

2003 No. 270

NATIONAL HEALTH SERVICE

**The National Health Service Superannuation Scheme
(Scotland) Amendment (No. 2) Regulations 2003**

Made 3rd June 2003

Laid before the Scottish Parliament 5th June 2003

Coming into force 30th June 2003

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a), and all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear 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, interpretation and extent

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) Amendment (No. 2) Regulations 2003 and shall come into force on 30th June 2003 but—

- (a) regulations 3 and 6 shall have effect from 1st April 2003; and
- (b) regulations 8, 9, 10 and 11 shall have effect from 1st April 2002.

(2) These Regulations extend to Scotland only.

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

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995(c) shall be amended in accordance with regulations 3 to 11 of these Regulations.

Contributions and other payments by employing authorities

3. In regulation D2—

- (a) at the end of the paragraph (1) insert “and when specifying a rate the Scottish Ministers shall include the cost of providing any increases in pensions which are payable by virtue of Part I of the Pensions (Increase) Act 1971(d)”; and

(a) 1972 c.11; sections 10 and 12 were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7; the functions of the Secretary of State were transferred to Scottish Ministers by virtue of article 2 of 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 Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).
(c) S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593, and 1999/443 and S.S.I. 2001/437, 2001/465 and 2003/55.
(d) 1971 c.56. Section 2 has been replaced by section 59 of the Social Security Pensions Act 1975 (c.60) but subsection (7) of that section provides the said section 59 shall have effect as if contained in the said Act of 1971.

- (b) in paragraph (3)(d) after “sub-paragraphs (a) to (c) above” insert “which has not been contributed pursuant to paragraph (1)”.

Preserved pension

- 4. In regulation E6–
 - (a) at the beginning of paragraph (4), for “If” substitute “Except in a case to which paragraph (4A) applies, if”; and
 - (b) after paragraph (4), insert–

“(4A) Paragraph (4) may not apply where the NHS employment which the member is in when he reaches age 60 is employment into which he has been transferred as a result of a transfer of an undertaking to the employer.

(4B) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (4A) applies–

- (a) his benefits in respect of any pensionable service in that new employment shall be calculated without regard to any pensionable service in any earlier employment; and
- (b) for the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(3) and (4) (contributions by members), his service in the earlier employment and in the new employment shall be aggregated.”.

Reduction of pension on return to NHS employment

- 5. In regulation S2–
 - (a) at the beginning of paragraph (1)(a), for “Subject to paragraph (12), this”, substitute “Subject to paragraph (12) and except in a case to which paragraph (1A) applies, this”; and
 - (b) after paragraph (1), insert–

“(1A) This paragraph applies where the member has been transferred into NHS employment as a result of a transfer of an undertaking to the employer.”.

Accounts and actuarial reports

- 6. In regulation U3(5) after “pensionable pay” insert “and of all contributions to the scheme made under regulation D2(1)”.

Amendments to Schedule 1

- 7. Schedule 1 (medical and dental practitioners) is amended in accordance with regulations 8 to 11.

Additional definitions used in Schedule 1

- 8. In paragraph 1, for the definition of “locum practitioner”(b), substitute–

““locum practitioner” means a registered medical practitioner, other than a GP registrar, who is engaged under a contract for services with a practitioner otherwise than in pursuance of a commercial arrangement with an agent, to deputise or assist in the provision of general medical services or personal medical services”.

Application of Regulations with modifications

- 9.—(1) In paragraph 2(1A)(c)–
 - (a) for the definition of “the listing Authority”, substitute–

““the listing Authority” in relation to a locum practitioner means the Health Board or Trust who prepare and publish–

(a) Regulation S2(1) was amended by S.I. 1998/1593.

(b) The previous definition of “locum practitioner” was inserted by S.S.I. 2003/55.

(c) Paragraph 2(1A) was inserted by S.S.I. 2003/55.

- (a) the medical list in accordance with regulations made under sections 19(2)(a) or 25(2)(a) of the 1978 Act(a); or
 - (b) the services list under section 17EA or the supplementary list under section 24B of the 1978 Act(b),
on which he is included.”;
- (b) in the definition of “the appropriate contracting party”, omit “within paragraph (b)(ii) of the definition of that expression”.
- (2) In paragraph 2(2)(c) omit the words following “as a practitioner”.

