SCOTTISH STATUTORY INSTRUMENTS

2004 No. 62

NATIONAL HEALTH SERVICE

The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004

Made - - - -	*10th February 2004*
Laid before the Scottish Parliament - - - -	*19th February 2004*
Coming into force - -	*26th March 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(**1**) and of all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury, hereby make the following Regulations:

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 2004 and shall come into force on 26th March 2004, but regulation 9(c) has effect from 1st November 1999(**2**).

(2) These Regulations extend to Scotland only.

(**1**) 1972 c. 11 ("the Act"); sections 10 and 12 of the Act were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) ("the 1990 Act"), sections 4(2), 8(5), 8(6) and 10 and the National Health Service Reorganisation Act 1973 (c. 32) sections 57, 58 and Schedule 5; section 10(6) of the Act was inserted by the 1990 Act, section 8(6), and amended by the Pension Schemes Act 1993 (c. 48), section 190 and Schedule 8, paragraph 7, and by S.I. 2001/3649 Part 3 Article 108. Functions under the Act as regards Scotland are transferred by S.I. 1999/1750, article 2 and schedule 1. The requirement for consent by the Minister for the Civil Service under section 10 of the Act was transferred to the Treasury by virtue of S.I. 1981/1670, and the consent of the Treasury is required in the exercise by the Scottish Ministers of the transferred functions by virtue of S.I. 1999/1750, schedule 1.

(**2**) See section 12(1) of the Act which provides that regulations may be framed so as to have effect from a date earlier than that of their making.

Amendment of The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998

2. The National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(**3**) are amended in accordance with the following regulations.

Interpretation

3. In paragraph (1) of regulation 2(**4**)–

(a) for the definition of "dependant" substitute–

> ""dependant" means a surviving spouse (providing the marriage was not, prior to 1st April 1995, subject to a decree of separation) or any surviving child of a participator or a person in whose favour a participator has made an election under regulation J1 of the 1995 Regulations (allocation of pension by member for benefit of dependant)(**5**)

(b) for the definition of "insurance company" substitute–

> ""insurance company" means–
>
> (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance; or
>
> (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule to effect or carry out contracts of long-term insurance as a result of satisfying the establishment conditions within the meaning of that Schedule;
>
> Provided that this definition must be read with–
>
> (i) section 22 (the classes of activity and categories of investment) of the Financial Services and Markets Act 2000;
>
> (ii) any relevant order under that section; and
>
> (iii) Schedule 2 to that Act.";

(c) after the definition of "normal benefit age"(**6**) insert–

> ""occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993(**7**)

(d) for the definition of "participator" substitute–

> ""participator" means–
>
> (a) a contributor who has made a benefits election under regulation 11(3);
>
> (b) a contributor who has died;
>
> (c) a person who has ceased to be a contributor but has not exercised any right to take a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993 or to be paid a lump sum under regulation 14; or
>
> (d) a person in respect of whom investments have been made under regulations 7(1), 8(2) or 9(4);";

(e) in the definition of "pensionable employment" after "Scotland" insert–

(**3**) S.I. 1998/1451, amended by S.S.I. 2001/465 and S.I. 2001/3649.
(**4**) Regulation 2 was amended by S.S.I. 2001/465 and S.I. 2001/3649.
(**5**) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443 and 2001/3649, and S.S.I. 2001/437, 2001/465, 2003/55, and 2003/270.
(**6**) The definition of "normal benefit age" was inserted by regulation 1 of S.S.I. 2001/465.
(**7**) 1993 c. 48.

", or such other employment as the Scottish Ministers may approve for the purposes of a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(**8**).";

(f) omit paragraph (1A) of regulation 2(**9**).

Making and acceptance of elections

4. In regulation 3–

(a) in paragraph (3)(a) after "absence from work" insert "due to ill-health";

(b) at the end of paragraph (3)(b) insert "on the date on which the notice of such an election is received by the Scottish Ministers";

(c) after paragraph (7) insert–

"(8) The Scottish Ministers shall notify in writing the person who has made an election under paragraph (1) of their acceptance of that election.".

Payment and amount of additional voluntary contributions

5. In regulation 4–

(a) in paragraph (2)–

(i) after "authorisation" insert "from the authorised provider"; and

(ii) for "but not later than 10 days following the pay period in which the contributions are deducted." substitute "but not later than 7 days after their deduction.";

(b) in paragraph (4)–

(i) for "paragraph 15(4)" substitute "paragraph 19(4)"; and

(ii) for "Schedule" substitute "Schedule 1".

Circumstances in which elections cease to have effect

6. In regulation 6–

(a) for "An" substitute "(1) Subject to paragraph (2), an";

(b) after sub-paragraph (d) insert–

"(2) Where paragraph (1)(a) or (b) above applies, an election shall be treated as not having ceased to have effect if a contributor gives written notice to the Scottish Ministers for the purpose specified in regulation 5(1)(c).".

