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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 55**

**NATIONAL HEALTH SERVICE**

**The National Health Service Superannuation  
Scheme (Scotland) Amendment Regulations 2003**

<i>Made</i>	- - - -	<i>30th January 2003</i>
<i>Laid before Scottish Parliament</i>		
	- - - - -	<i>7th February 2003</i>
<i>Coming into force</i>	- -	<i>1st March 2003</i>

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 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, interpretation and extent**

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

- (a) regulations 3(b) and (c) and 14 to 21 shall have effect from 1st April 2001;
- (b) regulations 5(b) and (c), 7 to 10, 11(2) and (3), and 12 shall have effect from 5th April 2002; and
- (c) regulations 5(a), 6 and 11(1) shall have effect from 25th April 2000.

(2) In these Regulations—

- “the 1978 Act” means the National Health Service (Scotland) Act 1978(3);
- “the 1995 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(4).

(3) These Regulations extend to Scotland only.

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(1) 1972 c. 11; sections 10 and 12 were 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; the functions of the Secretary of State 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 Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

(3) 1978 c. 29.

(4) S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593 and 1999/443, and S.S.I. 2001/437 and 2001/465.

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

2. The 1995 Regulations shall be amended in accordance with regulations 3 to 21 of these Regulations.

### **Interpretation**

3. In regulation A2 (interpretation)–

(a) in the definition of “employing authority” after paragraph (c) insert–

“(cc) the Mental Welfare Commission established under section 2 of the Mental Health (Scotland) Act 1984(5);”.

(b) for the definition of “practitioner” substitute–

““practitioner”	(a) a registered medical practitioner, other than a GP registrar, who is an assistant practitioner, an associate general practitioner, a locum practitioner, a principal practitioner or a person who is treated as a practitioner under regulation R13 (participants in pilot schemes), or (b) a registered dentist or a person treated as a practitioner under regulation R13, but excluding a person (other than an associate general practitioner) who is paid wholly by way of salary by a National Health Service Trust, a Primary Care NHS Trust or a Health Board or a person treated as an officer under regulation R13;”.
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(c) the following definitions are inserted in alphabetical order at the appropriate places–

““assistant practitioner”	The meaning given in paragraph 1 of Schedule 1;”,
““associate general practitioner”	The meaning given in paragraph 1 of Schedule 1;”,
““locum practitioner”	The meaning given in paragraph 1 of Schedule 1;”,
““principal practitioner”	The meaning given in paragraph 1 of Schedule 1;”.

(d) the definition of “trainee practitioner” is omitted and after the definition of “final year’s pensionable pay” there is inserted–

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““GP registrar”	A “General Practice (GP) Registrar” as defined in the National Health Service (General Medical Services) (Scotland) Regulations 1995 (a doctor who is being trained in general practice by a practitioner whose name is included in a medical list) <b>(6)</b> ,”
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### Membership of the Scheme

4. In regulation B1(1)(b) for “trainee practitioners” substitute “GP registrars”.

### Meaning of “qualifying service”

5. In regulation C3 (meaning of “qualifying service”)—
- (a) in paragraph (1)(b) after “a personal pension scheme,” omit “,” and insert “or”, and after “buy-out policy” delete “or self employed pension arrangement”(7);
- (b) after paragraph (1)(b) insert—
- “(ba) in the case of a person who—
- (i) has become a member on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer, and
- (ii) has rights under another occupational pension scheme to which he was eligible to belong in his former employment in respect of which no transfer payment has been accepted under regulations N1(4) or N4,
- the period of employment that qualified the member for those rights;” and
- (c) after paragraph (4) insert—
- “(4A) Where a member who is employed on a casual basis—
- (a) ceases to pay contributions because of a break in his pensionable employment of a period not exceeding three months, and
- (b) re-enters pensionable employment on the same basis after the break,
- for the purposes of these Regulations he is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin the scheme when he re-enters pensionable employment.”.

### Part M Transfer Arrangements And Buy-Outs

6.—(1) In regulations M1(2)(b) and (3), M3(2) and M5(3)(b) omit “or self employed pension arrangement” in each place where they occur.

