

1988 No. 1956 (S.186)

NATIONAL HEALTH SERVICE, SCOTLAND

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

<i>Made</i>	- - - -	<i>31st October 1988</i>
<i>Laid before Parliament</i>		<i>21st November 1988</i>
<i>Coming into force</i>		<i>12th December 1988</i>

The Secretary of State, in exercise of the powers conferred on him by sections 10 and 12 of the Superannuation Act 1972(a) and section 35(7) of the Social Security Pensions Act 1975(b), as read with regulation 33A of the Occupational Pension Schemes (Contracting Out) Regulations 1984(c), and of all other powers enabling him in that behalf, after consulting with such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate, in accordance with section 10(4) of the Superannuation Act 1972, and with the consent of the Treasury(d), hereby makes the following Regulations:

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(e) 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(f).

Definitions

3. In regulation 3 of the principal Regulations—

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

(a) 1972 c.11; section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7, Part II.
(b) 1975 c.60; section 35(7) was amended by the Social Security Act 1979 (c.18), Schedule 3, paragraph 18(b), and by the Social Security Act 1985 (c.53), Schedule 3, paragraph 2; see section 66(1) of the 1975 Act for definitions of “occupational pension scheme” and “public service pension scheme” relevant to the exercise of the statutory powers under which these Regulations are made.
(c) S.I. 1984/380; the relevant amending instruments are S.I. 1985/1930 and 1986/1716.
(d) The function was transferred to the Treasury by S.I. 1981/670.
(e) S.I. 1980/1177, 1981/1680 and 1983/272.
(f) S.I. 1980/1177, amended by S.I. 1981/1680 and 1983/272.

““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(a);”;

- (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”.

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”.

(a) 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.

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(a) 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(b) (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:—

“Revaluation of guaranteed minimum in certain cases

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

- (a) has ceased to be an officer, and

(a) 1986 c.50.

(b) 1971 c.56.

- (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(a).

(2) Where this regulation applies—

- (a) for the purposes of section 35(2) of the Pensions Act(b)(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(c), 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—
 - (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:—

(a) 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.

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

(c) 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.

“(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(a) (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.

(a) 1965 c.32.

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(a), 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
- (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 subparagraph (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,

(a) 1984 c.36.

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.

(9)(a) 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"; and
- (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(a) 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

(a) S.I. 1974/441.

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

**SCHEDULE SUBSTITUTED FOR SCHEDULE 2 TO THE PRINCIPAL
REGULATIONS**

“SCHEDULE 2

Regulations 23 and 80(1)

**THE CALCULATION OF TRANSFER PAYMENTS AND OF SERVICE TO BE
CREDITED IN RESPECT OF TRANSFER PAYMENTS MADE TO
THE SECRETARY OF STATE UNDER REGULATIONS 23 AND 80**

PART 1 — CALCULATION OF TRANSFER PAYMENT

1. Subject to the provisions of paragraphs 2, 3, 5 and 6, a transfer payment to be made in accordance with the provisions of regulation 80 in respect of a person shall be—

- (a) the capitalised value of his accrued rights and any associated rights under the Pensions (Increase) Act 1971 and the Pensions (Increase) Act 1974(a), less a sum, if any, in respect of any state scheme premium which the Secretary of State has paid and not recovered in respect of a period of service included in the valuation of those rights; together with
- (b) where the transfer payment is, without reasonable excuse, not made within 6 months of the material date and it is not to be made to a statutory scheme (or a scheme being treated by the Secretary of State as a statutory scheme for the purposes of this Schedule)—
 - (i) interest, if any, calculated on a daily basis over the period from the material date to the date on which the transfer payment is made, at the rate set out in regulation 4(4)(a) of the Occupational Pension Schemes (Transfer Values) Regulations 1985(b); or, if it is greater,
 - (ii) the amount by which the transfer payment falls short of what it would have been if the material date had been the date on which the transfer payment was made.

2. Where, prior to the last date on which he is required to make a transfer payment under these Regulations, the Secretary of State has directed that a person's benefits under these Regulations shall be forfeited in whole or part, any transfer payment payable in respect of that person shall be reduced in proportion to the reduction in the total value of the benefits or shall be withheld, as the case may be.

3. Where a person requests that a transfer payment be made to a superannuation scheme—

- (a) which is not contracted out within the meaning of section 32 of the Pensions Act(c); and
- (b) the trustees or managers of that scheme are able or willing to have transferred to it only the liability for a member's accrued rights other than his and his widow's rights to guaranteed minimum pensions; and
- (c) he does not require the Secretary of State to use that portion of his transfer payment that represents his guaranteed minimum pensions in one of the ways specified in paragraph 13(2) of Schedule 1A to the Pensions Act,

then his transfer payment shall be reduced by the deduction of an amount sufficient for the Secretary of State for Social Services to meet his liability in respect of that person's and his widow's guaranteed minimum pensions.

