

# SCOTTISH STATUTORY INSTRUMENT

No.

NATIONAL HEALTH SERVICE

## **The National Health Service (Superannuation Scheme, Injury Benefit Scheme, and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2004**

**Made** 2004

**Laid before Scottish Parliament** 2004

**Coming into force** 2004

The Scottish Ministers, in exercise of the powers conferred by sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup>, 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 be appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury<sup>(2)</sup>, hereby make the following Regulations.

### **Citation, commencement and effect**

1.-(1) These Regulations may be cited as the National Health Service (Superannuation Scheme, Injury Benefit Scheme and Premature Retirement Compensation) (Scotland) Amendment Regulations 2004, and shall come into force on ??? 2004-

(a) the “1978 Act” means the National Health Service (Scotland) Act 1978<sup>(3)</sup>

(b) Regulations 5, 6, 7(2), 8, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and the Schedule shall have effect from 1 April 2004.

### **Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 1995**

2. The National Health Service Superannuation Scheme (Scotland) Regulations 1995<sup>(4)</sup> shall be amended in accordance with regulations 5 – 24 of these Regulations.

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<sup>(1)</sup> 1972 c.11; sections 10 and 12 were amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7) sections 4(2), 8(5) and 10; section 10(6) was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7; the functions of the Secretary of State were transferred to Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750).

<sup>(2)</sup> See the Superannuation Act 1972, section 10(1) and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750)

<sup>3</sup> 1978 c.29

<sup>(4)</sup> S.I. 1995/365, amended by S.I. 1997/1434, 1997/1916, 1998/1593, 1999/443 and 2001/3649 and S.S.I. 2001/437, 2001/465, 2003/55, 2003/270 and 2003/517.

### **Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998**

3. The National Health Service (Injury Benefits) (Scotland) Regulations 1998<sup>(5)</sup> will be amended in accordance with regulations 25 - 27 of these Regulations.

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

4. The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>(6)</sup> will be amended in accordance with regulations 28 and 29 of these Regulations.

### **Interpretation**

5. In regulation A2(4)-

(a) omit the definition of “associate general practitioner” and “medical pilot scheme employee”;

(b) in the appropriate place in alphabetical order insert the following definitions –

““associated company” means a company under the control of another’s company, except where another’s company is an employing authority. For these purposes, a person shall be taken to have control of a company if they exercise, or are able to exercise or are entitled to acquire, direct or indirect control over the company’s affairs;

“CCT” means Certificate of Completion of Training awarded under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003<sup>(7)</sup> including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that order;

“default contract” means a contract under article 13 of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004<sup>(8)</sup> and default contractor shall be construed accordingly;

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<sup>5</sup> S.S.I.1998/1594 as amended by S.I.1999/195, S.I.1999/444, S.S.I 2001/437

<sup>6</sup> S.S.I 2003/344

<sup>7</sup> S.I. 2003/1250

<sup>8</sup> S.S.I 2004/163

“essential services” means services required to be provided in accordance with regulation 15 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004<sup>9)</sup>

“GMS practice” means a general practitioner or two or more individuals practicing in a partnership or a company limited by shares, who or which has a GMS contract under section 17J of the 1978 Act (<sup>10)</sup> and “GMS contractor” and “GMS provider” shall be construed accordingly;

“GP performer” has the meaning given paragraph 1 of Schedule 1”;

“GP provider” has the meaning given in paragraph 1 of Schedule 1”;

“GP trainer” means a general medical practitioner who is-

(a) until the coming into force of article 4(5)(d) of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(<sup>11)</sup>), approved as a GP trainer by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998<sup>12)</sup>; or

(b) from the coming into force of that article, approved by the Postgraduate Medical Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP registrar under article 5(1)(c)(i);

“Non GP partner” has the meaning given in paragraph 1 of Schedule 1;

“Non GP section 17C agreement provider” has the meaning given in paragraph 1 of Schedule 1;

“OOH provider” means-

(a) a company limited by guarantee, and-

(i) all the members of which are practitioners, GMS practices or section 17C agreement practices and the majority of those members are-

(aa) GMS practices or section 17C practices whose GMS contracts, default contracts or section 17C agreements require them to provide OOH services; or

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<sup>9</sup> S.S.I 2004/115

<sup>10</sup> 1978 c.29. Section 17J was inserted by Part 1, section 4 of the Primary Medical Services (Scotland) Act 2004 asp 1

<sup>11</sup> S.I. 2003/1250

<sup>12</sup> 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23.

