

2001 No. 437

NATIONAL HEALTH SERVICE

The National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001

<i>Made</i>	<i>21st November 2001</i>
<i>Laid before the Scottish Parliament</i>	<i>27th November 2001</i>
<i>Coming into force</i>	<i>18th December 2001</i>

The Scottish Ministers, in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972(a) and of all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(b), hereby make the following Regulations:

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001 and shall come into force on 18th December 2001, but

- (a) regulations 5(a), (b) and (c), 6, 8, 9, 12, 14, 18(a) and (d), 20(a), (b), (c) and (e), 21 and 22 shall have effect from 1st October 1999;
- (b) regulation 10 shall have effect from 31st March 2000; and
- (c) regulations 16 and 18(b) and (e) shall have effect from 1st April 2000.

(2) In these Regulations—

“the Compensation Regulations” means the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981(c);

“the Injury Benefits Regulations” means the National Health Service (Scotland) (Injury Benefits) Regulations 1998(d); and

“the Superannuation Scheme Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(e).

(a) 1972 c.11; section 10 was amended by Part II of Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58) and sections 10(2A), (3A) and (6) and 12(4A) were inserted, and sections 10(1) and 12(2) and (4) amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), sections 4(2), 8(5) and 10; section 10(6) was amended by the Pensions Schemes Act 1993 (c.48), Schedule 8, paragraph 7; the functions of the Secretary of State in relation to making subordinate legislation concerning the Scottish National Health Service Superannuation Scheme were transferred to the Scottish Ministers by virtue of article 2 and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

(b) See the Superannuation Act 1972, section 10(1) and the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2.

(c) S.I. 1981/1785, amended by S.I. 1985/2036 and 1992/3046.

(d) S.I. 1998/1594, amended by S.I. 1999/444 and S.S.I. 1999/195.

(e) S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593 and 1999/443.

Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 1995

2. The Superannuation Scheme Regulations shall be amended in accordance with regulations 5 to 18 below.

Amendment of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981

3. The Compensation Regulations shall be amended in accordance with regulation 19 below.

Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998

4. The Injury Benefits Regulations shall be amended in accordance with regulations 20 to 22 below.

Interpretation

5. In regulation A2 (interpretation)–
- (a) in the definition of “employing authority” after paragraph (b) there shall be inserted–
“(bb) a Primary Care NHS Trust to which certain functions referred to in section 12AA of the National Health Service (Scotland) Act 1978(a) are delegated by the Health Board;”;
 - (b) in the definition of “NHS dental employee”(b) after “a Health Board” in paragraph (b) there shall be inserted “or Primary Care NHS Trust”;
 - (c) in the definition of “practitioner” after “Health Board” there shall be inserted “or Primary Care NHS Trust”; and
 - (d) in the definition of “specialist” after “consultant” there shall be inserted “, other than a nurse consultant, or a”.

Age limits and restrictions on membership

6. In regulation B2(e)(c) after “Trust” there shall be inserted “or a Primary Care NHS Trust”.

Pensionable service in respect of part-time employment

7. In regulation C4 (6)–
- (a) after “ill-health))” there shall be inserted “or a pension under regulation E3 (early retirement pension (redundancy etc.))”;
 - (b) in sub-paragraph (a) for the words from “calculating” to the end of the sub-paragraph there shall be substituted the following–
“calculating–
 - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 is based should be increased under that regulation, or
 - (ii) the qualifying service for the purposes of regulation E3(1)(a);”;and
 - (c) in sub-paragraph (b) for “and the increase under regulation E2” there shall be substituted “and, in the case of a pension under regulation E2, the increase under that regulation”.

Early retirement pensions (redundancy etc.)

8. In regulation E3(4)(d)(d) after “Trust” there shall be inserted “or a Primary Care NHS Trust”.

(a) 1978 c.29; section 12AA was inserted by section 47 of the Health Act 1999 (c.8).

(b) This definition was inserted by S.I. 1999/443.

