
STATUTORY INSTRUMENTS

1988 No. 1956

**The National Health Service (Superannuation)
(Scotland) Amendment Regulations 1988**

Citation and commencement

1.—(1) These Regulations may be cited as the National Health Service (Superannuation) (Scotland) Amendment Regulations 1988, and may be cited together with the National Health Service (Superannuation) (Scotland) Regulations 1980 to 1983⁽¹⁾ as the National Health Service (Superannuation) (Scotland) Regulations 1980 to 1988.

(2) These Regulations shall come into force on 12th December 1988 and shall have effect—

- (a) for the purposes of regulation 21 as from 31st March 1984;
- (b) for the purposes of regulation 20(a) as from 11th May 1984;
- (c) for the purposes of regulations 12, 13, 16(a), 23 and 26 and the Schedule as from 6th April 1988.

Interpretation

2. In these Regulations “the principal Regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1980⁽²⁾.

Definitions

3. In regulation 3 of the principal Regulations—

- (a) after the definition of “appointed day” there shall be inserted the following definition:—

““appropriate policy” means a policy of insurance or annuity contract which provides an annuity which satisfies requirements prescribed under paragraph 13(2) (b) of Schedule 1A to the Pensions Act⁽³⁾”;
- (b) in the definition of “mental health officer”, for the words “any consultant or senior hospital medical officer who devotes”, there shall be substituted the words “a maximum part-time consultant as defined in regulation 77(3) who devotes the whole or”;
- (c) after the definition of “statutory scheme” there shall be inserted the following definition:—

““superannuation scheme” means an occupational pension scheme within the meaning of section 66(1) of the Pensions Act”;
- (d) in the definition of “temporary additional session” there shall be added at the end the words “and includes also any session regardless of its length in excess of ten in any one week which is worked by a consultant to whom sub-paragraph (a) of regulation 77(3) applies”.

(1) S.I. 1980/1177, 1981/1680 and 1983/272

(2) S.I. 1980/1177, amended by S.I. 1981/1680 and 1983/272

(3) The Social Security Pensions Act 1975 (c. 60); Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraphs 29 and 30; paragraph 13 of Schedule 1A was further amended by S.I. 1987/1116, Schedule 6.

Female Nurses, Physiotherapists, Midwives and Health Visitors

4. In regulation 7 of the principal Regulations the words “and in regulation 41(1)” shall be deleted.

Mental Health Officers

5. In regulation 8 of the principal Regulations—

- (a) in paragraph (1)(a) the words “and in regulation 41(1)” shall be deleted; and
- (b) in paragraph (2)(a) the words “and in regulation 41(1)” shall be deleted.

Officer’s pension and retiring allowance

6. In regulation 10 of the principal Regulations—

- (a) in paragraph (1)(a)(iv) the words “39(4) or” shall be deleted; and
- (b) in paragraph (6)(b) the words “or being a person to whom regulation 39(4) applies” shall be deleted.

Death gratuity

7. In regulation 15 of the principal Regulations—

- (a) in paragraph (1), after the words “at the time of his death”, there shall be inserted the words “and he has not elected by notice in writing to the Secretary of State that she shall be excluded from entitlement under this provision”;
- (b) in paragraph (3) there shall be inserted at the beginning the words “Except in any case to which any proviso to regulation 16(1) applies and”;
- (c) in paragraph (4)—
 - (i) for the words from “Where” to “calculated” there shall be substituted the words “Where the death referred to in paragraph (1) of this regulation was of a married woman, this regulation shall apply”; and
 - (ii) the words “in this regulation” shall be deleted; and
- (d) after paragraph (6) there shall be inserted—

“(7) Notice to the Secretary of State under paragraph (1) of this regulation shall be given in writing and may be cancelled in the same way.”.

Widow’s pension

8. In regulation 16 of the principal Regulations, in proviso (iii) to paragraph (1), for the words “15th December” there shall be substituted the words “16th December”.