(bb) practitioners who are partners in a GMS practice or section 17C practice which is required to provide OOH services under a GMS contract, default contract or section 17C agreement as the case may be, or members of a GMS or section 17C practice which is a company limited by shares and which is required to provide those services under such a contract or agreement;

(ii) which has a contract with a Health Board, GMS or section 17C practice for the provision of OOH services;

(iii) which, a Health Board appointed by the Scottish Ministers to act on their behalf,

(aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;

(bb) is satisfied that the company has met all the conditions referred to above (“the conditions for approval”); and

(cc) has, pursuant to a written application made by the company to it for that purposes approved it as an employing authority;

(b) a company which-

(i) operates in the interests of those who are the recipients of the primary medical services it provides and or of the general public;

(ii) operates on a not for profit basis;

(iii) is not an associated company;

(iv) whose memorandum of articles or rules-

(aa) prohibit the payment of dividends to its members;

(bb) require its profits (if any) or other income to be applied in promoting its objectives;

(cc) requires all assets which would be other wise available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health and social care for the benefit of the community or to another body the objectives of which are the

promotion of charity and anything incidental or conducive thereto;

(v) has at least one member who is a GMS provider or a section 17C provider or who is a partner in a GMS practice or a partner in a section 17C practice or a member of a GMS or section 17C practice which is a company limited by shares;

(vi) has a contract with a Health Board or, prior to 1<sup>st</sup> January 2005, a GMS or section 17C agreement provider, for the provision of OOH services;

(vii) a Health Board appointed by the Scottish Ministers to act on their behalf-

(aa) is satisfied that the company has met all the conditions referred to above (“the conditions for approval”); and

(bb) has, pursuant to a written application made by the company to it for that purpose, approved it as an employing authority;

“out of hours period” means-

(a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am the following day;

(b) the period between 6.30pm on Friday and 8am on the following Monday; and

(c) Good Friday, Christmas Day and Bank Holidays

and “part” of an out of hours period means any part of any one or more periods described in paragraphs (a) to (c);

“OOH services” means such services as are required to be provided in all or part of the out of hours period which are the same as or similar to essential services;

“Section 17C agreement practice” means a person or body who, or which, has an agreement made under section 17C<sup>(13)</sup> of the 1978 Act and “section 17C agreement” and “section 17C agreement provider” shall be construed accordingly;

(c) for the definition of “employing authority” substitute-

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<sup>13</sup> Section 17C was inserted by Part II, section 21(2) of the National Health Service (Primary Care) Act 1997  
c.46

“(a) a Health Board, Special Health Board or the Common Services Agency for the Scottish Health Service established under section 2 and section 10 of the 1978 Act;

(b) a GP provider whose name is included in a medical performers list working either as a sole practitioner, or a group of such practitioners acting jointly, whether or not practising in a partnership, in respect of the employment of practice staff;

(c) a person who is providing piloted services;

(d) the Mental Welfare Commission established under section 2 of the Mental Health (Scotland) Act 1984<sup>(14)</sup>;

(e) an OOH provider in respect of practice staff employed by it to assist in the provision of out of hours services;

(f) a GMS practice;

(g) a section 17C agreement practice; and

(h) any other body that is constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme;”

(d) for the definition of “GP registrar” substitute –

““GP registrar” means, until the coming into force of article 5 of the General and Specialist Medical Practice (Education, Training and qualifications) Order 2003, a general practitioner who is being trained in general practice by a medical practitioner who-

(a) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998<sup>(15)</sup>, and

(b) performs primary medical services, and

(c) from the coming into force of that article, means a medical practitioner who is being trained in general practice by a GP trainer whether as part of training leading to the award of a CCT or otherwise;”;

(e) for the definition of “medical list” substitute-

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<sup>14</sup> 1984 c.36

<sup>15</sup> 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23.

“”medical performers list” means a list prepared by a Health Board pursuant to regulation 3(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004<sup>(16)</sup>”;

(f) for the definition of “practice staff” substitute-

“”practice staff” means persons (other than assistant practitioners, principal practitioners, GP registrars, non GP partners or non GP section 17C agreement providers) employed by a GMS practice, a section 17C agreement practice or an OOH provider;”;

(g) in the definition of “officer” after “person” insert “(other than a GP performer)”;

(h) in the definition of “practitioner”-

(i) for paragraph (a) substitute –

“A registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer; or”; and

(ii) Omit “(other than an associate general practitioner)” and “National Health Service Trust, a Primary Care NHS Trust or a”;

(i) For the definition of NHS dental employee, substitute-

“An individual who, in the connection with the provision of dental health services in the health service, is employed by-

(a) a Health Board; or

(b) a registered dentist, including one who is providing personal dental services in accordance with a pilot scheme.”

