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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 94**

**The National Health Service Pension  
Scheme (Scotland) Regulations 2015**

**PART 3**

Scheme membership

CHAPTER 1

Joining and leaving

**Joining and leaving the scheme**

**15.**—(1) Each person who is eligible to join this scheme pursuant to regulation 18 is included in the scheme—

- (a) automatically on commencing NHS employment;
- (b) subject to regulation 16, where the person has previously opted out of this scheme, on the date determined under paragraph 2 of Schedule 4. where that paragraph applies;
- (c) subject to regulation 16, where the person has previously opted out of this scheme and is a person to whom section 3 or 5 of the 2008 Act applies—
  - (i) on that person's automatic enrolment date; or
  - (ii) on that person's automatic re-enrolment date, except where the notice referred to in paragraph 1 of Schedule 4 was given within the 12 months immediately preceding that date.

(2) A person who is included in this scheme may opt out at any time in accordance with paragraph 1 of Schedule 4

(3) In this Chapter—

- (a) “the 2008 Act” means the Pensions Act 2008 <sup>M1</sup>;
- (b) “the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 <sup>M2</sup>.

(4) Paragraph (1) does not apply to a locum practitioner.

(5) A locum practitioner who wishes to join this scheme must make an application to the scheme manager in such form as the scheme manager requires.

(6) The application must not relate to a period of engagement which ended more than 10 weeks before the date of the application.

(7) If the scheme manager accepts an application under paragraph (5), the locum practitioner's membership of this scheme takes effect on the date specified by the scheme manager.

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*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Pension Scheme (Scotland) Regulations 2015, PART 3. (See end of Document for details)*

#### **Marginal Citations**

**M1** 2008 c.30.

**M2** S.I. 2010/772.

#### **Re-joining the scheme**

**16.**—(1) Subject to paragraph (2), a person who has opted out of this scheme in accordance with paragraph 1 of Schedule 4 may re-join this scheme pursuant to paragraph 2 of that Schedule.

(2) A person may not re-join this scheme during any period of absence from work for any reason.

#### **Automatic enrolment legislation**

**17.**—(1) Regulations 15 and 16 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act and regulation 9 or 15 of the 2010 Regulations applies (that is, a person who is subject to automatic enrolment or re-enrolment in this scheme as a qualifying scheme who does not wish to participate in it).

(2) Paragraph (1) does not affect the rights of such a person who subsequently joins or re-joins this scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.

## CHAPTER 2

### Membership

#### **Membership**

**18.**—(1) Subject to regulation 19, a person is eligible to join this scheme if the person is a health service worker and is—

- (a) employed by an NHS organisation listed in Part 1 of Schedule 5;
- (b) an individual who is, or who is employed by, a medical contractor listed in Part 2 of that Schedule;
- (c) an individual who is a medical practitioner or dental practitioner listed in Part 3 of that Schedule; or
- (d) employed by a determination employer (see Part 4 of that Schedule).

(2) Subject to regulation 19 a person is eligible to join this scheme if the person is—

- (a) an individual of a category or description listed in Schedule 6; and
- (b) a person in respect of whom the Scottish Ministers have made a determination under section 25(5) of the 2013 Act.

(3) Where such a determination is made, these Regulations apply to the person subject to any modification made by the Scottish Ministers by direction under section 25(8) of the 2013 Act.

(4) In paragraph (1), the reference to a person being employed does not include a reference to a person engaged under a contract for services.

(5) Where a person is eligible to join this scheme by virtue of more than one of the sub-paragraphs of paragraph (1) or (2), the scheme manager must determine which one sub-paragraph is to be used as a basis for membership.

#### **Restrictions on membership**

**19.** A person is not eligible to join this scheme if the person—

- (a) is under the age of 16 or over the age of 75;
- (b) is eligible to be an active member of—
  - (i) a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 <sup>M3</sup>; or
  - (ii) a public service pension scheme established under section I(2)(a) or I(2)(d) of the 2013 Act,in respect of service in such a scheme and is such a member;
- (c) is, other than by virtue of regulation 6 of the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015, eligible to be an active member of the 1995 Section or the 2008 Section in respect of service in that scheme;
- (d) is a pensioner member of the 1995 Section or the 2008 Section, except so far as otherwise provided pursuant to the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015;
- (e) holds an honorary appointment and is not at the same time otherwise entitled to join this scheme;
- (f) is employed by a dentist but is not a dental practitioner;
- (g) is employed by—
  - (i) a GMS practice;
  - (ii) a Section 17C Agreement provider; or
  - (iii) an HBPMS contractor,but does not assist the employer in the provision of medical services for the purposes of the GMS Contract, Section 17C Agreement or HBPMS contract (as the case may be),
- (h) is a person who—
  - (i) becomes entitled to an upper tier IHP (see regulation 89); and
  - (ii) opts to exchange the upper tier IHP for a lump sum pursuant to regulation 108; or
- (i) is a person to whom regulation 95(5)(b) applies.

