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 STATUTORY INSTRUMENTS
 

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1977 No. 2138 (S. 164)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Superannuation) (War Service, etc.)  
(Scotland) Regulations 1977

Made - - - - 15th December 1977  
Laid before Parliament 6th January 1978  
Coming into Operation 27th January 1978

In exercise of the powers conferred on me by sections 10 and 12 of the Superannuation Act 1972(a) and of all other powers enabling me in that behalf, after consulting with such representatives of persons likely to be affected by these regulations as appear to me to be appropriate, and with the consent of the Minister for the Civil Service, I hereby make the following regulations:—

PART I

PRELIMINARY

*Citation and commencement*

1. These regulations may be cited as the National Health Service (Superannuation) (War Service, etc.) (Scotland) Regulations 1977 and shall come into operation on 27th January 1978.

*Interpretation*

2.—(1) In these regulations, unless the context otherwise requires—

“the principal regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1961(b), as amended(c);

“additional contributing service” means service which an officer is able to reckon by virtue of Part II of these regulations for the purpose of calculating any benefits payable by the Secretary of State under the principal regulations;

“excess remuneration” means, in relation to a retired officer of the armed forces of the Crown who is re-employed in those forces, any service pension drawn in respect of such period of re-employment or any addition to the normal pay attaching to the post in which the officer is re-employed which is granted by reason of the officer’s former employment in those forces;

“non-effective pay” includes naval, military and air force pensions, retired pay and gratuities (other than war gratuities, to which section 23 of the Finance (No. 2) Act 1945(d), which exempted war gratuities from income tax, applied);

(a) 1972 c. 11.

(b) S.I. 1961/1398 (1961 II, p. 2697).

(c) S.I. 1966/1522, 1972/1604, 1973/304, 746, 1713, 1974/441, 1357, 1975/1376 (1966 III, p. 4268; 1972 III, p. 4709; 1973 I, pp. 1061, 2379; III, p. 5204; 1974 I, p. 1447; II, p. 5204; 1975 II, p. 4693).

(d) 1945 (9 & 10 Geo. 6) c. 13.

“pension” includes any continuing payment payable by the Secretary of State under regulations 11B, 44, 46 and 47 of the principal regulations;

“public health service employment” means—

- (a) employment in Scotland, England, Wales, Northern Ireland or the Isle of Man which reckoned for the purpose of calculating the amount of any pension under the appropriate National Health Service superannuation scheme;
- (b) pensionable employment in a hospital directly administered by a Government Department;
- (c) employment by a local health authority or for the purposes of school health functions exercised by an education authority which reckoned for the purpose of calculating the amount of any pension under a public service pension scheme; or
- (d) pensionable employment in a medical school, being in London a medical or dental school or a post-graduate institute and elsewhere a department within a school of medicine or dentistry of a university;

“war service” means such service over the age of 18 as is mentioned in section 1 of the Superannuation Act 1946(a) at any time between 3rd September 1939 and 30th June 1950 (both dates inclusive) but does not include any such war service in respect of which an officer has received, and has not refunded, non-effective pay or excess remuneration;

and any other words and expressions have the same meanings as in the principal regulations.

(2) A reference in this Part or in Part II of these regulations to an officer shall be construed to include a reference to—

- (a) a practitioner to whom, by virtue of regulation 59 of the principal regulations, those regulations apply as if he were an officer;
- (b) a person who has become entitled to a pension under the principal regulations or the previous regulations in respect of his employment as an officer;
- (c) a person to whom the provisions of regulation 77 of the principal regulations apply; and
- (d) a person to whom regulation 20(1) of the principal regulations applies,

and any reference in this Part or Part II of these regulations to the principal regulations or to a regulation of the principal regulations shall be construed to include a reference to the previous regulations or the corresponding regulation of the previous regulations.