(c) Regulation B2(e) was inserted by S.I. 1999/443.

(d) Inserted by S.I. 1997/1916 and amended by S.I. 1998/1593 and S.I. 1999/443.

Early retirement pension (employer's consent)

9. In regulation E4(3)(d)(a) after "Trust" there shall be inserted "or a Primary Care NHS Trust".

Preserved pension

10. In regulation E6–

(a) for paragraph (2) there shall be substituted–

“(2) The pension under this regulation will be calculated–

(a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E5, as if it were a pension under that regulation; and

(b) in any other case, as described in regulation E1;

and the retirement lump sum will be calculated as described in regulation E7.”;

(b) in paragraph (3) after sub-paragraph (c) there shall be inserted–

“(d) the member–

(i) left pensionable employment after 30th March 2000;

(ii) has reached the age of 50; and

(iii) has applied to the Scottish Ministers for payment of the pension and retirement lump sum under this regulation.”;

(c) in paragraph (4) for the words from “authority)” to “the pension” there shall be substituted–

“authority)–

(a) in the case of a member to whom sub-paragraph (d) of paragraph (3) above applies, when he makes the application referred to in head (iii) of that sub-paragraph; or

(b) in any other case, when he reaches the age of 60, the pension”.

Payment of lump sum on death

11. For paragraphs (1) to (3) of regulation F5 there shall be substituted–

“(1) A lump sum under any of regulations F1 to F4 shall be paid in accordance with the following paragraphs.

(2) Unless paragraph (3) or (3A) below applies, the lump sum shall be paid to the member's personal representative.

(3) Where the member dies and leaves a widow or widower, the lump sum may be paid to the widow or widower, unless–

(a) the member has given notice to the Scottish Ministers in accordance with paragraph (3B) below that the widow or widower is not to receive the payment, and has not revoked that notice; or

(b) paragraph (3A) below applies.

(3A) Where the member has given notice to the Scottish Ministers in accordance with paragraphs (3B) and (3C) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless–

(a) that person has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(3B) Notice to the Scottish Ministers for the purpose of paragraph (3) or (3A) above–

(a) shall be given only by a member who is in pensionable service under the scheme;

(b) shall be given in writing; and

(c) may at any time be revoked in writing;
and, subject to sub-paragraph (a) above, a member who revokes such a notice may give further notice for the purpose of one of those paragraphs.

(3C) A notice given for the purpose of paragraph (3A) above shall specify one person, who may be—

- (a) an individual;
- (b) a body corporate; or
- (c) an unincorporated body.”.

Medical and dental practitioners and trainee practitioners

12. In regulation R1 after the words “Health Board” in both places where they occur there shall be inserted “or Primary Care NHS Trust”.

Mental Health Officers

13. In regulation R3—

- (a) in paragraph (6) delete the words from “or service credited” to the end; and
- (b) in paragraph (16)(c) for “a consultant” there shall be substituted “a specialist”.

Participators in pilot schemes

14. In regulation R13(a)—

- (a) In paragraph (1)—
 - (i) in sub-paragraphs (a), (b)(i), (c) and (d) after “Health Board” there shall be inserted “or Primary Care NHS Trust”;
 - (ii) in sub-paragraphs (e) and (f)(i) after the word “Trust” there shall be inserted the words “or Primary Care NHS Trust”;
 - (iii) in sub-paragraph (f)(ii) after the word “Trust” there shall be inserted the words “, by a Primary Care NHS Trust”; and
- (b) for paragraph (2) there shall be substituted—

“(2) In paragraph (1) above, “relevant Health Board or Primary Care NHS Trust” means the Health Board or, as the case may be, the Primary Care NHS Trust with which agreement or agreements constituting the pilot scheme in question has or have been made.”.

