

1974 No. 441 (S.26)

NATIONAL HEALTH SERVICE, SCOTLAND
The National Health Service (Superannuation) (Scotland)
Amendment Regulations 1974

<i>Made - - - -</i>	13th March 1974
<i>Laid before Parliament</i>	22nd March 1974
<i>Coming into Operation</i>	1st April 1974

In exercise of the powers conferred on me by sections 10 and 12 of the Superannuation Act 1972(a) and of all other powers enabling me in that behalf, after consulting with such representatives of persons likely to be affected by these regulations as appear to me to be appropriate, and with the consent of the Minister for the Civil Service, I hereby make the following regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the National Health Service (Superannuation) (Scotland) Amendment Regulations 1974 and shall come into operation on 1st April 1974.

(2) The National Health Service (Superannuation) (Scotland) Regulations 1961 to 1973(b) and these regulations may be cited together as the National Health Service (Superannuation) (Scotland) Regulations 1961 to 1974.

Interpretation

2.—(1) In these regulations “the principal regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1961(c) to 1973, and other words and expressions used have the same meaning as in the principal regulations.

(2) The Interpretation Act 1889(d) applies for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

Amendment of heading to Part II of the principal regulations

3. In the heading to Part II of the principal regulations—after the words “UNDER THE ACT” there shall be inserted “OR THE ACT OF 1972”.

Amendment of heading to Part III of the principal regulations

4. For the heading to Part III of the principal regulations there shall be substituted—“PROVISIONS RELATING TO MEDICAL AND DENTAL PRACTITIONERS”.

5. In regulation 2 of the principal regulations (interpretation)—

(a) In paragraph (2)

(i) after the definition of “the Act of 1953” there shall be inserted—

“the Act of 1972” means the National Health Service (Scot-

(a) 1972 c. 11.

(c) S.I. 1961/1398 (1961 II, p. 2697).

(b) S.I. 1973/1713 (1973 III, p. 5204).

(d) 1889 c. 63.

land) Act 1972(a);

“the Act of 1973” means the National Health Service Reorganisation Act 1973(b);”;

- (ii) in the definition of “assistant practitioner”, after the words “Executive Council” in both places where they occur there shall be inserted “or a Health Board”;
- (iii) in the definition of “employing authority”, for the words “and any such other body constituted under the Act as the Secretary of State may approve”, there shall be substituted “a Health Board, the Common Services Agency for the Scottish Health Service and any such other body constituted under the Act or the Act of 1972 or any other Act relating to health service as the Secretary of State may approve”;
- (iv) for the definition of “mental health officer” there shall be substituted—

“ “mental health officer” means a whole-time officer on the medical or nursing staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder who devotes the whole or substantially the whole of his time to the treatment or care of such persons, and any consultant or senior hospital medical officer who devotes substantially the whole of his time to the treatment or care of such persons, and, if the Secretary of State in a particular case so consents, any other officer who, having been a mental health officer, without a break in his service and without having become entitled to any benefit under these regulations, subsequently becomes employed in a part-time capacity in any employment as aforesaid, and such other classes or descriptions of officers employed in such hospitals as aforesaid as the Secretary of State may designate.”;
- (v) for the definition of “practitioner” there shall be substituted—

“ “practitioner” means a medical practitioner or a dental practitioner on the list of general medical or dental practitioners maintained by an Executive Council or Health Board and includes an assistant practitioner.”.

(b) For paragraph (6) there shall be substituted—

“(6) In these regulations any reference to a person’s becoming an officer in consequence of the acquisition of premises by the Secretary of State either by purchase under section 57 of the Act (which relates to the acquisition of land required for the purposes of the Act) or in any other manner shall be deemed to include a reference to a person who becomes an officer in consequence of the transfer of hospitals or other premises, or any functions to the Secretary of State otherwise than under the Act or in consequence of any decision by him to administer any premises, services or functions under the Act or any other Act relating to health services, and shall also be deemed to include a reference to a person to whom the proviso to paragraph (7) of this regulation applies.”.

