

SCHEDULE 2

Amendments to the old scheme

PART 2

Amendment of the 2013 Regulations

Amendment of regulation 2.B.3

10. After paragraph (1) of regulation 2.B.3 (restrictions on eligibility: general), insert—

“(1A) A person who was born on or after 1st September 1960 is not eligible to be an active member of this Section of the scheme in respect of service in NHS employment on or after 1st April 2015.

(1B) A person is not eligible to be an active member of this Section of the scheme if that person has had a break in service ending on or after 2nd April 2012, and any of the following apply—

- (a) that break in service is for any one period of five years or more;
- (b) that person receives a repayment of contributions under regulation 2.C.18 in respect of the person’s service before that break (see regulation 2.B.1(3)(a));
- (c) that person becomes entitled to a repayment of contributions under regulation 2.C.18 by virtue of paragraph (2)(a) to (c) of that regulation in respect of the person’s service before that break; or
- (d) that person’s rights under this Section of the scheme in respect of service before that break have been extinguished under regulation 2.F.7 because a transfer value payment is made in respect of them.

(1C) A person who on 1st April 2012 has attained the age of 55 may not contribute to or accrue further pensionable service under this Section of the scheme unless that person—

- (a) is on 1st April 2015 an active member of this Section of the scheme in accordance with regulation 2.B.1; or
- (b) returns to NHS employment on or after 2nd April 2015 in circumstances where paragraph (1B)(a) does not apply.

(1D) Paragraph (1E) applies to a person—

- (a) who on 1st April 2012 has attained the age of 51 years and 7 months but has not attained the age of 55; and
- (b) whose eligibility cessation date has not been reached (see paragraph (1F)).

(1E) A person referred to in paragraph (1D) may not contribute to or accrue further pensionable service under this Section of the scheme unless that person—

- (a) is on 1st April 2015 an active member of this Section of the scheme in accordance with regulation 2.B.1; or
- (b) returns to NHS employment on or after 2nd April 2015 in circumstances where paragraph (1B)(a) does not apply.

(1F) For the purposes of paragraph (1D), a person’s eligibility cessation date is to be determined according to the formula—

$$A - (2 \times T)$$

where—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

A is 1st April 2022;

T is the number of months (rounded up to the nearest whole month) by which the person's age on 1st April 2012 is less than 55.

(1G) For the purposes of paragraphs (1C)(b) and (1E)(b), any break in service where the member was in pensionable service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.

(1H) Paragraph (1I) applies to a person where in the opinion of the Scottish Ministers—

- (a) that person was previously an active member of a corresponding 2008 scheme;
- (b) the regulations governing that corresponding scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act that provide for exceptions to subsection (1) of that section, and
- (c) pursuant to those provisions, the member would have been eligible to re-join that corresponding scheme if the member had returned to NHS employment for the purposes of that scheme on the day the member commenced NHS employment within the meaning of these Regulations.

(1I) (The Scottish Ministers may permit a person referred to in paragraph (1H) to join this Section of the scheme and, for the purposes of paragraphs (1C) to (1G), the member's previous pensionable employment under the corresponding scheme referred to in paragraph (1H) will be treated as if it were previous pensionable employment under this section of the Scheme.

(1J) (Paragraph (1K) applies to a person where in the opinion of the Scottish Ministers—

- (a) that person was previously an active member in respect of service in an existing scheme (within the meaning of Schedule 5 to the 2013 Act);
- (b) that person is not receiving a pension in respect of that service on the relevant day;
- (c) the regulations of that existing scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act that provide for exceptions to subsection (1) of that section;
- (d) pursuant to those provisions, the person would have been eligible to be an active member of the existing scheme if the member had returned to employment for the purposes of that scheme on the relevant day; and
- (e) the member would, if the member's previous service in the existing scheme had been previous service under this Section of the scheme, have been eligible for active membership of this Section of the scheme on the relevant day pursuant to paragraphs (1A) to (1G).

(1K) The Scottish Ministers may permit a person referred to in paragraph (1J) to join this Section of the scheme and, for the purposes of paragraphs (1C) to (1G), the member's previous service as an active member under the existing scheme referred to in paragraph (1J) will be treated as if it were previous service as an active member of this Section of the scheme.

(1L) For the purposes of paragraphs (1J) and (1K) "the relevant day" is the day the member commences NHS employment for the purposes of these Regulations.

(1M) A person referred to in paragraph (1C), (1E), (1I) or (1K) may elect, using a form provided by the Scottish Ministers, not to make contributions or accrue further service under this Section of the scheme in accordance with whichever of those paragraphs apply, but instead (where eligible) to become an active member of the 2015 Scheme.

(1N) Such an election—

- (a) is irrevocable;

(b) must be given to the Scottish Ministers before the date specified by the Scottish Ministers in the election form;

(c) is to be treated as having been given on the date the election form is received by the Scottish Ministers.

(1O) The date referred to in paragraph (1N)(b) must be a date that is at least three months later than the date on which the Scottish Ministers provided the member with an election form.

(1P) An election shall be effective from the first day of the member's pensionable employment in the 2008 Section falling on or after 1st April 2015, and from that date—

(a) that member is to be treated as if that member had been an active member of the 2015 Scheme; and

(b) contributions made in respect of the member in the 2008 Section shall be treated as if they had been contributions made in respect of that member in the 2015 Scheme.

(1Q) The Scottish Ministers may allow a member to exercise an election after the date specified under paragraph (1N)(b) where the Scottish Ministers consider that the member has not had a reasonable opportunity to consider whether to exercise an election before that date.”.