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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 224**

**The National Health Service Pension  
Scheme (Scotland) Regulations 2008**

**PART 3**

**BENEFITS FOR PRACTITIONERS, ETC.**

**CHAPTER 3.F**

**TRANSFERS**

*Transfers out*

**Introduction: rights to transfer value payment**

**3.F.1.**—(1) This Chapter supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act (transfer values) and applies to practitioners.

(2) This Chapter is without prejudice to that Chapter or Chapter 5 of that Part<sup>(1)</sup> (early leavers: cash transfer sums and contribution refunds).

(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 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 paragraphs (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 him or her by reference to the pensionable service the member is entitled to count under 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.

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(1) Chapter 5 (sections 101AA to 101AI) was inserted by section 264 of the Pensions Act 2004 (c. 35).

### **Applications for statements of entitlement**

**3.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 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,

and in counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

- (3) In paragraph (2) “the required period” means—
- (a) the period of 3 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.

(4) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

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

**3.F.3.**—(1) A member who has applied for and received a statement of entitlement under regulation 3.F.2 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 3.F.4(2)).

(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**

**3.F.4.**—(1) Subject to paragraphs (4) and (5), an application under regulation 3.F.3(1) must be made before the end of the period of 3 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 per cent 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 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 3.J.7 (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 3 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 3.J.7 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 3.D.1(2)–
- (a) in the case of an application that requires the guaranteed cash equivalent transfer value payment to be made to an occupational pension scheme or a registered 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**

**3.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 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 of Part 4 of that 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,

may be excluded from the guaranteed cash equivalent transfer value 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 member's other rights).

- (5) A transfer payment may only be made to—
  - (a) a pension 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 that Part (see section 169(2) of that Act).

### **Calculating amounts of transfer value payments**

**3.F.6.**—(1) Subject to paragraphs (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for use at the guarantee date.

(2) In preparing those tables the scheme actuary must use such factors as the scheme actuary considers appropriate, having regard to section 97 of the 1993 Act and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(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”, in relation to any person, means the sum of—
  - (a) any transfer value payments that have been made to the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under the scheme by reference to which the accrued rights subject to the transfer are calculated; and
  - (b) any contributions paid by the person under Chapter 3.C as a result of which the person is entitled to count such service.

(5) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is 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.

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

**3.F.7** If a transfer value payment is made under this Chapter in respect of a person's rights under the scheme, those rights are extinguished.