(c) For paragraph (7) there shall be substituted—

“(7) Subject to the provisions of regulation 81(3), for the purposes of these regulations a person shall not be treated as having become an officer in consequence of the acquisition of premises by the Secretary of

State either by purchase under section 57 of the Act or in any other manner unless, immediately before and at the date of acquisition he was employed at the premises, or was employed for the purposes of administering the functions or services being transferred, and entered the employment of an employing authority as an officer in consequence of that acquisition:

Provided that this paragraph shall not apply to a person who before 1st April 1974 becomes an officer of a Health Board or of the Common Services Agency for the Scottish Health Service after leaving the employment of a local authority in which employment, had he not left it, he would have become a transferred officer on that date.”.

Amendment relating to application of regulations

6. For regulation 4(3) of the principal regulations (application) there shall be substituted—

“(3) Notwithstanding anything in the foregoing provisions of this regulation, this part of these regulations shall not apply to any officer of an employing authority to whom there became or becomes payable a pension under these or the previous regulations or an annual sum under regulations made under section 34A of the Act of 1972 as inserted by the Act of 1973 if that pension or sum is not liable to be reduced or suspended in consequence of his employment under that authority:

Provided that this paragraph shall not apply to a transferred officer who immediately before transfer was in receipt of a pension payable under these or the previous regulations.”.

Amendments relating to early retirement

7. In regulation 10 of the principal regulations (officer's pension and retiring allowance)—

(a) in paragraph (1)

(i) in sub-paragraph (a)(iv) for the word “and” where it occurs in the third place there shall be substituted “or”, and

(ii) after sub-paragraph (a)(iv) there shall be added the following sub-paragraph—

“(v) he has attained the age of fifty years and has completed five year's service and has become entitled to benefits under regulations made under section 34A of the Act of 1972 as inserted by the Act of 1973; and”.

(b) In paragraph 5(a) after the words “paragraph (1)(a)(iii)” there shall be inserted the words “or (1)(a)(v)”.

Amendments relating to employment

8. In regulation 19(1) of the principal regulations (reckoning of previous employment)—

(a) in proviso (a) after the words “the 1948 regulations” there shall be inserted “or became an officer on transfer to the employment of an employing authority under the Act of 1972”;

(b) in proviso (e) after the words “local Act contributor” there shall be inserted “or in the case of a person who became an officer on transfer to the employment of an employing authority under the Act of 1972 the

Secretary of State has received in respect of him a transfer payment calculated in accordance with terms otherwise agreed”.

Amendments relating to reduction of pension or injury allowance in certain circumstances

9. For the proviso to regulation 40(1) of the principal regulations (reduction of pension) there shall be substituted—

“Provided that—

- (i) the reference in sub-paragraph (a) of this paragraph to an employing authority shall not be deemed to include an employer with whom an agreement has been made under section 18 of the National Health Service (Amendment) Act 1949(a) or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(b); and
- (ii) this paragraph shall not apply to a pension payable to a person immediately before he was transferred under the Act of 1972 to the employment of an employing authority.”.

Amendments relating to benefits where option to retain previous rights exercised

10. In Regulation 44 of the principal regulations (benefits of officers who have exercised certain options)—

- (a) In proviso (b) to paragraph (1) after the words “cease to have effect” there shall be inserted “unless in the case of an officer so employed as a result of being transferred under the Act of 1972 the Secretary of State directs otherwise”.
- (b) In paragraph (2) after the words “3 months after becoming an officer” there shall be inserted “or 16th May 1974 whichever is the later”.

Amendments relating to benefits where option to retain previous rights not exercised

11. In regulation 45 of the principal regulations (benefits of officers who did not exercise certain options)—

- (a) In the proviso to paragraph 1 for the word “regulation” there shall be substituted “paragraph”;
- (b) after paragraph (2A) there shall be added—
 - “(2B) The provision of this regulation shall also apply to an officer who was transferred under the Act of 1972 to the employment of an employing authority if immediately before transfer he enjoyed rights conferred by regulation 14 of the Local Government Regulations 1954.”;
- (c) in paragraph 3(b) for the words “paragraph (2) or (2A)” there shall be substituted “paragraph (2), (2A) or (2B)” and after the words “in the said paragraph (2A)” there shall be inserted “or (2B)”.

