
STATUTORY INSTRUMENTS

1995 No. 365

**The National Health Service Superannuation
Scheme (Scotland) Regulations 1995**

PART M

TRANSFER-OUT ARRANGEMENTS AND BUY-OUTS

Member's right to transfer or buy-out

M1.—(1) A member who leaves pensionable employment with a preserved pension before reaching age 60, or age 59 where paragraph (3) applies, may require the Secretary of State to transfer or buy-out his rights under the scheme as described in this regulation.

(2) Subject to paragraphs (3) and (4), the right referred to in paragraph (1) is a right to require the Secretary of State to use the cash equivalent of the member's benefits under the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member; or
- (b) to acquire rights under another occupational pension scheme, or under a personal pension scheme, or self-employed pension arrangement that satisfies the requirements of the transfer values laws; or
- (c) in any combination of the ways described in sub-paragraphs (a) and (b),

provided that the right is exercised in relation to each and every portion of the cash equivalent.

(3) A member may require the Secretary of State to use the cash equivalent of the member's benefits under the scheme to purchase buy-out policies or to acquire rights under a personal pension scheme or self-employed pension arrangement only if—

- (a) the member leaves pensionable employment on or after 1st January 1986; and
- (b) where the transfer is to a buy-out policy the member has at least 2 years' pensionable service and does not rejoin the scheme until more than one month after leaving pensionable employment; and the member leaves pensionable employment before reaching age 59.

(4) A member who leaves pensionable employment with a preserved pension after reaching age 59 may require the Secretary of State to use the cash equivalent only to acquire rights under another occupational pension scheme, personal pension scheme or self-employed pension arrangement.

(5) Where a member leaves pensionable employment by opting-out and on so doing becomes entitled to a preserved pension under regulation E6 then, if the member has at least 2 years' pensionable service before 6th April 1988, the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of his benefits that is attributable to pensionable service after 5th April 1988 and the member will acquire a right to the cash equivalent of the remaining benefits only if he actually leaves NHS employment before reaching age 60.

(6) Subject to paragraph (7) and to paragraph (2) of regulation M5 a member loses the right referred to in paragraph (1) if any pension or other benefit becomes payable to the member before the member reaches age 60.

(7) This regulation applies to a member who leaves NHS employment with an immediate pension under regulation E3 (early retirement pension (redundancy etc.)) only if, before exercising the right to transfer or buy-out, the member pays to the Secretary of State an amount equal to the total benefits already paid to the member under the scheme and the member will be treated as if the benefits represented by that amount had never been payable to the member.

(8) Where the Secretary of State has done what is needed to carry out what the member requires under this regulation, the Secretary of State will be discharged from any obligation to provide benefits for or in respect of the member under the scheme, except that the Secretary of State will continue to be liable to provide guaranteed minimum pension in respect of the member where regulation M3(2) applies unless the Secretary of State discharges that liability under regulation K7 (state scheme premiums).

Exercising a right to transfer or buy-out

M2.—(1) A member shall exercise the right to require a transfer or buy-out by making application in writing to the Secretary of State.

(2) A member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, personal pension scheme or self-employed pension arrangement may exercise the right at any time before reaching age 60.

(3) Subject to paragraph (4), a member who requires all or part of the cash equivalent to be used to purchase one or more buy-out policies may exercise the right at any time before reaching age 59.

(4) A member who leaves pensionable employment less than six months before his 59th birthday may exercise the right under paragraph (3) at any time up to six months after leaving.

(5) Subject to paragraph (6), a member may withdraw the application by giving notice in writing to the Secretary of State that he no longer wishes to exercise that right.

(6) The member may not withdraw the application after the Secretary of State, in order to comply with what the member previously required, has entered into an agreement with a third party to use the member's cash equivalent in a way specified in regulation M1(2).

(7) A member who withdraws an application may make another.

Amount of member's cash equivalent

M3.—(1) Subject to paragraphs (2) to (6), the member's cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971⁽¹⁾, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes Act 1993⁽²⁾ (transfer values).

(2) If the member requires the cash equivalent to be used to acquire rights under an occupational pension scheme which is not a contracted-out scheme within the meaning of Chapter I of Part III of the Pension Schemes Act 1993, or under a personal pension scheme or self-employed pension arrangement which is not an appropriate scheme within the meaning of that Chapter of that Part of that Act, and the trustees or managers of the receiving scheme are unable or unwilling to accept liability for the member's rights to guaranteed minimum pensions, the cash equivalent will be reduced by an amount sufficient for the Secretary of State to meet his liability to provide guaranteed minimum pensions in respect of the member and the Secretary of State may discharge that liability by payment of a state scheme premium under regulation K7.