Suspension of pension on return to NHS employment

15. In regulation S1—

- (a) in paragraph (1) after “consent))” delete “or” and insert “,”; and
- (b) in paragraph (1), after “(with actuarial reduction))” there shall be inserted “or a preserved pension is payable to the member in the circumstances described in E6,”.

Reduction of pension on return to NHS employment

16. In regulation S2(1) for “regulations E1 to E6”(b) there shall be substituted “regulations E1 to E4 or in accordance with regulation E6(2)(b)(c),”.

Interest on late payment of benefit

17. After regulation T8 there shall be inserted—

“Interest on late payment of benefits

T9.—(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Scottish Ministers shall pay interest, calculated in

(a) Regulation R13 was inserted by S.I. 1998/1593 and substituted by 1999/443.

(b) Regulation S2(1) was amended by S.I. 1997/1434.

(c) Regulation E6(2)(b) is inserted by regulation 10(a) of these Regulations.

accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above shall not be payable where the Scottish Ministers are satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above shall be calculated at the base rate on a day to day basis from the due date to the date of payment, and shall be compounded with three-monthly rests.

(4) In this regulation—

“base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such rate, the rate which, when the base rate quoted by each reference bank is ranked in a descending sequence, is the first in the sequence;

“due date” means—

- (a) in the case of a lump sum under Part F above, the day immediately following the day of the member’s death, unless the lump sum falls to be paid to the member’s personal representative, in which case it means—
 - (i) the date on which probate or letters of administration are produced to the Scottish Ministers; or
 - (ii) the Scottish Ministers are satisfied that the lump sum may be paid as provided in regulation F5(4), whichever is the earlier;
- (b) in the case of a pension payable on a member’s death, the day immediately following the day of his death;
- (c) in the case of a pension under regulation E6, the day on which the pension becomes payable in accordance with that regulation;
- (d) in the case of a refund of contributions, the day after that on which the Scottish Ministers receive from the Commissioners of Inland Revenue the information they require for the purposes of compliance with paragraphs (2) to (4) of regulation E9; and
- (e) in any other case, the day immediately following that of the member’s retirement from pensionable employment;

“qualifying payment” means any amount payable by way of a pension or lump sum, or by way of a refund of contributions, under these Regulations;

“reference banks” means the four largest institutions for the time being which—

- (a) are authorised by the Financial Services Authority under the Banking Act 1987^(a);
- (b) are incorporated in the United Kingdom and carrying on within it a deposit-taking business (as defined in section 6, but subject to any order under section 7 of that Act); and
- (c) quote a base rate applicable to sterling deposits.”.

Medical and dental practitioners

18. In Schedule 1—

- (a) in paragraph 2 (application of Regulations with modifications) after the words “Health Board” in both places they occur, insert “or Primary Care NHS Trust”;
- (b) in paragraph 3(2) (meaning of “practitioner income”) after paragraph (c) there shall be inserted—
 - “(d) personal allowances (but excluding payment made to cover expenses) paid in respect of participation in a Local Health Care Co-operative.”;
- (c) before paragraph 5 there shall be inserted the heading “Election relating to calculation of “pensionable earnings” in partnerships”;

(a) 1987 c.22, as amended by the Bank of England Act 1998 (c.11).

- (d) in paragraph 5 after the words “Health Board” in each place where they occur, there shall be inserted “or Primary Care NHS Trust” and in sub-paragraph (3) after “Board” in both places where it occurs insert “or Trust”;
- (e) in paragraph 6(1) (meaning of “pensionable earnings” – other practitioners)(a) for the words from “means” to the end of the sub-paragraph there shall be substituted–
“means–
 - (a) all salary, wages, fees and other regular payments paid to the practitioner in respect of his employment as a practitioner, but does not include bonuses or payments made to cover expenses or for overtime; and
 - (b) personal allowances (but excluding payments made to cover expenses) paid in respect of participation in a Local Health Care Co-operative.”.