Child’s allowance

9. In regulation 17 of the principal Regulations—

- (a) in paragraph (2)(b)(i), after the words “profession or vocation”, there shall be inserted the words “in respect of which he does not receive remuneration of more than the allowable maximum”;
- (b) for paragraph (2)(b)(ii) there shall be substituted—

“(ii) has not attained the age of 19 years and is not engaged in remunerative full-time work and is not entitled to income support in terms of section 20 of the Social

Security Act 1986~~((4))~~ by reason that he is treated as receiving relevant education for the purposes of that section; or

(iii) by reason of permanent ill-health or infirmity of mind or body was at the time of the death of that person incapable, or at a time when sub-paragraphs (b)(i) or (ii) above applied to him became incapable, of earning his own living and has at all times subsequently remained incapable of so doing.”; and

(c) after paragraph (2) there shall be inserted the following paragraph:—

“(2A) In paragraph (2)(b)(i) above, “allowable maximum” means the sum of £1,177 per year as increased from time to time by—

(a) the amount of the increase, rounded up to the nearest pound, which would be applied under Part I of the Pensions (Increase) Act 1971~~((5))~~ (disregarding for this purpose the words “for a period of not less than two years” in section 3(3)(d) of that Act) to a pension of £1,177 per year first beginning on 6th April 1987; and

(b) the annual amount (if any) of essential expenses necessarily incurred for the purpose of the full-time training.”.

Pensions of limited duration for widows and dependent children

10. In regulation 18 of the principal Regulations, in paragraph (3)(a)(ii), after the words “profession or vocation” there shall be inserted the words “in respect of which he was not receiving remuneration of more than the allowable maximum as defined in regulation 17(2A), or was in a break in such instruction or training”.

Power to compound certain small benefits

11. In regulation 21 of the principal Regulations—

(a) in paragraph (1), after the words “payable to any person”, there shall be inserted the words “other than a widow or a dependent child”, and after the words “death gratuity” in both places where they occur there shall be inserted the words “, widow’s pension and child’s allowance”;

(b) in paragraph (2), for the words “in relation to”, there shall be substituted the words “where the annual sum is”; and

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

“(3) Where a person has died and the annual amount of any pension payable to his widow or any dependent child is less than £104, the Secretary of State may discharge his liability in respect of that pension by the payment of a lump sum representing its capital value.”.

Guaranteed minimum pension under the Pensions Act

12.—(1) In paragraph (1) of regulation 22 of the principal Regulations, after the words “paragraph (3) of this regulation”, there shall be inserted the words “and regulation 22A”.

(2) After regulation 22 of the principal Regulations there shall be inserted the following regulation:—

(4) 1986 c. 50

(5) 1971 c. 56

“Revaluation of guaranteed minimum in certain cases

22A.—(1) This regulation applies where a person—

- (a) has ceased to be an officer, and
- (b) has acquired a right to a transfer payment under regulation 80, and
- (c) has taken that right by exercising the option conferred by paragraph 13(2) of Schedule 1A to the Pensions Act in the way specified in sub-paragraph (b) of that paragraph,

and where his guaranteed minimum, and where appropriate, that of his widow, are appropriately secured within the meaning of section 52C(4) of that Act((6)).

(2) Where this regulation applies—

- (a) for the purposes of section 35(2) of the Pensions Act((7))(amount of guaranteed minimum), the person’s earnings factors shall be determined without reference to any order that comes into force under section 21 of that Act after the relevant year in which his service was terminated, and
- (b) thereafter the weekly equivalent mentioned in section 35(2) of that Act shall be increased—
 - (i) in accordance with any additional requirements for the time being prescribed for the purposes of section 45(1) (b)of that Act, or
 - (ii) by the minimum rate of increase provided for in section 35(7) of that Act((8)), whichever provides the greater increase.

(3) In this regulation “relevant year” and “final relevant year” have the meanings given in section 35(9) of the Pensions Act.”.

