SCOTTISH STATUTORY INSTRUMENTS

2001 No. 437

NATIONAL HEALTH SERVICE

The National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001

Made - - - -	*21st November 2001*
Laid before the Scottish Parliament - - - -	*27th November 2001*
Coming into force - -	*18th December 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 10, 12 and 24 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(**2**), hereby make the following Regulations:

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001 and shall come into force on 18th December 2001, but

(a) regulations 5(a), (b) and (c), 6, 8, 9, 12, 14, 18(a) and (d), 20(a), (b), (c) and (e), 21 and 22 shall have effect from 1st October 1999;

(b) regulation 10 shall have effect from 31st March 2000; and

(c) regulations 16 and 18(b) and (e) shall have effect from 1st April 2000.

(2) In these Regulations–

(**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 Pensions Schemes Act 1993 (c. 48), Schedule 8, paragraph 7; the functions of the Secretary of State in relation to making subordinate legislation concerning the Scottish National Health Service Superannuation Scheme were transferred to the Scottish Ministers by virtue of article 2 and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).

(**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.

"the Compensation Regulations" means the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981(**3**);

"the Injury Benefits Regulations" means the National Health Service (Scotland) (Injury Benefits) Regulations 1998(**4**); and

"the Superannuation Scheme Regulations" means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(**5**).

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

2. The Superannuation Scheme Regulations shall be amended in accordance with regulations 5 to 18 below.

Amendment of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981

3. The Compensation Regulations shall be amended in accordance with regulation 19 below.

Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998

4. The Injury Benefits Regulations shall be amended in accordance with regulations 20 to 22 below.

Interpretation

5. In regulation A2 (interpretation)–

(a) in the definition of "employing authority" after paragraph (b) there shall be inserted–

"(bb) a Primary Care NHS Trust to which certain functions referred to in section 12AA of the National Health Service (Scotland) Act 1978(**6**) are delegated by the Health Board;";

(b) in the definition of "NHS dental employee"(**7**) after "a Health Board" in paragraph (b) there shall be inserted "or Primary Care NHS Trust";

(c) in the definition of "practitioner" after "Health Board" there shall be inserted "or Primary Care NHS Trust"; and

(d) in the definition of "specialist" after "consultant" there shall be inserted ", other than a nurse consultant, or a".

Age limits and restrictions on membership

6. In regulation B2(e)(**8**) after "Trust" there shall be inserted "or a Primary Care NHS Trust".

Pensionable service in respect of part-time employment

7. In regulation C4 (6)–

(**3**) S.I. 1981/1785, amended by S.I. 1985/2036 and 1992/3046.
(**4**) S.I. 1998/1594, amended by S.I. 1999/444 and S.S.I. 1999/195.
(**5**) S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593 and 1999/443.
(**6**) 1978 c. 29; section 12AA was inserted by section 47 of the Health Act 1999 (c. 8).
(**7**) This definition was inserted by S.I. 1999/443.
(**8**) Regulation B2(e) was inserted by S.I. 1999/443.

(a) after "ill-health))" there shall be inserted "or a pension under regulation E3 (early retirement pension (redundancy etc.))";

(b) in sub-paragraph (a) for the words from "calculating" to the end of the sub-paragraph there shall be substituted the following–

"calculating–

(i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 is based should be increased under that regulation, or

(ii) the qualifying service for the purposes of regulation E3(1)(a);"; and

(c) in sub-paragraph (b) for "and the increase under regulation E2" there shall be substituted "and, in the case of a pension under regulation E2, the increase under that regulation".

Early retirement pensions (redundancy etc.)

8. In regulation E3(4)(d)(**9**) after "Trust" there shall be inserted "or a Primary Care NHS Trust".

Early retirement pension (employer's consent)

9. In regulation E4(3)(d)(**10**) after "Trust" there shall be inserted "or a Primary Care NHS Trust".

Preserved pension

10. In regulation E6–

(a) for paragraph (2) there shall be substituted–

"(2) The pension under this regulation will be calculated–

(a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E5, as if it were a pension under that regulation; and

(b) in any other case, as described in regulation E1;

and the retirement lump sum will be calculated as described in regulation E7.";

(b) in paragraph (3) after sub-paragraph (c) there shall be inserted–

"(d) the member–

(i) left pensionable employment after 30th March 2000;

(ii) has reached the age of 50; and

(iii) has applied to the Scottish Ministers for payment of the pension and retirement lump sum under this regulation.";

(c) in paragraph (4) for the words from "authority)" to "the pension" there shall be substituted–

"authority)–

(a) in the case of a member to whom sub-paragraph (d) of paragraph (3) above applies, when he makes the application referred to in head (iii) of that sub-paragraph; or

(b) in any other case, when he reaches the age of 60,

the pension".