### **Provisions relating to the approval of OOH providers**

6. After regulation A2 insert-

#### **“Provisions relating to the approval of OOH providers**

**A3.-** (1) This regulation applies to a company which, for the purpose of being approved as an employing authority, makes a written application to a Health Board appointed by Scottish Ministers to act on their behalf.

(2) An application referred to in (1) may specify the date from which approval by the Health Board (if given) shall have effect (“the nominated date”).

(3) Where, before 1 January 2005-

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<sup>16</sup> S.S.I. 2004/114

(a) a company makes an application which contains a nominated date earlier than the date on which approval is subsequently given (“the approval date”); and

(b) the Health Board is satisfied that, throughout the period beginning with nominated date and ending with the approval date, the company has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(4) Where, on or after 1 January 2005-

(a) a company makes an application which contains a nominated date later than the approval date; and

(b) the Health Board is satisfied that the company will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(5) Where, in respect of an application which does not fall within (2) or (3) above-

(a) the Health Board is satisfied that the company meets the conditions for approval; and

(b) it approves the application,

that approval shall take effect on the approval date.

(6) For the purposes of this regulation-

(a) the conditions for approval are those referred to in the definition of an OOH provider;

(b) the “nominated date” cannot be a date earlier than the date from which these Regulations have effect in accordance with regulation 1(1)

## **Contributions and other payments by employing authorities**

### **7. In regulation D2**

(1) For regulation D2(3)(c ) substitute -

“(c) the cost of providing compensation under regulation 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003”.

(2) After regulation D2(7) insert-



“(8) Where an employing authority which is an OOH provider, fails to pay or remit contributions in accordance with the provisions of this regulation, the Scottish Ministers may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount and provided by a person approved by the Scottish Ministers, which provides for payment to the Scottish Ministers of all future liabilities of the employing authority under these Regulations or under the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Amendment Regulations 1998<sup>(17)</sup> should that authority fail to meet them.”.

### **Cessation of participation in the scheme and recovery of the contributions.**

#### **8. After regulation D2, insert-**

“**D3.**-(1) An OOH provider that wishes to cease participation in the scheme shall give the Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”) and its employees and members not less than 3 months notice in writing (to commence with the date of the notice) of that fact.

(2) The appointed Board may give an OOH provider notice in writing terminating its participation in the scheme where that provider-

(a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation D2(8);

(b) has ceased to satisfy the conditions for approval as an employing authority.

(3) An OOH provider shall cease to participate in the scheme on the day upon which-

(a) the period referred to in paragraph (1) expires where a notice under that paragraph has been given;

(b) such date as the Scottish Ministers may specify in a notice under paragraph (2);

(c) in respect of the OOH provider-

(i) a proposal for a voluntary arrangement has been made or approved under Part 1 of the Insolvency Act 1986<sup>(18)</sup> (“the 1986 Act”),

(ii) an administration application has been made or a notice of intention to appoint an administrator has been filed with the court or an administrator has been appointed under Schedule B1 to the 1986 Act,

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<sup>17</sup> S.I. 1451/1995 as amended by S.S.I 2001/465 and S.S.I. 2004/62

<sup>18</sup> 1986 c.45

(iii) a receiver, manager or administrator has been appointed under part III of the 1986 Act,

(iv) a winding-up petition has been presented, a winding up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act, or

(v) notice has been received by it that it may be struck off the register of companies or an application to strike it off has been made under Part XX of the Companies Act 1985<sup>(19)</sup>.

(4) An OOH provider shall inform the appointed Board immediately upon the occurrence of any events referred to in (2)(b) or (3)(c).

(5) Without prejudice to any other method of recovery where, upon an OOH provider ceasing to participate in the scheme, any sum remains due to the Scottish Ministers under regulation D1 or D2, that sum may be recovered-

(a) as a simple contract debt in any court of competent jurisdiction; or

(b) by deducting it from any payment by way of benefits to or in respect of the member entitled to them or in respect of whom they are payable.”.

### **Preserved Pension**

**9.** In regulation E6(8) omit “(a)” and “or, if lower, (b) twice the member's final year's pensionable pay less the member's lump sum on retirement payable under this regulation (which shall not be subject to any reduction under regulation E8); ”.