Reckoning as service of previous periods of employment

13. In regulation 23 of the principal Regulations—

- (a) in paragraph (1)(c)(i), for the words “6 months”, there shall be substituted the words “1 year”;
- (b) in paragraph (1)(c)(ii) there shall be added at the end “from that scheme”;
- (c) for paragraph (3) there shall be substituted the following paragraph:—

“(3) Subject to paragraphs (4) and (6) of this regulation, where a person enters employment as an officer and paragraph (1) does not apply to him, and in consequence of his service in previous employment he has accrued rights to benefits under a superannuation scheme (whether or not his rights are preserved in that scheme or have been transferred to and are held under one or more such schemes or are appropriately secured for the purposes of section 52C of the Pensions Act by one or more appropriate policies), that service shall be reckonable at its full length for the purpose of determining whether any benefit is payable to or in respect of him under these Regulations, if—

- (a) within 12 months after entering employment as an officer, he gives written notice to the Secretary of State that he wishes the Secretary of State to accept a transfer payment in relation to some or all of his accrued rights from—

(6) Section 52C was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 2, and was amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraph 26.

(7) Section 35(2) was amended by the Social Security Act 1986, Schedule 8, paragraph 8.

(8) Section 35(7) was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 22(7), by the Social Security Act 1979 (c. 18), Schedule 3, paragraph 18(b), and by the Social Security Act 1985, Schedule 3, paragraph 2.

- (i) the trustees or managers of the superannuation scheme under which some or all of those rights are held, or
- (ii) the insurance company with whom an appropriate policy securing some or all of those rights is held; and
- (b) those trustees or managers or that insurance company make a transfer payment in respect of some or all of those rights to the Secretary of State, and, when the Secretary of State so requests, indicate the period of service in respect of which it is made.”;
- (d) in paragraph (4) the words from “and the contributing service” to the end shall be omitted; and
- (e) for paragraph (6)(c) there shall be substituted the following sub-paragraph:—
 - “(c) decline to accept a transfer payment in respect of a person under paragraph (3) if it does not exceed the annual amount of the guaranteed minimum pension for which the Secretary of State would have been liable as a result of accepting it multiplied by the factor appropriate to that person, as set out in column 2 of the following table opposite his age, as at the date when the Secretary of State is requested to accept the transfer payment, as set out in column 1—

Age	Appropriate Factor
29 or under	8
30 to 39	9
40 to 49	10
50 or over	12”

Purchase of added years of contributing service

14. In regulation 27(9) of the principal Regulations—

- (a) for the words “ceased to make payments” there shall be substituted the words “failed or ceased to make payment”;
- (b) after the words “liable to pay and” there shall be inserted the words “, except in a case where payment was not made by reason of his absence from duty without leave,”; and
- (c) for sub-paragraph (d) there shall be substituted—
 - “(d) if sub-paragraph (c) of this paragraph has applied to him, his election under paragraph (1)(b) shall continue to have effect if—
 - (i) having been absent from duty without leave, he ceases within 12 months to be so absent (while remaining an officer), or
 - (ii) having ceased to be an officer in circumstances other than those mentioned in sub-paragraph (a) of this paragraph, he again becomes an officer within 12 months in circumstances, other than those to which regulation 23(3) applies, in which his previous service is reckonable as contributing service;”.

Purchase of unreduced retiring allowance

15. In regulation 29 of the principal Regulations—

- (a) in paragraph (2)(b), for the words “he has received payment of a retiring allowance”, there shall be substituted the words “he has become entitled to receive payment of a retiring allowance”;
- (b) in paragraph (6)—
 - (i) for the words “ceased to make payments” there shall be substituted the words “failed or ceased to make payment”;
 - (ii) after the words “liable to pay and” there shall be inserted the words “, except in a case where payment was not made by reason of his absence from duty without leave.”; and
 - (iii) for sub-paragraph (d) there shall be substituted—
 - “(d) if sub-paragraph (c) of this paragraph has applied to him, his election under paragraph 1(b) shall continue to have effect if—
 - (i) having been absent from duty without leave, he ceases within 12 months to be so absent (while remaining an officer), or
 - (ii) having ceased to be an officer in circumstances other than those mentioned in sub-paragraph (a) of this paragraph, he again becomes an officer within 12 months in circumstances, other than those to which regulation 23(3) applies, in which his previous service is reckonable as contributing service.”.

