
STATUTORY INSTRUMENTS

1995 No. 365

**The National Health Service Superannuation
Scheme (Scotland) Regulations 1995**

PART R

SPECIAL PROVISIONS FOR CERTAIN MEMBERS

Medical and dental practitioners and trainee practitioners

R1.—(1) These Regulations apply to members who are or have been practitioners as if they were officers employed by the relevant Health Board, but with the modifications described in Schedule 1 to these Regulations.

(2) These Regulations apply to members who are or have been trainee practitioners as if they were whole-time officers employed by the relevant Health Board.

Nurses, physiotherapists, midwives and health visitors

R2.—(1) Subject to paragraph (2) this regulation applies to a member—

- (a) who, at the coming into force of these Regulations—
 - (i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or
 - (ii) has accrued rights to benefits under the scheme arising out of a previous period in which the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has had a break in pensionable employment for any one period of 5 years or more, and
- (b) who spends the whole of the last 5 years of pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies—

- (a) regulation E1 (normal retirement pension) will apply to the member as if the references, in paragraph (1) of that regulation, to age 60 were a reference to age 55;
- (b) if the member leaves NHS employment because of redundancy but without becoming entitled to an immediate pension under regulation E3 (early retirement pension (redundancy etc.)), regulation E6 (preserved pension) will apply as if the references in that regulation to age 60 were references to age 55.

(4) Where, in accordance with paragraph (3), a member becomes entitled to receive a pension before age 60, the amount payable shall—

- (a) in the case of a female member, be calculated by reference to all of her pensionable service under the scheme; and

(b) in the case of a male member, be calculated only by reference to pensionable service on or after 17th May 1990.

(5) Subject to paragraph (6), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5, contributions may be made from the next birthday following the exercise of the right to do so, until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q5(3).

(6) The period for which a member chooses to pay regular additional contributions under regulation Q5 must be at least 2 years.

(7) For the purposes of paragraph (1), "pensionable employment" includes employment that qualified the member for benefit under a health service scheme from which a transfer payment has been made to the scheme.

(8) For the purposes of paragraph (1) and (2), a person shall not be treated as having ceased to be in pensionable employment during any period in respect of which he is a member of a health service scheme.

(9) For the purpose of calculating the 5 year period referred to in paragraph (1)(b), "pensionable employment" does not include additional service bought under regulation Q1 or a period in respect of which a refund of contributions has been paid under regulation E9.

Mental health officers

R3.—(1) Subject to paragraph (2), this regulation applies to a member who at the coming into force of these Regulations—

- (a) is in pensionable employment under the scheme as a mental health officer, or
- (b) has accrued rights to benefits under the scheme arising out of a previous period in which he was engaged in such employment and at no time since the last occasion on which he was so engaged has he had a break in pensionable employment for any one period of 5 years or more.

(2) Subject to paragraph (3), this regulation shall cease to apply if the member has a break in pensionable employment for any period of 5 years or more ending after the coming into force of these Regulations.

(3) Paragraph (2) shall be without prejudice to the operation of paragraph (5)(a) in relation to any period prior to this regulation ceasing to apply.

(4) For the purposes of paragraphs (1) and (2), a person shall not be treated as having had a break in pensionable employment during any period in respect of which he is a member of a health service scheme.

(5) Subject to paragraphs (6) to (8), where this regulation applies—

- (a) each complete year of the member's pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service; and
- (b) where there is 20 years or more of such pensionable service the member shall be entitled to a pension under regulation E1 (normal retirement pension) on leaving NHS employment at any time after reaching age 55 but only if the member was in pensionable employment as a mental health officer immediately before leaving.

(6) For the purposes of calculating the 20 year period referred to in paragraph (5) the pensionable service as a mental health officer will be based on either—

- (a) a total of 20 years' pensionable service as a mental health officer (including any period that counted towards the 20 year period referred to in regulation 8(1) of the 1980 Regulations)

unless it would be more favourable to the member (or, if the member has died, to the person entitled to benefits in respect of the member) to disregard this paragraph; or

- (b) in the case of a member who has reached age 50, any period before he became a mental health officer in which he was employed on the staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder and in which he devoted the whole or substantially the whole of his time to the treatment and care of such persons unless it would be more favourable to the member (or, if the member has died, to the person entitled to benefits in respect of the member) to disregard this paragraph;

and pensionable service does not include additional service bought under regulation Q1 (right to buy additional service) or service credited under regulations N2 or N3 (transfers from other pension arrangements).

(7) If both sub-paragraphs (6)(a) and (6)(b) apply to a member the member's pensionable service will be calculated so as to produce the more favourable result to the member or, if the member has died, to the person entitled to benefits in respect of the member.