### **Payment of lump sum**

**10.** In regulation F5<sup>(20)</sup> -

(a) after paragraph (3)(a) insert-

“(aa) the widow or widower has been convicted of an offence specified in regulation T6(1A) and the Scottish Ministers have directed, as a consequence of that conviction, that the widow’s or widower’s right to a payment in respect of the member’s death shall be forfeited; or”

(b) after paragraph (3A)(a) insert –

“(aa) that person has been convicted of an offence specified in regulation T6(1A) and the Scottish Ministers has directed, as a consequence of that conviction, that that person’s right to a payment in respect of the member’s death shall be forfeited; or”

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<sup>19</sup> 1985 c.6

<sup>20</sup> As amended by S.S.I 2001/437 and 2003/517

## **Medical and dental practitioners and trainee practitioners**

### **11. In regulation R1<sup>(21)</sup>-**

- (a) In both places they occur, omit “or Primary Care NHS Trust”;
- (b) after sub-paragraph (b) insert-

“(3) These Regulations apply from 1<sup>st</sup> April 2004 to a non GP partner and a non GP section 17C agreement partner as if they were whole-time officers employed by the relevant Health Board.”.

## **Participators in pilot schemes**

### **12. In regulation R13-**

- (a) in sub- paragraph (1)(a) omit “ a registered medical practitioner or” and “or Primary Care NHS Trust”
- (b) in sub-paragraph (1)(a)(ii) omit “, a medical pilot scheme employee”;
- (c) in sub-paragraph (1)(b) omit “a registered medical practitioner or” and “or Primary Care NHS Trust” and “a medical pilot scheme employee or”;
- (d) in sub-paragraph (1)(c) omit “or Primary Care NHS Trust”;
- (e) omit sub-paragraph (1)(d)(ii);
- (f) in sub-paragraph (1)(d) omit “or Primary Care NHS Trust”;
- (g) omit sub-paragraph (e);
- (h) in sub-paragraph (1)(f)(i), for “National Health Service Trust or Primary Care NHS Trust” substitute “Health Board”
- (h) in sub-paragraph (1)(f)(ii), omit “by a National Health Service Trust, by a Primary Care NHS Trust or”
- (i) in sub-paragraph (1)(h) omit “a medical pilot scheme employee or as a”; and
- (j) in sub-paragraph (2) omit “or Primary Care NHS Trust” and “or, as the case may be, the Primary Care NHS Trust”

## **Loss of Rights to Benefits**

### **13. In regulation T6 –**

- (a) after paragraph (1), insert-

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<sup>21</sup> As amended by S.S.I 2001/437 and 2003/55

" (1A) Subject to paragraph (2), the Scottish Ministers 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)<sup>(22)</sup>; or
- (d) a person to whom such benefits or amounts are payable under the member's will or on their 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 “if (b) or (c) applies”, substitute “if (1)(b) or 1(c) applies”.

#### **Accounts and actuarial reports**

**14.** After regulation U3(5)<sup>(23)</sup>, insert-

“(6) In addition to keeping records referred to in paragraph (5), an employing authority which is-

- (a) a GMS practice;
- (b) a section 17C agreement practice; or
- (c) an OOH provider,

shall provide a statement of each member’s pensionable earnings within 2 calendar months of the end of each financial year for examination by, and approval of, the Health Board appointed by the Scottish Ministers to act on his behalf.”.

#### **Amendments to Schedule 1**

**15.** Schedule 1 (Medical and Dental Practitioners) is amended in accordance with regulations 16 – 23.

#### **Additional definitions used in this Schedule**

**16.** In paragraph 1 -

- (a) omit the definition of “associate general practitioner”;
- (b) for the definition of “assistant practitioner”, substitute-

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<sup>22</sup> As inserted by S.S.I. 2001/437 and amended by S.S.I.2003/517

<sup>23</sup> As amended by S.S.I. 2003/270

““assistant practitioner” means-

(a) in the case of a medical practitioner, other than a GP registrar or locum practitioner, a GP performer employed wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS provider, section 17C agreement provider or OOH provider;

(b) in the case of a dental practitioner, a practitioner employed by a principal practitioner, who in that employment is wholly or mainly engaged in assisting their employer in the discharge of the employer’s duties as a registered dentist;”;

(c) for the definition of “locum practitioner” substitute-

““locum practitioner” means a registered medical practitioner, other than a GP registrar, whose name is included in a medical performer’s list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract of services by-

- (a) a GMS provider;
- (b) a section 17C agreement provider;
- (c) an OOH provider,

to deputise or assist in the provision of general medical services, a section 17C agreement or OOH services which the Scottish Ministers regard as NHS work;”;

(d) for the definition of “principal practitioner” substitute-

““principal practitioner” means-

- (a) in the case of a medical practitioner, a GP provider;
- (b) in the case of a dental practitioner, a registered dentist who is included in a list prepared in accordance with section 25(2)(a) of the 1978 Act.