Amendment of the Compensation Regulations

19. In regulation 5 of the Compensation Regulations (crediting of additional period of service) after paragraph (13) there shall be inserted–

“(14) For the purposes of paragraph (7)(a) above, where any part of the pensionable service of an entitled officer to whom there is payable a pension under regulation E3 of the National Health Service Superannuation Scheme (Scotland) Regulations 1995 is service in part-time employment, the compensation payable in respect of the service credited under this Regulation shall not exceed the relevant amount.

- (15) In this regulation–
“the relevant amount” means the amount which bears the same proportion to the amount which would have been payable had the service not been part-time as the whole-time equivalent bears to comparable whole-time employment; and
“the whole-time equivalent” has the same meaning as in regulation C4 of the National Health Service Superannuation Scheme (Scotland) Regulations 1995.”.

Amendment of the Injury Benefits Regulations

Interpretation

- 20.** In regulation 2–
- (a) in the definition of “assistant practitioner” after the words “Health Board” in both places where they occur there shall be inserted “or Primary Care NHS Trust”;
 - (b) in the definition of “employing Authority” after sub-paragraph (c) there shall be inserted–
“(cc) a Primary Care NHS Trust to which certain functions referred to in section 12AA of the 1978 Act (b) are delegated by the Health Board;”;
 - (c) in the definition of “NHS dental employee(c)” after the words “Health Board” there shall be inserted “or Primary Care NHS Trust”;
 - (d) after the definition of “NHS dental Employee” there shall be inserted–
““NHS employment” has the same meaning as in the National Health Service Superannuation Scheme (Scotland) Regulations 1995(d);” and
 - (e) in the definition of “practitioner” there shall be inserted “or Primary Care NHS Trust” after the words “Health Board” in each place where it occurs.

Persons to whom the Regulations apply

- 21.** In regulation 3(1)–
- (a) in sub-paragraph (f)(e) after “Health Board” there shall be inserted “or Primary Care Trust”; and

(a) Paragraph 6 was amended by S.I. 1998/1593 and 1999/443.
(b) 1978 (c.29); section 12AA was inserted by section 47 of the Health Act 1999 (c.8).
(c) This definition was inserted by S.I. 1999/444.
(d) S.I. 1995/365; amended by S.I. 1997/1434, 1997/1916, 1998/1593 and 1999/443.
(e) Sub-paragraph (f) was amended by S.I. 1999/444.

- (b) in sub-paragraph (j)(i)(a) after “Trust” there shall be inserted “or Primary Care NHS Trust”.

Recovery of costs

22. In regulation 4A(4)(b)–

- (a) in sub-paragraph (e) after “National Health Service Trust” there shall be inserted “or Primary Care NHS Trust”; and
(b) after the words “Health Board” in both places where it occurs there shall be inserted “or Primary Care Trust”.

Transitional provision

23. Any notice given before 1st April 2000 under paragraph (1) of regulation F5 of the Superannuation Scheme Regulations (payment of lump sum) as then in force shall be treated on and after that date as if it were a notice given for the purpose of paragraph (3) of that regulation as amended by regulation 11 of these Regulations.

St Andrew’s House,
Edinburgh
17th November 2001

We consent,

21st November 2001

ANGUS MacKAY
A member of the Scottish Executive

NICK AINGER

ANNE McGUIRE
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Sub-paragraph (j)(i) was inserted by S.I. 1999/444.
(b) Regulation 4A was inserted by S.I. 1999/195.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Superannuation Scheme Regulations 1995 (“the Superannuation Scheme Regulations”) which provide for the superannuation of persons engaged in the National Health Service in Scotland, and – in one respect – the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981 (“the Compensation Regulations”) which provide for the compensation payable in respect of such persons where they retire prematurely by reason of redundancy or in the interests of the efficiency of the service and the National Health Service (Scotland) (Injury Benefits) Regulations 1998 which provide for the payment by Scottish Minister of injury benefits to or in respect of any person engaged in the National Health Service in Scotland whose earning ability is reduced, or who dies as a result of an injury suffered, or a disease contracted, in the course of his or her duties. Certain provisions have retrospective effect as authorised by section 12 of the Superannuation Act 1972: regulations 5(a), (b) and (c), 6, 8, 9, 12, 14, 18(a) and (d), 20(a), (b), (c) and (e), 21 and 22 from 1st October 1999, regulation 10 from 31st March 2000 and regulations 16 and 18 from 1st April 2000.