(2) In regulations M1(4) and M2(2) omit “, personal pension scheme or self-employed pension arrangement”.

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(6) S.I. 1995/416, as amended by The National Health Service (General Medical Services) (Scotland) Amendment Regulations 1998 (S.I.1998/4), which substituted “General Practice (GP) Registrar” for “trainee medical practitioner”. “Medical List” is defined in regulation 2(1) of those Regulations.

(7) Section 96(2)(a)(iii) of the Pension Schemes Act 1993 (c. 48) was amended by paragraph 3(2) of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30) extending the definition of personal pension scheme. References to “self employed pension arrangements” ceased to have effect from 25th April 2000.

### **Member's rights to transfer or buy-out**

7. In regulation M1(1) omit “with a preserved pension before reaching age 60, or age 59 where paragraph (3) applies.”.

8. After regulation M1(1) insert–

“(1A) Paragraph (1) only applies if the member–

- (a) leaves pensionable employment with a preserved pension before reaching age 60, or age 59 where paragraph (3)(b) applies; or
- (b) leaves pensionable employment on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.”.

### **Exercising a right to transfer or buy-out**

9. After regulation M2(4) insert–

“(4A) Paragraphs (2) or (3) of this Regulation do not apply if the member exercises the right to require a transfer or buy-out on the transfer of his employment to a new employer as a result of a transfer of an undertaking to that employer.”.

### **Transfers in respect of more than one member**

10. For regulation M6 substitute–

**“Special terms for transfers out (bulk transfers etc.)**

**M6.**—(1) If one or more members (“the transferring members”)–

- (a) leave pensionable employment,
- (b) join another occupational pension scheme, and
- (c) exercise a right to transfer to that scheme under regulation M1 (member’s right to transfer or buy-out),

the Scottish Ministers may, after taking advice from the Government Actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Scottish Ministers shall calculate the amount of any transfer payment paid under this regulation after taking advice from the Government Actuary.”.

### **Member's right to transfer accrued rights to benefits to the scheme**

11.—(1) In regulation N1(1) omit “, a self-employed pension arrangement”.

(2) In regulation N1(3) at the beginning of paragraph (a) insert “except where paragraph (3A) applies”.

(3) After regulation N1(3) insert–

“(3A) This paragraph applies where the member’s employment is transferred to an employing authority as a result of a transfer of an undertaking to that employing authority.”.

### **Transfers in respect of more than one member**

12. For regulation N4 substitute–

**“Special terms for transfers in (bulk transfers etc.)**

**N4.**—(1) This regulation applies where one or more members of another occupational pension scheme (“the transferring members”)—

- (a) cease to be in pensionable employment under that scheme,
- (b) join this scheme, and
- (c) consent in writing to a transfer payment being accepted in respect of them and pensionable service being credited to them as mentioned in paragraphs (2) and (3).

(2) The Scottish Ministers may, after taking advice from the Government Actuary, accept a single transfer payment in respect of the transferring members.

(3) Where such a transfer payment is accepted, each of the transferring members shall be credited with such additional period of pensionable service as the Scottish Ministers determine to be appropriate after taking advice from the Government Actuary.”.

**Medical and dental practitioners and trainee practitioners**

**13.** In regulation R1(2) for “trainee practitioners” substitute “GP registrars”.

**Amendments to Schedule 1**

**14.** Schedule 1 (medical and dental practitioners) is amended in accordance with regulations 15 to 21.

**Additional definitions used in Schedule 1**

**15.** In paragraph 1—

(a) the following definitions are inserted in alphabetical order at the appropriate places—

““locum practitioner” means a registered medical practitioner other than a GP registrar who—

(a) is not a principal practitioner, an associate general practitioner, an assistant practitioner or a person who is treated as a practitioner under regulation R13 (participants in pilot schemes),

(b) is either—

(i) included in a supplementary list prepared by a Health Board or Primary Care NHS Trust under section 24B of the 1978 Act<sup>(8)</sup> of persons approved by the Health Board or Trust for the purpose of assisting in the provision of general medical services, or