(e) in the appropriate place in alphabetical order insert the following definitions-

““Board and advisory work” means-

“(a) work undertaken by an appointee of an employing authority, other than a GMS practice, section 17C agreement practice, or an OOH provider, as a member of its Board; or

(b) advisory work commissioned by, and undertaken on behalf of, such an authority which is connected to its role in

performing, or securing the delivery of primary medical services or associated management activities or similar duties,

but which is not itself the performance of primary medical services and payment for which is made by the employing authority directly to the person carrying out the work;”

“GP performer” means a general practitioner who is not also a GP provider, locum practitioner or a GP registrar and who performs primary medical services –

- (a) under a GMS contract, default contract or a section 17C agreement; or
- (b) on behalf of an OOH provider;

“GP provider” means a general practitioner who is-

- (a) a GMS contractor, default contractor or a section 17C agreement contractor;
- (b) a partner in a partnership that is a GMS contractor;
- (c) a shareholder in a company limited by shares that is a GMS contractor,

and who performs primary medical services as, or on behalf of, that contractor;

“Non GP partner” means a partner-

- (a) in a partnership that is a GMS practice who is not a general practitioner and who satisfies the conditions set out in section 17L of the 1978 Act<sup>(24)</sup> on the day on which the practice enters into the GMS contract; or
- (b) who was a partner in such a partnership that had entered into a GMS contract that took effect for payment purposes 1<sup>st</sup> April 2004 and which is treated as a contract entered into by a partnership falling within section **[the relevant SSI is being drafted by OSSE at present – advised by Lorna Clark. Ritchie Malloch to advise in due course]**

“Non GP section 17C agreement partner” means a person who provides services under a section 17C agreement in a section 17C

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<sup>24</sup> 1978 c.29. Section 17L was inserted by Part 1, section 4 of the Primary Medical Services (Scotland) Act 2004 asp 1

practice who is not a general practitioner and who satisfies the conditions set out in section 17D of the 1978 Act (<sup>25</sup>);”

### **Application of Regulations with modifications**

#### **17. In paragraph 2-**

(a) in sub-paragraph (1), on the both occasions on which they occur, omit “or Primary Care NHS Trust” and “or the appropriate contracting party”;

(b) in sub-paragraph (1A), omit the definition of “the appropriate contracting party” and “or Trust”;

(c) for sub-paragraph (1A)(a) substitute-

“(a) the medical performer’s list; or”.

### **Meaning of “pensionable earnings”**

#### **18. In paragraph 3-**

(a) for sub-paragraph (1)(a), substitute-

“(a) any sum on account of certified practice expenses; and”;

(b) for sub-paragraph (2)(a), substitute-

“(a) all payments made to a principal practitioner by-

(i) an employing authority in respect of general medical services, section 17C agreements, general dental services, general ophthalmic services, locum services or pharmaceutical services provided by the practitioner, including any payments so made to the practitioner as a trainer in general practice;

(ii) an OOH provider in respect of OOH services;”

(c) for sub-paragraph (2)(d), substitute-

“(d) allowances and any other sums (but excluding payment made to cover expenses) paid in respect of Board and advisory work.”.

(d) after sub-paragraph (2)(d), insert –

“(e) where a practitioner is a GMS or section 17C agreement provider or assists in the provisions of OOH services on behalf of an approved OOH provider, any sums in respect of services treated by the Scottish

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<sup>25</sup> 1978 c.29. Section 17D was inserted by Part II, section 21(2) of the National Health Service (Primary Care) Act 1997 c.46

Ministers as NHS work and paid directly to him by an employing authority.”.

### **Calculating “pensionable earnings” of practitioners in partnership**

#### **19. For paragraph 4 substitute-**

“4- (1) In the case of practitioners practising (with or without a non GP partner), the pensionable earnings of each principal practitioner, and non GP partner (if any) shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the scheme) and, subject to paragraph (2), dividing the total equally by reference to the number of such partners.

