

2002 No. 561

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service Pension Scheme (Amendment)
Regulations 2002**

Made - - - - 15th March 2002

Laid before Parliament 15th March 2002

*Coming into force
for the purposes of
the provisions
mentioned in
regulation 1(1)(a) 1st April 2001
for all other purposes 5th April 2002*

The Secretary of State for Health, in exercise of the powers conferred on him by sections 10(1), (2) and (3) and 12(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972(a), and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate(b), and with the consent of the Treasury(c), hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Amendment) Regulations 2002 and shall come into force—

- (a) for the purposes of regulation 3 and paragraphs 1 and 10 of the Schedule on 1st April 2001, and
- (b) for all other purposes on 5th April 2002.

(2) In these Regulations “the principal Regulations” means the National Health Service Pension Scheme Regulations 1995(d).

Amendment of the principal Regulations

2. The principal Regulations are amended in accordance with the Schedule.

Modifications of provisions having effect from 1st April 2001 (locum practitioners)

3.—(1) For the purposes of the principal Regulations, a person is treated as having been a locum practitioner or as being such a practitioner at any particular time during the period beginning with 1st April 2001 and ending with 30th December 2002 if—

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- (a) 1972 c.11. Subsection (1) of section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c.30).
 - (b) See section 10(4) of the Superannuation Act 1972.
 - (c) See section 10(1) of the Superannuation Act 1972, and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
 - (d) S.I. 1995/300, as amended by S.I. 1997/80, 1888, 1998/666, 2216, 2000/605, 2001/1428 and 2001/3649.

- (a) at that particular time, apart from the condition in paragraph (b) of the definition of “locum practitioner” in paragraph 1 of Schedule 2 to those Regulations (as inserted by paragraph 10(1) of the Schedule to these Regulations), he would have fallen or falls within that definition, and
 - (b) he meets that condition not later than 31st December 2002.
- (2) For the purposes of those Regulations, a person is also treated as having been a locum practitioner or as being such a practitioner at any particular time during the period beginning with 1st April 2001 and ending with 30th December 2002 if—
- (a) at that particular time, apart from the condition in paragraph (b) of the definition of “locum practitioner” in paragraph 1 of Schedule 2 to those Regulations (as inserted by paragraph 10(1) of the Schedule to these Regulations), he would have fallen or falls within that definition, and
 - (b)(i) he became or becomes a principal practitioner, an associate general practitioner, an assistant practitioner or a person who is treated as a practitioner under regulation R11 (participants in pilot schemes) after that particular time and not later than 31st December 2002;
 - (ii) he became or becomes a medical pilot scheme employee treated as an officer under regulation R11(d)(ii) after that particular time and not later than 31st December 2002; or
 - (iii) he became or becomes a registered medical practitioner who is an officer within the meaning of the principal Regulations after that particular time and not later than 31st December 2002.

Signed by authority of the Secretary of State for Health

13th March 2002

John Hutton
Minister of State,
Department of Health

We consent,

15th March 2002

Tony McNulty
Graham Stringer
Two of the Lords Commissioners of Her Majesty's Treasury

THE SCHEDULE

Regulation 2

AMENDMENTS OF THE PRINCIPAL REGULATIONS

1. In regulation A2 (interpretation)—
 - (a) for the definition of “practitioner” there is substituted—

““practitioner” means—

 - (a) a registered medical practitioner, other than a trainee practitioner, who is an assistant practitioner, an associate general practitioner, a locum practitioner (other than a person treated as an officer under regulation R11), a principal practitioner or a person who is treated as a practitioner under regulation R11 (participants in pilot schemes), or
 - (b) a registered dentist, other than a person who is paid wholly by way of salary by a National Health Service Trust, a Primary Care Trust or a Health Authority or a person treated as an officer under regulation R11;”.
 - (b) the following definitions are inserted in alphabetical order at the appropriate places—

““assistant practitioner” has the meaning given in paragraph 1 of Schedule 2,”