Amendments relating to Executive Councils

12.—(1) In regulation 59 of the principal regulations (application of regulations with modifications), for the words “of an Executive Council” there shall be substituted “of a Health Board”, and for the words “at least one Executive Council” there shall be substituted the words “at least one Health Board”.

(a) 1949 c. 93.

(b) 1967 c. 28.

(2) In regulation 60 of the principal regulations (amendment of certain references to age), for the words “Executive Council” wherever they occur, there shall be substituted “Health Board”.

(3) In regulation 61 of the principal regulations (meaning of remuneration)—

(a) for the words “Executive Council” or “Council” wherever they occur, with the exception of provisos (b)(iii) and (d) and paragraph (2), and, paragraphs (4)(b), (8)(a) and (c) there shall be substituted “Health Board” or “Board” as the case may be;

(b) in proviso (b)(iii) to paragraph (2) the words “to the responsible Council” shall be deleted;

(c) in proviso (d) to paragraph (2) after the words “Executive Council” there shall be inserted “or Health Board”;

(d) in paragraph (4)—

(i) in sub-paragraph (b)(i) for the words “other than an Executive Council” there shall be substituted “otherwise than as a practitioner”;

(ii) in sub-paragraph (b)(ii) for the words “to the responsible Council” there shall be substituted the words “to the responsible Board”, and for the words “by an employing authority other than an Executive Council” there shall be substituted “in respect of employment with an employing authority otherwise than as a practitioner”.

(e) in paragraph (8)—

(i) in sub-paragraph (a)(i) for the words “under an Executive Council” there shall be substituted “as a practitioner on the list of a Health Board”;

(ii) in sub-paragraph (a)(ii) for the words “responsible Council” there shall be substituted “responsible Board”, and for the words “other than an Executive Council” there shall be substituted “otherwise than as a practitioner”;

(iii) for sub-paragraph (c) there shall be substituted—

“(c) “responsible Board” means, in the case of a partnership whose members are on the list of a single Health Board, that Board, and in the case of a partnership one or more of whose members is on the list of more than one Health Board, the Board which under the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations, 1966(a) or under those regulations as at any time amended or re-enacted, is responsible for assembling information about the total number of persons on the lists of the practitioner or practitioners concerned.”.

(4) In regulation 70(b) of the principal regulations (further modifications with respect to assistant practitioners) for the words “Executive Council” there shall be substituted “Health Board”.

Amendments relating to part-time employment

13. In paragraph 2(2)(c) of schedule 7 to the principal regulations (part-time employments)—

(a) in proviso (i) the word “and” shall be deleted;

(a) S.I. 1966/1233 (1966 III, p. 3330).

- (b) in proviso (ii) for the word "schedule", there shall be substituted "schedule; and", and
- (c) after proviso (ii) there shall be added—
- “(iii) an officer shall be deemed to have made an election taking effect as from 1st April 1974 if he was transferred as a part-time officer in consequence of the Act of 1972 and was in superannuable part-time employment at 31st March 1974.”.

Amendments relating to specialists

14. For regulation 71 of the principal regulations (modifications relating to certain part-time specialists) there shall be substituted—

“Modifications relating to certain officers.

71.—(1) Where a benefit becomes payable to or in respect of a whole-time officer, other than a practitioner, whose reckonable service includes service before 15th December 1966 in respect of a period of part-time employment during which he devoted substantially the whole of his time to the performance of duties as a consultant, senior hospital medical officer or senior hospital dental officer and it would be to his advantage if that benefit were calculated in accordance with this regulation, the benefit shall be so calculated.