(3) References in these regulations to the provisions of any enactment or scheme shall, unless the context otherwise requires, be construed as references to those provisions as amended, modified, extended, applied or re-enacted by any subsequent enactment or scheme.

(4) The Interpretation Act 1889(b) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

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(a) 1946 c. 60.

(b) 1889 c. 63.

PART II  
WAR SERVICE

*Reckoning war service as contributing service under the principal regulations*

3.—(1) Subject to regulation 4 of these regulations, an officer described in paragraph (2) of this regulation may, on application to the Secretary of State, reckon in respect of his war service a period of additional contributing service equal to one-half the length of that war service, or such part thereof as is needed after applying the provisions of regulation 9 of these regulations to comply with regulation 5(1) of these regulations, for the purpose of calculating benefits payable to or in respect of him by the Secretary of State under the principal regulations.

(2) Paragraph (1) of this regulation shall apply to an officer who, after war service, entered public health service employment before July 1950, or on completion of such course of training as the Secretary of State may allow, being either—

- (a) a course in respect of which grants were paid to him under the Ministry of Labour and National Service Further Education and Training Scheme; or
- (b) some other university course or training course which he began before 30th June 1950.

4. An officer shall not be entitled to make application under regulation 3 of these regulations

(a) unless either—

- (i) his employment since the date of his first entry into public health service employment after war service is reckonable as contributing service under the principal regulations (not being contributing service which is reckonable in consequence of additional contributory payments or payments for added years under regulation 25(2) of the principal regulations or as a result of his having received and not repaid a return of his superannuation contributions); or
  - (ii) on his first entry into public health service employment after war service he became subject to a pension scheme providing benefits under a policy of insurance, and after leaving that employment, or any subsequent public health service employment in which he was subject to a pension scheme providing benefits under a policy of insurance, he entered public health service employment which reckons as contributing service under the principal regulations (not being contributing service which is reckonable in consequence of additional contributory payments or payments for added years under regulation 25(2) of the principal regulations or as a result of his having received and not repaid a return of his superannuation contributions) without a break of 12 months or more between consecutive periods of any such employment;
- (b) for war service which, apart from these regulations, already falls to be taken into account in the calculation of any pension under the principal regulations or which he had reckoned, or has previously had an opportunity to reckon, under another scheme for the provision of retirement benefits.

*Further provisions relating to the reckoning of additional contributing service*

5.—(1) Subject to paragraph (2) of this regulation, the amount of additional contributing service which an officer may reckon shall, when aggregated with contributing service already reckonable by him, not exceed such limits as are specified in regulation 29 of the principal regulations.

(2) Where an officer's contributing service is increased under regulation 34(3) or 68 of the principal regulations, such increase shall be applied after having regard to additional contributing service he may reckon.

6. Additional contributing service shall not reckon as mental health officer service for the purposes of regulation 8(1) of the principal regulations.

7. The remuneration during any period of additional contributing service shall be deemed to have been at an annual rate ascertained by reference to the contributions deemed to have been payable by an officer for the purposes of regulation 8 of these regulations, and any additional contributing service shall be treated as service otherwise than as a practitioner and shall be aggregated with any other service otherwise than as a practitioner for the purposes of regulations 65 and 66 of the principal regulations.

*Defraying the cost of reckoning additional contributing service*

8.—(1) Subject to the remaining paragraphs of this regulation, contributions for the period of an officer's war service shall be deemed to have been payable at an annual rate equal to the amount of the contributions paid by him in the first year of employment after 4th July 1948 in which he contributed to a superannuation scheme and which reckons as contributing service under the principal regulations (other than contributing service reckonable at half-length by virtue of regulation 34(1)(a) of the principal regulations) and there shall be deducted from benefits payable to or in respect of him under the principal regulations, other than a return of his contributions, an amount equal to the aggregate of—

- (a) a sum equal to one-half of the contributions deemed to have been payable as aforementioned for the period of his war service reckonable as additional contributing service; and
- (b) compound interest on that sum at the rate of  $3\frac{1}{2}$  per cent per annum with yearly rests from 1st July 1950 until the relevant date as provided in paragraph (4) of this regulation.