““associate general practitioner” has the meaning given in paragraph 1 of Schedule 2,”

““locum practitioner” has the meaning given in paragraph 1 of Schedule 2,”

““principal practitioner” has the meaning given in paragraph 1 of Schedule 2,”.
2. In regulation C3 (meaning of “qualifying service”)—
 - (a) after paragraph (1)(b) there is inserted—

“(ba) in the case of a person who—

 - (i) has become a member on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer, and
 - (ii) has rights under another occupational pension scheme to which he was eligible to belong in his former employment in respect of which no transfer payment has been accepted under regulation N1(4) or N4,

the period of employment that qualified the member for those rights;”;
 - (b) after paragraph (4) there is inserted—

“(4A) Where a member who is employed on a casual basis—

 - (a) ceases to pay contributions because of a break in his pensionable employment of a period not exceeding three months, and
 - (b) re-enters pensionable employment on the same basis after the break,

for the purposes of these Regulations he is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin the scheme when he re-enters pensionable employment.”.
3. In regulation M1(1) the words “with a preserved pension before reaching age 60” are omitted.
4. After regulation M1(1) there is inserted—

“(1A) Paragraph (1) only applies if the member—

 - (a) leaves pensionable employment with a preserved pension before reaching 60, or
 - (b) leaves pensionable employment on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.”.
 5. After regulation M2(4) there is inserted—

“(4A) Paragraph (2) does not apply if the member exercises the right to require a transfer on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.”.
 6. For regulation M6 there is substituted—

“Special terms for transfers out (bulk transfers etc.)

M6.—(1) If one or more members (“the transferring members”)—

- (a) leave pensionable employment,
- (b) join another occupational pension scheme, and
- (c) exercise a right to transfer to that scheme under regulation M1 (member’s right to transfer or buy-out),

the Secretary of State may, after taking advice from the Government Actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Secretary of State must calculate the amount of any transfer payment paid under this regulation after taking advice from the Government Actuary.”.

7. In regulation N1(3) at the beginning of sub-paragraph (a) the words “except where paragraph (3A) applies” are inserted.

8. After regulation N1(3) there is inserted—

“(3A) This paragraph applies where the member’s employment is transferred to a new employer on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.”.

9. For regulation N4 there is substituted—

“Special terms for transfers in (bulk transfers etc.)

N4.—(1) This regulation applies where one or more members of another occupational pension scheme (“the transferring members”)—

- (a) cease to be in pensionable employment under that scheme,
- (b) join this scheme, and
- (c) consent in writing to a transfer payment being accepted in respect of them and pensionable service being credited to them as mentioned in paragraphs (2) and (3).

(2) The Secretary of State may, after taking advice from the Government Actuary, accept a single transfer payment in respect of the transferring members.

(3) Where such a transfer payment is accepted, each of the transferring members must be credited with such additional period of pensionable service as the Secretary of State determines to be appropriate after taking advice from the Government Actuary.”.

10.—(1) Schedule 2 is amended as follows.

(2) In paragraph 1—

(a) the following definitions are inserted in alphabetical order at the appropriate places—

““Local Health Group” means a committee which—

- (a) was appointed under regulation 14(1) of the Health Authorities (Membership and Procedure) Regulations 1996 in accordance with a circular issued by the Secretary of State for Wales in October 1998 entitled “Establishing Local Health Groups”, and
- (b) exercises functions in accordance with the National Assembly of Wales’ directions of 1st September 2001;”;

““locum practitioner” means a registered medical practitioner other than a trainee practitioner who—

- (a) is not a principal practitioner, an associate general practitioner, an assistant practitioner or a person who is treated as a practitioner under regulation R11 (participants in pilot schemes),

(b) is either—

- (i) included in a supplementary list prepared by a Health Authority under section 43D of the National Health Service Act 1977 of persons approved by the Authority for the purpose of assisting in the provision of general medical services, or

