
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 109

NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme etc.
(Miscellaneous Amendments) (Scotland) Regulations 2013**

<i>Made</i>	- - - -	<i>22nd March 2013</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>27th March 2013</i>
<i>Coming into force</i>	- -	<i>20th May 2013</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972⁽¹⁾ and of all other powers enabling them to do so.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

PART 1

GENERAL

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme etc. (Miscellaneous Amendments) (Scotland) Regulations 2013.

(1) 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649. The function of the Minister to consent in section 10(1) was transferred to the Treasury by S.I. 1981/1670. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions conferred on the Secretary of State by sections 10 and 12, so far as exercisable in or as regards Scotland and subject to the requirement in section 10(1) for consent of the Treasury, were transferred to Scottish Ministers by article 2 of S.I. 1999/1750. By virtue of article 6 of S.I. 1999/1750 and paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), regulations made by the Scottish Ministers under sections 10 and 12 are subject to the negative procedure.

- (2) These Regulations come into force on 20th May 2013 and, except as provided in paragraphs (3) to (8), have effect from that date⁽²⁾.
- (3) Regulations 30, 39, 40, 48, 49(c), 50, 57, 58 and 65 have effect from 1st April 2008.
- (4) Regulations 12, 13, 14, 20 and 21 have effect from 1st April 2011.
- (5) Regulation 15 has effect from 6th April 2012.
- (6) Regulations 3 to 8, 16, 17, 29, 31, 32, 49(a), (b), (d) and (e), 52 and 53 have effect from 1st January 2013.
- (7) Regulations 67 to 70 have effect from 31st March 2013.
- (8) Regulations 9, 10, 11, 23, 24, 25, 27, 28, 33, 34, 35, 38, 41 to 46, 54 and 59 to 63 have effect from 1st April 2013.

PART 2

AMENDMENT OF THE NATIONAL HEALTH SERVICE SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 2011

Amendments to the National Health Service Superannuation Scheme (Scotland) Regulations 2011

2. The National Health Service Superannuation Scheme (Scotland) Regulations 2011⁽³⁾ are amended in accordance with this Part.

Amendment of regulation A2

3. In regulation A2(4) (interpretation)—

(a) after “the 2004 Act” in column 1 and the corresponding meaning in column 2 insert—

“the 2008 Act”	The Pensions Act 2008 ⁽⁴⁾ ;
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(b) after “the 2008 Section” in column 1 and the corresponding meaning in column 2 insert—

“the 2010 Regulations”	The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ⁽⁵⁾ ;
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(c) after “assistant practitioner” in column 1 and the corresponding meaning in column 2 insert—

“automatic enrolment date”	The date referred to in section 3(7) of the 2008 Act;
“automatic re-enrolment date”	The date determined in accordance with regulation 12 of the 2010 Regulations (as modified by regulation 14 of those Regulations ⁽⁶⁾); and

(d) for “pay period” in column 1 and the corresponding meaning in column 2 substitute—

(2) Section 12(1) of the Superannuation Act 1972 provides that regulations may be framed so as to have retrospective effect.

(3) S.S.I. 2011/117 as amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.

(4) 2008 c.30.

(5) S.I. 2010/772.

(6) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

““pay period”	In relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;”.
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Amendment of regulation B1

4. For regulation B1(2) (membership of this Section of the scheme) substitute—
- “(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—
- (a) automatically on commencing NHS employment;
 - (b) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and has given notice in accordance with regulation B5(1), on the date determined under paragraph (2) of that regulation;
 - (c) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 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 regulation B4(1) was given within the period of 12 months immediately preceding that date.”.

Amendment of regulation B2

5. In regulation B2(1) (age limits and restrictions on membership)—
- (a) in sub-paragraph (k)(ii), for “paragraphs (1) or (2)” substitute “paragraph (1)”;
 - (b) in sub-paragraphs (l)(ii), (m)(ii), (n)(ii) and (o)(ii), omit “or (2)”; and
 - (c) in sub-paragraph (l)(iii)(bb), for “(6)” substitute “(7)”.

