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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 561**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Superannuation Scheme and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>20th November 2006</i>
<i>Laid before Parliament</i>		<i>27th November 2006</i> <i>22nd December</i>
<i>Coming into force</i>	- -	<i>2006</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(1), 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 the Scottish Ministers 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 and commencement**

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2006.

(2) These Regulations shall come into force on 22nd December 2006 but regulations 2(1) to (3) and 3 shall have effect from 1st December 2006.

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(1) 1972 c. 11. Section 10 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) (“the 1990 Act”), sections 4(2) and 8(5), the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 108. Section 12 was amended by the 1990 Act, section 10. Section 24 was amended by the Police Pensions Act 1976 (c. 35), Schedule 2, paragraph 10 and the Fire and Rescue Services Act 2004 (c. 21), Schedule 1, paragraph 37. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

(2) See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

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

**2.—(1)** The National Health Service Superannuation Scheme (Scotland) Regulations 1995(3) are amended as follows.

(2) In—

- (a) each of the following provisions after “regulation E3 (early retirement pension (redundancy etc.))”, wherever it occurs, insert “or regulation E3A (Redundancy etc. new starters and post-transition))”—
    - (i) paragraph (6) of regulation C4 (pensionable service in respect of part-time employment);
    - (ii) paragraph (3) of regulation D2 (contributions and other payments by employing authorities);
    - (iii) paragraph (7) of regulation M1 (member’s right to transfer or buy-out);
    - (iv) paragraph (3)(b) of regulation R2 (nurse, physiotherapists, midwives and health visitors);
    - (v) paragraph (10) of regulation R3 (mental health officers); and
    - (vi) paragraph (4) of regulation R4 (members doing more than one job);
  - (b) paragraph (2) of regulation B3 (restrictions on further participation in the scheme), for “regulation E3(3) (concurrent employment where early retirement pension (redundancy etc) becomes payable)”, substitute “regulation R4(4) (members doing more than one job)”;
  - (c) paragraph (5) of regulation C3 (meaning of “qualifying service”) after “E3” insert “or E3A”;
  - (d) paragraph (6) of regulation C4 for sub paragraph (a)(ii) substitute—
    - “(ii) the qualifying service for the purposes of regulation E3(2)(a) or regulation E3A(2) (a);”;
  - (e) paragraphs (3)(a) and (5)(b) of regulation D2, after “regulation E3”, wherever it occurs, insert “, E3A”; and
  - (f) paragraphs (8A) and (8B) of regulation R4 after “E3”, insert “or E3A”.
- (3) For regulation E3 (early retirement pension (redundancy etc.)), substitute—

### **“Early retirement pension (redundancy etc.)**

**E3.—(1)** This regulation shall apply to a member—

(a) who—

- (i) was in pensionable employment on 1st December 2006; or
- (ii) returns to such employment on, or after, that date and who is entitled to a preserved pension under regulation L1 (early leavers returning to pensionable employment); or
- (iii) returns to pensionable employment after that date having had a break in such employment which does not exceed 12 months but includes 1st December 2006 and who is not entitled to a preserved pension under regulation L1; or

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(3) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011, and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 544 and 2006/307.

- (iv) is certified by his employing authority as having a period of continuous employment (determined in accordance with terms and conditions relevant to that employment and as they applied on 1st October 2006);
  - (b) whose employment is terminated by his employing authority before 1st October 2011; and
  - (c) who satisfies the conditions specified in paragraph (2).
- (2) Those conditions are that—
- (a) he has at least 5 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) 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 he is employed; and
  - (c) his employing authority does not certify that he has unreasonably refused to seek suitable alternative employment or accept an offer of such employment.
- (3) A member who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1 (normal retirement pension).
- (4) This regulation does not apply to—
- (a) practice staff; or
  - (b) practitioners; or
  - (c) non-GP providers; or
  - (d) a member who is providing piloted services under a pilot scheme; or
  - (e) a member to whom regulation R13(1)(a) or (b) of these Regulations applies; or
  - (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

#### **Early Retirement Pension (Redundancy etc. new starters and post-transition)**

- E3A.**—(1) This regulation applies to a member—
- (a) whose pensionable employment is terminated by his employing authority; and
  - (b) who satisfies the conditions specified in paragraph (2).
- (2) Those conditions are that—
- (a) he has 2 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) his employing authority certifies he has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to that employment;
  - (c) his employing authority does not certify that he 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 he is employed; and
- (e) he makes a claim for the pension referred to in this regulation.
- (3) A claim referred to in paragraph (2)(e) shall—
  - (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of the employment being terminated; and
  - (c) contain such information as the Scottish Ministers may require.
- (4) A person who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1.
- (5) Where—
  - (a) a person who claims a pension under this regulation has received—
    - (i) a redundancy payment under the Employment Rights Act 1996<sup>(4)</sup>; or
    - (ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain; or
    - (iii) a payment made by virtue of any arrangement made pursuant to paragraph 20(2) of Schedule 7A to the National Health Service Act 1978 (National Health Service Trusts – general powers)<sup>(5)</sup>,
 in respect of the cessation of the employment; and
  - (b) the terms and conditions relevant to the employment require that payment or payments be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation D2(3); but
  - (c) payment or payments have not been so reduced,
 the pension shall be reduced by an amount equal to the amount of that payment or those payments and may be reduced to zero.
- (6) This regulation does not apply to—
  - (a) practice staff; or
  - (b) practitioners; or
  - (c) non-GP providers; or
  - (d) a member who is providing piloted services under a pilot scheme; or
  - (e) a member to whom regulation R11(1)(a) or (b) of these Regulations applies; or
  - (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