(ii) is included in a services list under section 17EA of the 1978 Act<sup>(9)</sup> and named as a performer of personal medical services in an agreement made under section 2 of the National Health Service Primary Care Act 1997, and

(c) is engaged under a contract for services with another practitioner, otherwise than in pursuance of a commercial arrangement with an agent, to deputise or assist in the provision of general medical services or personal medical services;”

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<sup>(8)</sup> Section 24B was inserted by section 18(2) of the [Community Care and Health \(Scotland\) Act 2002](#) (asp 5).

<sup>(9)</sup> [1978 c. 29](#). Section 17EA was inserted by section 18(1) of the [Community Care and Health \(Scotland\) Act 2002](#) (asp 5).

- (b) in the definition of “assistant practitioner” for the words “a medical or dental practitioner” substitute the words “a registered medical practitioner or registered dentist, being a practitioner”;
- (c) in the definition of “associate general practitioner” for the words “a medical practitioner” substitute the words “a registered medical practitioner other than a GP registrar ”;
- (d) for the definition of “principal practitioner” substitute—
  - ““principal practitioner” means a registered medical practitioner or registered dentist who is included in a list prepared in accordance with regulations made under sections 19(2)(a) or 25(2)(a) of the 1978 Act;”.

### **Application of Regulations with modifications**

**16.**—(1) In paragraph 2(1)—

- (a) after “Primary Care NHS Trust”, in both places where it occurs, insert “or, in the case of a locum practitioner, the listing Authority or the appropriate contracting party”.

(2) After paragraph 2(1) insert—

“(1A) In sub-paragraph (1)—

“the listing Authority”, in relation to a locum practitioner within paragraph (b)(i) of the definition of that expression, means the Health Board or Trust who prepare and publish the services list under section 17EA or the supplementary list under section 24B of the 1978 Act in which he is included,

“the appropriate contracting party”, in relation to a locum practitioner within paragraph (b)(ii) of the definition of that expression, means the Health Board or Primary Care NHS Trust with whom the agreement is made for the provision of piloted services by the person by whom he is treated as employed under regulation R13.”.

(3) At the end of paragraph 2(2) insert the words “(except that, unless and to the extent that paragraphs 2A or 2B apply in any particular case, any remuneration in respect of locum practitioner work concurrent with practitioner service is excluded from being pensionable earnings)”.

(4) After paragraph 2 insert—

#### **“Membership: locum practitioners**

**2A.**—(1) Regulation B1(2) (automatic membership of the scheme) does not apply to locum practitioners.

(2) A locum practitioner may apply to join the scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by the employing authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Scottish Ministers.

(4) If a locum practitioner wishes to apply to join the scheme from a date earlier than the coming into force of these Regulations he must submit an application under paragraph (2)—

- (a) in a case where immediately before the date of coming into force of these Regulations he is engaged under a contract for services with a practitioner, by virtue of which he is a locum practitioner, not later than ten weeks after he ceases to be so engaged, and
- (b) in any other case, before 31st August 2003.

(5) Except where paragraph (4) applies, no application may be made under paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.”.

**Modifications of provisions having effect from 1st April 2001 (locum practitioners) (retrospective effect when admitted to supplementary lists)**

**2B.**—(1) For the purposes of these Regulations, a person is treated as having been a locum practitioner or as being such a practitioner at any particular time during the period beginning with 1st April 2001 and ending with 30th August 2003 (both dates inclusive) if—

- (a) at that particular time, apart from the condition in paragraph (b) of the definition of “locum practitioner”, he would have fallen or falls within that definition, and
- (b) he meets that condition not later than 31st August 2003.