Return of contributions

16. In regulation 39 of the principal Regulations—

- (a) the full stop at the end of paragraph (3) shall be replaced by a colon and there shall be inserted the following words:—

“Provided that the sum payable to a person whose application for a refund of contributions has been received by the Secretary of State before 6th April 1988 shall be reduced by an amount equal to the tax which would have been chargeable to the Secretary of State had the Secretary of State made a refund of the contributions before that date and notwithstanding that the refund is made on or after that date.”;
- (b) paragraph (4) shall be deleted.

Reduction of pension in certain cases

17. In regulation 42 of the principal Regulations—

- (a) in paragraph (4)(c)(i), after the words “pay period”, there shall be inserted the words “other than as a result of a change in the conditioned hours of a grade”;
- (b) in paragraph (5), between sub-paragraph (e)(iii) and the provisos, there shall be inserted the words “so however that if the amount arrived at is less than the amount of pension payable the pre-retirement earnings shall be deemed to be the latter amount.”.

Separate benefits in the case of certain re-employed pensioners

18. In regulation 44(1) of the principal Regulations, for the words “payable out of public funds, whether under these regulations or otherwise, has become”, there shall be substituted the words “under these or the previous regulations has again become”.

Benefits of officers who have exercised option to retain rights corresponding with those previously enjoyed

19. In regulation 46 of the principal Regulations—

- (a) in paragraph (4), for the words “regulations 41 and”, there shall be substituted the word “regulation”;
- (b) in paragraph (5) the proviso shall be deleted; and
- (c) in paragraph (6)—
 - (i) in sub-paragraph (a), for the words “regulations 26(7) and 39(4)”, there shall be substituted the words “regulation 26(7)”;
 - (ii) in sub-paragraph (d), the following shall be substituted for proviso (i):—
 - “(i) the provisions contained in proviso (i)
and also, except where a person ceased to be an officer to whom this regulation applies before 24th December 1981, in provisos (a) and (d) to regulation 38(1) shall be applicable in determining the officer’s remuneration in respect of his final year of paid employment;”;
 - (iii) the following shall be substituted for sub-paragraph (h):—
 - “(h) for the purposes of calculating any benefit (other than a benefit in respect of which sub-paragraph (d)(ii) of this paragraph applies) which is payable to or in respect of any officer to whom this paragraph applies, account shall be taken of the provisions of proviso (i) to regulation 38(1); and”.

Payments without proof of title

20. In regulation 61 of the principal Regulations

- (a) for “£1,500” there shall be substituted the words “£5,000, or such higher amount as would for the time being be applicable in relation to the death if these Regulations were an enactment to which section 1 of the Administration of Estates (Small Payments) Act 1965⁽⁹⁾ (increase in amounts disposable on death without representation) applied;” and
- (b) the words from “or in the case of” to “may think fit” shall be deleted.

Application to officers in State hospitals

21. In regulation 64 of the principal Regulations, for the words from “hospitals provided or deemed to be” to “as if the Secretary of State”, there shall be substituted the words “State hospitals provided by the Secretary of State under Part VIII of the Mental Health (Scotland) Act 1984⁽¹⁰⁾, as if the Secretary of State or, where a State Hospital Management Committee has been constituted under section 91(2) of that Act, the State Hospital Management Committee”.

Meaning of “remuneration”

22. In regulation 68 of the principal Regulations—

- (a) in proviso (b) to paragraph (2), there shall be inserted at the beginning the words “subject to paragraph (8)”;
- (b) in proviso (b)(ii) to paragraph (2) the words “(as defined in paragraph (8) of this regulation)” shall be deleted; and

⁽⁹⁾ 1965 c. 32

⁽¹⁰⁾ 1984 c. 36

- (c) in paragraph (8)(a), at the end, there shall be inserted the words “so however that references to” aggregate superannuable remuneration “and to” total remuneration “in proviso (b) to paragraph (2) shall not include any remuneration which is stated in any notice given under that proviso to be remuneration received by one partner which is not to form part of the partnership profits”.

