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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

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

**PART B**

**MEMBERSHIP OF THE SCHEME**

**Age limits and restrictions on membership**

- B2.**—(1) A person is not eligible to join this Section of the scheme if—
- (a) that person is—
    - (i) under the age of 16;
    - (ii) over the age of 75; or
    - (iii) over the age of 70 on or before 31st March 2008;
  - (b) that person is a special class officer over the age of 65;
  - (c) that person is an officer in “contributory service” under the Teachers’ Superannuation (Scotland) Regulations 2005(1) in any hospital vested in the Scottish Ministers;
  - (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join this Section of the scheme;
  - (e) that person enters NHS employment for the first time on or after 1st April 2008 and has not previously been a member of this Section of the scheme or a health service scheme corresponding to this Section;
  - (f) that person, on or after 1st April 2008, returns to or commences NHS employment and was entitled to a refund of contributions under regulation E15 (early leavers’ entitlement to refund of contributions) when that person last left pensionable employment, unless paragraph (4), but not paragraph (5), of regulation L1 (treatment of pensionable service of early leavers returning to pensionable employment) applies to that person;
  - (g) that person—
    - (i) leaves pensionable employment on, or after, 1st April 2008; and
    - (ii) before returning to or commencing NHS employment, exercises that person’s right to transfer out all of that person’s benefits in this Section of the scheme in accordance with regulation M1 (member’s right to a transfer or a buy-out) or M2 (exercising a right to a transfer or a buy-out); or
    - (iii) has been a member of the 2008 Section.
  - (h) that person—
    - (i) ceased to be in pensionable employment on or before 31st March 2008;
    - (ii) on so ceasing was entitled to a preserved pension in accordance with regulation E12;

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(1) S.S.I. 2005/393, to which there are amendments not relevant to these Regulations.

- (iii) returns to, or commences for the first time, NHS employment on or after 1st October 2008 and before that employment starts (whether it is employment that has been returned to or commenced for the first time) exercises the member's right to transfer out all of that person's benefits in accordance with regulation M1;
  - (iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in head (i) and ending on the day immediately before the employment referred to in head (iii) commences; and
  - (v) is not in receipt of a pension under regulation E2 or E3;
- (i) that person—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) returns to or commences NHS employment on or after 1st October 2008;
  - (iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which that person is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences; and
  - (iv) is not in receipt of a pension under regulations E2 or E3.
- (j) that person's pension under a health service scheme is payable and in the opinion of the Scottish Ministers that person would not be eligible to—
- (i) join this Section of the scheme, or
  - (ii) where appropriate, accrue further pensionable service under this Section of the scheme,
- if the pensionable employment to which that health service scheme applied, and in respect of which that pension is being paid, had been pensionable employment in this Section of the Scheme;
- (k) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with paragraphs (1) or (2) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) as a result of that notice has been treated as having left pensionable employment; and
  - (iv) pursuant to that notice remains opted out of this Section of the scheme for any one period of five years or more beginning on the date that notice takes effect;
- (l) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with paragraph (1) or (2) of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) following that notice, has had a break in pensionable employment for any one period of five years or more, comprising the aggregate of—
    - (aa) any period during which the person leaves NHS employment, and
    - (bb) any period during which the person is treated as never having been included in this Section of the scheme in accordance with paragraph (6) of regulation

B4 in respect of one or more later periods of NHS employment entered into after having given the notice referred to in (ii);

- (m) that person is a person who—
  - (i) enters NHS employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to participate in the Scheme in accordance with paragraph (1) or (2) of regulation B4; and
  - (iii) as a result of that notice on 1st April 2008 is treated as never having been in pensionable employment with any employing authority in accordance with paragraph (6) of regulation B4;
- (n) that person is a person who—
  - (i) enters NHS employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (2) of regulation B4;
  - (iii) as a result of that notice has been treated as having left pensionable employment with all employing authorities for a period of 12 months or more; and
  - (iv) is not entitled to a preserved pension in accordance with regulation E12; or
- (o) that person is a person who—
  - (i) enters pensionable employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) or (2) of regulation B4;
  - (iii) is not entitled to a preserved pension in accordance with regulation E12; and
  - (iv) has, in respect of that pensionable employment, either received a repayment of contributions or exercised the right to a transfer payment under Part M.

(2) In paragraph (1)—

- (a) “pensionable employment” includes employment that qualified the member for a benefit under a health service scheme; and
- (b) a reference to regulations E2, E3, E12, E15, L1, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the National Health Service Superannuation Scheme for Scotland as set out in these Regulations.

(3) The Scottish Ministers may permit a person who would otherwise not be permitted to join this Section of the scheme in accordance with paragraph (1)(e), (f), (g) and (i) to do so if—

- (a) that person’s NHS employment was transferred to another employer by virtue of—
  - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings; and
  - (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in pensionable employment for any one period of five years or more; and
- (b) that person’s employment is transferred to an employing authority by virtue of—
  - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, (whether or not the transferring employer is in the public sector provided that the person’s employment was originally transferred out of the public sector); and
  - (ii) the employment from which the member is transferred—

- (aa) qualified the member for benefits under an occupational pension scheme;  
and
- (bb) the rules of that scheme (in the opinion of the Scottish Ministers) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.

(4) The reference in paragraph (3)(a) to arrangements equivalent to a transfer of undertakings is to arrangements—

- (a) which the Scottish Ministers consider to be equivalent to the transfer of an undertaking;  
and
- (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.

(5) For the purposes of paragraph (3)(b)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—

- (a) as to early retirement on the grounds of ill health, redundancy or otherwise; or
- (b) for benefits to be reduced for early payment.

(6) Before permitting a person referred to in paragraph (3) to join this Section of the scheme the Scottish Ministers must take advice from the scheme actuary.