(8) Paragraph (5) does not apply—

- (a) for the purpose of calculating, under regulations E2 (early retirement pension (ill health)) and H3(3)(b), H4(2)(b) and H5(3)(b) (child allowances), the pensionable service the member could have completed if he stayed in NHS employment until a particular age;
- (b) for the purpose of calculating a minimum widow's or widower's pension based on the member's pensionable service on or after 6th April 1978 under regulation G6(2) (member marries after leaving pensionable employment) or from 6th April 1988 under regulation G7(3) (widower's pension);
- (c) for the purpose of calculating a member's benefits where it would be more favourable to the member or other person entitled to the benefits not to apply that paragraph and to calculate the member's final year's pensionable pay when the member leaves pensionable employment, completes 45 years' pensionable service (calculated without regard to paragraph (5)(a)), reaches age 65 or dies, whichever occurs first.

(9) Where, by virtue of paragraph (8)(c), paragraph (5) does not apply to a member's benefits because it is more favourable to the member or other person entitled to the benefits not to apply that paragraph, the amount of any contributions that should have been paid under regulation D1 (contributions by members) but which were not deducted from the member's earnings will be deducted from the lump sum payable on the member's retirement or death.

(10) If a member to whom paragraph (5) applies leaves NHS employment before reaching age 55 because of redundancy but without becoming entitled to an immediate pension under regulation E3 (early retirement pension (redundancy etc.)), and was in pensionable service as a mental health officer immediately before leaving, regulation E6 (preserved pension) will apply as if the references to age 60 were to age 55.

(11) Subject to paragraph (13), if any member to whom this regulation applies becomes entitled to a preserved pension under regulation E6 on ceasing to be a mental health officer, the pension will be based on the greater of the member's basic pensionable service and a period of service calculated as—

$$\frac{\text{basic service}}{\text{potential basic service}} \times \text{potential service}$$

where—

“basic service” means the member's pensionable service calculated without regard to paragraph (5);

“potential basic service” means the pensionable service the member could have completed if he had stayed in pensionable employment until age 55, calculated without regard to paragraph (5); and

“potential service” means the pensionable service the member could have completed, taking account of paragraph (5), if he had stayed in pensionable employment as a mental health officer until age 55.

(12) Subject to paragraph (13), if a member with at least 2 years' qualifying service ceases to be a mental health officer while continuing in pensionable employment, the member's pension in respect of the period before ceasing to be a mental health officer will be equal to the preserved pension to which the member would have become entitled in accordance with paragraph (11) if he had left pensionable employment on the day he ceased to be a mental health officer, if this would be more favourable to the member.

(13) Paragraphs (11) and (12) do not apply if the member again becomes a mental health officer within 12 months after the date on which he ceased to be a mental health officer.

(14) Subject to paragraph (15), if a member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5 he may elect to make those contributions from his next birthday following the date on which he elected to buy the additional service or reduced lump sum until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q5(3).

(15) The period for which a member elects to pay regular additional contributions under regulation Q5 must be at least 2 years.

(16) In this regulation, “mental health officer” means—

- (a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of people suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of people suffering from mental disorder;
- (b) any other officer employed in such a hospital who is within a class or description of officers designated by the Secretary of State as mental health officers for this purpose; and
- (c) a consultant, in part-time NHS employment who devotes all, or almost all, his time to the treatment or care of people suffering from mental disorder and who satisfies the requirements of paragraph (17).

(17) A member satisfies the requirements of this paragraph if he holds a whole-time specialist post and either—

- (a) he receives at least 10/11ths of the pensionable pay that he would have received for whole-time NHS employment, or
- (b) he was appointed before 1st January 1980 and retains the right, to which he was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that he would have received for whole-time NHS employment.

(18) The Secretary of State may agree to treat as a mental health officer any person who would otherwise, on transferring to part-time pensionable employment, cease to be a mental health officer providing that member is engaged in work which, had it been whole-time, would have qualified that member for mental health officer status and there is no break in pensionable employment between the transfer from whole-time to part-time employment.

(19) Where a member is treated as a mental health officer under paragraph (18) each year of part-time pensionable service shall, for the purpose of determining whether the member has in excess of 20 years' service for the purposes of paragraph (5) (but for no other purpose), be treated as if it were a year of whole-time pensionable service.

Members doing more than one job

R4.—(1) This regulation applies to members in employment with more than one employing authority and members who hold, under one employing authority, two or more separate employments.

