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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 517**

**NATIONAL HEALTH SERVICE**

**The National Health Service Superannuation Scheme  
(Scotland) Amendment (No. 3) Regulations 2003**

*Made* - - - - - *15th October 2003*  
*Laid before the Scottish*  
*Parliament* - - - - - *6th November 2003*  
*Coming into force* - - - - - *29th November 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1), 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(2), hereby make the following Regulations:

**Citation, commencement, effect and extent**

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) Amendment (No. 3) Regulations 2003 and shall come into force on 29th November 2003 but—

- (a) regulation 6 shall have effect from 6th April 2003; and
- (b) regulations 7 and 8 shall have effect from 1st April 2003.

(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(3) shall be amended in accordance with regulations 3 to 8 of these Regulations.

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(1) 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 the 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).

(2) 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).

(3) S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593, 1999/443 and 2001/3649, and S.S.I. 2001/437, 2001/465, 2003/55 and 2003/270.

### Meaning of pensionable pay

3. For regulation C1(3)(4), substitute–

“(3) Subject to paragraph (3AZ), in the case of a member who joined the scheme before 1st June 1989 pensionable pay in excess of the permitted maximum will not be ignored.

(3AZ) In the case of a member who joined the scheme before 1st June 1989 and has a break in pensionable employment on or after that date–

- (i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;
- (ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored.”.

### Payment of lump sum

4. In regulation F5(5)–

- (a) in paragraph (3)(a) after “notice” insert “in writing” and omit “in accordance with paragraph (3B) below”;
- (b) in paragraph (3A) after “notice” insert “in writing” and omit “in accordance with paragraphs (3B) and (3C) below”;
- (c) for paragraph (3B), substitute–

“(3B) Notice given to the Scottish Ministers for the purposes of paragraph (3) or (3A) may, at any time, be revoked in writing.”; and
- (d) in paragraph (3C), after “shall” insert “only be given by a member who is in pensionable service in the scheme and shall”.

### Early leavers returning to pensionable employment

5. For regulation L2(2), substitute–

“(2) If a member’s pensionable service before and after a break in pensionable employment is treated separately, the member’s benefits in respect of each period of pensionable employment shall be calculated–

- (a) separately; and
- (b) by reference to–
  - (i) the member’s pensionable service before and after a break in pensionable employment as the case may be; and
  - (ii) the member’s final pensionable pay in respect of that particular period, as if that period had been the member’s only period of pensionable employment.”.

### Maternity leave

6. In regulation P1–

- (a) in the title to regulation P1, after “maternity” insert “, paternity and adoption”;
- (b) in paragraph (1) after “confinement” insert “, or for paternity or adoption leave”;
- (c) in paragraph (2) after “confinement” insert “, or for paternity or adoption leave”; and

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(4) Regulation C1(3) was amended by S.I. 1997/1434.

(5) Regulation F5 was amended by S.S.I. 2001/437.

- (d) in paragraph (3) for “leave under her” substitute “, paternity or adoption leave under the member's”.

### **Officer service treated as practitioner service**

**7.** In Schedule 1 (medical and dental practitioners), in paragraph 9(6)–

- (a) for sub-paragraph (2), substitute–

“(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member’s pensionable pay in respect of that officer service–

- (a) may be disregarded and his uprated earnings increased by the same proportion as his practitioner’s service is increased by virtue of the officer service being treated as practitioner service under sub paragraph (1); or

- (b) may be treated as pensionable earnings,

whichever is more favourable to him.”;

- (b) after sub-paragraph (5), insert–

“(5A) Where a member has more than 10 years’ officer service before first becoming–

- (a) a principal practitioner; or

- (b) a practitioner providing piloted services,

the member’s officer service before first becoming a principal practitioner or a practitioner providing piloted services may be treated as practitioner service if it would be more favourable to the member.