- (ii) named as a performer of personal medical services in an agreement made under section 2 of the National Health Service Primary Care Act 1997, and
- (c) 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;”;
- (b) in the definition of “assistant practitioner” for the words “a practitioner” there are substituted the words “a registered medical practitioner or registered dentist, being a practitioner”;
- (c) in the definition of “associate general practitioner” for the words “a medical practitioner” there are substituted the words “a registered medical practitioner other than a trainee practitioner”;
- (d) for the definition of “principal practitioner” there is substituted—
 ““principal practitioner” means a registered medical practitioner or registered dentist who is included in a list prepared in accordance with regulations made under section 29(2)(a) or 36(1)(a) of the 1977 Act;”.
- (3) In paragraph 2(1) after “Authority”, in both places where it occurs, there are inserted the words “or, in the case of a locum practitioner, the listing Authority or the appropriate contracting party”.
- (4) After that sub-paragraph there is inserted—
 “(1A) In sub-paragraph (1)—
 “the listing Authority”, in relation to a locum practitioner within paragraph (b)(i) of the definition of that expression, means the Health Authority who prepare and publish the supplementary list under section 43D of the National Health Service Act 1977 in which he is included,
 “the appropriate contracting party”, in relation to a locum practitioner within paragraph (b)(ii) of the definition of that expression, means the Health Authority or Primary Care Trust with whom the agreement is made for the provision of piloted services by the person by whom he is treated as employed under regulation R11.”.
- (5) At the end of paragraph 2(2) there are inserted the words “(except to the extent that for a practitioner of his description remuneration in respect of that work is excluded from being pensionable earnings)”.
- (6) After paragraph 2 there is inserted—

“Membership: locum practitioners

2A.—(1) Regulation B1(2) (automatic membership of the scheme) does not apply to locum practitioners.

(2) A locum practitioner may apply to join the scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by the authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Secretary of State.

(4) If a locum practitioner wishes to apply to join the scheme from a date earlier than 5th April 2002 he must submit an application under paragraph (2)—

- (a) in a case where immediately before 5th April 2002 he is engaged under a contract for services with a practitioner, by virtue of which he is a locum practitioner, not later than ten weeks after he ceases to be so engaged, and
- (b) in any other case, before 1st January 2003.

(5) Except where sub-paragraph (4) applies, no application may be made under sub-paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.”.

(7) In paragraph 3 (meaning of “pensionable earnings”)—

- (a) in sub-paragraph (1) for the words from the beginning to “means” there are substituted the words “In the case of a principal practitioner “pensionable earnings” means”, and
 - (b) in sub-paragraph (2)(d) for the words “or a Primary Care Group” there are substituted the words “, a Primary Care Group or a Local Health Group”.
- (8) In paragraph 6 (meaning of “pensionable earnings” in relation to other practitioners)—
- (a) at the end of sub-paragraphs (1)(a) and (2)(a) and (b) there are inserted the words “or any payments made to the practitioner in respect of the provision of locum services”,
 - (b) in sub-paragraph (1)(b) for the words “or a Primary Care Group” there are substituted the words “, a Primary Care Group or a Local Health Group”, and
 - (c) after sub-paragraph (2) there is inserted—
- “ (3) In the case of a locum practitioner, “pensionable earnings” means all fees and other payments made to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Secretary of State.
- (4) In this paragraph references to the provision of locum services, in relation to a practitioner, are to general medical services or personal medical services provided by the practitioner when 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 such services.”.
- (9) In paragraph 9(1) and (8) after the words “a principal practitioner” there are inserted the words “or a practitioner providing piloted services under an agreement between that practitioner and a Health Authority or Primary Care Trust”.
- (10) After paragraph 9 there is inserted—