(2) For the purposes of these Regulations, a person is also treated as having been a locum practitioner or as being such a practitioner at any particular time during the period beginning with 1st April 2001 and ending with 30th August 2003 (both dates inclusive) if—

- (a) at that particular time, apart from the condition in paragraph (b) of the definition of “locum practitioner”, he would have fallen or falls within that definition, and
- (b) he—
  - (i) became or becomes a principal practitioner, an associate general practitioner, an assistant practitioner or a person who is treated as a practitioner under regulation R13 (participants in pilot schemes) after that particular time and not later than 31st August 2003;
  - (ii) became or becomes a medical pilot scheme employee treated as an officer under regulation R13(b)(ii) after that particular time and not later than 31st August 2003; or
  - (iii) became or becomes a registered medical practitioner who is an officer after that particular time and not later than 31st August 2003.”.

**Meaning of “pensionable earnings”**

17. In paragraph 3(1) (meaning of “pensionable earnings”) for “In the case of a practitioner other than an assistant practitioner,” substitute “In the case of a principal practitioner”.

**Meaning of “pensionable earnings” in relation to other practitioners**

18. In paragraph 6 (meaning of “pensionable earnings” in relation to other practitioners) –

- (a) In sub-paragraph (1)(a) between “overtime” and “;and”, and at the end of sub-paragraphs (3)(a) and (b), insert the words “or any payments made to the practitioner in respect of the provision of locum services”,
- (b) after sub-paragraph (3) insert—

“(4) In the case of a locum practitioner, “pensionable earnings” means all fees and other payments paid to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Scottish Ministers.

(5) In this paragraph references to the provision of locum services, in relation to a practitioner, are to general medical services or personal medical services provided by the practitioner when engaged under a contract for services with a practitioner, otherwise

than in pursuance of a commercial arrangement with an agent, to deputise or assist in the provision of such services.”.

### **Officer service treated as practitioner service**

**19.**—(1) In paragraph 9(1) and (8) after the words “a principal practitioner” insert the words “or a practitioner providing piloted services under an agreement between that practitioner and a Health Board or Primary Care NHS Trust”.

(2) After paragraph 9 insert—

#### **“Locum practitioners: breaks between contracts**

**9A.**—(1) Paragraph (4A) of regulation C3 does not apply to a locum practitioner and instead sub-paragraph (2) applies where a locum practitioner ceases to be engaged as such a practitioner and is re-engaged as such a practitioner before the expiry of a period not exceeding three months from the day on which he so ceases.

(2) For the purposes of these Regulations—

- (a) a locum practitioner is treated as continuing to be in qualifying service during the period not exceeding three months whilst he is not so engaged and as not being required to rejoin the scheme at the time when he becomes re engaged in pensionable service, but
- (b) that period does not count as practitioner service or as a period in pensionable employment.”.

### **Contributions to the scheme**

**20.** In paragraph 10 (contributions)—

- (a) in sub-paragraph (1) for “(5)” substitute “(5B)”, and
- (b) after sub-paragraph (5) insert—

“(5A) Locum practitioners must pay their contributions to their employing authority.

(5B) Contributions paid by locum practitioners under sub-paragraphs (4), (5) or (5A) must be paid to the Scottish Ministers no later than the 19th day of the month following that in which they are received from the practitioners.”.

### **Absence from work**

**21.** At the end of paragraph 18 (members absent from work) insert—

“(7) Regulations P1, P2 and P3 and the previous sub-paragraphs do not apply in the case of locum practitioners.”.

Victoria Quay, Edinburgh  
15th January 2003

*ANDREW P KERR*  
A member of the Scottish Executive



We consent

30th January 2003

*JIM FITZPATRICK*  
*PHILIP WOOLAS*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further 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(b) and (c) and 14 to 21 shall have effect from 1st April 2001, regulations 5(b) and (c), 7 to 10, 11(2) and (3), and 12 shall have effect from 1st April 2002 and regulations 5(a), 6 and 11(1) shall have effect from 25th April 2000. All other amendments shall have effect from the date of coming into force of these Regulations.

Regulation 3 amends regulation A2 (interpretation) to introduce various definitions relating to practitioners which are required as a result of the amendments enabling locum practitioners to be included in the scheme and to clarify that for the purposes of the 1995 Regulations, the Mental Welfare Commission is treated as an employing authority.