(5B) For the purposes of calculating any benefits in respect of officer service that is treated as practitioner service under sub-paragraph (5A), the member’s pensionable pay in respect of that officer service shall be treated as pensionable earnings.”;

- (c) after sub-paragraph (6), insert–

“(6A) Subject to sub-paragraph (8), if a member has in total 1 year’s officer service or more on the last occasion on which he ceases to be a practitioner before his pension under the scheme becomes payable that officer service may be treated as practitioner service if it would be more favourable to him.

(6B) Any officer service which is treated as practitioner service by virtue of sub-paragraph (6) or (6A) shall include any periods of officer service which are concurrent with periods of practitioner service.”;

- (d) in sub-paragraph (7), after “sub-paragraph (6)” insert “or (6A)”;

- (e) in sub-paragraph (8)–

- (i) after “sub-paragraph (1)”, wherever it occurs, insert “ or (5A)”;

- (ii) in the first two places where “sub-paragraph (6)” occurs, substitute “sub paragraphs (6) and (6A)”;

- (iii) after “sub-paragraph (6)”, where it last occurs, insert “or (6A)”;

- (f) in sub-paragraph 11, for “paragraph (6) or paragraph (9)” substitute “sub-paragraph (6), (6A) or (9)”.

**Practitioners with benefits from both practitioner and officer service**

8. In Schedule 1 (medical and dental practitioners), after paragraph 9A(7), insert—

**“Practitioners with benefits from both practitioner and officer service**

**9B.—**(1) A member—

- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme;
- (b) who ceases to be in officer service while continuing in practitioner service; and
- (c) whose officer service is not treated as practitioner service under paragraph 9(5A) or 9(6A),

shall be entitled to receive a separate pension in respect of his officer service.

(2) A member—

- (a) who has at least two years qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme; and
- (b) who ceases to be in practitioner service while continuing in officer service,

shall be entitled to receive a separate pension and retirement lump sum in respect of such of his pensionable service as is specified in sub-paragraph (3).

(3) The pensionable service specified for the purposes of sub-paragraph (2) is—

- (a) any practitioner service; and
- (b) any officer service which falls to be treated as practitioner service under paragraph 9.

(4) Subject to sub-paragraph (5), the amount of any pension or retirement lump sum which a member is entitled to receive under sub-paragraph (1) or (2) shall be the same as the amount of the pension or retirement lump sum which the member would have been entitled to receive under these Regulations if he had left pensionable employment on the day on which he ceased to be in officer service or, as the case may be, ceased to be in practitioner service.

(5) A member who is entitled to a pension and retirement lump sum under sub paragraph (2) shall, if it would be more favourable to him, be treated as having continued in practitioner service until the last day of his pensionable employment.”.

Victoria Quay, Edinburgh  
13th October 2003

*TAVISH SCOTT*  
A member of the Scottish Executive

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(7) Paragraph 9A was inserted by [S.S.I. 2003/55](#).

We consent

15th October 2003

*NICK AINGER*  
*JIM MURPHY*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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: Regulation 6 shall have effect from 6th April 2003 and regulations 7 and 8 shall have effect from 1st April 2003. All other amendments shall have effect from the date of coming into force of the Regulations.

By amending the definition of “pensionable pay”, regulation 3 provides that a member who joined the Scheme prior to 1st June 1989 will not be subject to a cap on the earnings from which they can contribute to the Scheme. Should the member have a break in pensionable employment, the pensionable pay upon which contributions are based will be capped, but only for the pensionable service after the break in pensionable employment.

Regulation 4 provides that a member with preserved benefits can revoke a lump sum on death nomination made under regulation F5 of the 1995 Regulations.

Regulation 5 further defines the treatment of benefits should they be calculated separately as a result of the member returning to pensionable employment after leaving without immediate access to benefits.

Regulation 6 provides that paternity and adoption leave can count towards reckonable service within the superannuation scheme.

Regulation 7 extends the provision that officer service can be regarded as practitioner service in the calculation of final benefits, should it be more beneficial to the practitioner member.

Regulation 8 provides that, if it is more beneficial to the member, separate benefits can be paid in respect of officer and practitioner service.

These Regulations do not impose any cost on business.