
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 94

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

PART 7

Transfers

CHAPTER 2

Transfers values

SECTION 1

Application of Chapter

Application of Chapter

132. This Chapter applies to the payment and receipt of transfer 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.

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

SECTION 3

Transfers in

Right to apply for acceptance of transfer value payment

140.—(1) An active member (M) may apply for a transfer value payment to be accepted from—

- (a) an appropriate registered occupational pension scheme;
- (b) a registered personal pension scheme;
- (c) a registered buy-out policy;
- (d) a corresponding scheme.

(2) Paragraph (1) does not apply to M's rights—

- (a) under a free-standing AVC scheme to which paragraph (3) applies, or
- (b) that are directly attributable to a pension credit.

(3) This paragraph applies to—

- (a) a scheme which—
 - (i) immediately before 6th April 2006 was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes), and
 - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 to that Act, or
- (b) a scheme established on or after that date as a registered free-standing AVC scheme.

(4) An appropriate registered occupational pension scheme is a registered occupational pension scheme which is not—

- (a) a connected scheme;
- (b) a corresponding 1995 scheme; or
- (c) a corresponding 2008 scheme.

(5) In paragraph (1), “buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts).

(6) In paragraph (4)—

“a corresponding 1995 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972⁽²⁾ and having effect in England and Wales or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972⁽³⁾, the provisions of which the Scottish Ministers have determined correspond to the provisions of the 2011 Regulations;

“a corresponding 2008 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972 and having effect in England and Wales or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972, the provisions of which the Scottish Ministers have determined correspond to the provisions of the 2013 Regulations.

(2) 1972 c.11

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

Application procedure

141.—(1) An application under regulation 140—

- (a) must be in writing;
 - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;
 - (c) must be made before—
 - (i) the end of the period of one year starting on the day the member (M) becomes eligible to be an active member of this scheme, and
 - (ii) M attains normal pension age;
 - (d) if the scheme manager so requires, may be made only if M has requested a statement of entitlement; and
 - (e) must meet such other conditions as the scheme manager requires.
- (2) If the transfer is not a club transfer, a statement of entitlement—
- (a) is a statement of the increase to pensionable earnings and the service M will be entitled to count as a result of the transfer if the payment is accepted;
 - (b) must specify—
 - (i) the period within which the payment is to be accepted by the scheme manager, and
 - (ii) the amount of increase to pensionable earnings calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.
- (3) If the transfer is a club transfer, a statement of entitlement—
- (a) is a statement of the club transfer earned pension; and
 - (b) must specify—
 - (i) the period within which the transfer is to be accepted by the scheme manager; and
 - (ii) the basis on which the club transfer earned pension will be revalued while M is in pensionable service under this scheme.

Acceptance of transfer value payment

142.—(1) The scheme manager may accept an application under regulation 140 from a member (M) unless—

- (a) such conditions as the scheme manager requires are not met; or
 - (b) paragraph (5) applies.
- (2) If the transfer is a non-club transfer and the scheme manager accepts the payment, M is entitled—
- (a) for the purposes of calculating benefits payable to, or in respect of, M under this scheme, to an increase in M's pensionable earnings calculated in accordance with regulation 143; and
 - (b) to be credited with the relevant period of pensionable service in this scheme.
- (3) If the transfer is a club transfer, M is entitled—
- (a) to the amount of club transfer earned pension specified in the statement of entitlement; and
 - (b) to be credited with the relevant period of pensionable service in this scheme.
- (4) The relevant period is equal to the period of employment that qualified M for the rights in respect of which the transfer is being made.
- (5) This paragraph applies to a non-club transfer if—

- (a) it would be applied in whole or in part in respect of M's or M's spouse's entitlement to a guaranteed minimum pension; and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the scheme actuary for the purposes of this paragraph.

Calculation of increase to pensionable earnings

143.—(1) The increase in pensionable earnings that the member (M) is entitled to count under regulation 142 as a result of the transfer is calculated—

- (a) in accordance with guidance and tables provided by the scheme actuary for the purpose; and
- (b) by reference to any relevant factors as at the date the transfer payment is received by the scheme manager.

(2) The benefits in respect of the transfer payment must be calculated by increasing M's pensionable earnings for—

- (a) the scheme year in which M joined this scheme; or
- (b) if the transfer payment is received more than 12 months after the day on which M joined this scheme (the starting day), the scheme year in which the payment is received.

(3) Paragraph (2)(b) does not apply if—

- (a) a written statement estimating the increase in pensionable earnings that M would be entitled to count as a result of the transfer was given to M by the scheme manager during the period of 3 months ending 12 months after the starting date; and
- (b) the transfer payment is received by the scheme manager before the end of the period of 3 months after the date of the statement.

