
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

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

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.B

MEMBERSHIP

Eligibility: general

2.B.1.—(1) A person is eligible to be an active member of the scheme if conditions A to C are met and the person is not prevented by regulation 2.B.2, 2.B.3 or 2.B.6.

(2) Condition A is that the person is in NHS employment.

(3) Condition B is that the person—

(a) enters NHS employment on or after 1st April 2008; or

(b) entered NHS employment before that date and on that date was not an active member of the NHS superannuation scheme for Scotland 1995 in that employment or any other NHS employment,

and meets any one of the “other scheme conditions”.

(4) Condition C is that the person has not reached the age of 75.

(5) The “other scheme conditions” are that—

(a) the person has not previously been an active member of the NHS superannuation scheme for Scotland 1995;

(b) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 at least 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that scheme;

(c) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 less than 12 months before entering the employment mentioned in paragraph 3(a) or (b) without becoming a pensioner member or a deferred member of that scheme and has received a repayment of contributions in respect of that membership; or

(d) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 on or after 1st April 2008 on leaving NHS employment and before the person re-entered such employment—

(i) a transfer payment was made in respect of the person under Part M of the 1995 regulations, or

(ii) the person made an application under regulation M2 of the 1995 Regulations (exercising a right to transfer or buy-out) from which the person may not withdraw,

but sub paragraph (d) will not apply if the Scottish Ministers have permitted such a person to rejoin the NHS superannuation scheme for Scotland 1995 in the circumstances described in regulation B5 of the 1995 Regulations⁽¹⁾.

(6) This regulation applies to any person who has previously been an active member of a corresponding health service scheme as though in paragraph (3) any reference to—

- (a) “NHS superannuation scheme for Scotland 1995” includes a reference to that corresponding health service scheme; and
- (b) “NHS employment” includes a reference to—
 - (i) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967⁽²⁾;
 - (ii) employment to which regulations made under section 10 of the Superannuation Act 1972⁽³⁾ and having effect in England and Wales apply;
 - (iii) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply;
 - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald)⁽⁴⁾ applies; and
 - (v) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.

Restrictions on eligibility: general

2.B.2.—(1) A person who is entitled to the immediate payment of a pension under the scheme under a regulation that requires the person not to be in NHS employment may only be an active member in accordance with—

- (a) regulation 2.D.5 (partial retirement (members aged at least 55));
 - (b) regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased); or
 - (c) Chapter 2.G (re-employment and rejoining the scheme).
- (2) A person is not eligible to be an active member of the scheme if the person—
- (a) became a pensioner member of the NHS superannuation scheme for Scotland 1995 before 1st April 2008; or
 - (b) became a pensioner member or a deferred member of that scheme on or after that date.
- (3) A person is not eligible to be an active member of the scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972⁽⁵⁾ in respect of service in that employment.
- (4) A person who holds an honorary appointment and does not at the same time hold any other employment which entitles him or her to be a member of the scheme is not eligible to be an active member of the scheme.
- (5) A person is not eligible to be an active member of the scheme if the person—
- (a) becomes entitled to an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health (active members)); and

(1) Regulation 5 was amended by [S.S.I. 2005/512](#).

(2) [1967 c. 28](#).

(3) [1972 c. 11](#).

(4) [1984 c. 8 \(Tynwald\)](#).

(5) [1972 c. 11](#).

- (b) opts to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum).

Concurrent employments

2.B.3.—(1) This regulation applies if for any period a person holds 2 or more employments in respect of which the person is (or apart from this regulation would be) eligible to be an active member of the scheme.

(2) The person may only be such a member in respect of so many hours or, as the case may be, sessions in each such employment as, in the opinion of the Scottish Ministers, do not, taken together, exceed a comparable whole-time employment not held concurrently with any other employment.

(3) If the person is such a member in respect of 2 or more employments which, in the opinion of the Scottish Ministers, when taken together exceed a comparable whole-time employment not held concurrently with any other employment, the person is not eligible to be an active member in respect of any employment (or part of an employment) which exceeds a comparable whole time employment not held concurrently with any other employment.

(4) For the purposes of paragraphs (2) and (3), 2 or more employments taken together exceed a comparable whole-time employment if the total number of hours or sessions under the employments exceeds the number of hours or sessions that would, in the opinion of the Scottish Ministers, constitute a comparable whole-time employment under which services of the kinds performed in the 2 or more employments were performed.

(5) For the purposes of this regulation an employment is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the 2 or more employments.

(6) A person may participate in the scheme in respect of employment as an officer even if he or she also participates in the scheme under Part 3 in respect of concurrent employment as a practitioner.

Joining and leaving the scheme

Joining the scheme

2.B.4.—(1) A person entering employment with an employing authority in which the person is eligible to be an active member of the scheme becomes such a member, unless regulation 2.B.5(4) applies.

(2) A person who is eligible to be such a member by virtue of falling within regulation 2.B.1(3) (b) may opt to become such a member by giving notice in writing to the employing authority.

(3) A person who whilst an active member in any employment has exercised the option to opt out of the scheme under regulation 2.B.5(1) and is eligible to be an active member—

(a) in that employment; or

(b) in a later employment to which paragraph (1) does not apply because of regulation 2.B.5(5),

may opt to become an active member in the employment in which the member is eligible to be such a member by giving notice in writing to the employing authority in such form as the Scottish Ministers require.

(4) A notice under paragraph (3) takes effect—

(a) from the beginning of the first pay period to begin after the notice is received by the employing authority; or

- (b) if the notice specifies a date that is the first day of a later pay period, from that date.
- (5) A notice under paragraph (3) may not be given by a person who is absent from work for any reason.
- (6) Paragraph (1) is subject to regulation 2.B.5(5).

Opting out of the scheme

2.B.5.—(1) A person who is an active member of the scheme in any employment may opt at any time to cease to be such a member by giving notice in writing to the person’s employing authority.

- (2) A person who so opts ceases to be such a member on the date the notice takes effect.
- (3) The notice takes effect—
 - (a) from the beginning of the first pay period to begin after the notice is received by the employing authority; or
 - (b) if the notice specifies a later date, from the beginning of the first pay period after that in which the specified date falls.
- (4) A person falling within regulation 2.B.4(1) in respect of an employment (automatic membership on entering employment) who gives notice in writing under paragraph (1) before the end of the person’s first pay period in the employment is treated as not having become an active member by virtue of that regulation.

(5) Regulation 2.B.4(1) does not apply to a person entering an employment with an employing authority (“the later employment”) if—

- (a) the person has previously given notice under paragraph (1) in respect of an employment with the same authority that has ceased (“the earlier employment”); and
- (b) either—
 - (i) the period beginning with the day following that on which the earlier employment ceased and ending with the day before the later employment begins; or
 - (ii) the period beginning with the day following that on which a relevant intermediate employment ceased and ending with the day before the later employment begins, is less than 12 months.
- (6) An employment is a relevant intermediate employment for the purposes of paragraph (5) if—
 - (a) regulation 2.B.4(1) did not apply to the person on entering it because of paragraph (5); and
 - (b) the person did not opt to become a member of the scheme in that employment under regulation 2.B.4(3).

Restriction on further participation in the scheme

2.B.6.—(1) A person who ceases to meet any of the conditions in regulation 2.B.1 in an employment or is prevented by regulation 2.B.2 or 2.B.3 from continuing to be an active member in an employment must cease to be an active member of the scheme in that employment.

- (2) Accordingly—
 - (a) a person falling within paragraph (1) may not make any further contributions to the scheme under Chapter 2.C; and
 - (b) any further service of the person is not pensionable service for the purposes of the scheme.