### **Early Retirement Pension (Redundancy etc. notifications)**

- E3B.**—(1) This regulation applies to a member—
- (a) who satisfies the conditions specified in regulations E3 and E3A; and
  - (b) whose pensionable employment is terminated by his employing authority on, or after, 1st December 2006 but before 1st October 2011.

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(4) 1996 c. 18.

(5) 1978 c. 29. Schedule 7A was inserted by Schedule 6 to the National Health Service and Community Care Act 1990 (c. 19).

(2) A person referred to in paragraph (1) may notify the Scottish Ministers as to which of those regulations he wishes to apply to him and such a notification shall be—

- (a) in writing (but the Scottish Ministers may, in their discretion, accept notification in another form);
- (b) given within 6 months of the employment being terminated; and
- (c) given on an irrevocable basis.

(3) Where a member does not notify the Scottish Ministers within the period mentioned in paragraph (2)(b), regulation E3 shall apply.

### **Early Retirement Pension (special classes)**

**E3C.**—(1) This regulation applies to a member—

- (a) who has attained the age of 55;
- (b) to whom regulation R2 (nurse, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies; and
- (c) whose employment is terminated on, or after, 1st October 2011, and either—
  - (i) the Scottish Ministers certify that that employment is terminated by reason of redundancy; or
  - (ii) with the agreement of the employing authority, the Scottish Ministers, certify that that employment is terminated in the interests of the efficiency of the service in which he is employed.

(2) A person referred to in paragraph (1) who would, if he made a claim for it, be entitled to a pension in accordance with regulation E3A—

- (a) shall (for the purpose of this regulation) be treated as retiring from pensionable employment on the day on which his employment terminates; and
- (b) shall be entitled to a pension under regulation E1 or E5 if he makes a claim for it.

(3) A claim referred to in paragraph (2)(b) shall—

- (a) be in writing and addressed to the Scottish Ministers;
- (b) be made within 6 months of the employment being terminated; and
- (c) contain such information as the Scottish Ministers may require.

### **Continuing entitlement to a pension under regulation E1 or E5**

**E3D.**—(1) This regulation applies to a member—

- (a) whose employment is certified by the Scottish Ministers to have terminated by reason of redundancy on, or after, 1st December 2006; and
- (b) who has attained—
  - (i) normal minimum pension age, or, where relevant, protected pension age; or
  - (ii) age 60.

(2) A member referred to in paragraph (1) who would, if he made a claim for it, be entitled to a pension in accordance with regulation E3A—

- (a) shall (for the purposes of this regulation) be treated as retiring from pensionable employment on the day on which his employment terminates; and
- (b) shall be entitled to a pension under regulation E1 or E5 if—
  - (i) he satisfies the conditions set out in those regulations; and

- (ii) he makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) shall—
  - (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of employment terminating; and
  - (c) contain such information as the Scottish Ministers may require.”.
- (4) In regulation T2A (deduction of tax: further provisions)—
  - (a) for paragraph (4)(b) substitute—
    - “(b) the information referred to in paragraph (3)”; and
  - (b) in paragraphs (5) and (6)—
    - (i) for “(7)” substitute “(3)”; and
    - (ii) for “(8)” substitute “(4)”.

### **Amendment of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003**

**3.—(1)** The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(6) are amended as follows.

- (2) For regulation 3 (persons to whom the regulations apply), substitute—

#### **“Persons to whom the Regulations apply**

**3.** These Regulations shall apply to an officer who on ceasing to be employed in the employment of an employing authority—

- (a) becomes entitled to benefits in accordance with regulation E3 of the Superannuation Scheme Regulations; or
  - (b) notifies the Scottish Ministers in accordance with regulation E3B of the Superannuation Scheme Regulations that he or she wishes regulation E3 of those Regulations to apply to him or her.”.
- (3) In regulation 5 (crediting of additional period of service) after paragraph (1), insert—

“(1A) Paragraphs (1B) and (1C) shall apply where an entitled officer becomes so entitled on, or after, 1st December 2006 but before 1st July 2007.

(1B) The additional period of service an entitled officer shall be credited with where regulation 6(4) does not apply to him or her at 30th September 2006, shall be equal to R and determined by the formula—

$$P - Q = R$$

where—

**P** is the additional service he or she would have been credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September 2006 as if he or she became so entitled at that date; and

**Q** is the period commencing on, or after, 1st October 2006 and ending on the day on which he or she does in fact become so entitled.