(**9**) Inserted by S.I. 1997/1916 and amended by S.I. 1998/1593 and S.I. 1999/443.
(**10**) Inserted by S.I. 1997/1916 and amended by S.I. 1998/1593 and S.I. 1999/443.

Payment of lump sum on death

11. For paragraphs (1) to (3) of regulation F5 there shall be substituted–

"(1) A lump sum under any of regulations F1 to F4 shall be paid in accordance with the following paragraphs.

(2) Unless paragraph (3) or (3A) below applies, the lump sum shall be paid to the member's personal representative.

(3) Where the member dies and leaves a widow or widower, the lump sum may be paid to the widow or widower, unless–

(a) the member has given notice to the Scottish Ministers in accordance with paragraph (3B) below that the widow or widower is not to receive the payment, and has not revoked that notice; or

(b) paragraph (3A) below applies.

(3A) Where the member has given notice to the Scottish Ministers in accordance with paragraphs (3B) and (3C) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless–

(a) that person has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(3B) Notice to the Scottish Ministers for the purpose of paragraph (3) or (3A) above–

(a) shall be given only by a member who is in pensionable service under the scheme;

(b) shall be given in writing; and

(c) may at any time be revoked in writing;

and, subject to sub-paragraph (a) above, a member who revokes such a notice may give further notice for the purpose of one of those paragraphs.

(3C) A notice given for the purpose of paragraph (3A) above shall specify one person, who may be–

(a) an individual;

(b) a body corporate; or

(c) an unincorporated body.".

Medical and dental practitioners and trainee practitioners

12. In regulation R1 after the words "Health Board" in both places where they occur there shall be inserted "or Primary Care NHS Trust".

Mental Health Officers

13. In regulation R3–

(a) in paragraph (6) delete the words from "or service credited" to the end; and

(b) in paragraph (16)(c) for "a consultant" there shall be substituted "a specialist".

Participators in pilot schemes

14. In regulation R13(**11**)–

(**11**) Regulation R13 was inserted by S.I. 1998/1593 and substituted by 1999/443.

(a) In paragraph (1)–

(i) in sub-paragraphs (a), (b)(i), (c) and (d) after "Health Board" there shall be inserted "or Primary Care NHS Trust";

(ii) in sub-paragraphs (e) and (f)(i) after the word "Trust" there shall be inserted the words "or Primary Care NHS Trust";

(iii) in sub-paragraph (f)(ii) after the word "Trust" there shall be inserted the words ", by a Primary Care NHS Trust"; and

(b) for paragraph (2) there shall be substituted–

"(2) In paragraph (1) above, "relevant Health Board or Primary Care NHS Trust" means the Health Board or, as the case may be, the Primary Care NHS Trust with which agreement or agreements constituting the pilot scheme in question has or have been made.".

Suspension of pension on return to NHS employment

15. In regulation S1–

(a) in paragraph (1) after "consent))" delete "or" and insert ","; and

(b) in paragraph (1), after "(with actuarial reduction))" there shall be inserted "or a preserved pension is payable to the member in the circumstances described in E6,".

Reduction of pension on return to NHS employment

16. In regulation S2(1) for "regulations E1 to E6"(**12**) there shall be substituted "regulations E1 to E4 or in accordance with regulation E6(2)(b)(**13**),".

Interest on late payment of benefit

17. After regulation T8 there shall be inserted–

"**Interest on late payment of benefits**

T9.—(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Scottish Ministers shall pay interest, calculated in accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above shall not be payable where the Scottish Ministers are satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above shall be calculated at the base rate on a day to day basis from the due date to the date of payment, and shall be compounded with three-monthly rests.

(4) In this regulation–

"base rate" means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such rate, the rate which, when the base rate quoted by each reference bank is ranked in a descending sequence, is the first in the sequence;

(**12**) Regulation S2(1) was amended by S.I. 1997/1434.
(**13**) Regulation E6(2)(b) is inserted by regulation 10(a) of these Regulations.