Meaning of pensionable earnings

- 10.**—(1) In paragraph 3(2)(a), after “general ophthalmic services” insert “, locum services”.
- (2) After paragraph 3(3), insert—
- “4) In sub-paragraph (2)(a), “locum services” shall have the same meaning as for the purposes of paragraph 6”.

Meaning of pensionable earnings in relation to other practitioners

- 11.** In paragraph 6(1)(a) and (3)(a) and (b)(d), omit “or any payments made to the practitioner in respect of the provision of locum services”.

Victoria Quay,
Edinburgh
16th May 2003

ANDREW P KERR
A member of the Scottish Executive

We consent

JIM FITZPATRICK

NICK AINGER
Two of the Lords Commissioners
of Her Majesty’s Treasury

3rd June 2003

(a) S.I. 1995/365, as relevantly amended by S.I. 1997/1916, defines “the 1978 Act” as meaning the National Health Service (Scotland) Act 1978 (c.29).

(b) Section 17EA was inserted by section 18(1) of the Community Care and Health (Scotland) Act 2002 (asp 5) and section 24B was inserted by section 18(2) of that Act.

(c) Paragraph 2(2) was amended by S.S.I. 2003/55.

(d) Paragraph 6(1)(a) was inserted by S.S.I. 2001/437; paragraph 6(3) was inserted by S.I. 1998/1593 and amended by S.I. 1999/443 and S.S.I. 2003/55.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the 1995 Regulations”) which provide for the superannuation of persons engaged in the National Health Service in Scotland. Certain provisions have retrospective effect as authorised by section 12 of the Superannuation Act 1972: regulations 3 and 6 shall have effect from 1st April 2003 and Regulations 8, 9, 10 and 11 shall have effect from 1st April 2002. All other amendments shall have effect from the date of coming into force of these Regulations.

Regulation 3 amends regulation D2 (contributions and other payments by employing authorities) to provide that employing authorities shall make contributions to the Scheme as specified by the Scottish Ministers to account for the cost of increases to NHS pensions which are payable by virtue of Part I of the Pensions (Increase) Act 1971.

Regulations 4 and 5 amend regulations E6 (preserved pension) and S2 (reduction of pension on return to NHS employment) respectively to provide that preserved benefits may be payable at age 60 while continuing in employment, and that a pension already in payment or which comes into payment at age 60 is not abated where a member returns to employment with an employing authority by virtue of a transfer of an undertaking to that authority.

Regulation 6 amends regulation U3(5) (accounts and actuarial reports) and provides that employing authorities shall maintain records of all the contributions they make to the Scheme.

Regulations 7 to 11 amend Schedule 1 to the 1995 Regulations (medical and dental practitioners) to enable additional categories of practitioners to count their earnings as locum practitioners towards their rights under the Scheme.

Regulation 8 amends the definition of “locum practitioner” contained in paragraph 1 of Schedule 1, to include principal practitioners, assistant practitioners and associate general practitioners and allow the additional categories of practitioner to count their earnings as locum practitioners towards their rights under the Scheme.

Regulation 9(1)(a) amends the definition of “the listing authority” in relation to locum practitioners, contained in paragraph 2(1A) of Schedule 1, to include principal practitioners, assistant practitioners and associate general practitioners held on Health Board or Trust lists. Regulation 9(1)(b) makes a consequential amendment. Regulation 9(2) amends paragraph 2(2) of Schedule 1 to allow practitioners to include as pensionable earnings any payments made in respect of locum services which have been undertaken concurrently with practitioner service.

Regulation 10(1) amends paragraph 3(2)(a) of Schedule 1 to provide that payments made to principal practitioners for the provision of locum services can be regarded as pensionable earnings. Regulation 10(2) inserts a new paragraph (4) to provide that for the purposes of paragraph 3(2)(a) “locum services” has the same meaning as in paragraph 6 of Schedule 1 (meaning of “pensionable earnings” in relation to other practitioners).

Regulation 11 makes a consequential amendment to paragraph 6(1)(a) and (3) of Schedule 1.

These Regulations do not impose any costs on business.

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