimum pension; or

(b) M's accrued rights attributable to service in a contracted-out employment (within the meaning of section 8 of the 1993 Act) on or after 6th April 1997, may be excluded from the guaranteed cash equivalent payment if section 96(2) 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 members other rights).

(5) A transfer payment may be made only to—

- (a) a pension scheme (other than a connected scheme) that is registered under Chapter 2 of Part 4 of the 2004 Act; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

### **Calculating amounts of value or club transfer value**

**138.**—(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the scheme manager in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996(1).

(2) In determining the factors to be used in the calculation of the member's (M's) guaranteed cash equivalent, the scheme manager must take account of—

- (a) M's prospective normal pension age;
- (b) advice from the scheme actuary.

(3) If the amount calculated in accordance with paragraph (1) or (5) is less than M's minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value.

(4) In paragraph (3) "minimum transfer value" means the sum of—

- (a) any transfer value payments that have been made to this scheme in respect of M as a result of which M is entitled to count any pensionable service under this scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (b) any contributions paid by M under Part 4 as a result of which M is entitled to count such service.

(5) If the transfer is a club transfer, the amount of the transfer value payment is calculated in accordance with the club transfer arrangements rather than paragraph (1).

(6) If a club transfer value is paid later than 6 months after the guarantee date, the amount of the club transfer value as specified in the statement of entitlement must be increased if necessary so that it is equal to the amount it would have been if the guarantee date had been the date on which the payment is made.

### **Effect of transfer-out**

**139.** If a transfer value payment is made under this Section in respect of a person's rights under the scheme, those rights are extinguished.

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(1) [S.I. 1996/1847](#).