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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.

### *Transfers in*

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

**3.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 him or her 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)(2) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes); and
    - (ii) became a registered scheme for the purposes of that Act by virtue of Schedule 36 to that Act; and
  - (b) a scheme established on or after that date as a registered free-standing AVC scheme.

### **Procedure for applications under regulation 3.F.8**

**3.F.9.**—(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 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, 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
  - (e) must meet such other conditions as the Scottish Ministers may require.
- (2) A statement given to the member in pursuance of a 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.11 (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.

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(2) Section 591 was repealed by the 2004 Act, Schedule 42, paragraph 1, subject to transitional provisions and savings specified in Schedule 36.

### Acceptance of transfer value payments

**3.F.10.**—(1) If an application is duly made by a member under regulation 3.F.8, the Scottish Ministers may accept the transfer value payment if such conditions as they may require are met, unless paragraph (4) applies.

(2) If the Scottish Ministers accept 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; and
- (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 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.

(6) Paragraph (5) does not apply if the transfer would be paid under the public sector transfer arrangements.

### Calculation of transferred-in pensionable service

**3.F.11.**—(1) Subject to the following provisions of this regulation, 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 Scottish Ministers.

(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 3.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) 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 result of the transfer was given to the member by the Scottish Ministers during the period of 3 months ending 12 months after the starting day; and

- (b) the transfer payment is received by the Scottish Ministers 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<sup>(3)</sup> and having effect in England and Wales;
  - (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(4)</sup>;
  - (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald)<sup>(5)</sup> applies; and
  - (d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers.

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

- 3.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 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<sup>(6)</sup>; or

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(3) 1972 c. 11.

(4) S.I.1972/1073.

(5) 1984 c. 8 (Tynwald).

(6) 1988 c. 1. Section 590C was amended by the Finance Act 1993 (c. 34), S.I. 1993/2950, 1995/3034, 1996/2951, 1998/758 and 1999/592.

- (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.

### **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.

### **Bulk transfers out**

**3.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 the scheme;
- (c) after that 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 3.F.6; but
- (b) is to be 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 2 applies, a bulk transfer under this regulation also operates as a transfer of that member’s rights under Part 2.

### **Bulk transfers in**

**3.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 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) 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 Scottish Ministers consider necessary in consequence of the transfer.

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

**3.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) 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 of Part 4 of the 2004 Act.