
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

**The National Health Service Superannuation
Scheme (2008 Section) (Scotland) Regulations 2013**

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.K

2008 SECTION OPTANTS

Application and options

Application of Chapter 2.K

2.K.1.—(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the scheme on the basis set out in this Chapter, including persons who—

- (a) return to NHS employment in respect of which there is a liability to pay contributions to the scheme in accordance with regulation D1 (contributions by members) of the 2011 Regulations within a period of less than 5 years beginning with the day on which they last left such employment (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) (age limits and restrictions on membership) of the 2011 Regulations;
- (c) both—
 - (i) became entitled to a pension under regulation E6 (early retirement pension (redundancy etc.)) or E7 (early retirement pension (redundancy etc. new starters and post-transition)) of the 2011 Regulations on leaving employment with one employing authority; and
 - (ii) elected to continue to be an active member of the 1995 Section in respect of any other continuing pensionable employment in accordance with regulation R4(6) (members doing more than one job) of those Regulations.

(2) This Chapter does not apply to a person if—

- (a) that person is an active member of the 1995 Section by virtue of regulation E2(12) (early retirement pension on ill health grounds (pre 1st April 2008)) of the 2011 Regulations; or
- (b) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(3) In this Part, a member of this Section of the scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

Options for a member of the 1995 Section to join this Section of the scheme

2.K.2.—(1) A person who by virtue of that person's employment—

- (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009; and
 - (ii) on the day that person's option to join this Section of the scheme was received by the Scottish Ministers; and
- (b) would be eligible to join this Section of the scheme if that person met the condition in regulation 2.B.1(3)(a) (eligibility: general),

may join this Section of the scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the scheme if that person opts to do so.

(3) Subject to paragraphs (4) and (8) and regulation 2.K.19 (circumstances in which a member of the 1995 Section may defer making an option to join this Section of the scheme), the option may only be exercised by giving notice in writing to the scheme administrator—

- (a) in such form as the Scottish Ministers require; and
- (b) before the date the Scottish Ministers specify for that purpose in the comparative statement of benefits under the 1995 Section and this Section of the scheme issued to that person (“the comparative statement”).

(4) For the purpose of paragraph (3)—

- (a) the date specified by the Scottish Ministers in the comparative statement must be a date that is at least four months later than the comparative statement issue date; and
- (b) the notice must be—
 - (i) irrevocable; and
 - (ii) treated as having been given on the date on which it is received by the scheme administrator.

(5) Subject to paragraph (13)—

- (a) the option must be effective from the first day of the member's pensionable employment in the 1995 Section falling on or after 1st April 2008;
- (b) the person must be treated as if that person had been a member of this Section of the scheme from that date; and
- (c) the member's service both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section must count under this Section of the scheme only to the extent that it would have counted had the member been an active member of this Section of the scheme from that date.

(6) If contributions due from the member under Chapter 2.C (contributions) in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable pay in such manner and at such rate as the Scottish Ministers require.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Scottish Ministers may extend the time limit in paragraph (3) if the Scottish Ministers consider that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Scottish Ministers may accept an option to join this Section of the scheme that is received after the person ceases to be an active member of the 1995 Section if either paragraph (10) applies to that person or that person satisfies all of the following—

- (a) a comparative statement of benefits under the 1995 Section and this Section of the scheme was issued to the person whilst that person was an active member of the 1995 Section;
- (b) but for the exercise of the option, the person would otherwise become entitled to the immediate payment of benefits under Part E (benefits for members) of the 2011 Regulations;
- (c) the person has provided the Scottish Ministers with a notice in writing in such form as the Scottish Ministers may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

(10) This paragraph applies to a person who—

- (a) has ceased to pay contributions in accordance with regulation D1(26) (special class officers) or (27) (non special class officers) of the 2011 Regulations;
- (b) is continuing in NHS employment; and
- (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.

(11) A person may revoke a notice given for the purposes of paragraph (9)(c)—

- (a) at any time;
- (b) in writing in such form as may be required by the Scottish Ministers for that purpose.

(12) A person who has revoked a notice in accordance with paragraph (11) may not provide a further notice under paragraph (9).

(13) A person exercising an option under this regulation who is entitled to a pension under regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations may count as qualifying service for the purpose of this Section of the scheme a period of service, measured in years and days, equal to the qualifying service that person was entitled to count under regulation C3 (meaning of “qualifying service”) of the 2011 Regulations in determining the person's entitlement to that pension.

(14) For the purposes of paragraphs (4), (9) and (10) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and this Section of the scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person's employing authority.

(15) Subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8), where paragraph (14)(b) applies the person must have a period equal to at least four months ending on the date specified by the Scottish Ministers in accordance with paragraph (4)(a) in which to opt to join this Section of the scheme.

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, Cross Heading: Application and options.