Inward transfers

7. In regulation 8(1) omit "during any previous employment".

Outward transfers

8. For regulation 10 substitute–

(**8**) 1967, c. 28. Section 7 was amended by Articles 2 and 5(4)(a) of S.I. 1968/1699; Section 10(5), paragraph. 66(a) and (b) of Schedule 6, and Schedule 8 of the Act; the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 40; the National Health Service Reorganisation Act 1973 (c. 32), Schedule 5; and the National Health Service (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 24.

(**9**) Paragraph (1A) of regulation 2 was inserted by S.I. 2001/3649.

"**Outward transfers**

10.—(1) Subject to paragraphs (4) to (7), the Scottish Ministers shall as soon as is reasonably practicable after having received a notice in writing from an eligible person requesting a transfer of the value of that person's investments made in relation to that person under regulation 7(1), 8(2) or 9(4), pay a transfer value representing the value of all such investments at that person's option–

(a) where that person has left pensionable employment, to one of the schemes specified in paragraph (2) in which that person may be participating; or

(b) where that person remains in pensionable employment, to the scheme specified in paragraph (3).

(2) The schemes specified in this paragraph are–

(a) an approved scheme which provides additional benefits by virtue of additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act(**10**) (discretionary approval);

(b) a personal pension scheme, including a personal pension scheme which is a stakeholder pension scheme under Part 1 of the Welfare Reform and Pensions Act 1999(**11**) (stakeholder pension schemes);

(c) an occupational pension scheme which is a stakeholder pension scheme under Part 1 of the Welfare Reform and Pensions Act 1999; and

(d) any other arrangement which has been approved by the Board of Inland Revenue to accept transfer payments, provided that the transfer value shall not be used to purchase benefits in the form of a tax free lump sum.

(3) The scheme specified in this paragraph is a free-standing additional voluntary contributions scheme.

(4) Where the Scottish Ministers are required under paragraph (1) above to make a transfer payment in circumstances where a transfer payment in respect of an eligible person is also provided and used in accordance with regulation M1 of the 1995 Regulations (member's right to transfer or buy-out), they shall do so by whichever is the earlier of–

(a) the end of the period of 6 months beginning with the guarantee date; or

(b) if the person in respect of whom the transfer is to be made–

(i) ceased to be subject to the NHS Superannuation Scheme on a date prior to his attaining the age of 59 years; and

(ii) made an application for a transfer payment within six months of that date,

the date on which the person attains age 60.

(5) In any case where the Scottish Ministers have directed under regulation 20 (loss of rights to benefit) that all or part of any of an eligible person's rights to benefits under these Regulations are to be forfeited, the cash equivalent payable in respect of that person shall be reduced by the capitalised value of the rights which are to be forfeited.

(6) If disciplinary or court proceedings are commenced against the eligible person within 12 months after he leaves pensionable employment and it appears to the Scottish Ministers that the proceedings may lead to all or part of that person's rights to benefits being forfeited in accordance with regulation 20, the Scottish Ministers may defer doing what is required of them under this regulation to carry out the requirements of that eligible person until the date 3 months after the conclusion of those proceedings (including any proceedings on appeal)

(**10**) 1988, c. 1.
(**11**) 1999 c. 30.

where that date is later than the date which would otherwise apply by virtue of paragraph (4) above.

(7) Where the Scottish Ministers have done what is required of them to carry out the requirements of the eligible person under this regulation, the Scottish Ministers shall be discharged from any obligation under regulation 15 (payments by the Scottish Ministers) to or in respect of that person.

(8) In this regulation "eligible person" means a person–

(a) who is a contributor; and

(b) either–

(i) has not attained the age of 60 years on or before the date the notice referred to in paragraph (1) above is received by the Scottish Ministers; or

(ii) to whom regulation M6(**12**) of the 1995 Regulations (special terms for transfers out (bulk transfers etc.)) applies.".

Retirement and dependant's pensions

9. In Regulation 11–

(a) in paragraph (3) after "Not earlier than 3 months before" insert " the date of";

(b) at the end of paragraph (4) insert the words "in accordance with regulation 15(3)";

(c) for paragraph (6) substitute–

"(6) Notwithstanding whether benefits to which a participator may be entitled under Part E of the 1995 Regulations (benefits for members) are payable, where a participator's date of retirement falls on or after 1st November 1999 and he or she has–

(a) reached the age of 75; and

(b) failed to give a notice of election under paragraph (3) on or before the date of his or her 75th birthday,

the Scottish Ministers may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of a pension policy from an insurance company in order to provide such benefits as appear to them to be suitable.";

(d) in paragraph (7)–

(i) after "participator dies before" insert "the date of his or her";

(ii) for "paragraph 15" substitute "paragraph 19"; and

(iii) for "Schedule" substitute "Schedule 1";

(e) at the end of paragraph (8) insert "in accordance with regulation 15(4)".

Lump sums on death

10. In regulation 12(2) for "paragraph 15(4) of the Schedule" substitute "paragraph 19(4) of Schedule 1".

Repayment of investments in certain cases

11. At the end of regulation 14(1) insert "in accordance with regulation 15(4)".

(**12**) Regulation M6 was substituted by regulation 10 of S.S.I. 2003/55.