
STATUTORY INSTRUMENTS

1993 No. 3235 (S.312)

PENSIONS

The Pensions Increase (Approved Schemes) (National Health Service) (Scotland) Amendment Regulations 1993

Made - - - - *15th December 1993*
Laid before Parliament *11th January 1994*
Coming into force - - *1st February 1994*

The Secretary of State, in exercise of the powers conferred on him by sections 13(2), (4) and (5) of and Schedule 6 to the Pensions (Increase) Act 1971(1), and of all other powers enabling him in that behalf, with the approval of the Treasury(2), hereby makes the following regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Pensions Increase (Approved Schemes) (National Health Service) (Scotland) Amendment Regulations 1993.

(2) These Regulations shall come into force on 1st February 1994.

Interpretation

2. In these Regulations “the principal Regulations” means the Pensions Increase (Approved Schemes) (National Health Service) (Scotland) Regulations 1976(3).

Amendment of regulation 2 of the principal Regulations

3. In regulation 2(1) of the principal Regulations (interpretation)—

(a) for the definition of “reckonable service”, there shall be substituted the following definition:—

““reckonable service” has the meaning assigned to it—

(i) by the civil service regulations, in relation to a person to whom regulation 4C applies;

(1) 1971 c. 56; section 13(2) was amended by the Superannuation Act 1972 (c. 11) Schedule 6 paragraph 88; section 13(4) was amended by S.I. 1979/1451, Schedule 3.
(2) See the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2.
(3) S.I. 1976/1690.

- (ii) by the local government regulations, in relation to a person to whom regulation 4D applies; and
- (iii) by the Schedule to these Regulations, in relation to any other person;”;
- (b) for the words ““regulation 72(1) optant” means a person to whom the provisions of regulation 72(1) of the 1961 regulations”, there shall be substituted the words ““regulation 78(1) optant” means a person to whom the provisions of regulation 78(1) of the 1980 regulations”;
- (c) in the definition of “superannuation scheme”, for the words “regulation 72(1)” there shall be substituted the words “regulation 78(1)”;
- (d) in the definition of “superannuable under the Regulations”, for the words “regulations 44, 46 and 72 of the 1961 regulations” there shall be substituted the words “regulations 46, 50 and 78 of the 1980 regulations”;
- (e) after the definition of “superannuable under the Regulations” there shall be inserted the following definition:—
 - ““the civil service regulations” means the Pensions Increase (Federated Superannuation Scheme for Nurses and Hospital Officers) (Civil Service) Regulations 1972(4);”;
- (f) after the definition of “the compensation regulations” there shall be inserted the following definition:—
 - ““the local government regulations” means the Pensions Increase (Approved Schemes) (Local Government) (Scotland) Regulations 1972(5);”;
- (g) in the definition of “the previous regulations”, for the words “21st July 1961” there shall be substituted the words “1st August 1980” and after the words “National Health Service Act (Scotland) 1947(6)” there shall be inserted the words “or section 10 of the Superannuation Act 1972(7)”;
- (h) in the definition of “the Regulations”, for the words “the 1961 regulations” there shall be substituted the words “the 1980 regulations”;
- (i) for the definition of “the 1961 regulations” there shall be substituted the following definition:—
 - ““the 1980 regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1980(8);”.

Amendment of regulation 3 of the principal Regulations

4. In regulation 3 of the principal Regulations (application of these regulations), for the words “regulation 4” there shall be substituted the words “regulations 4 to 4D”.

Amendment of regulation 4 of the principal Regulations

5.—(1) For the heading to regulation 4 of the principal Regulations (persons to whom these regulations apply) there shall be substituted the heading “Persons attaining age 70 or leaving an employing authority and entitled to benefits under a superannuation scheme”.

(2) In regulation 4 of the principal Regulations—

(4) S.I. 1972/395, amended by S.I. 1973/1068, 1984/1751.

(5) S.I. 1972/1355, amended by S.I. 1975/2045.

(6) 1947 c. 27.

(7) 1972 c. 11.

(8) S.I. 1980/1177, amended by S.I. 1981/1680, 1983/272, 1988/1956, 1989/807, 1989/1749, 1990/382 and 1992/3046.

- (a) in paragraph (1)(a)(ii), at the beginning there shall be inserted the words “subject to regulations 4A and 4B”;
- (b) in paragraph (1)(b), for the words “72(1) optant” there shall be substituted the words “78(1) optant”;
- (c) in paragraph (1)(c)(ii), for the words “disabled by physical or mental infirmity” there shall be substituted the words “permanently incapacitated by physical or mental infirmity from engaging in any regular full-time employment”;
- (d) in paragraph (2), for the words “72(1) optant” there shall be substituted the words “78(1) optant”.

