

2003 No. 631

**NATIONAL HEALTH SERVICE, ENGLAND
AND WALES**

**The National Health Service (Pension Scheme, Injury
Benefits and Compensation for Premature Retirement)
Amendment Regulations 2003**

Made - - - - - 10th March 2003

Laid before Parliament 11th March 2003

Coming into force - - 1st April 2003

The Secretary of State for Health, in exercise of the powers conferred by sections 10(1), (2) and (3A), 12(1) and (2) and 24(1) of, and paragraphs 1, 2, 4 and 13 of Schedule 3 to, the Superannuation Act 1972(a) and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate(b) and with the consent of the Treasury(c), hereby makes the following Regulations:

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Pension Scheme, Injury Benefits and Compensation for Premature Retirement) Amendment Regulations 2003 and shall come into force on 1st April 2003.

(2) Regulation 3 shall have effect as from 10th February 2003.

(3) Regulation 4 shall have effect as from 1st April 2002.

(4) In these Regulations—

“the principal Regulations” means the National Health Service Pension Scheme Regulations 1995(d);

“the Injury Benefits Regulations” means the National Health Service (Injury Benefits) Regulations 1995(e).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the Schedule.

(a) 1972 c. 11. Section 10(1) was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c. 32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). These powers are extended by section 42 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 10(3A) was inserted by the Pensions (Miscellaneous Provisions) Act 1990, section 4(2). Section 24 was amended by section 13(1) of, and paragraph 10 of Schedule 2 to, the Police Pensions Act 1976 (c. 35).

(b) See section 10(4) of the Superannuation Act 1972.

(c) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

(d) S.I. 1995/300; the relevant amending instruments are S.I. 1997/1888, 1998/666, 2000/605 and 2002/561 and 2469.

(e) S.I. 1995/886; the relevant amending instruments are S.I. 1998/2217 and 2000/606.

Local Health Boards

3.—(1) After paragraph (bb) of the definition of “employing authority” in each of the provisions specified in paragraph (3) there shall be inserted the following paragraph—

“(bbb) a Local Health Board established under section 16BA of that Act(a),”.

(2) After paragraph (aa) of the definition of “NHS dental employee” in each of the provisions specified in paragraph (3) there shall be inserted the following paragraph—

“(aaa) a Local Health Board;”.

(3) The provisions specified for the purposes of paragraph (1) and (2) (interpretation) are—

- (a) regulation A2 of the principal Regulations;
- (b) regulation 2(1) of the Injury Benefits Regulations.

(4) In paragraph (b) of the definition of “practitioner” in regulation A2 of the principal Regulations, after the words “a Primary Care Trust”, there shall be inserted the words “, a Local Health Board”.

(5) In Schedule 2 to the principal Regulations, in both—

- (a) the definitions of “the listing Authority” and “the appropriate contracting party” in paragraph 2(1A) as substituted by regulation 4(3)(a) below; and
- (b) paragraph 9(1),

for the words “or Primary Care Trust”, there shall be substituted the words “, Primary Care Trust or Local Health Board”.

(6) In regulation 2(1) of the Injury Benefits Regulations—

- (a) in the definition of “assistant practitioner”, for the words “or Primary Care Trust” in both places where those words occur, there shall be substituted the words “, Primary Care Trust or Local Health Board”;
- (b) in paragraphs (a) and (e) of the definition of “practitioner”, for the words “or Primary Care Trust” wherever those words occur, there shall be substituted the words “, Primary Care Trust or Local Health Board”.

(7) After paragraph (d) of the definition of “employing authority” in regulation 2(1) of the National Health Service (Compensation for Premature Retirement) Regulations 2002(b) (interpretation), there shall be inserted the following paragraph—

“(dd) a Local Health Board established under section 16BA of the National Health Service Act 1977;”.

Locum practitioners

4.—(1) Schedule 2 to the principal Regulations (medical and dental practitioners) shall be amended in accordance with the following paragraphs.

(2) For the definition of “locum practitioner” in paragraph 1 (additional definitions), there shall be substituted the following definition—

““locum practitioner” means a registered medical practitioner, other than a trainee practitioner, who is engaged under a contract for services with a practitioner otherwise than in pursuance of a commercial arrangement with an agent, to deputise or assist in the provision of general medical services or personal medical services;”.

(3) In paragraph 2 (application of Regulations with modifications)—

- (a) for the definition of “the listing Authority” in sub-paragraph (1A) there shall be substituted the following definition—

““the listing Authority”, in relation to a locum practitioner, means the Health Authority or Primary Care Trust who prepare and publish—

- (a) the medical list in accordance with section 29(2)(a) of the 1977 Act; or
- (b) the supplementary list in accordance with section 43D of that Act, on which he is included;”;

- (b) in the definition of “the appropriate contracting party”, the words “within paragraph (b)(ii) of the definition of that expression” shall be omitted;

(a) “That Act” is the National Health Service Act 1977 (c. 49), Section 16BA was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 6.

(b) S.I. 2002/1311.