(2) A member may contribute to the scheme in respect of all or any of his employments with employing authorities, subject to an aggregated maximum of 365 days' whole-time equivalent pensionable employment; except that a member who is contributing to the scheme in respect of whole-time NHS employment cannot contribute to the scheme in respect of concurrent employment with the same or another employing authority.

(3) Subject to paragraphs (4) and (6), a member shall not become entitled to a pension under any of regulations E1 to E5 until the termination of all NHS employments (including employment as a practitioner) or until the member reaches age 70.

(4) If a member leaves employment with an employing authority and becomes entitled to a pension under regulation E3 (early retirement pension (redundancy etc.) in relation to the employment that has ended, the member may, instead of taking benefits in respect of all NHS employment, elect to take benefits only in respect of the employment that has ended and to continue to accrue benefits in respect of the other continuing pensionable employments.

(5) Where a member elects under paragraph (4), paragraph (3) will apply in relation to any employment in respect of which the member continues to accrue benefits.

(6) For the purposes of paragraph (3) a member, on leaving NHS employment, shall be treated as having terminated all NHS employment where any remaining NHS employment amounts to 16 hours per week or less.

(7) Regulation S2 (members who return to NHS employment after pension becomes payable) will apply to any member who becomes entitled to a pension under paragraph (4) while continuing to accrue benefits in respect of other NHS employment.

(8) In calculating the member's final year's pensionable pay there shall be taken into account pensionable pay in respect of any other pensionable employment in that final year except a pensionable employment in respect of which the member continues to accrue benefits in accordance with paragraph (4).

(9) A member will not receive a refund of contributions under regulation E9 (refund of contributions) until he leaves all pensionable employment without becoming entitled to a pension or a preserved pension under any of regulations E1 to E6.

(10) A member may only exercise a right to transfer or buy-out under Part M (transfers and buy-outs) if he leaves all NHS employment before reaching age 60 in the case of a transfer and age 59 for a buy-out policy and before becoming entitled to receive a pension under the scheme.

(11) Any amount by which a member's pensionable pay in respect of concurrent part-time employments exceeds the amount which the Secretary of State determines would have been paid in respect of a single comparable whole-time employment will be ignored.

(12) Any amount by which a member's pensionable service in respect of concurrent part-time employments, calculated as described in regulation C4(2) and (3) (service in respect of part-time employment), exceeds the period during which the member carried on those employments will be ignored.

Transferred officers (supplementary payments)

R5.—(1) This regulation applies to members who were transferred from local authority employment under the National Health Service (Scotland) Act 1972(1).

(1) 1972 c. 58.

(2) When the member leaves NHS employment, becomes entitled to receive a pension or dies (whichever occurs first), the following benefits will be added to the benefits otherwise payable to, or in respect of, the member under the scheme:—

- (a) a yearly amount equal to any additional superannuation benefits that would have been granted by the local authority had the member stayed in its employment until the date he left NHS employment, became entitled to receive a pension or died (as the case may be), and
- (b) any payments other than superannuation benefits that the local authority would have made if the circumstances in which the member left NHS employment, became entitled to receive a pension or died (as the case may be) had occurred immediately before the date on which he was transferred to NHS employment.

(3) Where a member dies after becoming entitled to receive a pension, the amount of any benefits paid to the member under paragraph (2)(b) will be ignored when calculating the amount of any lump sum payable on the member's death under regulation F2 (member dies after becoming entitled to receive a pension).

Members entitled to fees for domiciliary consultations

R6.—(1) This regulation applies to members who, as medical or dental officers, have received fees from an employing authority in respect of domiciliary consultations.

(2) Any fees received in respect of domiciliary consultations will be included in the member's pensionable pay for the purposes of regulation D1 (contributions by members).

(3) Any fees in respect of domiciliary consultations that are included in the member's pensionable pay for the purposes of regulation D1 will also be included in the member's pensionable pay for the purpose of deciding the year by reference to which final year's pensionable pay is to be calculated, but the member's final year's pensionable pay will then be reduced by the amount of any fees received in respect of domiciliary consultations during that year.

(4) If the member's final year's pensionable pay is reduced as described in paragraph (3), a supplementary benefit shall be payable with each benefit that is payable to, or in respect of, the member under the scheme.

(5) Subject to paragraph (6), each supplementary benefit that is payable in accordance with paragraph (4) will be calculated in the same way as the benefit that it supplements as if the amount of the fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated were the member's final year's pensionable pay.

