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STATUTORY INSTRUMENTS

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**1995 No. 365**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 1995**

**PART S**

**MEMBERS WHO RETURN TO PENSIONABLE  
EMPLOYMENT AFTER PENSION BECOMES PAYABLE**

**Suspension of pension on return to NHS employment**

**S1.**—(1) This regulation applies where a pension becomes payable to a member by virtue of regulation E1 (normal retirement pension), E4 (early retirement pension (employer’s consent)) or E5 (early retirement pension (with actuarial reduction)) and, within one month of the date on which the pension becomes payable, the member enters NHS employment in which he is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under the scheme has become payable.

(3) Where this regulation applies the pension referred to in paragraph (1) shall, subject to paragraph (4), cease to be payable.

(4) The pension referred to in paragraph (1) shall again become payable if the member either ceases to be in any NHS employment (or reduces the number of hours worked to 16 hours or less) for a period of one month or reaches age 70, whichever occurs first.

(5) For the purposes of this regulation “NHS employment” includes employment with a National Health Service employing authority in England and Wales in respect of which regulations made under section 10 of the Superannuation Act 1972 apply and employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 and section 54 of the National Health Service (Isle of Man) Act 1948 (an Act of Tynwald) apply.

**Reduction of pension on return to NHS employment**

**S2.**—(1) This regulation applies, until he reaches age 60, to any member who continues in or returns to NHS employment after his pension becomes payable under any of regulations E2 to E5 (early retirement pensions).

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under the scheme has become payable.

(3) Where this regulation applies, the member’s pension will be reduced to the extent necessary to ensure that the member’s pension plus pay from NHS employment for any financial year after the pension becomes payable does not exceed the member’s previous pay.

(4) Subject to paragraph (5), a member’s pension will be reduced as described in this regulation whether or not the member is included in the scheme in respect of the employment after his pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.

(5) A member's employment with an employer with whom an agreement has been made under section 89 of the National Health Service (Scotland) Act 1978(1) or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(2) will not be treated as NHS employment, and the employer will not be treated as an employing authority, for the purposes of this regulation unless the member is included in the scheme in respect of that employment.

(6) For the purposes of paragraph (3), the amount to be taken as previous pay shall—

- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member's benefits under the scheme became payable (or, if earlier, the date the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year;
- (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by adding to it the amount of the annual rate of pay in respect of the continuing employment;
- (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by adding to it the amount of the average of the annual amounts of uprated earnings as defined in paragraph 11 of Schedule 1 in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.

(7) For the purpose of calculating the reduction to be made under paragraph (3) in respect of any part of a financial year, the amount of the member's previous pay will be reduced proportionately.

(8) This paragraph applies to a person who held a part-time pensionable employment before the pension described in paragraph (1) became payable and who at any time during the period of that employment held a concurrent part-time pensionable employment.

(9) Where paragraph (8) applies and the concurrent part-time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (10).

(10) For the purpose of paragraph (9), previous pay shall be increased by the amount of the member's pensionable pay or annual rate of pay (calculated as described in paragraph (11)) whichever is the greater, that relates to the member's last year of concurrent pensionable employment increased in accordance with paragraph (6)(a).

(11) For the purposes of this regulation—

“annual rate of pay” means that annual rate of so much of the member's pensionable pay immediately before his pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of his pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before his pension became payable;

“continuing employment” means, for the purposes of paragraph (1), a pensionable employment which a person held immediately before he became entitled to the said pension and which he continues to hold whether it is pensionable or not;

“NHS employment” has the same meaning as in regulation S1(5);

“pension” means the amount of pension paid under the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

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(1) 1978 c. 29; section 89 replaced section 18 of the National Health Service (Amendment) Act 1949 (c. 93).

(2) 1967 c. 28; section 7 was amended by the Superannuation Act 1972, section 10(5), Schedule 6, paragraph 66 and Schedule 8; by the National Health Reorganisation Act 1973 (c. 32), Schedule 5 and by the National Health Service (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 24.

“pay” means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been his pensionable pay had he been in pensionable employment); and

“previous pay” means, subject to paragraphs (6) to (8), the greater of—

- (a) final year’s pensionable pay; and
- (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) becomes payable and which the member held before becoming entitled to that pension.

### **Benefits in respect of pensionable employment after pension becomes payable**

**S3.**—(1) This regulation applies to any member in respect of whom a pension becomes payable under regulation E2 (early retirement pension (ill-health)) and who subsequently enters pensionable employment.

(2) For the purposes of paragraphs (3) and (5), the member’s “previous service” means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2 and the member’s “later service” means any pensionable service which accrues after the member becoming so entitled.

(3) Subject to paragraph (5), the member’s benefits in respect of later service shall be calculated without regard to the member’s previous service.

(4) Where the member becomes entitled, under regulation E2, to a pension in respect of later service, the increase as described in regulation E2(3) shall be in accordance with the proportioned increase described in regulation L1(3)(b).

(5) For the purposes of regulations D1(3) and D1(4) (contributions by members) and regulation C2(4) (meaning of “pensionable service”) the member’s previous service and later service shall be aggregated.

### **Benefits on death in pensionable employment after pension becomes payable**

**S4.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension under regulation E2 becomes payable; and
- (b) dies in pensionable employment.

(2) In this regulation, the member’s “previous service” and “later service” have the same meaning as in regulation S3(2).

(3) Where this regulation applies, the lump sum payable on the member’s death shall be equal to 5 times the amount of the pension that would have been payable to the member had he left NHS employment and become entitled to a pension, based on his later service, under regulation E1 (normal retirement pension) on the date of his death. For this purpose, no account will be taken of the member’s previous service.

(4) Subject to paragraph (5), if a member to whom this regulation applies leaves a surviving spouse, the spouse’s pension for the first 3 months after the member’s death (6 months if the member leaves a dependent child who is dependent on the spouse) shall be equal to the total of the member’s rate of pensionable pay when he died and the amount of the member’s pension (if any) that was payable at that time.

(5) Paragraph (4) shall not apply if the aggregate of the spouse’s pension and any child allowance which would otherwise be payable under these regulations is greater than the spouse’s pension payable under that paragraph.

(6) Except while the pension is payable at the rate mentioned in paragraph (4), any spouse's pension shall be equal to one-half of the rate of pension described in paragraph (3) that would have been payable to the member.

(7) If a member to whom this regulation applies leaves a dependent child but no surviving spouse, the child allowance, for the first 6 months after the member's death, shall be equal to the aggregate of the member's rate of pensionable pay when he died and the amount of the member's pension (if any) that he was receiving at that time.

(8) If a member to whom this regulation applies leaves a dependent child not dependent on the surviving spouse the child allowance for the first 3 months will be the aggregate of the member's pensionable pay when he died plus the aggregate of the member's pension (if any).

(9) Subject to paragraph (10), except where a spouse's pension or a child allowance is payable at the rate mentioned in paragraph (4), (7) or (8) respectively, the child allowance shall be paid as a proportion of the rate of pension described in paragraph (3). That proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(10) If a member to whom this regulation applies dies any child allowance payable under these Regulations shall be calculated according to regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment, and regulation H3 in respect of later pensionable employment. If the aggregate of pensionable service in both calculations is less than 10 years, additional service will be allocated to the later pensionable employment to bring the aggregate up to the shorter of:

- (a) 10 years' pensionable service, and
- (b) the pensionable service the member could have completed if he had stayed in the later pensionable employment until age 65.