- (1C) Where regulation 6(4) does apply to an entitled officer at 30th September 2006—

- (a) the additional period of service he or she shall be credited with shall be equal to P (as defined in paragraph (1B)); and
- (b) the amount of compensation payable to him or her shall be determined in accordance with that regulation except that the “relevant amount” referred to in that regulation shall be reduced by the fraction—

$$\frac{R}{P}$$

and R and P have the same meaning as in paragraph (1B).

(1D) Paragraphs (1E) to (1H) shall apply where an entitled officer becomes so entitled on, or after, 1st July 2007 but before 1st October 2011.

(1E) The additional period of service an entitled officer shall be credited with where regulation 6(4) does not apply to him or her at 30th September 2006, shall be equal to U and determined by the formula—

$$S - T - U$$

Where—

S (except where paragraph (1F) applies) is the additional period of service he or she would have been credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his or her service at 30th September 2006 as if he became so entitled at that date; and

T is the period commencing on, or after, 1st October 2006 and ending on the day on which he or she does in fact become so entitled.

(1F) For the purposes of paragraph (1E) only, where the additional period of service an entitled officer would have been credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his or her service as at 30th September 2006 as if he or she became so entitled at that date is greater than 5 years (but not otherwise)—

- (a) the excess over 5 years shall be reduced at the rate of 1/60th for each complete month commencing on, or after, 1st October 2006 and ending on the date on which he or she does in fact become so entitled (with any part day being rounded up to the nearest whole day) (“the relevant fraction”); and
- (b) the result shall be S.

(1G) Where regulation 6(4) does apply to an entitled officer as at 30th September 2006—

- (a) the additional period of service he or she shall be credited with shall be equal to S (as defined in paragraph (1E)); and
- (b) the amount of compensation payable to him or her shall be determined in accordance with that regulation except that the “relevant amount” referred to in that regulation shall be reduced by amount X.

(1H) Amount X shall be—

- (a) V (except where (b) applies);
- (b) the product of V+W where the additional service a member would be credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his or her service at 30th September 2006 as if he or she became so entitled at that date is greater than 5 years (but not otherwise), where—

$$V = (\text{the relevant amount} \times \frac{1825}{S \text{ (in days)}}) \times \frac{T \text{ (in days)}}{1825}$$

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*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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$$W = (\text{the relevant amount} \times \frac{(N(\text{in days}) - 1825)}{S(\text{in days})}) \times \text{the relevant fraction}$$

and S and T have the same meaning as in paragraph (1E).

(1I) Where it is more beneficial to an entitled officer to whom paragraphs (1A) to (1C) of this regulation apply—

- (a) those paragraphs shall be ignored; and
- (b) he or she shall be credited with additional service calculated by applying paragraph (1)(a) or, as the case may be, (1)(b) to his or her service at 30th September 2006 and as if he or she became so entitled at that date..”

St Andrew’s House,  
Edinburgh  
16th November 2006

*GEORGE LYON*  
Authorised to sign by the Scottish Ministers

We consent

20th November 2006

*DAVE WATTS*  
*FRANK ROY*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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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 (S.I.1995/365) (“the Superannuation Scheme Regulations”) and further amend the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (S.S.I. 2003/344) (“the Compensation Regulations”).

These Regulations take account of the age discrimination aspect of EC Directive 2000/78 on equal treatment and employment and vocational training (O.J. No. L 303, 2.12.2000, p.16), which requires to be implemented by 2nd December 2006. The provisions of regulations 2(1) to (3) and 3 have retrospective effect from 1st December 2006 as authorised by sections 12 and 24 of the Superannuation Act 1972 (c. 11).

Regulation 2 amends the Superannuation Scheme Regulations by–

- substituting regulation E3 (early retirement pension) with regulations E3, E3A, E3B, E3C and E3D which deal with members who are made redundant before 1st October 2011 (regulation E3); members whose pensionable employment is terminated by their employing authority (whether before or after that date) (regulation E3A); member’s notification as to whether he wishes E3 or E3A to apply to him (regulation E3B); special provisions for special classes (regulation E3C); and the right of a member who is entitled to a pension under E3A to claim a pension under E1 or E5 (regulation E3D).
- inserting references to new regulation E3A in regulations C3 (meaning of “qualifying service”); C4 (pensionable service in respect of part-time employment); D2 (contributions and other payments by employing authorities); M1 (member’s right to transfer or buy-out); R2 (nurse, physiotherapists, midwives and health visitors); R3 (mental health officers); and R4 (members doing more than one job).
- removing, in regulation B3 (restrictions on further participation in the scheme), reference to old regulation E3(3).
- amending previous incorrect references within regulation T2A (deduction of tax: further provisions).

Regulation 3 amends the Compensation Regulations by–

- substituting a new regulation 3 (persons to whom the regulations apply) so that it refers to both regulation E3 and E3B of the Superannuation Scheme Regulations.
- amending regulation 5 (crediting of additional period of service) in respect of the calculation of additional periods of service for those who are made redundant on, or after, 1st December 2006 but before 1st July 2007 (new paragraphs (1A) to (1C) and (1I)) and those who are made redundant on, or after, 1st July 2007 but before 1st October 2011 (new paragraphs (1D) to 1(H)).

These Regulations have no impact on business, charities or voluntary bodies and no regulatory impact assessment is required.