(4) If the transfer is a club transfer, the club transfer earned pension M is entitled to count is calculated in accordance with the club transfer arrangements.

(5) If the transfer value statement is accepted from a corresponding scheme, the increase in pensionable earnings M is entitled to count is the increase M would be entitled to count if—

- (a) M's employment to which that scheme applied were health service employment in respect of which M was a member of this scheme; and
- (b) M's contributions to that scheme were contributions to this scheme.

Transfer from 1995 or 2008 Section

144.—(1) This regulation applies to an active member of this scheme (M) who is entitled to require a cash equivalent of M's rights to be used to acquire rights in this scheme pursuant to—

- (a) regulation M7A of the 1995 Section; or
- (b) regulation 2.F.18 or 3.F.18 of the 2008 Section.

(2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.

(3) An application under paragraph (2)—

- (a) must be in writing in the form provided by the scheme manager for the purpose;
- (b) must be made before the end of the period starting with the guarantee date within the meaning of whichever of regulation M7A, 2.F.18 or 3.F.18 applies;

- (c) may be made only if M has first been provided with a statement of the pensionable service and increase in pensionable earnings M will be entitled to count under this scheme if the application is accepted;
- (d) must meet such other conditions as the scheme manager requires;
- (e) is irrevocable.
- (4) The statement mentioned in paragraph (3)(c) must inform M of—
 - (a) the amount of the increase in pensionable earnings that will count under this scheme for the purpose of calculating benefits payable to or in respect of M;
 - (b) the pensionable service that will count under this scheme to determine whether M has 2 years qualifying service for the purposes of regulation 71.
- (5) The amount of the increase in pensionable earnings must be calculated in accordance with guidance, tables and other relevant factors provided by the scheme actuary for the purpose.
- (6) The pensionable service is equal to the period of employment that qualifies M to the entitlement mentioned in paragraph (1).
- (7) If the scheme manager accepts an application under paragraph (2), for the purposes of this scheme—
 - (a) the period of pensionable service mentioned in paragraph (4)(b) applies for the purpose mentioned in that paragraph;
 - (b) the amount of the increase in pensionable earnings is credited to M's active member's account in the scheme year in which M's application under paragraph (2) is received.
- (8) For the purposes of this regulation, in regulation 140(4), sub-paragraph (a) must be ignored.

Transfers from corresponding 1995 and 2008 schemes

- 145.**—(1) This regulation applies to an active member of this scheme (M) if—
- (a) M was formerly a member of a corresponding 1995 scheme or a corresponding 2008 scheme; and
 - (b) the scheme manager considers that on the notional joining date M would be entitled to require a cash equivalent of M's rights in that scheme to be used to acquire rights in a corresponding health service scheme if M became a member of the corresponding health service scheme.
- (2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.
- (3) An application under paragraph (2) must be in such form, provide such information and be made at such time as the scheme manager requires.
- (4) The notional joining date in relation to a relevant corresponding scheme is the date M became a member of this scheme.
- (5) References to a corresponding 1995 scheme and a corresponding 2008 scheme must be construed in accordance with regulation 140(6).

SECTION 4

Bulk transfers

Bulk transfers out

- 146.**—(1) This regulation applies if—

- (a) the employment of one or more active members (the transferring employees) is transferred without consent to a new employer;
 - (b) on the transfer the transferring employees cease to be eligible to be members of this scheme;
 - (c) after the transfer the transferring employees become active members of another occupational pension scheme (the new employer's scheme);
 - (d) the Scottish Ministers have agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the scheme actuary; and
 - (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) In the case of the transferring members or the transferred members, the transfer value payment to be paid—
- (a) is not calculated in accordance with regulation 135; but
 - (b) is to be such amount as the Scottish Ministers, after consulting the scheme actuary, determine to be appropriate in accordance with the special terms.
- (3) This Part has effect with such modifications as are necessary to give effect to those terms.
- (4) If the transfer is directly or indirectly attributable to an enactment, this Part has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.

Bulk transfers in

147.—(1) This regulation applies if—

- (a) the employment of one or more persons (the transferred employees) is transferred without their consent to a new employer;
 - (b) on the transfer the transferred employees cease to be active members of an occupational pension scheme (the former employer's scheme);
 - (c) after the transfer the transferred employees become active members of this scheme;
 - (d) the Scottish Ministers, after consulting the scheme actuary, have agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme; and
 - (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) This scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).
- (3) If the transfer is directly or indirectly attributable to an enactment, this scheme has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.