**Marginal Citations**

**M3** 1972 c.11.

CHAPTER 3

Pensionable service

**Pensionable service**

- 20.**—(1) Pensionable service is the aggregate of the following periods—
- (a) a period of service in which a member (M) contributes to this scheme under regulation 30 or 31;
  - (b) a period of absence from service which counts as pensionable service under regulation 21; and
  - (c) a period of service credited to M as pensionable service under Part 7 (transfers).
- (2) M's pensionable service does not include—
- (a) a period of service in respect of which an employing authority or the Scottish Ministers have paid contributions to another occupational pension scheme in respect of M;

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- (b) where M is a pensioner member or a deferred member, a period taken into account—
  - (i) in determining M's entitlement to the pension in payment or, as the case may be, the deferred pension; or
  - (ii) in calculating the amount of the pension,
- (c) a period of service in which the Scottish Ministers' liability to provide benefits is discharged—
  - (i) by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act;
  - (ii) under regulation 41 (effect of refund); or
  - (iii) by the payment of a transfer value payment on transfer out under Part 7 (transfers).
- (3) Paragraph (4) applies if—
  - (a) the employment in which M is an active member ceases; and
  - (b) a payment is made in respect of untaken leave.
- (4) If this paragraph applies—
  - (a) M's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made; and
  - (b) the payment is treated as M's pensionable pay for the period.
- (5) If M—
  - (a) is a pensioner member; and
  - (b) is entitled to a pension under regulation 84 (partial retirement),
 paragraph (2)(b) applies only to so much of M's pensionable service as is mentioned in regulation 84(3)(a) (the specified percentage of the pensionable service as respects which M is an active member on the election day).
- (6) For the purposes of calculating the length of a period of pensionable service—
  - (a) a year is a period of 365 days;
  - (b) 29th February in any year is ignored;
  - (c) part of a day is treated as a whole day.

### **Absence from work**

- 21.**—(1) Paragraph (2) applies if a member (M) is absent from work because of—
- (a) illness or injury;
  - (b) maternity leave;
  - (c) adoption leave;
  - (d) paternity leave; or
  - (e) parental leave [<sup>F1</sup>shared parental leave or parental bereavement leave].
- (2) The period of absence counts as pensionable service if M contributes to this scheme under regulation 30 or 31 in respect of the period of absence.
- (3) Paragraph (4) applies if M—
- (a) is on leave of absence;
  - (b) is not within paragraph (1); and
  - (c) contributes to this scheme at the same intervals as those made by M before the absence.
- (4) The maximum period of leave that can be counted as pensionable service is—

- (a) if M contributes for a continuous period of 6 months starting with the first day of M's leave of absence, 6 months;
  - (b) if M contributes for a continuous period of less than 6 months starting with that day, the period in respect of which M pays the contributions.
- (5) Paragraph (6) applies if M—
- (a) has paid contributions for the period mentioned in paragraph (4)(a);
  - (b) remains on leave of absence that is not within paragraph (1); and
  - (c) at the same intervals as contributions made by M before the absence, contributes both member contributions under regulation 30 or 31 and employer contributions under regulation 32.
- (6) The maximum period of leave that can be counted as pensionable service is—
- (a) if M contributes for a continuous period of 18 months starting immediately after the end of the period mentioned in paragraph (4)(a), 18 months; and
  - (b) if M contributes for a continuous period of less than 18 months starting immediately after the end of that period, the period in respect of which M pays the contributions.

#### Textual Amendments

- F1** Words in reg. 21(1)(e) substituted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **38(2)**

#### Modifications etc. (not altering text)

- C1** Reg. 21 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **8**

### Qualifying service

- 22.**—(1) The qualifying service of a member (M) is the aggregate of the following periods—
- (a) M's pensionable service, except service mentioned in regulation 20(1)(c);
  - (b) a transfer in period;
  - (c) a transferred undertaking period;
  - (d) a period treated as qualifying service by virtue of paragraph (6);
  - (e) a period of relevant pensionable service in a connected scheme;
  - (f) a period of service in which M is a pensioner member in this scheme.
- (2) In determining a period of pensionable service for the purposes of paragraph (1)(a), paragraph (b) of regulation 20(2) must be ignored.
- (3) A transfer in period is the period equal to M's period as an active member in another occupational pension scheme (including a connected scheme) in relation to which a transfer value in respect of M's rights under the scheme has been accepted under Part 7.
- (4) A transferred undertaking period is the period of employment that qualified M for rights under another occupational pension scheme where—
- (a) M became an active member of this scheme on the transfer of M's employment to a new employer as the result of a transfer of undertaking to that employer; and
  - (b) no transfer payment in respect of those rights has been accepted under Part 7.