(2) Where the principal practitioners and non GP partners (if any) do not share equally in the partnership profits, they may elect that each partner’s pensionable earnings shall correspond to each partner’s share of the partnership profits.

(3) Where a medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner, the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with sub-paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their shares in the partnership profits.

(4) The calculations described in sub-paragraphs (2) and (3) will be made by the Health Board to which the partners are required to give notice of their election in accordance with paragraph 5.”.

### **Election relating to calculation of “pensionable earnings” in partnerships**

#### **20. In paragraph 5-**

(a) Omit “or Trust and” on both occasions on which it occurs “or Primary Care NHS Trust”

(b) in sub-paragraph (1) for “Practitioners”, substitute “Partners”

(c) in sub-paragraph (3) for “medical practitioners”, substitute “medical partners” and for “practitioners” in the twice it occurs, substitute “medical partners” and for “practitioner”, substitute “medical partner”.

(d) in sub-paragraph (4) for “principal practitioners”, substitute “partners” and for “each practitioner’s”, substitute “each partner’s”.

(e) in sub-paragraph (5) for “each quarter”, substitute “each financial year” and for “that quarter”, substitute “that year”.

### **Meaning of “pensionable earnings” in relation to other practitioners**



**21.** In paragraph 6-

(a) for sub-paragraph 1<sup>(26)</sup>, substitute-

“(1) In the case of an assistant practitioner, pensionable earnings means-

(a) all salary, wages, fees and other regular payments paid to the practitioner in respect of their employment as a practitioner, but does not include bonuses or payments made to cover expenses or for overtime; and

(b) allowances and any other sums (but excluding payment made to cover expenses) paid in respect of membership of, or advisory work for, an employing authority, and paid by that body or employer directly to them;

(c) where the practitioner performs services under a GMS contract, default contract or a section 17C agreement or assists in the provision of OOH services on behalf of an approved OOH provider, any sums in respect of services treated by the Scottish Ministers as NHS work and paid directly to them by an employing authority;”;

(b) in sub-paragraph (3)(a) before “practitioner” insert “dental”

(c) in sub-paragraph (3)(b) omit “medical or”;

(d) in sub-paragraph (5) for “or personal medical services”, substitute “, personal medical services, OOH services or services treated by the Scottish Ministers as NHS work”.

**Contributions to the scheme**

**22.** In paragraph 10-

(a) for sub-paragraph (4), substitute-

“(4) Principal practitioners must pay their contributions to-

(a) the appropriate employing authority in respect of general medical services, section 17C agreements of general dental services;

(b) the OOH provider on whose behalf they provide OOH services;

(c) the employing authority which directly pays them an allowance or other sum in respect of their membership of, or advisory work for, it;

(d) the employing authority which directly pays them any sum in respect of services treated by the Scottish Ministers as NHS work.”;

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<sup>26</sup> As amended by S.S.I. 2001/437, S.S.I 2003/55 and S.S.I 2003/270

(b) in sub-paragraph (5), omit “or associate general practitioner”;

(c) for sub-paragraph (5A), substitute-

“(5A) Locum practitioners must pay their contributions to the appropriate Health Board in respect of general medical services, section 17C agreement services, OOH services or services treated by the Scottish Ministers as NHS work.”;

(d) for sub-paragraph (6), substitute-

“(6) Regulation D2 (contributions by employing authorities) is modified so that contributions in respect of practitioners are payable under that regulation by-

(a) the appropriate employing authority in respect of general medical services, services provided under a section 17C agreement or general dental services;

(b) the OOH provider in respect of OOH services;

(c) the appropriate employing authority which directly pays them an allowance or other sum in respect of their membership of, or advisory work for, that employing authority;

(d) the employing authority which directly pays them any sum in respect of services treated by the Scottish Ministers as NHS work.”.

