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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 174**

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

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.F

TRANSFERS

*Transfers-out*

**Introduction: rights to transfer value payment**

**2.F.1.**—(1) This Chapter supplements the rights conferred by or under Chapter 4 (transfer values) of Part 4 of the 1993 Act.

(2) This Chapter is without prejudice to Chapter 4 (transfer values) and Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4 of the 1993 Act.

(3) Accordingly—

- (a) a member to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) 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 the member under this Section of the scheme; and
- (b) a member to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to paragraph (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of the member by reference to the pensionable service the member is entitled to count under this Section of the scheme (and references in this Chapter to the member's accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not—

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

**Applications for statements of entitlement**

**2.F.2.**—(1) A member who requires a transfer value payment to be made 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 (a "statement of entitlement").

- (2) In this Part, 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) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.
- (4) In paragraph (2) “the required period” means—
  - (a) the period of three 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 6 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) 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.

#### **Applications for transfer value payments: general**

**2.F.3.**—(1) A member who has applied for and received a statement of entitlement under regulation 2.F.2 (applications for statements of entitlement) may apply in writing to the Scottish Ministers for a transfer value payment to be made.

(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 2.F.4(2) (applications for transfer value payments: time limits)).

(3) In this Part 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**

**2.F.4.**—(1) Subject to paragraph (4), an application under regulation 2.F.3(1) (applications for transfer value payments: general) must be made before the end of the period of three 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 65.

(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 base rate.
- (3) Paragraph (4) 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 2.J.8 (forfeiture of rights to benefit).
- (4) The Scottish Ministers may defer doing what is needed to carry out what the member requires until the end of the period of three months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.
- (5) In any case where a direction is given under regulation 2.J.8 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.
- (6) In respect of an applicant who does not fall within regulation 2.D.1(2) (normal retirement pensions)—
  - (a) whose application requires the guaranteed cash equivalent transfer value payment to be made to an occupational pension scheme or a personal pension scheme, an application under paragraph (1) may only be made if—
    - (i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which the member ceased to be in the pensionable service in which the rights accrued (“the leaving date”); and
    - (ii) the application is made not later than—
      - (aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme; or
      - (bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date; and
  - (b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.

### **Ways in which transfer value payments may be applied**

**2.F.5.—**(1) A member may only require the Scottish Ministers to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 (ways of taking right to cash equivalent) of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 4 (transfer values) of Part 4 of the 1993 Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, 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,

is to be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) (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) of the 1993 Act applies.

- (5) A transfer payment may only be made to—
- (a) a pension scheme that is registered under Chapter 2 (registration of pension schemes) 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) (recognised charges) of the 2004 Act).

### Calculating amounts of transfer value payments

**2.F.6.**—(1) Subject to paragraphs (2), (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(1)</sup>.

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent transfer value payment, the Scottish Ministers must take advice from the scheme actuary.

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

- (4) In paragraph (3) “minimum transfer value” means—
- (a) in the case of a person other than a 2008 Section Optant, the sum of—
    - (i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated; and
    - (ii) any contributions paid by the person under Chapter 2.C (contributions) as a result of which the person is entitled to count such service; and
  - (b) in the case of a 2008 Section Optant, the sum of—
    - (i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated;
    - (ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service; and
    - (iii) the aggregate of any—
      - (aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;
      - (bb) any contributions paid by the Optant under regulation D1 (contributions by members) of the 2011 Regulations in respect of pensionable employment in that Section on or before 31st March 2008; and
      - (cc) any payments made by the Optant under regulation Q1 (right to buy additional service) of the 2011 Regulations for the purchase of additional service,

(1) S.I. 1996/1847, amended by 1997/786 and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/34 and 744, 2007/60, 2008/1050 and 2450, 2009/615, 2011/1246 and 2012/692.

which entitle the Optant to count, under Chapter 2.K of this Section of the scheme, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.

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

- (a) in accordance with those arrangements rather than paragraphs (1) 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 the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

### **Effect of transfers-out**

**2.F.7.**—(1) If a transfer value payment is made under this Chapter in respect of a person’s rights under this Section of the scheme, those rights are extinguished.

