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STATUTORY INSTRUMENTS

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**2004 No. 665**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service (Pension Scheme and  
Injury Benefits) Amendment Regulations 2004**

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|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>10th March 2004</i> |
| <i>Laid before Parliament</i> |         | <i>10th March 2004</i> |
| <i>Coming into force</i>      | - -     | <i>1st April 2004</i>  |

The Secretary of State for Health in exercise of the powers conferred upon him by sections 10(1) and (2) and 12(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> 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<sup>(2)</sup>, and with the consent of the Treasury<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the National Health Service (Pension Scheme and Injury Benefits) Amendment Regulations 2004 and shall come into force on 1st April 2004.

(2) Regulation 3(4) of these Regulations shall have effect as from 1st April 1998.

**Amendment of the National Health Service (Injury Benefits) Regulations 1995**

2.—(1) The National Health Service (Injury Benefits) Regulations 1995<sup>(4)</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) For paragraph (3) of regulation 3<sup>(5)</sup> (persons to whom the Regulations apply), substitute—

“(3) These Regulations shall not apply to a person—

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(1) 1972 c. 11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c. 32) and by section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).  
(2) See section 10(4) of the Superannuation Act 1972.  
(3) 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).  
(4) S.I. 1995/866; the relevant amending instruments are S.I. 2000/606 and 2002/2469.  
(5) To which there are amendments not relevant to this instrument.

- (a) in relation to any injury or disease wholly or mainly due to, or seriously aggravated by, his own culpable negligence or misconduct;
  - (b) eligible to participate in a superannuation scheme established under section 1 of the Superannuation Act 1972.”.
- (3) In paragraph (4) of regulation 4(6) (scale of benefits) after “suffers a”, insert “permanent”.
- (4) After regulation 18 (avoidance of duplicate benefits), insert—

**“Claims for benefits**

**18A.** A person claiming to be entitled to benefits under these Regulations and his employing authority including any previous employing authority of his shall provide such evidence of entitlement as the Secretary of State may from time to time require.”.

- (5) After regulation 21 (payment to personal representatives), insert—

**“Decisions by medical practitioners and other persons**

**21A.—**(1) The Secretary of State may make arrangements for his functions under Part II of these Regulations in relation to—

- (a) a decision whether a person has sustained an injury or contracted a disease to which regulation 3(2) applies and, if so, by what degree his earning ability has been permanently reduced for the purpose of the payment of an allowance referred to in regulation 4(2), (3) or (4);
- (b) a decision whether a person has sustained an injury or contracted a disease to which regulation 3(2) applies for the purpose of the payment of an allowance referred to in regulation 4(5),

to be discharged by the person or authority specified in paragraph (2).

- (2) In the case of—

- (a) a decision specified in paragraph (1)(a), the function may be discharged by a registered medical practitioner appointed by the Secretary of State to act on his behalf;
- (b) a decision specified in paragraph (1)(b), the function may be discharged by the employing authority of that person.”.

**Amendment of the National Health Service Pension Scheme Regulations 1995**

**3.—**(1) The National Health Service Pension Scheme Regulations 1995(7) shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (c) of regulation B2(8) (restrictions on membership) for “section 9”, substitute “section 1 or 9”.

(3) For paragraph (3)(d) of regulation D2(9) (contributions by employing authorities), substitute—

- “(d) the cost of providing compensation under regulation 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) Regulations 2002;”.

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(6) To which there are amendments not relevant to this instrument.

(7) [S.I. 1995/300](#).

(8) To which there are amendments not relevant to this instrument.

(9) To which there are amendments not relevant to this instrument.

(4) In paragraph (8) of regulation L1(preserved pension), the words “or, if lower, twice the member’s final year’s pensionable pay (less the member’s lump sum on retirement payable under this regulation)” shall be omitted.

(5) After regulation U1 (extension of time limits), insert—

**“Determinations by medical practitioners**

**U1A.** The Secretary of State may make arrangements for his functions under these Regulations in relation to a decision whether a person is—

- (a) permanently incapable of efficiently discharging the duties of his employment because of physical or mental infirmity for the purposes of regulation E2;
- (b) incapable of earning a living because of physical or mental infirmity for the purposes of regulation G8(2);
- (c) incapable of earning a living because of permanent physical or mental infirmity for the purposes of regulation H1(6);
- (d) in good health for the purposes of regulation J1(6);
- (e) suffering from mental or physical infirmity that makes him permanently incapable of efficiently discharging the duties of employment or suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment for the purposes of regulation L1(3)(a) and (b) respectively,

to be discharged by a registered medical practitioner appointed to act on his behalf.”.

(6) In paragraph 9(8)(b) of Schedule 2(10) (medical and dental practitioners) after “sub-paragraph (1)”, insert “or (5A)”.

Signed by authority of the Secretary of State for Health.

8th March 2004

*John Hutton*  
Minister of State,  
Department of Health

We consent

10th March 2004

*Joan Ryan*  
*John Heppell*  
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 (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the Injury Benefits Regulations”) and the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (“the Pension Scheme Regulations”).

Regulation 2 amends the Injury Benefits Regulations by—

providing that benefits are not payable under those Regulations to persons who are eligible to be members of the Civil Service Superannuation schemes established under section 1 of the Superannuation Act 1972 (c. 11) (“the 1972 Act”) (paragraph (2));

providing that an annual allowance shall be payable where there has been a permanent reduction in the emoluments of employment as a result of injury or disease (paragraph (3));

providing that a person claiming to be entitled to benefits under those Regulations, and his employing authority, shall provide such evidence of entitlement as the Secretary of State may from time to time require (paragraph (4)); and

providing that certain questions relating to whether or not an injury has been sustained or a disease contracted and its impact on a claimant’s earning ability, may be determined by a medical practitioner appointed to act on the Secretary of State’s behalf or by an employing authority (paragraph (5)).

Regulation 3 amends the Pension Scheme Regulations by—

excluding from membership of the National Health Service Pension Scheme also those who are eligible to be members of the Civil Service Superannuation schemes established under section 1 of the 1972 Act (paragraph (2));

substituting references to the National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I.2002/1311) for references to the National Health Service (Compensation for Premature Retirement) Regulations 1981 (paragraph (3));

omitting words which operate to limit the amount of a lump sum whereby liability for a preserved pension may be discharged (paragraph (4));

providing that certain questions relating to a person’s state of health, and its impact on his earning ability and employment, may be determined by a medical practitioner appointed to act on behalf of the Secretary of State (paragraph (5)); and providing that any officer service that is treated as practitioner service will be ignored for certain purposes (paragraph (6)).

The authority for regulation 3(4) of these Regulations having retrospective effect is contained in section 12(1) of the 1972 Act.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.