### **Members away from work and maternity absence**

23. In paragraph 18(6)(b)<sup>(27)</sup>, omit “medical or” in both places where it occurs.

### **Schedule**

24. The Regulations will be amended in accordance with the Schedule.

## **Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998**

### **Interpretation**

25. In regulation A2-

(a) in the definition of “assistant practitioner”<sup>(28)</sup>-

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<sup>27</sup> As amended by S.I. 1998/1593, S.I. 1999/443 and S.S.I 2003/55

<sup>28</sup> The definition was amended by paragraph 8(2)(a) of The Primary Medical Services (Consequential and Ancillary Amendments) (Scotland) Order 2004. S.S.I 2004/212

(i) for paragraph (b) substitute-

“(b) a person-

(i) who is a GP performer; or

(ii) who is a GP Registrar and has applied for inclusion on a primary medical services performer’s list, and

who is employed (other than by a Health Board) wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS provider, section 17C agreement provider or OOH provider”

(ii) in paragraph (f)<sup>(29)</sup> of the definition of “practitioner”, after “practitioner” insert “(other than a locum practitioner)”;

(b) at the appropriate place in alphabetical order, insert-

““non GP partner” means a partner-

(a) in a partnership that is a GMS practice who is not a general practitioner and who satisfies the conditions set out in section 17L of the National Health (Scotland) Act 1978<sup>(30)</sup> on the day on which the practice enters into the GMS contract; or

(b) who was a partner in such a partnership that had entered into a GMS contract that took effect for payment purposes on 1<sup>st</sup> April 2004 and which is treated as a contract entered into by a partnership comprising only individuals falling within **[the relevant SSI is being drafted by OSSE at present – advised by Lorna Clark. Ritchie Malloch to advise in due course]**

““OOH services” means such services as are required to be provided in all or part of the out of hours period which are the same as or similar to essential services;”.

## **Persons to whom the Regulations apply**

**26.** In regulation 3<sup>(31)</sup> after sub-paragraph (j), insert-

“(k) a non GP partner;

(l) a person providing services under a section 17C agreement who is not a practitioner;”.

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<sup>29</sup> sub-paragraph (f) was inserted by paragraph 8(2)(b)(v) of The Primary Medical Services (Consequential and Ancillary Amendments) (Scotland) Order 2004. S.S.I 2004/212

<sup>30</sup> 1978 c.29. Section 17L was inserted by Part 1, section 4 of the Primary Medical Services (Scotland) Act 2004 asp 1

<sup>31</sup> As amended by S.I. 1999/444 and S.S.I. 2001/437

## **Recovery of costs**

**27.** In regulation 4A<sup>(32)</sup>

(a) in sub paragraph (d) delete “and”;

(b) after sub-paragraph (4)(e), insert-

“(f) a person providing services under a section 17C agreement; and

(g) A non GP partner;”.

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

### **Interpretation**

**28.** In regulation 2(1), for the definition of “employing authority”, substitute-

““employing authority” means-

(a) a Health Board, Special Health Board, or the Common Services Agency for the Scottish Health Service established under section 2 and section 10 of the National Health Service (Scotland) act 1978;

(b) the Mental Welfare Commission established under section 2 of the Mental Health Scotland Act; or

(c) any other body that is constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme;”

### **Crediting of additional periods of service**

**29.** In paragraph 5-

(a) in sub-paragraph (5)(ii) omit “;or”; and

(b) omit sub-paragraph (5)(iii).

Authorised to sign by the Scottish Ministers

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<sup>32</sup> Inserted by S.I. 1999/195 and amended by S.S.I. 2001/437

St Andrew's House

Edinburgh

2004

Two of the Lord's Commissioners of  
Her Majesty's Treasury

## SCHEDULE

### Table of amendments

<u>Regulation</u>	<u>Amendment</u>
Regulation B2(e)	For “ National Health Service Trust or a Primary Care NHS Trust” substitute “Health Board”
Regulation E3(4)(d)	For “National Health Service Trust or a Primary Care NHS Trust “ substitute “Health Board”
Regulation E4(3)(d)	For “National Health Service Trust or a Primary Care NHS Trust” substitute “Health Board”

## EXPLANATORY NOTE

(This is not part of the Regulations)

These Regulations further amend the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365) (“the NHS Scheme”), the National Health Service (Injury Benefits) (Scotland) Regulations 1998 (S.I. 1998/1594) (“the Injury Benefits Scheme”) and the National Health Service (Premature Retirement Compensation (Scotland) Regulations 2003 (S.S.I 2003/344) (“the PRC Scheme”)

Regulation 1 provides that the regulations will come into force on ??, but a number of the regulations will have effect from 1<sup>st</sup> April 2004.

Regulations 2, 3 and 4 provide for the amendment of the National Health Service Superannuation Scheme (Scotland) Regulation 1995, the National Health Service (Scotland) (Injury Benefits) Regulations 1998 and the National Health Service (Compensation for Premature Retirement) Regulations 2003, respectively.