“Locum practitioners: breaks between contracts

- 9A.**—(1) Paragraph (4A) of regulation C3 does not apply and this paragraph applies instead where a locum practitioner ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable employment and is re-engaged as such a practitioner before the expiry of a period not exceeding three months from the day on which he so ceases.
- (2) For the purposes of these Regulations—
- (a) he is treated as continuing to be in qualifying service during the period whilst he is not so engaged and as not being required to rejoin the scheme at the time when he becomes so re-engaged, but
 - (b) that period does not count as practitioner service (or as a period in pensionable employment).”.
- (11) In paragraph 10 (contributions)—
- (a) in sub-paragraph (1) for “(2) to (5)” there is substituted “(2) to (5B)”, and
 - (b) after sub-paragraph (5) there is inserted—
- “(5A) Locum practitioners must pay their contributions to their employing authority.
- (5B) Contributions paid by practitioners under sub-paragraph (4), (5) or (5A) must be paid to the Secretary of State no later than the 19th day of the month following that in which they are received from the practitioners.”.
- (12) At the end of paragraph 19 (members absent from work) there is inserted—
- “(7) Regulations P1 and P2 and the previous sub-paragraphs do not apply in the case of locum practitioners.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (“the principal Regulations”) which provide for the superannuation of persons engaged in the National Health Service.

Regulation 1 makes provision about the citation of the Regulations and their commencement and interpretation. Regulation 3 and paragraph 10 of the Schedule, which make provision about the eligibility of locum practitioners (“locums”) to belong to the NHS Pension Scheme, are brought into effect as from 1st April 2001.

Regulation 2 introduces the Schedule which amends the principal Regulations.

Paragraph 1 amends the regulation A2 (general interpretation) so as to introduce various definitions relating to practitioners that are required as a result of the amendments enabling locums to belong to the Scheme.

Paragraph 2 enables service which a member could count in a previous scheme and which has not been credited to the Scheme when the member transferred to it as the result of a transfer of an undertaking, to count as qualifying service. It also enables members employed on a casual basis to continue in qualifying service during short breaks in employment.

Paragraphs 3 to 6 amend Part M (transfers out of the Scheme) so as to entitle members to a transfer payment where they leave after reaching 60 as a result of a transfer of an undertaking, and to enable special terms to be applied where one member so transfers.

Paragraphs 7 to 9 make parallel amendments of Part N (transfers into the Scheme) so as to enable transfer payments to be accepted for members who have reached 60 and payments to be accepted on special terms for a single member.

Paragraph 10 contains amendments of Schedule 2 to the principal Regulations (practitioners) most of which are connected with the admission of locums to the Scheme. Sub-paragraphs (2) to (4) add new definitions to the Schedule, including a definition of a “locum practitioner” and “the employing authority” for such practitioners. Sub-paragraph (6) adds a provision setting out the procedure for locums to apply to join the Scheme, including provision enabling applications to be made in relation to employment on and after 1st April 2001. Sub-paragraphs (5), (7) and (8) apply so as to define the earnings that are pensionable for locums, and prevent other practitioners’ earnings as locums from being pensionable. Special provision is made by sub-paragraph (10) enabling locums to count as continuing to be in qualifying service during short breaks between engagements. Locums are to pay their contributions to their employing authority and regulations P1 and P2 which give rights in cases of absence from work are disapplied for them.

Regulation 3 contains some transitional provisions connected with retrospective commencement of paragraph 10 of the Schedule which contains amendments relating to the eligibility of locums to belong to the NHS Pension Scheme. It modifies the definition of a “locum practitioner” inserted by that paragraph in two ways. First, doctors who would not fall into the definition can count as locums during the period beginning on 1st April 2001 and ending on 30th December 2002 if they meet one of the conditions in paragraph (b) of the definition immediately after the end of the period. (This is necessary because the supplementary lists referred to in paragraph (b)(i) of the definition were not in place at the beginning of the period, and some practitioners performing piloted services would not have been named as mentioned in paragraph (b)(ii).) Secondly, doctors who would not fall into the definition can count as locums during the period beginning on 1st April 2001 and ending on 30th December 2002 if after performing locum services during that period they become another sort of practitioner, a personal medical services doctor who is treated as an officer, or a hospital doctor, not later than 31st December 2002.

These Regulations do not impose any costs on business.

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