(2) A deduction under paragraph (1) of this regulation shall be made in the order specified in sub-paragraphs (a) to (c) of this paragraph as follows—

- (a) where the officer has made an application under regulation 3 of these regulations—
  - (i) from the retiring allowance,
  - (ii) from the pension, and
  - (iii) from the death gratuity (if any),

so, however, that where the officer dies before becoming entitled to receive payment of a retiring allowance, the deduction shall be made from the death gratuity;

- (b) where some other person has made an application as provided in regulation 11 of these regulations—
- (i) from any payment of death gratuity,
  - (ii) from any additional pension in respect of the officer,
  - (iii) from the widow's pension or child's allowance, and
  - (iv) from any further benefit payable under regulation 16(5) of the principal regulations;
- (c) in any case where a transfer payment is payable under the principal regulations, from the accrued retiring allowance and any outstanding balance shall be recovered from the resulting transfer payment.

(3) In the case of an officer who was in part-time employment in any part of the first year of employment mentioned in paragraph (1) of this regulation, the contributions deemed by that paragraph to have been payable shall be the amount that would have been payable on remuneration which the Secretary of State determines would have been payable in respect of comparable whole-time employment.

(4) The relevant date is—

- (a) in the case of a person who on 17th July 1975 was entitled to a pension, 17th July 1975; or
- (b) in the case of an officer who became or becomes a member of another superannuation scheme on or after 17th July 1975 and a transfer payment under the principal regulations is paid or becomes payable to that scheme in respect of him, the date of his ceasing to be an officer; or
- (c) in any other case, the day preceding that on which the person became or becomes entitled to a pension:

Provided that where a person has become entitled to a pension as mentioned in sub-paragraph (a) or (c) of this paragraph but has not become entitled to receive payment of that pension because his benefits have been recalculated in accordance with regulation 41 of the principal regulations, the relevant date shall be the date on which his benefits last fell to be recalculated under the said regulation 41 before he became entitled to payment thereof.

(5) Where the Secretary of State has received in respect of an officer a transfer payment from a health service scheme, and that payment has been reduced under a provision corresponding to paragraph (2)(c) of this regulation, there shall be deducted from benefits payable to or in respect of such officer under the principal regulations the amount that would have been deducted from corresponding benefits under that health service scheme.

(6) Where the amount of contributions paid by an officer in the first year of employment mentioned in paragraph (1) of this regulation cannot be ascertained because the records of a former employer are no longer available and the officer, having been invited to do so, cannot provide appropriate records, he shall be regarded as having paid contributions on such remuneration as his former employer was at the time in the practice of paying to a person of the same age and status.

(7) For the purpose of determining the contributions paid in the first year of employment mentioned in paragraph (1) of this regulation, a dental practitioner shall be deemed not to have paid contributions on remuneration in excess of an annual rate of £2,500 in the financial year ending 31st March 1949, £3,000 in the financial year ending 31st March 1950 and £3,500 in the financial year ending 31st March 1951.

(8) Where, for the purposes of section 1 of the National Insurance Act 1946(a), an officer's contributions in the first year of employment mentioned in paragraph (1) of this regulation were paid at a reduced rate, for the purposes of this regulation his contributions shall be deemed not to have been so reduced, and any pension to which he may become entitled in respect of additional contributing service shall not be reduced under the provisions of regulation 51 of the principal regulations.

*Adjustment of payments for added years in certain cases*

9. Where, apart from regulation 5(1) of these regulations, an officer who has purchased or is purchasing added years of contributing service under the principal regulations would be entitled to reckon additional contributing service to such extent that, if he continued in his employment, his total contributing service (including added years and additional contributing service) would fall to be limited under the said regulation 5(1) and regulation 29(1) of the principal regulations, the number of added years purchased shall be reduced by the number of whole years by which such total service would, apart from the said regulations 5(1) and 29(1), exceed the limit specified in the said regulation 29(1), and the Secretary of State shall adjust the amount payable by the officer by way of lump sum or instalments accordingly.