4. In this Schedule—

- (a) “accrued rights” means the rights which have accrued in respect of a person under these Regulations at the material date, or which would have accrued in respect of him if the period of service necessary to satisfy the requirements of regulation 10(1)(a)(iv) had been the period which he had completed at that date;
- (b) “capitalised value” means the capitalised value at the material date as determined by the Secretary of State, having regard to investment conditions and the contingencies on which benefits are, or are to be, payable under these Regulations;
- (c) “material date” means the date on which the person left employment in which he was an officer or, if it is later, the date on which he made an application for a transfer payment which he has not subsequently withdrawn; and
- (d) “state scheme premium” means a state scheme premium or a transfer premium under Part III of the Pensions Act.

(a) 1974 c.9.

(b) S.I. 1985/1931, to which there are amendments not relevant to these Regulations.

(c) Section 32 was amended by the Social Security and Housing Benefits Acts 1982 (c.24), Schedule 4, and by the Social Security Act 1986 (c.50), section 9 and Schedules 2, 10 and 11.

5. Where one or more transfer payments have been made to the Secretary of State in respect of a member, any transfer payment made by him shall be at least equal to the aggregate of those transfer payments and any contributions made by that person under regulation 9, 27 or 29, except where it falls to be made to a statutory scheme (or a scheme being treated by the Secretary of State as a statutory scheme for the purposes of this Schedule).

6. A transfer payment made under this Schedule shall be at least equal in amount to the cash equivalent, if any, to which a person would otherwise be entitled under Part II of Schedule 1A to the Pensions Act.

PART II — CALCULATION OF CREDITED SERVICE AND CREDITED PRACTITIONER'S REMUNERATION

7. Where a transfer payment has been made to, and accepted by, the Secretary of State, there shall be credited to the officer in respect of whom the payment was made—

- (a) in the case of an officer who is not a practitioner, a period of contributing service calculated in accordance with paragraph 8; and
- (b) in the case of an officer who is a practitioner, a period of contributing service and an associated amount of remuneration calculated in accordance with paragraph 9.

8. For the purposes of paragraph 7(a) (contributing service to be credited to an officer who is not a practitioner)—

- (a) where the transfer payment—
 - (i) is made by the trustees or managers of a statutory scheme, or any other scheme which is at the appropriate date treated by the Secretary of State as a statutory scheme for the purposes of this Schedule;
 - (ii) represents all of the officer's accrued rights in that scheme; and
 - (iii) has been calculated in a manner consistent with the methods adopted and assumptions made by the Secretary of State in determining the amount of transfer payments to be made to schemes which are, or which fall to be treated as, statutory schemes under Part I of this Schedule,

the period of contributing service to be credited to the officer shall be equal to the period of service which, if used to calculate a transfer payment to a superannuation scheme which is, or which falls to be treated as, a statutory scheme under Part I of this Schedule, would produce an amount equal to the transfer payment received by the Secretary of State; and in making the calculation regard shall be had to the officer's age, rate of pensionable pay, marital status and, in addition, to any other factor notified to the Secretary of State by the trustees or managers of the scheme making the payment as having been taken into account in determining its amount; and

- (b) in any other case, the period of contributing service credited to the officer shall be calculated in a manner consistent with the methods adopted and assumptions made by the Secretary of State in determining the amount of transfer payments to be made to superannuation schemes (which do not fall to be treated as statutory schemes) under Part I of this Schedule, due allowance being given for expected increases in the average remuneration of an officer of the same age as the officer in question between the appropriate date and the date on which the particular officer in respect of whom the transfer payment was made would attain the age of 60 years.

9.—(1) For the purposes of paragraph 7(b), the period of contributing service credited to an officer who is a practitioner shall be equal to—

- (a) in the case of a transfer payment made by an insurance company—
 - (i) where the payment is in respect of all of the officer's rights as secured by the appropriate policy, the period of service which gave rise to such of his accrued rights which were initially secured by it, and
 - (ii) where the payment represents part only of his rights, that period of service, reduced proportionally, and
- (b) in any other case, the period of service which was taken into account by the trustees or managers of the superannuation scheme making the payment in determining the amount of it.

(2) For the purposes of paragraph 7(b)—

- (a) the amount of associated remuneration to be credited to an officer who is a practitioner shall be of an amount which, using the rate of pension accrual applicable to an officer who is not such a practitioner, would produce an accrued pension under these Regulations equal in value to the transfer payment received by the Secretary of State, and the manner in which that

amount is calculated shall be consistent with the methods to be adopted and the assumptions to be made by the Secretary of State—

- (i) in a case where the transfer payment is made by a scheme which is a statutory scheme, or any other scheme which is at the appropriate date treated by the Secretary of State as a statutory scheme for the purposes of this Schedule, under paragraph 8(a), and
 - (ii) in any other case under paragraph 8(b);
- (b) remuneration credited in accordance with head (a) of this sub-paragraph shall be added to the officer's remuneration for the financial year in which the appropriate date falls, and in this regard no account shall be taken of the limit on the remuneration of dental practitioners mentioned in regulation 68; and
 - (c) no remuneration other than that specified in this sub-paragraph shall be credited to the officer as a result of the contributing service credited to him in consequence of the transfer payment in question.

