

2006 No. XX

NATIONAL HEALTH SERVICE

**The National Health Service (Superannuation Scheme and
Compensation for Premature Retirement) (Scotland)
Amendment (No.2) Regulations 2006**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - ***

The Scottish Ministers in exercise of powers conferred by sections 10, 12, and 24 of, and Schedule 3 to, the Superannuation Act 1972(a), and of all other powers enabling them in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to the Scottish Ministers to be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(b), hereby make the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the National Health Service (Superannuation Scheme and Compensation for Premature Retirement) (Scotland) Amendment (No.2) Regulations 2006 and shall come into force on^{2nd} December 2006.

Amendment of the National Health Service Superannuation Scheme Regulations 1995

2.—(1) The National Health Service Superannuation Scheme (Scotland) Regulations 1995(c) shall be amended as follows.

(2) In each of the following provisions after “regulation E3” wherever it occurs, insert “or E3A (early retirement pension (redundancy etc. notifications))”—

- (a) paragraph (3) and paragraph (5)(b) of regulation D2 (contributions and other payments by employing authorities);
- (b) paragraph (7) of regulation M1 (member’s right to transfer or buy-out);

(a) 1972 c.11. Section 10 was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7, Part II, the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), sections 4(2) and 8(5), the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 108. Section 12 was amended by the 1990 Act, section 10. Section 24 was amended by the Police Pensions Act 1976 (c.35), Schedule 2, paragraph 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

(b) See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

(c) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011, and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 544 and 2006/307.

- (c) paragraph (3)(b) of regulation R2 (nurses, physiotherapists, midwives and health visitors);
 - (d) paragraph (10) of regulation R3 (mental health officers); and
 - (e) paragraphs (4), (8A) and (8B) of regulation R4 (members doing more than one job).
- (3) For regulation E3 (early retirement pension (redundancy etc)), substitute—

“Early retirement pension (redundancy etc.)

E3.—(1) This regulation shall apply to a member—

- (a) who—
 - (i) was in pensionable employment on 2nd December 2006, or
 - (ii) returns to such employment on, or after, that date and who is entitled to a preserved pension under regulation L1, or
 - (iii) returns to pensionable employment after that date having had a break in such employment which does not exceed 12 months but includes 2nd December 2006 and who is not entitled to a preserved pension under regulation L1, or
 - (iv) is certified by his employing authority as having a period of continuous employment (determined in accordance with terms and conditions relevant to that employment and as they applied on 1st October 2006);
- (b) whose employment is terminated by his employing authority before 1st October 2011; and
- (c) who satisfies the conditions specified in paragraph (2).

(2) Those conditions are that—

- (a) he has at least 5 years’ qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
- (b) the Scottish Ministers certify—
 - (i) that the member’s employment is terminated by reason of redundancy, or
 - (ii) with the agreement of the employing authority, that the member’s employment is terminated in the interests of the efficiency of the service in which he is employed; and
- (c) his employing authority does not certify that he has unreasonably refused an offer of suitable alternative employment.

(3) A person who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1 (normal retirement pension).

(4) This regulation does not apply to—

- (a) practice staff;
- (b) practitioners;
- (c) non-GP providers;
- (d) a member who is providing piloted services under a pilot scheme;
- (e) a member to whom regulation R13(1)(a) or (b) of these Regulations applies; or
- (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

Early Retirement Pension (Redundancy etc. notifications)

E3A.—(1) This regulation applies to a member—

- (a) whose pensionable employment is terminated by his employing authority; and
- (b) who satisfies the conditions specified in paragraph (2).

- (2) Those conditions are that—
- (a) he has 2 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
 - (b) his employing authority certifies he has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to that employment;
 - (c) his employing authority does not certify that he has unreasonably refused an offer of suitable alternative employment;
 - (d) the Scottish Ministers certify—
 - (i) that the member's employment is terminated by reason of redundancy, or
 - (ii) with the agreement of the employing authority, that the member's employment is terminated in the interests of the efficiency of the service in which he is employed; and
 - (e) he makes a claim for the pension referred to in this regulation.
- (3) A claim referred to in paragraph (2)(e) shall be—
- (a) in writing and addressed to the Scottish Ministers;
 - (b) made within 2 months of the employment terminating; and
 - (c) contain such information as the Scottish Ministers may from time to time require.
- (4) A person who satisfies the conditions in paragraph (2) shall be entitled to a pension calculated as described in regulation E1 (normal retirement pension).
- (5) Where a person who claims a pension under this regulation—
- (a) has received—
 - (i) a redundancy payment under the Employment Rights Act 1996**(a)**,
 - (ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain, or
 - (iii) a payment made by virtue of any arrangement made pursuant to paragraph 20(2) of Schedule 6 to the National Health Service and Community Care Act 1990 (National Health Service Trusts – general powers)**(b)**,
 in respect of the cessation of the employment; and
 - (b) that payment has not been reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation D2(3),
 the pension shall be reduced by an amount equal to the amount of that payment or payments and may be reduced to zero.
- (6) This regulation does not apply to—
- (a) practice staff;
 - (b) practitioners;
 - (c) non-GP providers;
 - (d) a member who is providing piloted services under a pilot scheme;
 - (e) a member to whom regulation R11(1)(a) or (b) of these Regulations applies; or
 - (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

(a) 1996 c.18
(b) 1990 c.19

Early Retirement Pension (Redundancy etc. notifications)

E3B.—(1) This regulation applies to a member—

- (a) who satisfies the conditions specified in regulation E3 and E3A; and
- (b) whose pensionable employment is terminated by his employing authority on, or after 2nd December 2006 but before 1st October 2011.