Additional time for purposes of regulation 4(1)(a)(ii) of the principal Regulations

6. After regulation 4 of the principal Regulations, there shall be inserted the following regulations:—

“Additional time for purposes of regulation 4(1)(a)(ii)

4A. Any person who does not satisfy the requirements of regulation 4(1)(a)(ii) of these regulations and—

- (a) has ceased to be—
 - (i) employed by an employing authority, and immediately before the cessation was subject to a superannuation scheme, or
 - (ii) subject to a superannuation scheme while remaining in the employment of an employing authority; and
- (b) within 12 months, or such longer period as the Secretary of State may allow, of that cessation has become superannuable under the Regulations,

shall be held to satisfy the requirements of regulation 4(1)(a)(ii) if they would be satisfied by adding the length of time during which he has been superannuable under the Regulations both to the length of time which he has spent in reckonable service and to his age at the time of the cessation.

4B.—(1) Any person who does not satisfy the requirements of regulation 4(1)(a)(ii) of these regulations and—

- (a) has ceased to be employed by an employing authority and immediately before the cessation was subject to a superannuation scheme;
- (b) within 12 months, or such longer period as the Secretary of State may allow, of that cessation has entered other employment which is employment—
 - (i) related to the provision of health or allied services, or
 - (ii) in the civil service of the State, local government, education, the police or the fire service;
- (c) is not a person—
 - (i) to whom the civil service regulations apply, or
 - (ii) to whom the civil service regulations would apply if regulation 3(2) of the civil service regulations were disregarded, or
 - (iii) to whom the local government regulations apply; and
- (d) has given the notice required by paragraph (2),

shall be held to satisfy the requirements of regulation 4(1)(a)(ii) if they would be satisfied by adding the length of time during which he has been employed in the employment referred to in subparagraph (b) of this paragraph both to the length of time which he has spent in reckonable service and to his age at the time of the cessation.

(2) Where any person wishes the length of time in employment referred to in paragraph (1)(b) of this regulation to be added in accordance with paragraph (1) he shall within 6 months, or such longer period as the Secretary of State may allow, of the coming into force of this regulation give written notice to the Secretary of State that he wishes the length of time in that employment to be added.”.

Extension of the principal Regulations to persons becoming superannuable after employment in the civil service or by a local authority

7. After regulation 4B of the principal Regulations as added by regulation 6 of these Regulations there shall be added the following regulations:—

“Persons becoming superannuable under the Regulations after employment in the civil service

4C.—(1) These regulations shall apply to any person who becomes superannuable under the Regulations in the circumstances set out in paragraph (2) below and does not qualify for payment under the civil service regulations in the circumstances set out in paragraph (3) below.

(2) The circumstances referred to in paragraph (1) of this regulation in which any person becomes superannuable under the Regulations are where the person does so within 12 months, or such longer period as the Secretary of State may allow, of—

- (a) ceasing to be employed in the civil service of the State, where immediately before the cessation he was subject to a superannuation scheme, or
- (b) ceasing to be subject to a superannuation scheme while remaining in such employment.

(3) The circumstances referred to in paragraph (1) of this regulation in which any person does not qualify for payment under the civil service regulations are where he does not so qualify because (and only because)—

- (a) on ceasing to be employed in the civil service of the State he had not completed the requisite period of reckonable service;
- (b) on ceasing to be so employed he had not attained the requisite age; or
- (c) he ceased to be so employed before 12th April 1972,

but he would qualify for a payment under the civil service regulations if—

- (i) the length of time during which he has been superannuable under the Regulations were added both to the length of time which he has spent in reckonable service and to his age at the time of ceasing to be employed in the civil service of the State; and
- (ii) the civil service regulations applied to him as they apply to persons who have ceased to be employed in the civil service of the State on or after 12th April 1972.

Persons becoming superannuable under the Regulations after employment by a local authority

4D.—(1) These regulations shall apply to any person who becomes superannuable under the Regulations in the circumstances set out in paragraph (2) below and does not qualify for payment under the local government regulations in the circumstances set out in paragraph (3) below.

(2) The circumstances referred to in paragraph (1) of this regulation in which any person becomes superannuable under the Regulations are where the person does so within 12 months, or such longer period as the Secretary of State may allow, of—

- (a) ceasing to be employed by a local authority where immediately before the cessation he was subject to a superannuation scheme, or
- (b) ceasing to be subject to a superannuation scheme while remaining in such employment.

(3) The circumstances referred to in paragraph (1) of this regulation in which any person does not qualify for payment under the local government regulations are where he does not so qualify because (and only because)—

- (a) on ceasing to be employed by a local authority he had not completed the requisite period of reckonable service;
- (b) on ceasing to be so employed he had not attained the requisite age; or
- (c) he ceased to be so employed before 31st March 1972,

but he would qualify for payment under the local government regulations if—

- (i) the length of time during which he has been superannuable under the Regulations were added both to the length of time which he has spent in reckonable service and to his age at the time of ceasing to be employed by a local authority; and
- (ii) the local government regulations applied to him as they apply to persons who have ceased to be employed by a local authority on or after 31st March 1972.”.

Amendment of regulation 5 of the principal Regulations

8. In regulation 5 of the principal Regulations (notional pension and lump sum), there shall be inserted after paragraph (6) the following paragraph:—

“(6A) Any employment referred to in paragraph (1)(b) of regulation 4B of these regulations shall not qualify for the purpose of calculating any pensions increase payable.”.