### *Transfers-in*

### **Right to apply for acceptance of transfer value payment from another scheme**

**2.F.8.**—(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of the member under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by this Section of the scheme.

(2) This paragraph applies to—

- (a) an occupational pension scheme other than a corresponding health service scheme;
- (b) a personal pension scheme;
- (c) a registered buy-out policy;
- (d) a corresponding 1995 scheme; and
- (e) a corresponding 2008 scheme.

(3) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of the member’s rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of the member’s rights under a corresponding 1995 scheme.

(4) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

(5) In this regulation “FSAVC” means—

- (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) (free-standing AVC schemes) of the Income and Corporation Taxes Act 1988(2); and
  - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 (pensions schemes etc: transitional provisions and savings) to that Act; or
- (b) a scheme established on or after that date as a registered free-standing AVC scheme.

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

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(2) 1988 c.1. Section 591 was repealed by Part 3 of Schedule 42 of the Finance Act 2004 (c.12).

**Procedure for applications under regulation 2.F.8**

**2.F.9.**—(1) An application under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme)—

- (a) must be made in writing;
- (b) must specify this Section of the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;
- (c) except in the case of a member whose transfer value payment is from a corresponding health service scheme, may only be made during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of this Section of the scheme;
- (d) must be made before the applicant reaches age 65;
- (e) if the Scottish Ministers so require, may only be made if the member has first requested a statement—
  - (i) in the case of a transfer made under the public sector transfer arrangements, of the service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Scottish Ministers; and
  - (ii) in a case where the transfer is not made under those arrangements (including a transfer of rights from a corresponding 1995 scheme), of the service that member will be entitled so to count if the payment is so accepted by the Scottish Ministers within such period as is specified in the statement; and
- (f) must meet such other conditions as the Scottish Ministers may require.

(2) A statement given to the member in pursuance of such a request as is mentioned in paragraph (1)(e)—

- (a) in the case mentioned in paragraph (1)(e)(i), must inform the member of the effect (if any) of regulation 2.A.13 (restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service) in the member’s case; and
- (b) in the case mentioned in paragraph (1)(e)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.

**Acceptance of transfer value payments**

**2.F.10.**—(1) If an application is duly made by a member under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme) the Scottish Ministers may accept the transfer value payment if such conditions as the Scottish Ministers may require are met, unless paragraph (6) applies.

(2) If the Scottish Ministers accept the payment—

- (a) the member is entitled to count the appropriate period of pensionable service for the purposes of calculating benefits payable to or in respect of the member under this Section of the scheme; but
- (b) in the case of a member any of whose service falls to be treated as capped transferred-in service, with such period as so falls counting as such service<sup>(3)</sup>.

(3) In paragraph (2)(a), “the appropriate period” means the period calculated in accordance with regulation 2.F.11 (calculation of transferred-in pensionable service).

(4) If the Scottish Ministers accept the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service must count when determining whether or not the

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(3) For the meaning of “capped transferred-in service” see regulation 2.F.12.

member has reached 45 years of pensionable service for the purposes of regulation 2.A.4 (meaning of “pensionable service”: part-time service).

(5) In paragraph (4), “the relevant period” means the period calculated in accordance with regulation 2.F.11.

(6) The Scottish Ministers may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member’s or the member’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.

(7) Paragraph (6) does not apply if the transfer would be paid under the public sector transfer arrangements.

(8) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

### **Calculation of transferred-in pensionable service**

**2.F.11.**—(1) Subject to the following provisions of this regulation, the period of service that the member is entitled to count under regulation 2.F.10 (acceptance of transfer value payments) as the result of a transfer is to be calculated in accordance with any guidance and tables provided by the scheme actuary for that purpose.

(2) For the purposes of the calculation under paragraph (1), the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the member’s pensionable service begins (“the starting day”), unless paragraph (3) applies.

(3) If the transfer payment is received by the Scottish Ministers more than 12 months after the starting day, the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the transfer payment is received.

(4) Paragraph (3) does not apply if—

- (a) a written statement estimating the pensionable service that the member would be entitled to count as result of the transfer was given to the member by the Scottish Ministers during the period of three months ending 12 months after the starting day; and
- (b) the transfer payment is received by the Scottish Ministers less than three months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the period of pensionable service the member is entitled to count is to be calculated—

- (a) in accordance with those arrangements; 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 that is used by the transferring scheme for calculating the transfer value payment.