(6) Any supplementary benefit will be based on the same pensionable service as the benefit that it supplements, except that—

- (a) any period of additional service bought as described in regulation Q1 (right to buy additional service) will be ignored;
- (b) any additional period of service credited to the member by virtue of paragraph (5)(a) of regulation R3 (mental health officers) will be ignored;
- (c) any period of pensionable service in respect of part-time employment will count at its full length and will not be reduced to its whole-time equivalent as described in regulations C4(2) and C4(3) (pensionable service in respect of part-time employment);
- (d) the member's pensionable service will include any period of additional service credited to the member under regulation 5(2) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981(2) (crediting of additional period of service); and

- (e) any period of pensionable service calculated as described in regulation 37(7) of the 1980 Regulations (calculation of pensionable service in respect of part-time employment before 15 December 1966) will be ignored.

(7) Except as described in paragraph (8), if the member exercises a right to buy additional service under regulation Q1 or unreduced retirement lump sum under regulation Q2, the amount of any fees received from an employing authority in respect of domiciliary consultations will not be included in the member's pensionable pay for the purpose of calculating the cost of the additional service or unreduced retirement lump sums.

(8) If the member exercises a right to buy an unreduced retirement lump sum under regulation Q2—

- (a) any fees received during the last financial year to end before the member elects to buy an unreduced retirement lump sum will be included in the member's remuneration for the purpose of calculating the amount payable under regulation Q4(3) (paying for an unreduced retirement lump sum by single payment); and
- (b) any fees received while the member is paying for an unreduced retirement lump sum by regular additional contributions will be included in the member's pensionable pay for the purposes of regulation Q5(5) (paying by regular additional contributions).

(9) If the member returns to NHS employment after becoming entitled to receive a pension the member's final year's pensionable pay will include, for the purposes of calculating previous pay under regulation S2 (reduction of pension where member returns to NHS employment after becoming entitled to receive pension), the amount of any fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated.

(10) For the purposes of paragraph (9), "NHS employment" means the same as in regulation S1(5).

Former members of health service schemes

R7.—(1) For the purposes of these Regulations, "health service scheme" means—

- (a) a superannuation scheme provided under the regulations made under section 10 of the Superannuation Act 1972(3) and for the time being in force in relation to England and Wales, or
- (b) a superannuation scheme provided under regulations for the time being in force under Article 12 of the Superannuation (Northern Ireland) Order 1972(4) or section 54 of the National Health Service (Isle of Man) Act 1948 (an Act of Tynwald), or
- (c) any other occupational pension scheme approved for this purpose by the Secretary of State.

(2) A member who leaves employment in respect of which the member qualified for benefit under a health service scheme and who joins the scheme may, subject to paragraphs (3) and (4), require the Secretary of State to credit him with a period of service (together with the rights attaching to that service) under the scheme calculated as if—

- (a) the employment to which the health service scheme applied were NHS employment, and
- (b) the member's contributions to the health service scheme were contributions to the scheme.

(3) The member may exercise this right only if a transfer payment is made from the health service scheme to the scheme.

(3) 1972 c. 11; section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, Part II and sections 10(2A) and (3A) and (6) were inserted and section 10(1) amended, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2) and 8(5).

(4) S.I. 1972/1073 (N.I.10).

(4) A member who wishes to exercise this right must do so by making application in writing to the Secretary of State within 1 year after joining the scheme.

(5) A member who leaves employment to which a health service scheme applied without becoming entitled to any benefits other than a refund of contributions may buy additional service as described in regulation Q1 (right to buy additional service). Regulation Q3(7) and regulation Q5(8) will apply, as the case may be, as if the previous service under a health service scheme were previous pensionable service under this scheme.

Members whose earnings are reduced

R8.—(1) A member with at least 2 years' qualifying service who suffers a reduction in earnings in the circumstances described in paragraph (2) may opt to take a preserved pension in respect of his pensionable service before his earnings were reduced.

(2) A member acquires the right described in this regulation if the reduction is due to—

- (a) the member being transferred to other employment with an employing authority;
- (b) the member choosing to transfer to other employment with an employing authority, in circumstances approved by the Secretary of State; or
- (c) a change in the member's duties, while continuing in the same employment, otherwise than at the member's request or as a result of something done by the member.

(3) The preserved pension will be calculated and paid as described in regulation E6 (preserved pension), as if the member had left pensionable employment immediately before his earnings were reduced.

(4) A member wishing to exercise the option described in this regulation must make application in writing to the Secretary of State within 3 months after his earnings are reduced.

(5) If a member continues to contribute to the scheme after exercising the option described in this regulation, the member's pensionable service before and after the member's earnings are reduced will, subject to paragraph (6), be treated separately unless, when the member becomes entitled to receive a pension, or dies, (whichever occurs first), it would be more favourable to the member to treat the member's pensionable service before and after the reduction, and all such other reductions (if any), as continuous.

