

---

STATUTORY INSTRUMENTS

---

**2008 No. 654**

**The National Health Service Pension  
Scheme (Amendment) Regulations 2008**

**Substitution of Part M**

**41.** For Part M substitute—

**“PART M**

**TRANSFERS AND BUY-OUTS**

**Member’s right to transfer or buy-out**

**M1.**—(1) A member who leaves pensionable employment with a preserved pension has the right to require the Secretary of State to transfer or buy-out the member’s rights under the scheme as described in this regulation.

(2) Subject to the following provisions of this regulation, the member may require the Secretary of State to use the cash equivalent of the member’s rights under the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member; or
- (b) to acquire rights under—
  - (i) another occupational pension scheme; or
  - (ii) a personal pension scheme,that satisfies the requirements of Chapter IV of Part IV of the 1993 Act; or
- (c) to acquire rights under an arrangement that is a qualifying recognised overseas pension scheme for the purposes of section 169(2) of the 2004 Act; or
- (d) in any combination of the ways described in sub-paragraphs (a), (b) and (c).

(3) The member must exercise the member’s right in relation to each and every portion of the cash equivalent unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member’s accrued rights to a guaranteed minimum pension; or
- (b) the member’s accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the cash equivalent transfer value payment if section 96(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member’s other rights).

(5) A member who requires the cash equivalent to be used to acquire rights under another pension scheme in accordance with paragraph (2) may exercise the right—

- (a) at any time before reaching age 60; or

- (b) at a later time if the member exercises the right to require a transfer on the transfer of the member's employment to a new employer as a result of a transfer of an undertaking to that employer.
- (6) A member may require the Secretary of State to use the cash equivalent of the member's rights under the scheme to purchase one or more buy-out policies or to acquire rights under a personal pension scheme only—
  - (a) if the member leaves pensionable employment on or after 1st January 1986; and
  - (b) if those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, only if a period of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.
- (7) If a member—
  - (a) leaves pensionable employment by opting-out; and
  - (b) on so doing becomes entitled to a preserved pension under regulation L; and
  - (c) has at least 2 years' service before 6th April 1988,
 the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of the member's rights that is attributable to service after 5th April 1988 and the member will acquire a right to the cash equivalent of the member's remaining rights only if the member actually leaves NHS employment before reaching age 60.
- (8) A member who leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 will be treated, for the purposes of regulations M1 to M5, as if the member left pensionable employment with a preserved pension, except that—
  - (a) a member who requires the cash equivalent to be used to buy one or more buy-out policies must exercise the right to buy-out within 12 months after leaving pensionable employment; and
  - (b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, a personal pension scheme or a qualifying recognised overseas pension scheme must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

### **Exercising a right to a transfer or a buy out**

- M2.**—(1) A member who wishes to exercise the member's right to a transfer or a buy out must apply in writing to the Secretary of State for a statement of the amount of the cash equivalent of the member's accrued benefits under the Scheme at the guarantee date (a "statement of entitlement").
- (2) In these Regulations, "the guarantee date" means any date that—
    - (a) falls within the required period; and
    - (b) is chosen by the Secretary of State; and
    - (c) is specified in the statement of entitlement; and
    - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
  - (3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
  - (4) In paragraph (2) "the required period" means—

- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

### **Amount of member's cash equivalent**

**M3.**—(1) Subject to the following provisions of this regulation, the member's guaranteed cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971, calculated and verified as required by Chapter IV of Part IV of the 1993 Act.

(2) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (member's right to transfer accrued benefits to the scheme), plus the amount of the member's contributions to the scheme.

(3) If a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.

(4) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) and (3); and
- (b) by reference to the guidance and tables provided by the Scheme Actuary for the purposes of this paragraph that are in use on the date used for the calculation.

(5) In any case where the Secretary of State has directed, under regulation T6, that part of a member's benefits under these Regulations shall be forfeited, the cash equivalent payable in respect of that member shall be reduced by the capitalised value of the forfeited part of those benefits.

### **Applications for transfer value payments: General**

**M4.**—(1) A member who has applied for and received a statement of entitlement under regulation M2 may apply in writing to the Secretary of State for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation M5(2)).

(3) In these Regulations such a payment is referred to as "the guaranteed cash equivalent transfer value payment".

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Secretary of State may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Secretary of State, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### **Applications for transfer value payments: time limits**

**M5.**—(1) Subject to paragraph (5), an application under regulation M4 must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 60.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1 per cent above the Bank of England base rate.

(3) In this regulation “Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, and
- (b) if an order under section 19 of the Bank of England Act 1998 is in force, any equivalent rate determined by the Treasury under that section.

(4) Paragraph (5) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to the Scheme; and
- (b) it appears to the Secretary of State that the proceedings may lead to all or part of the member’s benefits being forfeited under regulation T6.

(5) The Secretary of State may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(6) In any case where a direction is given under regulation T6 for the forfeiture of a member’s benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the Scheme Actuary.

(7) Subject to paragraph (8), if a transfer value payment is made in respect of a member’s rights under the Scheme, those rights are extinguished.

(8) If the member’s rights described in regulation M1(4) have been excluded from the transfer payment, the Secretary of State will continue to be liable to provide the benefits described in regulation K2(7) (guaranteed minimum pension).

**Special terms for transfer out (bulk transfers etc)**

**M6.**—(1) If one or more members (the transferring members)—

- (a) leave pensionable employment,
- (b) join another occupational pension scheme, and
- (c) exercise a right to transfer to that scheme under regulation M2,

the Secretary of State may, after taking advice from the Scheme Actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Secretary of State must calculate the amount of any transfer payment paid under this regulation after taking advice from the Scheme Actuary.”.

---

**Commencement Information**

**I1** Reg. 41 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Pension Scheme (Amendment) Regulations 2008, Section 41.