Regulation 5 amends regulation A2 to include in the definition of “employing authority” a Primary Care NHS Trust to which certain functions referred to in section 12AA of the 1978 Act (in relation to the provision of general or personal medical or dental services under that Act and pilot schemes under Part 1 of the National Health Service (Primary Care) Act 1997) are delegated by the Health Board to the Trust. The definition of “specialist” is amended to avoid confusion with the introduction of the new grade of nurse consultant.

Regulations 5, 6, 8, 9, 12, 14, 18, 20, 21 and 22 amend regulations A2, B2, E3, E4, R1 and R13 of, and in Schedule 1 to, the Superannuation Scheme Regulations and regulations 2, 3 and 4 of the Injury Benefits Regulations to include references to Primary Care NHS Trusts.

Regulation 7 amends regulation C4(6) of the Superannuation Scheme Regulations to clarify that calculation of part-time service in relation to early retirement pensions under regulation E3 (early retirement pension (redundancy, etc.)) is in accordance with E2 of those Regulations.

Regulation 10 amends regulation E6 of the Superannuation Scheme Regulations to enable a member who leaves pensionable employment after 30th March 2000 with preserved rights to elect to receive an actuarially reduced pension and lump sum after attaining the age of 50.

Regulations 11 and 23 amend regulation F5 of the Superannuation Scheme Regulations to make provision for members to nominate someone other than their surviving spouse as the person who is to receive the lump sum payable on their death, with transitional protection for existing arrangements.

Regulation 13 amends regulation R3(6) of the Superannuation Scheme Regulations to correct an error made when consolidating the Regulations. The amendment allows service transferred in under regulations N2 or N3 to count as qualifying service for the purposes of regulations R3 where the previous employment meets the criteria for mental health officer. This regulation also amends regulation R3(16)(c) to refer to specialist to avoid confusion with the interpretation of consultant following the introduction of nurse consultants.

Regulation 15 amends regulation S1 to clarify that where a preserved pension comes into payment and the person resumes employment within one month working more than 16 hours per week, the pension will be subject to suspension.

Regulation 16 amends regulation S2(1) of the Superannuation Scheme Regulations so that where a person with preserved rights elects to receive an actuarially reduced pension or where a pension is in payment under regulation E5, the pension will not be subject to a reduction should the member return (after more than one month) to NHS employment while under the age of 60.

Regulation 17 inserts a new regulation T9 in the Superannuation Scheme Regulations to provide for interest to be paid in respect of delays in the payment of benefits.

Regulation 18 amends Schedule 1 to the Superannuation Scheme Regulations to include references to Primary Care NHS Trusts and amend paragraph 3 of that Schedule to provide for allowances paid to a practitioner in respect of participation in a Local Health Care Co-operative (excluding payments made to cover expenses) to be treated as practitioner earnings.

Regulation 19 amends the Compensation Regulations to clarify that the application of regulation 5 of those Regulations in relation to a pension payable under regulation E3 of the Superannuation Scheme Regulations means the proportion which would be payable to a part-time member under Regulation C4(6) of the Superannuation Scheme Regulations.

Regulations 20 to 22 amend regulations 2, 3 and 4A of the Injury Benefits Regulations to include references to Primary Care NHS Trusts and insert a new definition of employing authority in relation to practitioners.

Regulation 23 provides transitional protection for existing arrangements to exclude the widow or widower from receiving the lump sum on death.

These Regulations do not impose any costs on business.

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Benefits and Compensation for Premature Retirement)
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