Amendment of regulation B4

6. In regulation B4 (opting out of this Section of the scheme)—
- (a) omit paragraphs (2) to (4);
 - (b) for paragraph (5) substitute—

“(5) A notice referred to in paragraph (1) takes effect—

 - (a) from the first day of the pay period immediately following its receipt by the employing authority; or
 - (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.”;
 - (c) for paragraph (7) substitute—

“(7) A person who opts out of this Section of the scheme under paragraph (1) within one month of the date of commencing NHS employment is to be treated as never having been included in this Section of the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf of, that person before the opt out took effect must be refunded.”;

- (d) for paragraph (8) substitute—
- “(8) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—
- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.”; and
- (e) after paragraph (9) insert—
- “(10) This regulation and regulation B5 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act(7) and regulation 9 or 15 of the 2010 Regulations(8) apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

Amendment of regulation B5

7. In regulation B5 (rejoining this Section of the scheme)—
- (a) in paragraph (1)—
- (i) for “paragraphs (3) and (4), a member” substitute “paragraph (3), a person”; and
- (ii) before “rejoin” insert “join or”;
- (b) in paragraph (2), for “member” substitute “person”;
- (c) for paragraphs (3) and (4) substitute—
- “(3) A person who has opted out may not rejoin this Section of the scheme during any period of absence from work for any reason.”; and
- (d) for the heading to the regulation substitute—

“Joining or rejoining this Section of the scheme after opting out”.

Amendment of regulation B6

8. In regulation B6 (opting into this Section of the scheme: mis-sold pensions)—
- (a) in paragraph (2), before “rejoin” insert “join or”; and
- (b) in paragraph (3), before “rejoin” insert “join or”.

Amendment of regulation D1

9. For regulation D1(4) (contributions by members) substitute—
- “(4) Before determining those pensionable pay bands or contribution percentage rates under paragraph (3), the Scottish Ministers must consider the advice of the scheme actuary.”.

(7) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

(8) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

Amendment of regulation D2

10. In regulation D2 (contributions and other payments by employing authorities)—

- (a) in paragraph (7A), at the end insert (as full out words) “This is subject to paragraph (7B).”; and
- (b) after paragraph (7A) insert—

“(7B) Where the member leaves pensionable employment on or after 1st April 2013, any additional contributions that are due to the Scottish Ministers under paragraph (5) (a), in respect of a pension payable under regulation E7, and paragraph (5)(b), (d) and (e) may only be paid by a single payment of an amount determined by the Scottish Ministers on the advice of the scheme actuary: that payment must be made within one month of the date on which the pension under regulation E7 became payable.”.

Amendment of regulation E7

11. For regulation E7(2) (early retirement pension (redundancy etc. new starters and post transition)) substitute—

“(2) Those conditions are that—

- (a) the member has two years’ qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
- (b) the member’s employing authority certifies—
 - (i) that the member has at least two years’ continuous employment determined in accordance with any terms and conditions applying to that employment; and
 - (ii) if the member’s employment is terminated by reason of redundancy, that the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to him in accordance with those terms and conditions;
- (c) the member’s employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify—
 - (i) that the member’s employment is terminated by reason of redundancy; or
 - (ii) with the agreement of the employing authority, that the member’s employment is terminated in the interests of the efficiency of the service in which the member is employed; and
- (e) the member makes a claim for the pension referred to in this regulation.”.

Amendment of regulation G6

12. After regulation G6(3) (widow’s pension when member marries after leaving pensionable employment) insert—

“(4) Where the nominated partner referred to in G14 (surviving nominated partner’s pension) becomes the member’s widow on the member’s death, the widow’s pension will, if it would be more beneficial to the widow, be equal to the nominated partner pension that would have been payable if the widow and the member had not been married to each other.”.