*Purchase of an unreduced retiring allowance*

10.—(1) Regulation 25B of the principal regulations shall apply so as to enable an officer who is able to reckon additional contributing service to elect to make payment in respect of that service as though the requirement in that regulation for elections to be made within 12 months were omitted, and for the purpose of calculating the amount payable under that regulation the material date shall be the date on which his election is received by the Secretary of State, so, however, that where such election is received after he ceases to be an officer the material date shall be the date on which he so ceased to be an officer.

(2) Regulation 22 of the National Health Service (Superannuation) (Scotland) Amendment Regulations 1975(b) except paragraphs (2) and (8) thereof, shall apply to any person therein mentioned in respect of any additional contributing service as though the references in that regulation to 31st December 1975 were references to the date of coming into operation of these regulations, so, however, that the material date shall be the date before the coming into operation of these regulations on which the person last ceased to be an officer for the purposes of the principal regulations.

*Additional provisions relating to an application under regulation 3 of these regulations*

11. Where, after 16th July 1975, a widow's pension or child's allowance becomes payable under the principal regulations in respect of the service of

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(a) 1946 c. 67.

(b) S.I. 1975/1376 (1975 II, p. 4693).

an officer who had he not died would have been able to reckon additional contributing service, the person entitled to such widow's pension or child's allowance shall be entitled to make application under regulation 3 of these regulations in lieu of the application which could have been made by such officer had he not died.

*Provisions relating to the adjustment of certain benefits*

**12.**—(1) Where an officer has become entitled to a pension under the principal regulations, such pension and the associated retiring allowance shall be adjusted to take account of additional contributing service he is able to reckon—

- (a) in the case of an officer who became entitled to such pension before 17th July 1975, as from 17th July 1975; and
- (b) in the case of an officer who became or becomes entitled to such pension on or after 17th July 1975, as from the date on which he became or becomes so entitled.

(2) Where an officer has become a member of another superannuation scheme after 16th July 1975 and a transfer payment has become payable to that scheme in respect of him, such transfer payment shall be adjusted to take account of additional contributing service he is able to reckon.

(3) Where a person mentioned in regulation 11 of these regulations has become entitled to a benefit mentioned therein, such benefit shall be adjusted to take account of additional contributing service which the officer mentioned in the said regulation 11 would have been able to reckon had he not died and any death gratuity payable in respect of him shall be adjusted accordingly.

(4) Notwithstanding the foregoing provisions of this regulation, where an application under regulation 3 of these regulations is received more than 12 months after the coming into operation of these regulations, no arrears of pension, widow's pension or child's allowance payable as the result shall be payable in respect of a period earlier than 12 months before the receipt of such application, so, however, that the Secretary of State may waive the operation of this paragraph in any case where he considers this to be appropriate.

**PART III**

*Reckoning as service of previous employment subject to a non-statutory superannuation scheme*

**13.**—(1) Subject to paragraph (7) of this regulation, where—

- (a) a person who is subject to the provisions of regulation 46 of the principal regulations and whose superannuation benefits are secured by policies of insurance; or
- (b) a person who is subject to the principal regulations and who became subject thereto on being transferred under the provisions of the National Health Service (Scotland) Act 1972(a) from employment in which he was subject to the Federated Superannuation Scheme for Nurses and Hospital Officers

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(a) 1972 c. 58.

elects, not later than 3 months after the operative date of these regulations, or within such longer period as the Secretary of State may in any particular case allow, that this regulation shall apply to him and surrenders to the Secretary of State the policies of insurance by which his superannuation benefits are or were secured, he shall be credited with service calculated in accordance with the provisions of paragraphs (2) and (3) or (5) of this regulation, and if he is a person referred to in sub-paragraph (a) of this paragraph the principal regulations shall apply to him as from the date he surrenders his policies of insurance.