10. In this Part of this Schedule—

- (a) "appropriate date" means the date on which the person in respect of whom the transfer payment is made became such an officer or, if the transfer payment is received more than 12 months after that date, the date on which it is received; and
- (b) "associated remuneration" means the amount of remuneration to be credited to an officer who is a practitioner and which is associated with the period of contributing service credited to that officer as a result of a transfer payment."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Superannuation) (Scotland) Regulations 1980 ("the principal Regulations") which provide for the payment of pensions and other benefits to persons engaged in the National Health Service.

The main changes to the principal Regulations are—

- (a) in regulation 3, the definitions of "mental health officer" and "temporary additional session" are amended, and two new definitions (of "appropriate policy" and "superannuation scheme") are inserted (regulation 3);
- (b) regulation 15 is amended to allow a person to elect that his widow be excluded from entitlement to a death gratuity and to apply the provisions for entitlement to a death gratuity to a widower in the same way as to a widow (regulation 7);
- (c) regulations 17 and 18 are amended to introduce an earnings limit (initially £1,177) for children receiving full-time training, in respect of whom a child's allowance is payable or in respect of whom their widowed mother qualifies for increased pension entitlement (regulations 9 and 10);
- (d) regulation 17 is also amended to extend the child's allowance to cover a person under the age of 19 who is not in remunerative full-time work and who is not entitled to income support and to allow for an allowance to continue to be paid to a child who was not permanently incapacitated at the time of the officer's death but who subsequently became so while the allowance was still payable (regulation 9);
- (e) regulation 21 is extended to provide for commutation of a contingent widow's pension and child's allowance and commutation of a widow's pension or child's allowance of less than £104 a year (regulation 11);
- (f) regulation 22 is amended, and a new regulation 22A is added, to provide for the exclusion of officers' guaranteed minimum pensions from revaluation under section 21 of the Social Security Pensions Act 1975 where those pensions are appropriately secured by a policy of insurance or annuity contract, within the meaning of section 52C of that Act, following a transfer payment (in such circumstances they are to be revalued by a fixed percentage) (regulation 12);
- (g) regulation 23 is amended and a new Part II of Schedule 2 substituted, in particular, to introduce a method of calculating credited service and credited practitioner's remuneration consistent with the methods adopted and the assumptions made in determining a transfer payment under regulation 80 and Part I of Schedule 2 (as amended by regulations 23 and 26 of these Regulations) (regulations 13 and 26 and the Schedule);
- (h) in regulations 27 and 29 the position where a person, who has made an election to purchase added years or an unreduced retiring allowance, is absent without leave, is clarified and paragraph 3 of Schedule 7 is amended so that any period of service which is normally reckonable at half length is reckonable at its full length for the purpose of determining the number of added years which may be purchased (regulations 14, 15 and 27);
- (i) in regulation 42 minor amendments are introduced in relation to re-employment earnings deductible from a pension (regulation 17);
- (j) regulation 44 is amended to introduce minor easements in relation to re-employment earnings deductible from a pension (regulation 18);
- (k) in regulation 61 the maximum sum payable on death without confirmation is increased from £1,500 to £5,000 or such higher sum as may be specified by section 1 of the Administration of Estates (Small Payments) Act 1965 (regulation 20);
- (l) regulation 64 is amended to cover any cases where the responsibility for staff of a State hospital changes from the Secretary of State to a State Hospital Management Committee (regulation 21);
- (m) regulation 80 is amended, in particular, to provide that an officer's right to a transfer payment shall be at least equal to his right to a cash equivalent under paragraph 12 of Schedule 1A to the Social Security Pensions Act 1975 (as inserted by the Social Security Act 1985, Schedule 1) and so that in exercising his choice as to how his transfer payment is to be used an officer has available at least as broad a choice as

is available to him under that Schedule to that Act (regulations 23 and 26 and the Schedule);

- (n) regulation 82 is amended, in particular, to provide that, in calculating the benefits payable on death in approved employment, the first of the three methods of calculating a death gratuity is to be disregarded (regulation 24);
- (o) in paragraph 1(d) of Schedule 1 the minimum part of a pension which may be surrendered for allocation to a spouse or dependant is increased to that sufficient to secure an annual pension of £104 (instead of £78) (regulation 25).

These Regulations also make a number of minor and consequential amendments.

Section 12(1) of the Superannuation Act 1972 authorises the making of Regulations with retrospective effect. Regulation 21 has effect from 31st March 1984, regulation 20(a) as from 11th May 1984 and regulations 12, 13, 16(a), 23 and 26 and the Schedule as from 6th April 1988 (regulation 1(2)).