Regulation 4 amends regulation B1(1) (membership of the scheme) to delete the references to “trainee practitioners” and insert references to “GP registrars” in accordance with the change introduced by the National Health Service (General Medical Services) (Scotland) Amendment Regulations 1998.

Regulation 5 amends regulation C3 (meaning of “qualifying service”) to remove the references to “self employed arrangement” following changes introduced in the Welfare Reform and Pensions Act 1999. The amendments also enable service which a member could count in a previous scheme to count as qualifying service where no transfer payment has been made to the NHS Scheme when the member transferred to the NHS as a result of a transfer of an undertaking. This Regulation also provides for members employed on a casual basis to continue in qualifying service during short breaks in employment of less than three months.

Regulations 6 to 10 amend Part M (transfers out of the scheme). Regulations M1, M2 and M5 are amended so that in each place where they occur the words “self employed arrangement” will cease to have effect. The amendments also entitle members to a transfer payment where they leave the scheme after age 60 as a result of a transfer of an undertaking, and enable special terms to apply where one member transfers as a result of a transfer of an undertaking.

Regulations 11 to 12 amend Part N (transfers into the scheme) so as to enable transfer payments to be accepted for members who have reached age 60 and have transferred as a result of a transfer of an undertaking. They also provide for payments on special transfer terms to be accepted for a single member and in regulation N1 for the words “self-employed pension arrangement” to be omitted.

Regulation 13 amends regulation R1(2) (medical and dental practitioners and trainee practitioners) to delete the reference to “trainee practitioners” and substitute “GP registrars”.

Regulations 14 to 21 amend Schedule 1 to the 1995 Regulations (medical and dental practitioners) to provide for the admission of locum practitioners to the scheme.

Regulation 15 adds new definitions to paragraph 1 of the Schedule (additional definitions used in Schedule 1), including a definition of a “locum practitioner”.

Regulation 16 amends paragraph 2 of the Schedule (application of regulations with modifications) to identify the “employing authority” for locum practitioners and amends paragraph 2(2) to exclude from practitioner pensionable earnings other earnings in respect of concurrent locum practitioner service.

Regulation 16 also adds new paragraphs 2A and 2B. Paragraph 2A sets out the procedure for locums to apply to join the Scheme, including provision enabling applications to be made in relation to locum service on and after 1st April 2001.

The new paragraph 2B makes transitional provisions connected with retrospective commencement of regulations 14 to 21 of these regulations. It modifies the definition of a “locum practitioner” inserted by that paragraph in two ways:

- (i) doctors who would not fall into the definition can be treated as locums during the period beginning on 1st April 2001 and ending on 30th August 2003 if they meet one of the conditions in paragraph (b) of the definition immediately after the end of the period. (This is necessary because the supplementary lists referred to in paragraph (b)(i) of the definition were not in place at the beginning of the period, and some practitioners performing piloted services would not have been named as mentioned in paragraph (b)(ii)).
- (ii) doctors who would not fall into the definition can count as locums during the period beginning on 1st April 2001 and ending on 30th August 2003 if after performing locum services during that period they become another sort of practitioner not later than 31st August 2003.

Regulations 17 and 18 amend paragraphs 3 and 6 of the Schedule (meaning of “pensionable earnings”) so as to define the earnings that are pensionable for locums.

Regulation 19 amends paragraph 9 of the Schedule (officer service treated as practitioner service) to clarify that the provisions of paragraph (9) apply to practitioners providing piloted services under an agreement, and makes special provision enabling locums to be treated as continuing to be in qualifying service during short breaks between engagements.

Regulation 20 amends paragraph 10 of the Schedule (contributions to the scheme) to provide for locum practitioners to pay their contributions to the employing authority who must pay these contributions to the Scheme by the 19th day of the month following the month in which they are received from the Practitioners.

Regulation 21 (absence from work) provides that regulations P1, P2 and P3 and paragraph 18 of Schedule 1 to the 1995 Regulations which give rights in cases of absence from work are disapplied for locum practitioners.

These Regulations do not impose any costs on business.