(6) The member's pensionable service before and after the member's earnings are reduced—

- (a) will be treated as continuous for the purpose of calculating the member's qualifying service under regulation C3 (qualifying service); and
- (b) if the member next leaves NHS employment with an immediate pension under regulation E2 (early retirement pension (ill health)), will be treated as continuous for the purpose of calculating whether, and if so to what extent, the service on which the pensionable pension is based should be increased.

(7) If the member leaves pensionable employment with an immediate pension under regulation E2 and the member's pensionable service falls to be increased as described in paragraphs (4) to (6) of that regulation, the increase will apply only in respect of benefits attributable to the period after the member's earnings were reduced.

(8) If a member dies in pensionable employment after exercising the option described in this regulation, the benefits that become payable on the member's death will be equal to the greater of—

- (a) the benefits that would be payable in the case of death in pensionable employment, in which case the member's exercise of the option will be disregarded; and
- (b) the benefits that would have been payable if the member had left pensionable employment immediately before the member's death.

Polygamous marriages

R9.—(1) If a member dies and at the date of death the member was married to a spouse or spouses under a law which permits polygamy, any benefits payable to a widow or widower will be payable in equal shares to the member’s widow or widower, if any, and any other spouse or spouses.

(2) The shares will be calculated as at the date the member dies.

(3) Where the death of one or more spouse occurs the pension will be paid in full to the surviving spouse or divided between the surviving spouses in equal shares.

Members who work temporary additional sessions

R10.—(1) This regulation applies to members who work temporary additional sessions.

(2) Any period of employment in respect of a temporary additional session will be ignored when calculating a member’s pensionable service, and any payment received in respect of that employment will be ignored when calculating the member’s pensionable pay.

(3) In this regulation, “temporary additional session” means a session equivalent to an extra notional half-day which a consultant, senior hospital medical officer or senior hospital dental officer or an officer appointed to a post in the grade of associate specialist has, in exceptional circumstances, undertaken to work and which does not form part of the member’s normal contractual duties.

(4) In the case of a member who holds a whole-time consultant post and who receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable employment, “temporary additional session” also includes any session in excess of 10 in any one week, regardless of its length.

Officers on the staff of special hospitals

R11.—(1) This regulation applies to persons employed on the staff of a state hospital provided by the Secretary of State under Part VIII of the Mental Health (Scotland) Act 1984⁽⁵⁾.

(2) For the purposes of these Regulations, the Secretary of State or the State Hospital Management Committee where a State Hospital Management Committee has been established under section 91(2) of that Act, is regarded as an employing authority in relation to officers to whom this regulation applies and the scheme established under section 1 of the Superannuation Act 1972⁽⁶⁾ shall not apply.

Part-time specialists with service before 15th December 1966

R12.—(1) Subject to paragraph (2), this regulation applies where it would result in the payment of greater benefits than would otherwise be the case to and in respect of members who—

- (a) are in whole-time pensionable employment immediately before benefits become payable to or in respect of them under the scheme; and
- (b) have previous pensionable service as specialists in respect of part-time employment before 15th December 1966, where that part-time employment occupied substantially the whole of the member’s time.

(2) This regulation applies, subject to paragraph (3), only for the purpose of calculating benefits for pensionable service in respect of—

- (a) any period of whole-time employment;
- (b) any period of part-time employment as a specialist before 1st January 1980, if the part-time employment occupied substantially the whole of the member’s time; and

⁽⁵⁾ 1984 c. 36.

⁽⁶⁾ Section 1 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 8 and by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 6.

- (c) any period of employment as a maximum part-time consultant during which the member satisfies the requirements of paragraph (4).
- (3) This regulation does not apply to pensionable service in respect of any period of employment as a practitioner.
- (4) A member satisfies the requirements of paragraph (2) if he holds a whole-time consultant post and either—
 - (a) he receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable employment, or
 - (b) he was appointed before 1st January 1980 and retains the right, to which he was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that he would have received for whole-time pensionable employment.
- (5) If it would be more favourable to the member or other person entitled to the benefits—
 - (a) benefits for the pensionable service mentioned in paragraph (2) will be based on the full length of that pensionable service rather than (in the case of pensionable service in respect of part-time employment) the whole-time equivalent of that pensionable service;
 - (b) if the full length of the pensionable service mentioned in paragraph (2) is not a whole number of years, any additional period of more than 182 days will be treated as half a year and any additional period of 182 days or less will be ignored; and
 - (c) the benefits in respect of that pensionable service will be calculated by reference to the yearly average of the member's pensionable pay during the last 3 years of pensionable employment, instead of by reference to the member's final year's pensionable pay.