
STATUTORY INSTRUMENTS

1998 No. 1593 (S. 83)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service Superannuation
Scheme (Scotland) Amendment Regulations 1998**

<i>Made</i>	- - - -	<i>29th June 1998</i>
<i>Laid before Parliament</i>		<i>10th July 1998</i>
<i>Coming into force</i>	- -	<i>31st July 1998</i>

The Secretary of State, in exercise of the powers conferred on him by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1) 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 in accordance with section 10(4) of that Act, and with the consent of the Treasury(2), hereby makes the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) Amendment Regulations 1998.

(2) These Regulations shall come into force on 31st July 1998, but—

- (a) regulations 3(e), 8, 9 and 15 shall have effect from 1st September 1997; and
- (b) regulations 3 (except paragraph (e)), 5, 6, 13 and 16 shall have effect from 1st April 1998.

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

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995(3) shall be amended in accordance with regulations 3 to 16 below.

(1) 1972 c. 11; section 10 was amended by Part II of Schedule 7 to the National Health Service (Scotland) Act 1972 (c. 58) and sections 10(2A), (3A) and (6) and 12(4A) were inserted, and sections 10(1) and 12(2) and (4) amended, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 7.

(2) See the Superannuation Act 1972, section 10(1) and the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2.

(3) S.I. 1995/365, amended by S.I. 1997/1434 and 1997/1916.

Interpretation

3. In regulation A2—

- (a) after the definition of “the 1978 Act” insert—

“the 1997 Act”	The National Health Service (Primary Care) Act 1997(b);”;
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- (b) in the definition of “employing authority” after paragraph (d) insert—

“(e) a person who is providing piloted services;”;

- (c) after the definition of “health service scheme” insert—

“medical list”	A list prepared in accordance with regulations made under section 19(2)(a) of the 1978 Act;”;
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- (d) after the definition of “mental health officer” insert—

“NHS employee”	The meaning given in section 2(3) of the 1997 Act;”;
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- (e) in paragraph (a) of the definition of “occupational pension scheme” for “Chapter IV” substitute “Chapter I”;

- (f) after the definition of “personal pension scheme” insert—

“pilot scheme”	The meaning given in section 1(1) of the 1997 Act;
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“pilot scheme employee”	The meaning given in section 2(3) of the 1997 Act;
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“piloted services”	The meaning given in section 1(4) of the 1997 Act;”.
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Early retirement pension (ill-health)

4. In regulation E2(10) after the words “equal to” delete “(a)” and delete from the word “or” to the words “regulation E8”, where they first occur.

Early retirement pension (redundancy etc.)

5. In regulation E3(4) for the words “practice staff” substitute—

“_

(a) practice staff; or

(b) a member who is providing piloted services.”.

Early retirement pension (employer’s consent)

6. In regulation E4(3) for the words “practice staff” substitute—

“_

(a) practice staff; or

- (b) a member who is providing piloted services.”.

Lump sum when member dies after pension becomes payable

7. In regulation F2(1) at the beginning insert the words “Except where a lump sum payment is made under regulation E2(7),”.

Continuation of additional contributions

8. In regulation L4–

- (a) at the beginning insert “(1)”; and
- (b) at the end insert–

“(2) Practice staff who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who–

- (a) had previously been compulsorily transferred from employment with a body referred to in paragraph (a), (b) or (c) of the definition of “employing authority” in regulation A2 to employment with a registered medical practitioner referred to in paragraph (d) of that definition;
- (b) were at the time of the transfer paying for additional benefits by regular additional contributions under regulation Q5; and
- (c) rejoined the scheme with effect from 1st September 1997,

may resume payment of those additional contributions at the percentage rate, which applied prior to the transfer, of current pensionable pay provided that the payment of those contributions resume with effect from 1st September 1997.”.

Right to buy additional service

9. In regulation Q1–

- (a) in paragraphs (1) and (6), after the words “age 60”, in each place where they occur, insert the words “or, in the case of a special class officer, age 55”; and
- (b) after paragraph (6) insert–

“(6A) A member who–

- (a) joined the scheme on or after 17th March 1987;
- (b) has made an application prior to 1st September 1997 to buy additional service; and
- (c) does not commence making payments under regulation Q5 until on or after 1st September 1997,

may, up until and including 31st August 1998, elect that paragraph (6) shall cease to apply to him.

(6B) Paragraph (6) shall cease to apply to a member who–

- (a) joined the scheme on or after 17th March 1987;
- (b) makes an application on or after 1st September 1997 to buy additional service; and
- (c) commences payments under regulation Q5 on or after 1st September 1997.”.

Members doing more than one job

10. In regulation R4–

(a) for paragraph (1) substitute–

“(1) This regulation applies to members in NHS employment–

- (a) with more than one employing authority;
- (b) who hold, under one employing authority, two or more separate employments; or
- (c) to whom paragraph (8A) below applies.”;

(b) in paragraph (8), for the words “In calculating” substitute the words “Subject to paragraph (8A), in calculating”;

(c) after paragraph (8), insert–

“(8A) A member who becomes entitled to a pension under regulation E3 in respect of his employment as an officer and has terminated concurrent employment as a practitioner not more than 12 months before the date on which he becomes entitled to that pension shall not be entitled to receive a pension under that regulation in respect of any employment as a practitioner, but shall be entitled to receive only a pension under regulation E1 or E5 or a preserved pension under regulation E6, in respect of any such employment.

