
STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 3.F

TRANSFERS

Transfers in

3.F.8 Right to apply for acceptance of transfer value payment from another scheme

(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 him under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by the Scheme.

(2) This paragraph applies to—

- (a) a registered occupational pension scheme,
- (b) a registered personal pension scheme,
- (c) a registered buy-out policy, and
- (d) a corresponding health service scheme.

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

(4) 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) of the Income and Corporation Taxes Act 1988(1) (free-standing AVC schemes), and
 - (ii) became a registered scheme for the purposes of that 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.

3.F.9 Procedure for applications under regulation 3.F.8

(1) An application under regulation 3.F.8—

- (a) must be made 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) 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 the Scheme and before the applicant reaches the age of 65,
 - (d) if the Secretary of State so requires, 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 Secretary of State, and
 - (ii) in a case where the transfer is not made under those arrangements, of the service that member will be entitled so to count if the payment is so accepted by the Secretary of State within such period as is specified in the statement, and
 - (e) must meet such other conditions as the Secretary of State may require.
- (2) A statement given to the member in pursuance of such a request as is mentioned in paragraph (1)(d)—
- (a) in the case mentioned in paragraph (1)(d)(i), must inform the member of the effect (if any) of regulation 3.A.13 (restriction on pensionable earnings 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)(d)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the Scheme actuary for the purpose.

3.F.10 Acceptance of transfer value payments

- (1) If an application is duly made by a member under regulation 3.F.8, the Secretary of State may accept the transfer value payment if such conditions as the Secretary of State may require are met, unless paragraph (4) applies.
- (2) If the Secretary of State accepts the payment—
- (a) the member is entitled to count the increase in the member’s pensionable earnings for the purposes of calculating benefits payable to or in respect of the member under 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.
- (3) In paragraph (2)(a) “the appropriate increase” means the increase calculated in accordance with regulation 3.F.11.
- (4) For the meaning of “capped transferred-in service”, see regulation 3.F.12.
- (5) The Secretary of State 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.
- (6) Paragraph (5) does not apply if the transfer would be paid under the public sector transfer arrangements.

3.F.11 Calculation of transferred-in pensionable service

- (1) The increase in pensionable earnings that the member is entitled to count under regulation 3.F.10 as the result of a transfer is calculated in accordance with guidance and tables provided by the Scheme actuary for the purpose by reference to any relevant factors as at the date on which the transfer payment is received by the Secretary of State.

This is subject to the following provisions of this regulation.

(2) For the purposes of the calculation under paragraph (1) the benefits in respect of the transfer payment will be calculated by increasing the member's pensionable earnings for the financial year in which the member joined the Scheme (or the financial year in which the transfer payment is received if the payment is more than 12 months after the member joined the Scheme).

(3) The amount of the increase referred to in paragraph (2) will be calculated by—

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made,
- (b) calculating the final year's pensionable pay that would have given rise to a cash equivalent in respect of officer service under regulation 2.F.6 (calculating amounts of transfer value payments), and
- (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the final year's pensionable pay mentioned in paragraph (b) throughout that period.

(4) But paragraph (3) does not apply if—

- (a) a written statement estimating the increase in pensionable earnings that the member would be entitled to count as a result of the transfer was given to the member by the Secretary of State during the period of 3 months ending 12 months after the starting day, and
- (b) the transfer payment is received by the Secretary of State less than 3 months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the increase in pensionable earnings the member is entitled to count is 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 health service scheme, the increase in pensionable earnings the member is entitled to count is the increase that the member would be entitled to count if—

- (a) the member's employment to which that scheme applied were NHS employment in respect of which the member was a member of the Scheme, and
- (b) the member's contributions to that scheme were contributions to the Scheme.

(7) In this Part "corresponding health service scheme" means—

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972(2) and having effect in Scotland,
- (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972(3),
- (c) a scheme made under section 2 of the Superannuation Act 1984(4) (an Act of Tynwald) applies, and
- (d) any other occupational pension scheme approved for the purposes of this regulation by the Secretary of State.

(2) 1972 c. 11.

(3) 1965 c. 32.

(4) S.I. 1972/1073.

3.F.12 Meaning of “capped transferred-in service”

(1) This regulation applies if—

- (a) the Secretary of State accepts 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 by which the 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 3.F.10(2)(a) 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 scheme 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) of the Income and Corporation Taxes Act 1988⁽⁵⁾, 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 scheme 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.

3.F.13 Public sector transfer arrangements

3.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.

3.F.14 Bulk transfers out

(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 the Scheme,
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer’s scheme”),
- (d) the Secretary of State has 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.

(5) 1984 c. 8 (Tynwald).

(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 3.F.6, but
- (b) is to be such amount as the Secretary of State determines 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 Secretary of State considers necessary in consequence of the transfer.

(5) Where a member to whom this regulation applies is also a member to whom Part 2 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 2

3.F.15 Bulk transfers in

(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 the Scheme,
- (d) the Secretary of State has 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) 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, the Scheme has effect with such modifications as the Secretary of State considers necessary in consequence of the transfer.

EU and other overseas transfers

(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) The Scheme applies in relation to the member with such modifications as the Secretary of State considers 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 of Part 4 of the 2004 Act.