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- (5) Paragraph (6) applies if M is employed on a casual basis or is a locum practitioner and, for a period not exceeding 3 months —
- (a) M ceases to pay contributions because of a break not exceeding that period in the employment in which M is an active member, but before the end of the period M re-enters the employment on the same basis as before the break, or
  - (b) M is not engaged as such a practitioner and so is not treated as being in pensionable service.
- (6) The period mentioned in paragraph (5) is treated as a period when M continues to be in qualifying service and—
- (a) M is not required to re-join the scheme on re-entering the employment or on being re-engaged; and
  - (b) if M is engaged as a locum practitioner, the period does not count as pensionable service as a practitioner.
- (7) Relevant qualifying service in a connected scheme is service that counts for the purposes of—
- (a) regulation C3 of the 2011 Regulations; or
  - (b) regulation 2.A.4 or 3.A.5 of the 2013 Regulations.

**Modifications etc. (not altering text)**

- C2** Reg. 22(5)(6) applied (with modifications) (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), 9(2)

**Effect of break in pensionable service**

23.—(1) In the following table a break in a period of pensionable service of a member (M) in circumstances set out in Column 1 has the effect described in Column 2.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<p>Part 1</p> <p>M leaves active membership, is neither qualified for a retirement pension pursuant to regulation 71 nor is a pensioner member because of rights resulting from that membership, then returns to active service</p> <p>1. The break—</p> <ol style="list-style-type: none"> <li>(a) (a) does not exceed one month; or</li> <li>(b) is due to a trade dispute (within the meaning of section 35(1) of the Jobseekers Act 1995 <sup>M4</sup>).</li> </ol> <p>2. No transfer payment is made to another scheme in respect of pensionable service before the break.</p> <p>3. It is immaterial if a refund of contributions is paid to M in respect of the period before the break.</p>	<p>The period of pensionable service before the break is treated as continuous with the period after the break.</p>

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| <p>1. The break does not exceed 5 years.</p> <p>2. No transfer payment is made to another scheme in respect of M's pensionable service before the break.</p> <p>3. If a refund of contributions in respect of the period before the break is paid to M, it is repaid before the end of the period of 6 months starting on the first day of pensionable service after the break.</p> | <p>The period of pensionable service before the break is treated as continuous with the period after the break.</p>   |
| <p>1. The break exceeds 5 years</p> <p>2. M may claim a refund of contributions in respect of pensionable service before the break.</p>   | <p>The period of pensionable service before the break is not treated as continuous with the period after the break and does not count towards qualifying service.</p> |

## Part 2

M leaves active membership, is qualified for a retirement pension pursuant to regulation 71 but is not a pensioner member because of rights resulting from that membership, then returns to active service

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| <p>1. The break does not exceed 5 years.</p> <p>2. No transfer payment is made to another scheme in respect of M's pensionable service before the break.</p> | <p>The period of pensionable service before the break is treated as continuous with the period after the break.</p>  |
| <p>1. The break exceeds 5 years.</p> <p>2. No transfer payment is made to another scheme in respect of M's pensionable service before the break</p>          | <p>The period of pensionable service before the break is not treated as continuous with the period after the break and does not count towards qualifying service</p> |

(2) In paragraph (1) a reference to the repayment of a refund of contributions includes the repayment of any interest on the contributions.

### Marginal Citations

M4 1995 c.18.

## CHAPTER 4

### Pension accounts

#### Establishment of pension accounts

24.—(1) The scheme manager must establish and maintain one or more of the following pension accounts for each member of this scheme in accordance with Schedule 7—

- (a) active member's account;
- (b) deferred member's account;
- (c) pensioner member's account;
- (d) additional pension account;
- (e) pension credit member's account.

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(2) A pension account—

- (a) may be kept in any form the scheme manager considers appropriate; and
- (b) must specify the details required by these Regulations.

(3) References in these Regulations to any amount specified in a pension account are references to the amount that is required by these Regulations to be so specified and not, if different, the amount actually so specified.

#### **Closure of pension accounts on transfer out or repayment of balance of contributions**

**25.**—(1) All pension accounts relating to a member (other than a pension credit member's account) must be closed if—

- (a) a transfer payment is made in respect of the member's accrued rights under this scheme; or
- (b) the member is repaid the balance of contributions under regulation 40.

(2) Paragraph (1) does not require the scheme manager to close an account that includes amounts to which the transfer payment or the refund does not relate or is not attributable.

(3) An account that is not closed because of paragraph (2) must be adjusted as the scheme manager considers appropriate to reflect the extinguishment of rights under this scheme.

#### **Calculation of amount of accrued pension**

**26.**—(1) For the purpose of a full retirement pension, the amount of accrued pension is calculated in accordance with paragraph 28 of Schedule 7.

(2) For the purpose of a partial retirement pension, the amount of accrued pension is calculated in accordance with paragraph 29 of Schedule 7.

(3) For the purpose of a deferred member's account, the amount of accrued earned pension is calculated in accordance with paragraph 30 of Schedule 7.



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