(8B) Where paragraph (8A) applies, the member may, in respect of any service as an officer which has terminated and to which paragraph 9(1), (6) or (9) of Schedule 1 applies, elect for the said paragraph 9 not to apply and instead to receive a pension under regulation E3 in respect of that service.”.

Former members of health service schemes

11. In regulation R7(1)(b) for the words “section 54 of the National Health Service (Isle of Man) Act 1948” substitute the words “a scheme made under section 2 of the Superannuation Act 1984”.

Members whose earnings have been reduced

12. In regulation R8(6)(b) for the words “the service on which the pensionable pension” substitute the words “the pensionable service on which the pension”.

Participants in pilot schemes

13. After regulation R12 insert–

“Participants in pilot schemes

R13.—(1) For the purposes of these Regulations for the duration of any pilot scheme–

(a) a registered medical practitioner–

- (i) whose name appeared on a medical list immediately before the commencement of a pilot scheme or who, immediately before the commencement of a pilot scheme, was an assistant practitioner; and

- (ii) who is involved in the operation of the pilot scheme, whether as a person providing piloted services or as a pilot scheme employee,

shall be treated as a practitioner employed by the relevant Health Board;

- (b) a registered medical practitioner whose name did not appear on a medical list, and who was not an assistant practitioner, immediately before the commencement of a pilot scheme shall be treated–

- (i) as a practitioner employed by the relevant Health Board if he provides piloted services under that pilot scheme; or
 - (ii) as an officer employed by the provider of the piloted services if he is a pilot scheme employee;
 - (c) a person who is providing piloted services shall be liable to pay contributions under regulation D2 in respect of a member who is employed by him as a pilot scheme employee;
 - (d) a member who, immediately before the commencement of a pilot scheme—
 - (i) was employed as a NHS employee; or
 - (ii) was employed as a pilot scheme employee, and is not a registered medical practitioner,and who, after the commencement of a pilot scheme, is providing piloted services under that pilot scheme, shall be treated as a whole-time officer employed by the relevant Health Board;
 - (e) pilot scheme employees, who are employed otherwise than by a National Health Service Trust which is providing piloted services, and to whom paragraph (a) or (b)(ii) does not apply, shall be treated for the purposes of these Regulations as if they were practice staff.
- (2) In this regulation—
- “assistant practitioner” has the meaning given in paragraph 1 of Schedule 1;
 - “relevant Health Board” means the Health Board which has made an agreement with a person for that person to provide piloted services in the Health Board’s area.”

Suspension of pension on return to NHS employment

14. In regulation S1(5), for the words “section 54 of the National Health Service (Isle of Man) Act 1948” substitute the words “section 2 of the Superannuation Act 1984”.

Reduction of pension on return to NHS employment

15. In regulation S2—

- (a) in paragraph (1) for the word “This” substitute the words “Subject to paragraph (12), this”;
- and
- (b) at the end add—
 - “(12) This regulation shall not apply to practice staff in respect of whom a pension is payable under any of regulations E1 to E6 who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who—
 - (a) were ineligible to rejoin the scheme with effect from 1st September 1997; or
 - (b) made an election not to rejoin the scheme with effect from that date and who do not cancel that election.”.

Medical and dental practitioners

16. In Schedule 1—

- (a) in paragraph 3 (meaning of “pensionable earnings”) in sub-paragraph (1)(b) at the beginning insert the words “in the case of a dental practitioner,”;

(b) in paragraph 6 (meaning of “pensionable earnings” in relation to other practitioners) at the end add–

“(3) In the case of–

- (a) a practitioner providing piloted services, “pensionable earnings” means all fees and other regular payments paid to the practitioner in respect of the provision of piloted services, but does not include bonuses or payments made to cover expenses or for overtime;
- (b) a practitioner employed as a pilot scheme employee, “pensionable earnings” means all salary or wages paid to the practitioner in respect of employment as a practitioner, but does not include bonuses or payments made to cover expenses or for overtime.”;

(c) in paragraph 18 (members away from work and maternity absence) at the end add–

“(6) For the purposes of these Regulations for the duration of any pilot scheme–

- (a) a member who is providing piloted services and who is absent from work by reason of illness or injury shall be treated as a practitioner whether or not his name is included on a medical list immediately before the commencement of the pilot scheme; and
- (b) a member who is a pilot scheme employee and who is absent from work by reason of illness or injury shall be treated as an officer whether or not his name is included on a medical list immediately before the commencement of the pilot scheme.”.

St Andrew’s House,
Edinburgh
24th June 1998

Brian Wilson
Minister of State, Scottish Office

We consent

29th June 1998

Jim Dowd
Bob Ainsworth
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (“the 1995 Regulations”) which provide for the superannuation of persons engaged in the National Health Service in Scotland. Certain provisions have retrospective effect as authorised by section 12 of the Superannuation Act 1972: regulations 3(e), 8, 9 and 15 from 1st September 1997; and the remainder of regulation 3 and regulations 5, 6, 13 and 16 from 1st April 1998.