Rights on transfer to other employment

23.—(1) For the heading to regulation 80 of the principal Regulations there shall be substituted the heading “Right to a transfer payment”.

(2) In regulation 80 of the principal Regulations—

(a) for paragraph (1) there shall be substituted the following paragraph:—

“(1) Subject to paragraphs (4) and (6), where a person has left employment in which he was an officer (hereafter referred to as his “old employment”) then if—

- (a) his old employment terminated before he attained the age of 60 years or, where paragraph (6) applies, the age of 59 years;
- (b) he is a person—
 - (i) who has completed 2 or more years' service, or
 - (ii) who, within 12 months (or within such longer period as the Secretary of State may in any particular case allow) of leaving his old employment, has taken up employment in which he participates in a superannuation scheme and has, within 12 months after taking up that new employment, made an application such as is mentioned in sub-paragraph (d) for a transfer payment;
- (c) no benefit under these Regulations has been paid to him in relation to his old employment other than—
 - (i) a benefit consisting of a return of contributions in respect of part only of his contributing service in his old employment (whether or not repaid to the Secretary of State), or
 - (ii) a benefit consisting of a return of contributions in respect of all of his contributing service in his old employment paid to him by the Secretary of State under regulation 39 where he has repaid to the Secretary of State an amount equal to the sum received by him, or
 - (iii) any funds paid to him on account of benefit under these or the previous Regulations, where he has ceased to be employed in the circumstances mentioned in regulation 10(4) and has repaid to the Secretary of State the amount paid to him;
- (d) he has, before—
 - (i) attaining the age of 60 years, or
 - (ii) where paragraph (6) applies, attaining the age of 59 years, or 6 months after the date on which his old employment terminated, whichever is later, made an application in writing to the Secretary of State for a transfer payment to be made and has not subsequently withdrawn it in accordance with paragraph (9)(a); and
- (e) where paragraph (6) applies, he has completed 2 or more years' service, the Secretary of State shall, in respect of that person provide a transfer payment, calculated in accordance with Part I of Schedule 2, to be used in accordance with

paragraph 13 of Schedule 1A to the Pensions Act at that person's option in one or more of the ways set out in sub-paragraph (2) of that paragraph.”;

- (b) paragraphs (1A) and (2) shall be deleted;
- (c) in paragraph (3), for “new employment”, there shall be substituted “employment”;
- (d) in paragraph (5), for “, regulation 22(3)(c)(ii) and regulation 81”, there shall be substituted “and regulation 22(3)(c)(ii)”;
- (e) after paragraph (5) there shall be added the following paragraphs:—

“(6) This paragraph applies where a person opts to have his transfer payment, or any portion of it, made to one or more insurance companies to purchase an appropriate policy.

(7) Subject to paragraph (8), where the Secretary of State is to make a transfer payment he shall do so—

- (a) within 12 months of the date on which an application under paragraph (1)(d) is received by him; or
- (b) if the person in respect of whom the transfer payment is to be made—
 - (i) ceased to be employed in contributing service on a date prior to his attaining the age of 59 years, and
 - (ii) made his application for a transfer payment within 6 months of that date, by the date on which he attains the age of 60 years (if this is earlier than the date specified in sub-paragraph (a) above).

(8) Where proceedings before a court have been commenced against a person at any time before the expiry of the period of 12 months beginning with the date on which his contributory service terminates and it appears to the Secretary of State that the proceedings may lead to any retiring allowance or gratuity payable under these Regulations to or in respect of the person being forfeited in whole or part under regulation 62, the date by which the Secretary of State shall make a transfer payment shall be—

- (a) the date before which he would be required to do so under paragraph (7), or
- (b) the end of the period of three months after the conclusion of the court proceedings (including any proceedings on appeal),

whichever is the later.