(3) If the cash equivalent is not to be used to acquire rights in a scheme that participates in the Public Sector Transfer Arrangements and the Secretary of State fails, without reasonable excuse,

(1) 1971 c. 56.

(2) 1993 c. 48.

to do what is needed to carry out what the member requires within 6 months of the member's leaving pensionable employment or, if later, exercising the right, the member's cash equivalent will be increased.

(4) The amount of the increase under paragraph (3) will be equal to the greater of—

- (a) interest on the cash equivalent at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgment Act 1838⁽³⁾ (judgment debts to carry interest), calculated on a daily basis over the period between the date of the member's leaving pensionable employment or, if later, exercising the right to transfer or buy-out and the date on which the Secretary of State carries out what the member requires; and
- (b) the amount (if any) by which the cash equivalent is less than what it would have been if the date of the member's leaving pensionable employment or, if later, exercising the right, had been the date on which the Secretary of State carries out what the member requires.

(5) Subject to paragraph (7), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under Part N (transfers-in from other pension arrangements), plus the amount of the member's contributions to the scheme.

(6) Subject to paragraph (7), if a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to pensionable service before 12th December 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if that would be more favourable to the member.

(7) Paragraphs (5) and (6) do not apply where the member requires the cash equivalent to be used to acquire rights under another occupational pension scheme that participates in the Public Sector Transfer Arrangements.

(8) In any case where prior to the last date he is required to make a transfer payment under these Regulations the Secretary of State has directed, under regulation T6 (loss of rights to benefit), that any part of a member's benefits under these Regulations shall be forfeited, the cash equivalent payable in respect of that member shall be withheld or reduced to the extent of the capitalised value of that part of those benefits.

Time limit for doing what member requires

M4.—(1) Subject to paragraphs (2) and (3), the Secretary of State shall do what is needed to carry out what the member requires under regulation M1 (member's right to transfer or buy-out) within 12 months after receiving the member's application or by age 60 if that is earlier.

(2) Where regulation M2(3) applies, if the member leaves pensionable employment within six months before reaching age 59 and the Secretary of State receives the member's application after the member reaches age 59 but within six months after the member's leaving, the Secretary of State shall do what is needed to carry out what the member requires under regulation M1 within 6 months or by the date on which the member reaches age 60 if that is earlier.

(3) If disciplinary or court proceedings are commenced against the member within 12 months after the member leaves pensionable employment and it appears to the Secretary of State that the proceedings may lead to all or part of the member's benefits being forfeited under regulation T6 (loss of rights to benefits), the Secretary of State may defer doing what is needed to carry out what the member requires until the date three months after the conclusion of those proceedings (including any proceedings on appeal) where that date is later than the date which would otherwise apply under paragraph (1) or (2) above.

(3) 1838 c. 10 (1&2.Vict.). Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c. 59), Schedule, Part I; the rate of interest was amended by S.I. 1971/491, 1977/141, 1979/1382, 1980/672, 1982/696 and 1427 and 1985/437.

Early leaver without preserved pension

M5.—(1) Subject to paragraphs (2) and (3), this regulation applies where a member leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E6 (pensions for members).

(2) This regulation applies to a member who has received a refund of contributions under regulation E9 (refund of contributions) only if, before exercising the right to transfer, the member pays to the Secretary of State an amount equal to that refund of contributions (including any interest).

(3) Where this regulation applies the member will be treated, for the purposes of regulations M1 to M4, as if he had left pensionable employment or opted out of the scheme with a preserved pension, except that—

- (a) sub-paragraph (2)(a) of regulation M1 will not apply; and
- (b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme or under a personal pension scheme or self-employed pension arrangement, must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

(4) A member who pays an amount to the Secretary of State as described in paragraph (2) of this regulation will be treated, for the purposes of regulation M1(6), as if the benefits represented by that amount had never become payable to the member.

Transfers in respect of more than one member

M6.—(1) If two or more members leave pensionable employment, join another occupational pension scheme and exercise a right to transfer to that scheme under regulation M1 (member's right to transfer or buy-out), the Secretary of State may, after consulting the Government Actuary, make a single transfer payment to that scheme in respect of those members.

(2) The Secretary of State will calculate the amount of any transfer payment under this regulation after taking advice from the Government Actuary.

Waiver of transfer payments

M7. If an occupational pension scheme waives payment of any cash equivalent or transfer payment that would otherwise be payable to it under regulations M1 to M6, the payment will nevertheless be treated as made for the purposes of these Regulations.