Regulation 3 amends regulation A2 of the 1995 Regulations to incorporate definitions relating to pilot schemes under the National Health Service (Primary Care) Act 1997.

Regulation 4 amends regulation E2(10) to remove the overriding cap on the amount payable when early retirement on grounds of terminal ill-health is taken and a lump sum is paid under regulation E2(7) in addition to the lump sum under regulation E7.

Regulations 5 and 6 amend regulations E3 and E4 to disapply the provisions for early retirement on redundancy or efficiency grounds or with the employer’s consent in respect of all providers of piloted services.

Regulation 7 amends regulation F2 to make it clear that no lump sum will be payable under that provision where a lump sum has already been paid under regulation E2(7).

Regulation 8 amends regulation L4 to give GP practice staff who were employed by a general practitioner on and immediately before 1st September 1997 and had previously been compulsorily transferred from NHS employment to employment in a GP practice the option of continuing their contracts to buy additional service, if they had such a contract before they were compulsorily transferred.

Regulation 9 amends regulation Q1 so that a member who made an application before 1st September 1997 to buy additional service, but who commences payments on the contract on or after that date, may up to and including 31st August 1998 elect that regulation Q1(6) (which specifies that a person can only purchase additional service where he could complete 9 years before age 60 and also specifies a maximum of additional service which may be bought) shall cease to apply to him, and thereby increase the number of added years which may be purchased. The amendment also provides for regulation Q1(6) to cease to apply to a member who makes an application on or after 1st September 1997 to buy additional service and who commences payments on that contract on or after that date. The requirement of 9 years potential service to age 60 accordingly no longer applies in such circumstances. In both cases the member must have joined the scheme on or after 17th March 1987. For those members to whom regulation Q1(6) continues to apply and who become entitled to normal retirement pension at age 55, instead of 60, regulation Q1(1) and (6) are amended to refer to age 55 instead of 60. The right to buy additional service is modified accordingly.

Regulation 10 substitutes paragraph (1) and inserts new paragraphs (8A) and (8B) in regulation R4 of the 1995 Regulations.

The substituted paragraph (1) provides that regulation R4 not only applies (as at present) to members who are employed by one or more employing authority or hold two or more separate employments under one employing authority, but also applies to members who are in NHS employment at the time of redundancy and who also held another concurrent NHS employment within the 12 months prior to the redundancy date.

Paragraph (8A) provides that a member, who has been made redundant from NHS employment and whose last concurrent employment as a practitioner terminated within 12 months prior to the date

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of redundancy, shall be entitled to a pension only under regulation E1 or E5 or a preserved pension under regulation E6 in respect of his practitioner employment.

Paragraph (8B) provides an option which is available to a member to whom paragraph (8A) applies in respect of officer service to which paragraph 9(1), (6) or (9) of Schedule 1 applies. In these circumstances, the member may elect that paragraph 9 (under which his officer service would count as practitioner service) should not apply and instead receive a pension in respect of his officer service.

Regulations 11 and 14 update a statutory reference in regulations R7 and S1(5) respectively and regulation 12 makes a minor correction to regulation R8(6)(b).

Regulation 13 inserts a new regulation R13 into the 1995 Regulations to include in the scheme providers and performers of piloted services under the National Health Service (Primary Care) Act 1997.

New regulation R13 provides that—

- (a) registered medical practitioners who are on a health board list immediately before the commencement of the pilot scheme, and assistant practitioners, will continue to be treated as practitioners employed by the relevant Health Board whether they are providing or performing piloted services;
- (b) registered medical practitioners who are not on a health board list, and who are not assistant practitioners, immediately before the commencement of the pilot scheme will be treated as practitioners employed by the relevant Health Board if they are providing piloted services, and as officers employed by the pilot scheme provider if they are performing piloted services;
- (c) the pilot scheme provider is responsible for paying employer contributions for all members who are pilot scheme employees;
- (d) a nurse, or any other NHS employee, or anyone who was previously a pilot scheme employee (other than a doctor), who is providing piloted services will be treated as a whole-time officer employed by the relevant Health Board; and
- (e) members, other than practitioners, who are performing piloted services will be treated as practice staff.

Regulation 15 amends regulation S2 of the 1995 Regulations to add a new paragraph (12). This paragraph enables practice staff who are in receipt of an NHS pension and who cannot rejoin the scheme or who have chosen to opt out of the scheme not to have their pension abated provided that they were employed by a general practitioner on and immediately before 1st September 1997.

Regulation 16 amends paragraphs 3, 6 and 18 of Schedule 1—

- (a) so that there will no longer be an adjustment to a general practitioner's earnings when he employs an assistant practitioner;
- (b) to define pensionable earnings for practitioners who are providing or performing piloted services; and
- (c) to provide that a registered medical practitioner provider or performer of piloted services (whether or not his name appears on a health board list immediately before the commencement of the pilot scheme) will be treated respectively as a practitioner or officer if he is absent from work due to illness or injury.

These Regulations do not impose any costs on business.