(2) Notwithstanding any other provision of these regulations, such part of the benefit referred to in paragraph (1) of this regulation as is attributable to contributing service in respect of any period of part-time employment during which the officer devoted substantially the whole of his time to the performance of duties as a consultant, senior hospital medical officer or senior hospital dental officer, and to service in respect of any period of whole-time employment otherwise than as a practitioner, shall be calculated in accordance with the following provisions of this regulation—

- (a) all such service shall be deemed to be whole-time service otherwise than as a practitioner;
- (b) all periods of such service shall be aggregated and if such aggregate service includes a fraction of a year that fraction shall, if it exceeds 182 days, be treated as one-half of a year and in any other case shall be disregarded; and
- (c) the average remuneration shall be deemed to be the annual average of the remuneration during the last three years of such aggregate service.”.

15. For regulation 72 of the principal regulations (continuation of contracts or policies in certain cases) there shall be substituted—

“Continuation of contracts or policies of insurance in certain cases.

72.—(1) Where immediately before the first day of October 1955 the Secretary of State was under a liability imposed by sub-paragraph (m) of paragraph (3) of regulation 42 of the 1950 regulations to pay to a practitioner as a contribution towards the maintenance of a contract or policy of insurance held by that practitioner with any of the Life Assurance Companies an amount equal to eight per cent. of the practitioner's remuneration, the Secretary of State shall, subject to such terms and conditions as he may have determined, continue to pay to the practitioner, so long as he remains a practitioner, as a contribution towards the maintenance of the aforesaid contract or policy an amount equal to eight per cent. of the practitioner's remuneration and the practitioner, so long as he remains a practitioner shall

not be subject to any of the provisions of these regulations except this provision.

(2) The preceding paragraph shall, if the Secretary of State consents and subject to such additional terms and conditions as he may determine, also apply in relation to any contract or policy of insurance entered into or taken out in substitution for the contract or policy therein mentioned for the purpose of complying with section 22 of the Finance Act 1956.

(3) In this regulation "remuneration"—

(a) in relation to a practitioner means his remuneration as defined in regulation 61;

(b) in relation to a practitioner by virtue of performing duties as a consultant, senior hospital medical officer or senior hospital dental officer has the meaning assigned to it by paragraph (2) of regulation 2; and

(c) in relation to an assistant practitioner has the meaning assigned to it by paragraph (a) of regulation 70.

(4) For the purpose of this regulation the term "practitioner" includes an officer rendering part-time service as a consultant, senior hospital medical officer or senior hospital dental officer."

Date from which the amendments take effect

16. The amendments shall have effect from 1st April 1974 with the exception of regulations 5, 6, 8, 9 and 11 which shall take effect as from 1st August 1973.

William Ross,

One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
13th March 1974.

Consent of the Minister for the Civil Service given under his Official Seal on
13th March 1974.

(L.S.)

K. H. McNeill,

Authorised by the Minister for the Civil Service.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations further amend the National Health Service (Superannuation) (Scotland) Regulations 1961 which provide for the superannuation of persons engaged in the National Health Service in Scotland (except employees of local health authorities and local education authorities).

The main changes are—

(1) local authority employees who are transferred to employment in the National Health Service under the National Health Service (Scotland) Act 1972 will have their accrued superannuation rights automatically transferred to the National Health Service superannuation scheme; transferred employees will retain any existing rights to an enhanced lump sum retiring allowance under Local Government Regulations and will also have the right to remain subject to the superannuation terms and conditions which they enjoyed immediately prior to transfer (Regulations 5 and 11);

(2) local authority employees who are in receipt of pensions payable under the National Health Service (Superannuation) (Scotland) Regulations by reason of previous employment in the National Health Service, and who are transferred to the National Health Service under the National Health Service (Scotland) Act 1972 will not have their pensions reduced in respect of their earnings in the National Health Service and will be able to contribute to the National Health Service scheme provided they are otherwise eligible (Regulations 6, 8 and 9);

(3) various amendments have been made in the text of the Regulations to accord with the text of the National Health Service (Scotland) Act 1972 (Regulations 12, 14 and 15).

In accordance with section 12(1) of the Superannuation Act 1972 Regulations 5, 6, 8, 9 and 11 of these Regulations have retrospective effect as from 1st August 1973 (Regulation 16).

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