
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

**The National Health Service Superannuation
Scheme (Scotland) Regulations 2011**

PART K

CONTRACTING OUT AND GUARANTEED MINIMUM PENSIONS

Contracting-out conditions to be overriding

K1.—(1) This Section of the scheme will be administered in conformity with the contracting-out conditions and, with the exception of the circumstances specified in paragraph (2), regulations K2 to K7 override any inconsistent provisions of these Regulations.

(2) The circumstances referred to in paragraph (1) are—

- (a) where a trivial pension is commuted in accordance with regulation T8 (commutation of trivial pensions);
- (b) where a pension is commuted in accordance with regulations E2(10) (early retirement pension (ill health)), E3(10) (ill health pension on early retirement) or E12(7) (preserved pension); or
- (c) where a pension is forfeited for the reasons specified in regulation T7(1)(b) or (c) [^{F1}or (2)] (loss of rights to benefits).

(3) In this Part—

- (a) “contracting-out conditions” means the conditions specified in sections 9(2A) and (2B) (requirements for certification of schemes) of the 1993 Act;
- (b) “guaranteed minimum” means the guaranteed minimum as defined in sections 13 to 17 of the 1993 Act;
- (c) “guaranteed minimum pension” is a pension calculated in accordance with the guaranteed minimum requirements;
- (d) “guaranteed minimum pension age” means age 65 in the case of a man or age 60 in the case of a woman; and
- (e) “protected rights” has the same meaning as in the 1993 Act.

Textual Amendments

- F1** Words in reg. K1(2)(c) inserted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), 6 (with reg. 53)

Guaranteed minimum pensions

K2.—(1) This regulation applies where the member has a guaranteed minimum, in relation to the pension provided for the member under this Section of the scheme, in accordance with section 13 (minimum pensions for earners) of the 1993 Act.

(2) The weekly rate of the member's pension from guaranteed minimum pension age will not be less than the member's guaranteed minimum, except that—

- (a) payment may at the discretion of the Scottish Ministers be postponed for up to 5 years if the member remains in NHS employment, or for any period if the postponement continues or occurs more than 5 years after guaranteed minimum pension age if the member consents; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement);
- (b) payment may be reduced or suspended under regulation S1 to S3 (members who return to pensionable employment after becoming entitled to receive a pension) if the member returns to NHS employment; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement); and
- (c) payment may be reduced or suspended where the Scottish Ministers have made a direction under regulation T7 (loss of rights to benefit) or where they have discharged their liability by making a payment under regulation T8 or under Part M (transfers or buy-outs).

(3) If the member is a man and dies leaving a widow, the weekly rate of the widow's pension will not be less than half the member's guaranteed minimum for any period such as is mentioned in section 17(5) of the 1993 Act.

(4) If the member is a woman and dies leaving a widower, the weekly rate of the widower's pension will not be less than half the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive for any period such as is mentioned in section 17(6) of the 1993 Act.

(5) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive for any period mentioned in section 17(6) of the 1993 Act.

(6) The part of any guaranteed minimum pension that is attributable to earnings for the tax years 1988-89 to 1996-97 inclusive will increase in each year by the percentage specified in any order made by the Secretary of State under section 109 of the 1993 Act (annual increases of guaranteed minimum pensions).

(7) A member who on leaving pensionable employment—

- (a) becomes entitled to a refund of contributions under regulation E15 (early leavers' entitlement to refund of contributions); or
- (b) exercises a right to require a transfer or buy-out in accordance with regulation M2 (exercising a right to transfer or buy-out),

but, in either case, remains (as described in regulation E15(2)) entitled to a guaranteed minimum pension or section 9(2B) rights, is entitled to the benefits specified in paragraphs (8) and (9).

(8) The benefits are—

- (a) a pension payable from the date on which the member reaches guaranteed minimum pension age at a weekly rate equal to the member's guaranteed minimum (if any); and
- (b) a pension and lump sum from the date the member reaches normal benefit age in respect of the member's section 9(2B) rights.

(9) On the death of a member to whom paragraph (7) applies, no benefit will be payable except for a widow's, widower's, surviving civil partner's or nominated partner's pension equal to the aggregate of—

- (a) that described in paragraph (3) or, as the case may be, paragraph (4); and
- (b) half the member's pension in respect of section 9(2B) rights.

