

2003 No. 2322

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service Pension Scheme
(Amendment) Regulations 2003**

Made - - - - - 8th September 2003

Laid before Parliament 9th September 2003

Coming into force - - - 1st October 2003

The Secretary of State for Health, in exercise of the powers conferred by sections 10(1) and (2) and 12(1) and (2) of, and paragraphs 4, 8 and 13 of 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 effect

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Amendment) Regulations 2003 and shall come into force on 1st October 2003.

(2) Regulation 2 shall have effect—

- (a) in the case of paragraph (5), as from 6th April 2003;
- (b) in the case of the remainder of that regulation, as from 1st April 2003.

Amendment of the National Health Service Pension Scheme Regulations 1995

2.—(1) The National Health Service Pension Scheme Regulations 1995^(d) shall be amended in accordance with the following paragraphs.

(2) For regulation C1(3)(meaning of “pensionable pay” and “final year’s pensionable pay”) there shall be substituted the following paragraph—

“(3) In the case of a member who—

- (a) joined the scheme before 1st June 1989 and has a break in pensionable employment on or after that date—
 - (i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;
 - (ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored;

(a) 1972 c. 11. Section 10(1) 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 Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
(d) S.I. 1995/300; the relevant amending instruments are S.I. 2000/605, 2002/561 and 2003/631.

(b) joined the scheme before 1st June 1989 and to whom sub-paragraph (a) does not apply, pensionable pay in excess of the permitted maximum will not be ignored.”.

(3) In regulation F5 (payment of lump sum)—

(a) in paragraph (3)—

(i) in sub-paragraph (a)—

(aa) after the word “notice” in the first place where it occurs, there shall be inserted the words “in writing”;

(bb) the words “in accordance with paragraph (3B) below” shall be omitted;

(ii) after sub-paragraph (a), there shall be inserted the following sub-paragraph—

“(aa) the widow or widower has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the widow’s or widower’s right to a payment in respect of the member’s death shall be forfeited; or”;

(b) in paragraph (3A)—

(i) after the word “notice” in the first place where it occurs, there shall be inserted the words “in writing”;

(ii) the words “in accordance with paragraphs (3B) and (3C) below” shall be omitted;

(iii) after sub-paragraph (a), there shall be inserted the following sub-paragraph—

“(aa) that person has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that that person’s right to a payment in respect of the member’s death shall be forfeited; or”;

(c) for paragraph (3B), there shall be substituted the following paragraph—

“(3B) Notice given to the Secretary of State for the purpose of paragraph (3) or (3A) may, at any time, be revoked in writing.”;

(d) in paragraph (3C), after the word “shall”, there shall be inserted the words “only be given by a member who is in pensionable service under the scheme and shall”.

(4) For regulation L4(8)(early leavers returning to pensionable employment) there shall be substituted the following paragraph—

“(8) If a member’s pensionable employment before and after a break in pensionable employment (the “pre-break period” and the “post-break period” respectively) is treated separately, the member’s benefits in respect of such employment in the pre-break period and the post-break period shall be calculated—

(a) separately; and

(b) by reference to—

(i) the member’s pensionable service comprising that pre-break or post-break period as the case may be; and

(ii) his final year’s pensionable pay in respect of that particular period,

as if that period had been his only period of pensionable employment.”.

(5) In Part P (members absent from work)—

(a) in the title to regulation P1, for the words “maternity leave”, there shall be substituted the words “certain types of leave”;

(b) in regulation P1—

(i) in sub-paragraph (1), after the words “maternity leave”, there shall be inserted the words “, adoption leave or paternity leave”;

(ii) in sub-paragraph (4)(b), for the words “woman on maternity leave” there shall be substituted the words “member on maternity leave, adoption leave or paternity leave”.