- (c) in sub-paragraph (2), the words after “as a practitioner” shall be omitted.
- (4) In paragraph 3 (meaning of pensionable service)—
 - (a) in sub-paragraph (2)(a), after the words “general ophthalmic services” there shall be inserted the words “, locum services”;
 - (b) at the end, there shall be added the following sub-paragraph—
 - “(4) In sub-paragraph (2)(a), “locum services” shall have the same meaning as for the purposes of paragraph 6.”;
- (5) In paragraph 6(1)(a) and (2)(a) and (b) (meaning of “pensionable service” in relation to other practitioners), the words “or any payments made to the practitioner in respect of the provision of locum services” shall be omitted.

Signed by authority of the Secretary of State for Health.

7th March 2003

John Hutton
Minister of State,
Department of Health

We consent.

10th March 2003

Nick Ainger
Philip Woolas
Two of the Lords Commissioners of Her Majesty’s Treasury

AMENDMENT OF THE PRINCIPAL REGULATIONS

1. In regulation D2 (contributions by employing authorities)—
 - (a) at the end of paragraph (1), there shall be added the words “and when specifying a rate, the Secretary of State shall include the cost of providing any increases in pensions which are payable by virtue of Part I of the Pensions (Increase) Act 1971(a)”;
 - (b) in paragraph (3)(e), after the words “sub-paragraphs (a) to (d)” there shall be inserted the words “which have not been contributed pursuant to paragraph (1)”.
2. In regulation L1 (preserved pension)—
 - (a) at the beginning of paragraph (4), there shall be inserted the words “Except in a case to which paragraph (4A) applies,”;
 - (b) after paragraph (4), there shall be inserted the following paragraphs—

“(4A) Paragraph (4) may not apply where the NHS employment which the member is in when he reaches age 60 is employment into which he has been transferred as a result of a transfer of an undertaking to the employer.

“(4B) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (4A) applies—

 - (a) his benefits in respect of any pensionable service in that new employment shall be calculated without regard to any pensionable service in any earlier employment;
 - (b) for the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(3) and (4) (contributions by members), his service in the earlier employment and in the new employment shall be aggregated.”.
3. In regulation S2 (reduction of pension on return to NHS employment)—
 - (a) at the beginning of paragraph (1), there shall be inserted the words “Except in a case to which paragraph (1A) applies,”;
 - (b) after paragraph (1), there shall be inserted the following paragraph—

“(1A) This paragraph applies where the member has been transferred into NHS employment as a result of a transfer of an undertaking to the employer.”.
4. In regulation T6 (loss of rights to benefits)—
 - (a) after paragraph (1), there shall be inserted the following paragraph—

“(1A) Subject to paragraph (2), the Secretary of State may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is—

 - (a) the member’s widow or widower;
 - (b) a dependant of the member;
 - (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice given under regulation F5(3A); or
 - (d) a person to whom such benefits or amounts are payable under the member’s will or on his intestacy,

and that person is convicted of the offence of murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.”;
 - (b) in paragraph (2), for “paragraph (b) or (c)”, there shall be substituted “paragraph (1)(b) or (c)”.
5. In regulation U3(5) (accounts and actuarial reports), after the word “wages” there shall be inserted the words “and of all contributions to the scheme made under regulation D2(1)”.

(a) 1971 c. 56. Section 2 has been replaced by section 59 of the Social Security Pensions Act 1975 (c. 60) but subsection (7) of that section provides that the said section 59 shall have effect as if contained in the said Act of 1971.

EXPLANATORY NOTE

(This notice is not part of the Regulations)

Regulation 2 of, and the Schedule to, these Regulations amend the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (“the principal Regulations”) by—

- providing that employing authorities shall make contributions to the cost of increases to NHS pensions and that such authorities should maintain records of their contributions to the scheme and making a consequential amendment (paragraphs 1 and 5 of the Schedule);
- providing both that preserved benefits are paid and that a pension is not abated where a member returns to employment with an employing authority by virtue of a transfer of an undertaking to that authority (paragraphs 2 and 3);
- providing for the forfeiture of benefits under the NHS Pension Scheme (“the Scheme”) to persons other than the member where the beneficiary has been convicted of the unlawful killing of the member, and making a minor amendment (paragraph 4).

Regulation 3 amends the principal Regulations, the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/886) and the National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I. 2002/1311) so as to enable Local Health Boards in Wales which are established under section 16BA of the National Health Service Act 1977 (c. 49) both to be treated as “employing authorities” and included in the definition of “NHS dental employee”, “practitioner”, “assistant practitioner” and “listing Authority” for the purposes of those Regulations.

Regulation 4 amends the principal Regulations by enabling additional categories of practitioners to count their earnings as locum practitioners towards their rights under the Scheme and makes consequential amendments.

Regulation 1(2) provides that regulation 3 has effect from 10th February 2003 and regulation 1(3) provides that regulation 4 has effect from 1st April 2002. The authority for regulations 3 and 4 having retrospective effect is contained in section 12(1) of the Superannuation Act 1972 (c. 11).

These Regulations do not impose any costs on business.

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