Regulation 5 amends regulation A2 (interpretation) of the NHS Scheme to include new definitions, for example “OOH provider” and amend existing definitions, for example “employing authority”, which have arisen as a result of the introduction of the new contract for the provision of general medical services.

Regulation 6 inserts a new regulation A3 (provisions relating to the approval of OOH providers) into the NHS Scheme which outlines the date from which a company which provides OOH services, and which meets the relevant conditions, can seek approval as an employing authority.

Regulation 7 amends regulation D2 (Employers contributions) of the NHS Scheme to reflect the revocation of the majority of the National Health Service Compensation for Premature Retirement (Scotland) Regulations 1981 and their replacement by the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003. It also add a new paragraph (8) to regulation D2 which provides that Scottish Ministers can require certain employing authorities to have in force a guarantee, indemnity or bond which will secure the payment of employer contributions to the NHS scheme.

Regulation 8 outlines circumstances under which an OOH provider will no longer be approved as an employing authority in the NHS Scheme, and provides for the recovery of any outstanding contributions in those circumstances.

By amending regulation E6(preserved pension) of the NHS Scheme, regulation 9 removes the overriding limit in respect of the lump sum payable in order to discharge liability for a preserved pension.

Regulations 10 & 13 provide that Scottish Ministers may direct that a widow, widower, dependant or nominated person forfeit benefits paid by the NHS Scheme in respect of the death of a member, should the aforementioned beneficiaries be convicted of the unlawful

killing of that member. Where a lump sum on death benefit is forfeited, that lump sum will be paid to the member's personal representative.

Regulation 11 amends regulation R1 (medical and dental practitioners and trainee practitioners) of the NHS Scheme to provide that non GP partners and non GP section 17C agreement providers can access the NHS scheme from 1<sup>st</sup> April 2004 on a whole time officer basis.

Regulations 12, 17 and 23 amend regulation R13 (participants in pilot schemes), Schedule 1 paragraph 2 (application of regulations with modifications) and Schedule 1 paragraph 10 (member's away from work and maternity absence) of the NHS Scheme to reflect the discontinuation of medical pilot schemes.

Regulation 14 inserts a new sub-paragraph into regulation U3 (accounts and actuarial reports) of the NHS Scheme, which provides that certain employing authorities will provide a statement of pensionable earnings within 2 months of the end of each financial year.

Regulation 15 provides for the amendment of Schedule 1 of the NHS Scheme.

Regulation 16 amends Schedule 1, paragraph 1 (additional definitions used in this Schedule) of the NHS Scheme to include new definitions, for example GP provider, and omitting and amending existing definitions, for example associate general and principal practitioner.

Regulation 18 redefines the meaning of pensionable earnings for principal practitioners, contained in Schedule 1, paragraph 3 (meaning of "pensionable earnings") of the NHS Scheme.

Regulations 19 & 20 amends Schedule 1 paragraphs 4 (calculating "pensionable earnings" of practitioners in partnership) & 5 (election relating to a calculation of "pensionable earnings" in partnership) of the NHS Scheme, mainly to take account of non GP partners eligibility to join the NHS scheme and their share in practice profits.

Regulation 21 amends Schedule 1, paragraph (6) (meaning of "pensionable earnings" in relation to other practitioners) of the NHS Scheme to redefine the meaning of pensionable earnings for practitioners other than principal practitioners.

Regulation 22 amends Schedule 1 paragraph 10 (contributions to the scheme) of the NHS Scheme in order to clarify whom contributions should be paid to by principal practitioners, locum practitioners and employing authorities.

Regulation 24 and various other regulations contained in this instrument provide for the dissolution of NHS Trusts in Scotland under the terms of the National Health Service Reform (Scotland) Act 2004 in respect of the NHS Scheme.

Regulation 25 amends certain definitions contained in regulation A2 (interpretation) of the Injury Benefits Scheme.

Regulation 26 amends regulation 3 (persons to whom the regulations apply) of the Injury Benefits Scheme to include a non GP partner and a person who is not a practitioner but provides services under a section 17C agreement.



Regulation 27 amends regulation 4A (recovery of costs) of the Injury Benefits Scheme so that it applies to a non GP partner and a non practitioner provider of services under a section 17C agreement, as if they were whole time officers of the relevant Health Board.

Regulation 28 and 29 amend the PRC Scheme to take account of the dissolution of NHS Trusts in Scotland under the terms of the National Health Service Reform (Scotland) Act 2004, in respect of that scheme.