(6) If the transfer value payment is accepted from a corresponding 2008 scheme, the period of pensionable service the member is entitled to count is the period that the member would be entitled to count if—

- (a) the member’s employment to which that Section applied were NHS employment in respect of which the member was a member of this Section of the scheme; and
- (b) the member’s contributions to that Section were contributions to this Section of the scheme.

(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

**Meaning of “capped transferred-in service”**

**2.F.12.**—(1) This regulation applies if—

- (a) the Scottish Ministers accept a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply; and
- (b) the service in respect of which the transfer is made was, or included, capped service in employment to which the scheme from which the transfer value payment is made (“the transferring scheme”) applied.

(2) For the purposes of this Part, the same proportion of the service that the member is entitled to count under regulation 2.F.10(2)(a) (acceptance of transfer value payments) as the capped service bears to the whole of the service in respect of which the transfer is made is capped transferred-in service.

(3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as—

- (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) (earnings cap) of the Income and Corporation Taxes Act 1988(4); or
- (b) in the case of service on or after 6th April 2006, the member was an active member of the transferring scheme whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under that section was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the member’s remuneration in any tax year would have exceeded the amount of the limit.

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

**Public sector transfer arrangements**

**2.F.13.** This Chapter applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Chapter provides otherwise; or
- (b) the arrangements themselves make different provision.

**Bulk transfers-out**

**2.F.14.**—(1) This regulation applies if—

- (a) the employment of one or more active members (“the transferring employees”) is transferred without their consent to a new employer;
- (b) on that transfer the transferring employees cease to be eligible to be active members of this Section of the scheme;
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer’s scheme”);

(4) 1988 c.1. Section 590C was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).



- (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 to be calculated in accordance with regulation 2.F.6 (calculating amounts of transfer value payments); and
  - (b) is such amount as the Scottish Ministers determine to be appropriate in accordance with the special terms after consulting the scheme actuary.
- (3) This Chapter 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 Chapter has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.
- (5) Where a member to whom this regulation applies is also a member to whom Part 3 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 3.

#### **Bulk transfers-in**

- 2.F.15.**—(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 that transfer the transferred employees cease to be active members of an occupational pension scheme (“the former employer's scheme”);
  - (c) after that transfer the transferred employees become active members of this Section of the scheme;
  - (d) the Scottish Ministers have agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme, after consulting the scheme actuary; and
  - (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) This Section of the 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 Section of the scheme has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.

#### **EU and other overseas transfers**

- 2.F.16.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.
- (2) This Section of the scheme applies in relation to the member with such modifications as the Scottish Ministers consider necessary to comply with—
- (a) the terms of those arrangements;
  - (b) any applicable provision contained in or made under any enactment; and

- (c) the requirements to be met by a scheme registered under Chapter 2 (registration of pension schemes) of Part 4 of the 2004 Act.

*Transfers across*

**Transfers across from the 1995 Section**

**2.F.17.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member’s rights under the 1995 Section pursuant to regulation M7 (member’s right to transfer a preserved pension to the 2008 Section) of the 2011 Regulations, may apply to convert that cash equivalent value into rights under this Section of the scheme.

- (2) An application under paragraph (1)—
  - (a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;
  - (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 2011 Regulations;
  - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this Section of the scheme if the application is accepted by the Scottish Ministers;
  - (d) must meet such other conditions as the Scottish Ministers may require; and
  - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
  - (a) inform the member of the amount of pensionable service that will count under this Section of the scheme for the purposes of calculating benefits payable to or in respect of the member;
  - (b) inform the member of the amount of pensionable service that will count under this Section of the scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3 (meaning of “pensionable service”); and
  - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose.
- (4) If the Scottish Ministers accept an application under paragraph (1)—
  - (a) the member is entitled to count the period of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes of calculating benefits payable to or in respect of the member under this Section of the scheme; and
  - (b) that period of pensionable service must be credited to the member on the day that the Scottish Ministers received the member’s application.