- (6) In Schedule 2 (medical and dental practitioners)—
- (a) in paragraph 9 (officer service treated as practitioner service)—
- (i) for sub-paragraph (2), there shall be substituted the following sub-paragraph—
- “(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member’s pensionable pay in respect of that officer service—
- (a) may be disregarded and his uprated earnings increased by the same proportion as his practitioner’s service is increased by virtue of the officer service being treated as practitioner service under sub-paragraph (1); or
- (b) may be treated as pensionable earnings, whichever is the more favourable to him.”;
- (ii) after sub-paragraph (5), there shall be inserted the following sub-paragraphs—
- “(5A) Where a member has more than 10 years’ officer service before first becoming—
- (a) a principal practitioner; or
- (b) a practitioner providing piloted services under an agreement between that practitioner and a Health Authority, Primary Care Trust or Local Health Board,
- the member’s officer service before first becoming such a practitioner may be treated as practitioner service if it would be more favourable to him.
- (5B) For the purpose of calculating any benefits in respect of officer service that is treated as practitioner service under sub-paragraph (5A), the member’s pensionable pay in respect of that officer service shall be treated as pensionable earnings.”;
- (iii) after sub-paragraph (6), there shall be inserted the following sub-paragraphs—
- “(6A) Subject to sub-paragraph (8), if a member has in total, 1 year’s officer service or more on the last occasion on which he ceases to be a practitioner before his pension under the scheme becomes payable, that officer service may be treated as practitioner service if it would be more favourable to him.
- (6B) Any officer service which is treated as practitioner service by virtue of sub-paragraph (6) or (6A) shall include any periods of officer service which are concurrent with periods of practitioner service.”;
- (iv) in sub-paragraph (7), after “sub-paragraph (6)” there shall be inserted “or (6A)”;
- (v) in sub-paragraph (8)—
- (aa) after “sub-paragraph (6)”, in the first and third places where it occurs, there shall be inserted “or (6A)”;
- (bb) for the words “sub-paragraph (6) will not”, there shall be substituted the words “neither sub-paragraph (6) nor (6A) will”;
- (cc) in paragraph (a), after “sub-paragraph (1)” there shall be inserted “or (5A)”;
- (vi) in sub-paragraph (11), after “sub-paragraph (6)”, there shall be inserted “, sub-paragraph (6A)”;
- (b) after paragraph 11, there shall be inserted the following paragraph—

“Practitioners with benefits from both practitioner and officer service

11A.—(1) A member—

- (a) who has at least two years’ qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme;
- (b) who ceases to be in officer service while continuing in practitioner service; and
- (c) whose officer service is not treated as practitioner service under paragraph 9(5A) or (6A),

shall be entitled to receive a separate pension and retirement lump sum in respect of his officer service.

- (2) A member—
- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his rights under a personal pension scheme; and
 - (b) who ceases, or who ceased before 1st April 2003, to be in practitioner service while continuing in officer service on or after that date,
- shall be entitled to receive a separate pension and retirement lump sum in respect of such of his pensionable service as is specified in sub-paragraph (3).
- (3) The pensionable service specified for the purposes of sub-paragraph (2) is—
- (a) any practitioner service; and
 - (b) any officer service which falls to be treated as practitioner service under paragraph 9.
- (4) Subject to sub-paragraph (5), the amount of any pension or retirement lump sum which a member is entitled to receive under sub-paragraph (1) or (2) shall be the same as the amount of the pension or retirement lump sum which the member would have been entitled to receive under these Regulations if he had left pensionable employment on the day on which he ceased to be in officer service or, as the case may be, ceased to be in practitioner service.
- (5) A member who is entitled to a pension and retirement lump sum under sub-paragraph (2) shall, if it would be more favourable to him, be treated as having continued in practitioner service until the last day of his pensionable employment.”.

Signed by authority of the Secretary of State for Health

8th September 2003

John Hutton
Minister of State,
Department of Health

We consent

8th September 2003

Nick Ainger
Joan Ryan
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations amends the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) by—

- ensuring that the position as regards a member's contributions and benefits reflect the situation where that member is subject to an earnings cap following a break in pensionable employment (paragraphs (2) and (4));
- ensuring that lump sums, which would otherwise be payable to persons whose right to the lump sum has been forfeited because they have been convicted of the unlawful killing of the member, shall be payable to the personal representatives of the member, and correcting an error in the lump sum provisions as regards members who may give notice that their widow or widower is not to receive the lump sum payable on death (paragraph (3));
- ensuring that periods of adoption leave and paternity leave count as pensionable service under the Scheme (paragraph (5));
- providing more choice for practitioners with mixed patterns of officer and practitioner service to have their benefits under the Scheme calculated in the way which is most beneficial to them—in particular, for them to be able to have a separate pension in respect of previous periods of officer or practitioner service (paragraph (6)).

The authority for regulation 2 having retrospective effect is contained in section 12(1) of the Superannuation Act 1972 (c. 11).

These Regulations do not impose any costs on business.

STATUTORY INSTRUMENTS

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(Amendment) Regulations 2003**

£2.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1242 9/2003 131242 19585

ISBN 0-11-047531-3



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