- (a) (9) An application for a transfer payment to be made may be withdrawn by giving notice in writing to the Secretary of State, but such a notice will be of no effect if prior to the date of receiving it the Secretary of State has entered into an agreement with a third party to use the whole or any part of the person's transfer payment in one of the ways set out in paragraph 13 of Schedule 1A to the Pensions Act;

- (b) a person who withdraws an application may make another.”.

Provisions relating to approved employment

24. In regulation 82 of the principal Regulations—

- (a) in paragraph (1)—
 - (i) the words “(other than a person who is entitled to benefits under regulation 10(1)(a)(iv))” shall be deleted;
 - (ii) after the words “become entitled to” there shall be inserted the words “receive payment of”; and

- (iii) for the words “3 months” there shall, in both places where they occur, be substituted the words “6 months”;
- (b) in paragraph (2)(c), after the word “officer”, there shall be inserted the words “,so however that, for the purpose of calculating any death gratuity, regulation 15(2)(a)(i) (average remuneration) shall be disregarded”;
- (c) paragraph (5) shall be deleted.

Allocation of part of pension

25. In paragraph 1(d) of Schedule 1 to the principal Regulations, for the sum “£78”, there shall be substituted the sum “£104”.

Schedule 2

26. For Schedule 2 to the principal Regulations, there shall be substituted Schedule 2 set out in the Schedule to these Regulations.

Schedule 7

27. In paragraph 3 of Schedule 7 to the principal Regulations (purchase of added years), after sub-paragraph (1), there shall be inserted the following sub-paragraph:—

“(1A) Notwithstanding regulation 36(1)(a)(ii), any period of service referred to therein shall be reckonable at its full length for the purpose of determining the maximum number of years of additional contributing service that an officer may elect to purchase.”.

Revocations

- 28.—(1) Regulations 41 and 81 of the principal Regulations are hereby revoked.
- (2) The National Health Service (Superannuation) (Scotland) Amendment Regulations 1974((11)) are hereby revoked.

Application of Regulations

29.—(1) Regulation 7(a) of these Regulations shall not apply in relation to any person who ceased to be an officer before these Regulations came into force.

(2) Regulation 24(b) of these Regulations shall not apply in relation to any benefit which is being paid or may become payable under the principal Regulations to or in respect of any person who, having served in an employment or office in service which qualifies persons to participate in the benefits for which those Regulations provide, has ceased to serve or has died before these Regulations came into force.

(3) Regulations 23 and 26 shall not have effect—

- (a) in relation to any person who has completed 5 or more years' service as an officer and whose employment as such an officer terminated before 1st January 1986, so as to allow him to exercise an option under regulation 80 of the principal Regulations which would not have been available to him had these Regulations not been made; or
- (b) in relation—
 - (i) to transfer payments made by the Secretary of State to statutory schemes, or schemes which fall to be treated by him as statutory schemes for the purposes of Schedule 2

to the principal Regulations, where an application was received by him before 6th April 1988; and

(ii) to transfer payments made by such schemes to the Secretary of State before that date.

(4) Where the whole, or any part of, a transfer payment made in respect of a person—

(a) falls to be calculated by reference to service rendered by him before the coming into force of these Regulations; and

(b) is to be used by the Secretary of State, at that person's option, to acquire transfer credits in an occupational pension scheme which is not a statutory scheme; and the amendments made to the principal Regulations by regulations 23 and 26 of these Regulations would result in the amount or value of those transfer credits being reduced, that transfer payment, or that part of it, shall be calculated as if regulations 23 and 26 of these Regulations had not been made.

St Andrew's House,
Edinburgh
20th October 1988

Michael B Forsyth
Parliamentary Under Secretary of State Scottish
Office

We consent,

31st October 1988

David Lightbown
David Maclean
Two of the Lords Commissioners of Her
Majesty's Treasury