Amendment of regulation 6 of the principal Regulations

9. In regulation 6 of the principal Regulations (payments of benefits equivalent to statutory pensions increases), for the words from “The Secretary of State shall,” to “these regulations apply” there shall be substituted the words “Subject to regulation 6A of these regulations, the Secretary of State shall, in respect of the appropriate period as specified in paragraph (2) of regulation 6A, pay to a person to whom these regulations apply”.

Provisions supplementary to regulation 6 of principal Regulations

10. After regulation 6 of the principal Regulations there shall be added the following regulation:
—

“Provisions supplementary to regulation 6

6A.—(1) The Secretary of State shall not pay the amounts referred to in regulation 6 of these regulations to any person to whom these regulations apply unless the person first makes a claim in writing to the Secretary of State.

(2) The appropriate period for the purposes of regulation 6 of these regulations is—

(a) in relation to a person to whom these regulations apply by virtue of regulation 4 alone—

(i) any period beginning on or after 1st March 1975 if he is a regulation 78(1) optant, or

(ii) any period beginning on or after 1st December 1974 if he is not, and

(b) in relation to a person to whom these Regulations apply by virtue of regulation 4 as read with regulation 4A or 4B or by virtue of regulation 4C or 4D, any period beginning on or after 15th May 1989.”.

Amendment of the Schedule to the principal Regulations

11. In paragraph 1(a) of the Schedule to the principal Regulations (meaning of reckonable service) for the words “72(1) optant” there shall be substituted the words “78(1) optant” and in paragraph 4 of the Schedule for the words “regulation 24 of the 1961 regulations” there shall be substituted the words “regulation 26 of the 1980 regulations”.

St. Andrew’s House,
Edinburgh
9th December 1993

Fraser of Carmyllie
Minister of State, Scottish Office

We consent,

15th December 1993

Nicholas Baker
Andrew Mackay
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pensions Increase (Approved Schemes) (National Health Service) (Scotland) Regulations 1976 (“the principal Regulations”).

The principal Regulations provide for payments to certain persons who, having elected to secure their superannuation benefits through schemes which operate by way of insurance policies to produce lump sums or annuities, or both, on retirement (persons who so elect being known as “optants”), have retired from employment in the National Health Service, and would have been eligible for increases under the Pensions (Increase) Act 1971 had they been pensionable under the National Health Service Superannuation Scheme.

The main provisions of these Regulations are regulations 6 and 7.

Regulation 6 adds new regulations 4A and 4B to the principal Regulations.

The new regulation 4A extends the application of the principal Regulations to NHS optants who ceased to be employed by an employing authority or ceased to be such optants without ceasing to be so employed then and who later became superannuable under NHS (Superannuation) (Scotland) Regulations but did not have sufficient reckonable service as optants, or had not attained the requisite age, to qualify for pensions increase payments. The extension is achieved by allowing them to add the length of time during which they have been superannuable under the NHS (Superannuation) (Scotland) Regulations to the length of the time they have spent in reckonable service as optants and add that same length of time to their age at the time of cessation.

The new regulation 4B extends the application of the principal Regulations to NHS optants who, when they ceased to be employed by an employing authority, did not have sufficient reckonable service as optants, or had not attained the requisite age, to qualify for pensions increase payments. If within 12 months, or a longer period if the Secretary of State allows, of ceasing to be so employed they entered employment outside of the NHS but which was in health or allied services, or in the civil service, local government, education, or police or fire services, and if the civil service or local government regulations do not apply to them, they may within 6 months after this regulation comes into force apply for that employment outside the NHS to count as service for the purpose of satisfying the minimum service requirements to qualify for a pension (but not for the purpose of calculating any actual pensions increase—see regulation 8) and to add that same length of time to their age at the time of cessation, for the purpose of qualifying for a pension.

Regulation 7 adds new regulations 4C and 4D to the principal Regulations.

The new regulation 4C extends the application of the principal Regulations to people who were similarly optants while employed in the civil service who have become superannuable under the NHS (Superannuation) (Scotland) Regulations and on ceasing to be such optants did not have sufficient reckonable service, or had not attained the requisite age, to qualify for pensions increase payments under the Pensions Increase (Federated Superannuation Scheme for Nurses and Hospital Officers) (Civil Service) Regulations 1972 or who did not qualify for such payments because they left employment in the civil service before 12th April 1972.

The new regulation 4D extends the application of the principal Regulations to people who were similarly optants while employed in local government who have become superannuable under the NHS (Superannuation) (Scotland) Regulations and on ceasing to be such optants did not

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have sufficient reckonable service, or had not attained the requisite age to qualify for pensions increase payments under the Pensions Increase (Approved Schemes) (Local Government) (Scotland) Regulations 1972 or who did not qualify for such payments because they left local authority employment before 31st March 1972.

Regulation 10 inserts a new regulation 6A into the principal Regulations which requires that a claim for pensions increase be made in writing. It also specifies, in accordance with the power conferred by section 13(5) of the Pensions (Increase) Act 1971, that benefits may be paid to the new categories of persons who become eligible under the Regulations in respect of any period after 15 May 1989.

The other amendments are minor or consequential.