(2) A person referred to in paragraph (1) may notify the Scottish Ministers as to which of those regulations he wishes to apply to him and such a notification shall be—

- (a) in writing (but the Scottish Ministers may, in their discretion, accept notification in another form);
- (b) given within 40 days of the employment being terminated; and
- (c) irrevocable.

(3) Where a member does not notify the Scottish Minister within 60 days of his employment terminating, regulation E3 shall apply.

Early Retirement Pension (special classes)

E3C.—(1) This regulation applies to a member—

- (a) to whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies;
- (b) who has attained the age of 55, and
- (c) whose employment is terminated on, or after, 1st October 2011, and either—
 - (i) the Scottish Ministers certify that that employment is terminated by reason of redundancy, or
 - (ii) with the agreement of the employing authority, the Scottish Minister, certifies that that employment is terminated in the interests of the efficiency of the service in which he is employed.

(2) A person referred to in paragraph (1) who would, if he made a claim for it, be entitled to a pension in accordance with regulation E3A—

- (a) shall be treated as retiring from pensionable employment on the day on which his employment terminates; and
- (b) shall be entitled to a pension under regulation E1 or E5 if he makes a claim for it.

(3) A claim referred to in paragraph (2)(b) shall be—

- (a) in writing and addressed to the Scottish Minister;
- (b) made within 2 months of the employment terminating; and
- (c) contain such information as the Scottish Minister may from time to time require.”.

Amendment of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003

3.—(1) The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(a) shall be amended as follows.

(2) For regulation 3 (persons to whom the Regulations apply), substitute—

“Persons to whom the Regulations apply

3. These Regulations shall apply to an officer who on ceasing to be employed in the employment of an employing authority—

(a) S.S.I. 2003/344, amended by S.S.I. 2005/445, 512 and 544.

- (a) becomes entitled to benefits in accordance with regulation E3 of the Superannuation Scheme Regulations; or
 - (b) notifies the Scottish Ministers in accordance with regulation E3B of the Superannuation Scheme Regulations that he wishes regulation E3 of those Regulations to apply to him.”.
- (3) In regulation 5 (crediting of additional period of service) after paragraph (1), insert—
- “(1A) Where an entitled officer becomes so entitled on, or after, 2nd December 2006 but before 1st July 2007, the additional period of service he shall be credited with shall be determined by—
- (a) applying paragraph (1)(a) or, as the case may be, (1)(b) to his service as at 30th September 2006 and as if he became so entitled at that date (call it “Amount A”); and
 - (b) by reducing Amount A by a period equal to that part of his service commencing on, or after, 1st October 2006 and ending on the day on which he does in fact become so entitled.
- (1B) Where an entitled officer becomes so entitled on, or after 1st July 2007 but before 1st October 2011, the additional period of service he shall be credited with shall be determined by—
- (a) applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September and as if he became so entitled at that date (call it “Amount B”), and
 - (b) reducing Amount B—
 - (i) in all cases, by a period equal to that part of his service commencing on, or after, 1st October 2006 and ending on the day on which he does in fact become so entitled, and
 - (ii) where Amount B is greater than 5 years (but not otherwise), reducing the excess over 5 years at the rate of 1/60th for each complete calendar month of that part of his service commencing on, or after, 1st October 2006 and ending on the day on which he does in fact become so entitled (with any part day being rounded up to the nearest whole day).”.

Name

St Andrew’s House
Edinburgh
Date

Authorised to sign by the Scottish Ministers

We consent
Date

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365) (“the Superannuation Scheme Regulations”) and amend the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (S.S.I. 2003/344) (“the Compensation Regulations”).

Regulation 2 amends the Superannuation Scheme Regulations by—

- inserting a reference to new regulation E3A in regulation D2 (contributions by employing authorities).
- substituting regulation E3 (early retirement pension) with regulations E3, E3A, E3B and E3C which deal with (respectively) members who are made redundant before 1st October 2011 (E3); members whose pensionable employment is terminated by their employing authority (whether before or after that date) (E3A); member's notification as to whether he wishes E3 or E3A to apply to him (E3B) and special provisions for special classes (E3C).
- inserting references to new regulation E3A in regulations M1 (early leavers without a pension or preserved pension); R2 (nurses, physiotherapists, midwives and health visitors), R3 (mental health officers) and R4 (members doing more than one job).

Regulation 3 amends the Compensation Regulations by—

- substituting regulation 3 (persons to whom the regulations apply) so that it refers to both regulation E3 and E3B of the Superannuation Scheme Regulations,
- amending regulation 5 (crediting of additional period of service) in respect of the calculation of additional periods of service for those who are made redundant on, or after, 2nd December 2006 but before 1st July 2007 (new paragraph (1A)) and those who are made redundant on, or after, 1st July 2007 but before 1st October 2011 (new paragraph (1B)).

These Regulations impose no additional costs.