(10) Where paragraph (3) of regulation K7 applies, a guaranteed minimum pension of the amount described in paragraph (4) will be payable.

Late retirement

K3. If a member's pension is postponed for more than 7 weeks after guaranteed minimum pension age, or is reduced or suspended after it becomes payable, the member's guaranteed minimum pension as increased under section 109 of the 1993 Act (annual increases of guaranteed minimum pensions) will be increased by 1/7th per cent for each complete 7 days of postponement.

Early leavers

K4.—^{F2}(1) Subject to paragraph (2), this paragraph applies if a member who is under guaranteed minimum pension age—

- (a) leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches guaranteed minimum pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).]

(2) If a guaranteed minimum pension is to be transferred to another scheme, or bought out by a buy-out policy, under which early leavers' guaranteed minimum pensions are increased by a method other than that described in ^{F3}paragraph (1A)], the Scottish Ministers may adopt that other method for the guaranteed minimum pension in question.

(3) If a member ^{F4}to whom paragraph (1) applies returns to pensionable] employment under this Section of the scheme within six months after leaving, the two periods of ^{F5}... employment will be treated as continuous, unless the first period is covered by—

- (a) a state scheme premium under Chapter III of Part III of the 1993 Act, or
- (b) a transfer to another occupational pension scheme or to a personal pension scheme, or
- (c) any guaranteed minimum pensions being bought out under a buy-out policy.

Textual Amendments

- F2** Reg. K4(1)(1A) substituted for reg. K4(1) (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(a)** (with reg. 53)
- F3** Words in reg. K4(2) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(b)** (with reg. 53)

- F4** Words in reg. K4(3) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(c)(i)** (with reg. 53)
- F5** Word in reg. K4(3) omitted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **7(c)(ii)** (with reg. 53)

Guaranteed minimum pensions transferred to this Section of the scheme

K5.—^{F6}(1) This paragraph applies where a guaranteed minimum pension has been transferred to this Section of the scheme and the member—

- (a) subsequently leaves contracted-out employment under this Section of the scheme before 6th April 2016; or
- (b) was in contracted-out employment under this Section of the scheme on 5th April 2016 but leaves pensionable employment on or after 6th April 2016.

(1A) Where paragraph (1) applies, the guaranteed minimum pension transferred to this Section of the scheme will be increased for each complete tax year after the date of leaving under this Section of the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches guaranteed minimum pension age or dies (if earlier).]

(2) If the transfer is from another occupational pension scheme, the guaranteed minimum pension will be increased by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

(3) If the transfer is from a buy-out policy, the guaranteed minimum pension will be increased by the same method as was in use under the policy or by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 to come into force before the tax year in which the member reaches guaranteed minimum pension age or dies (if earlier).

Textual Amendments

- F6** Reg. K5(1)(1A) substituted for reg. K5(1) (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **8** (with reg. 53)

Protected rights transferred to this Section of the scheme

K6.—(1) Where^{F7}, before 6th April 2012,] protected rights have been transferred to this Section of the scheme from another occupational pension scheme or a personal pension scheme, the protected rights will be used to provide guaranteed minimum pensions equal to those to which the member and the member's spouse or civil partner would have been treated as entitled under the transferring scheme had the transfer not been made.

(2) Any guaranteed minimum pensions to which a member and the member's spouse or civil partner are entitled by virtue of paragraph (1) will be revalued as described in regulation K5(2) (transferred guaranteed minimum pensions).

Textual Amendments

- F7** Words in reg. K6(1) inserted (with effect in accordance with reg. 1(5) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **15** (with reg. 71)

State scheme premiums

K7.—(1) Subject to paragraph (3) the Scottish Ministers may discharge their liability to provide guaranteed minimum pensions by paying a state scheme premium under Chapter III of Part III of the 1993 Act.

(2) Where a member, or a member's widow, widower or surviving civil partner, is entitled to a pension under this Section of the scheme in respect of a period for which a contributions equivalent premium has been paid under section 55(2) of the 1993 Act the pension will be reduced by the amount of the guaranteed minimum pension that would have been payable under this Section of the scheme to the member, widow, widower or surviving civil partner as the case may be, if the contributions equivalent premium had not been paid.

(3) Notwithstanding paragraph (1) the Scottish Ministers may not discharge any liability under paragraph (1) when a female member dies with less than 2 years' service.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, PART K.