(2) Notwithstanding the definition of service in regulation 2(2) of the principal regulations, where a person elects that this regulation shall apply to him the period during which the policies of insurance were fully maintained shall be reckonable as service at its full length for the purpose of determining whether any benefit is payable to or in respect of him under the principal regulations and for the purpose of calculating such benefit shall reckon in accordance with the provisions of paragraph (3) or (5) of this regulation.

(3) In calculating the service reckonable under the provisions of this regulation—

(a) any period during which the whole of the relevant insurance policies have been fully maintained up to the date of surrender to the Secretary of State shall, subject to the provisions of sub-paragraph (b) of this paragraph and paragraph (5) of this regulation be reckonable as contributing service under the principal regulations in the proportion of 9 years of reckonable service for every 10 years of the said period up to 24th March 1972 and in the like proportion for the remainder of the said period, shorter periods being reckoned proportionately;

(b) any period of part-time employment shall be treated as whole-time employment for a period which bears the same proportion to the period of part-time employment as the number of hours of employment in each week bears to the number of hours which would have constituted whole-time employment, and any period during which less than the full insurance premiums have been paid shall be reduced to a length which bears the same proportion to the whole of such period as the amount of insurance premiums paid bears to the full insurance premiums payable.

(4) The benefits in respect of the contributing service reckoning under the provisions of this regulation shall be reduced at the rate specified in regulation 51(3)(c) of the principal regulations and the periods of employment referred to in paragraph (3) of this regulation shall not be treated as participating employment for the purposes of the National Insurance (National Health Service Superannuation (Scotland) Scheme—Modification and Non-participation) Regulations 1976(a).

(5) The benefits in respect of any period of employment as a practitioner during which the whole of the relevant insurance policies have been fully maintained up to the date of surrender to the Secretary of State shall be calculated at 9/10ths of the benefits to which he would have been entitled if he had been subject to the principal regulations other than regulation 61(2)(d) during such period, and such benefits shall be reduced at the rate specified in regulation 51(3)(c) of the principal regulations.

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(a) S.I. 1976/1742 (1976 III, p. 4602).



(6) Where a person elects that this regulation shall apply to him any payments made by him towards the maintenance of the policies of insurance shall be treated for the purposes of regulation 2(9) of the principal regulations as if they were superannuation contributions.

(7) This regulation shall not apply to a person who is subject to any of the following pension schemes—

- (a) the Holloway Sanatorium Pension Scheme;
- (b) the Old Manor, Salisbury, Pension and Life Assurance Scheme; or
- (c) the Public Health Laboratory Service Group Pension Scheme.

(8) This regulation shall have effect as from 31st March 1977.

#### PART IV

##### *Determination of questions*

**14.** Regulation 82 of the principal regulations shall apply for the purposes of these regulations as it applies for the purposes of the principal regulations.

*Bruce Millan,*  
One of Her Majesty's Principal  
Secretaries of State.

New St. Andrew's House,  
Edinburgh.

13th December 1977.

Consent of the Minister for the Civil Service given under his Official Seal  
on 15th December 1977.

(L.S.)

*K. H. McNeill,*  
Authorised by the Minister for the Civil Service.

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations provide for the war service of certain members of the National Health Service superannuation scheme who entered public health service employment after war service to count at half its length for the purpose of calculating superannuation benefits payable to or in respect of them (Regulations 3 to 12); and enable certain National Health Service employees whose retirement benefits are provided through the proceeds of insurance policies to elect to join the main National Health Service superannuation scheme with back-service credit (Regulation 13).

In accordance with Section 12(1) of the Superannuation Act 1972, these Regulations have retrospective effect as from 17th July 1975, except for Regulation 13 which has effect as from 31st March 1977.

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