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STATUTORY RULES OF NORTHERN IRELAND

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**2001 No. 367**

**The Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001**

**Part I**

**Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001 and shall come into operation on 1st December 2001.

**Interpretation**

2.—(1) In these Regulations—

“the 1962 Regulations” means the Health Services (Superannuation) Regulation (Northern Ireland) 1962(1);

“the 1984 Regulations” means the Health and Personal Social Services (Superannuation) Regulation 1984(2)

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(3);

“the 1997 Order” means the Health Services (Primary Care) (Northern Ireland) Order 1997(4);

“the superannuation scheme Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(5);

“the previous Regulations” means the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 1975(6);

“the Agency” means the Northern Ireland Central Services Agency for Health and Social Services established under Article 26 of the 1972 Order;

“assistant practitioner” means an employee of a medical practitioner or dental practitioner whose name is included on a medical or dental list being himself a registered medical practitioner or dental practitioner who, in such employment, is engaged in assisting his employer in the actual discharge of his duties as such practitioner, and for whose employment the consent of the Health and Social Services Board concerned is required;

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- (1) [S.R. & O. \(N.I.\) 1962 No. 237](#) which was repealed by regulation 80 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984 ([S.R. 1984 No. 336](#))
- (2) [S.R. 1984 No. 336](#) which was repealed by regulation 99 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) ([S.R. 1995 No. 95](#))
- (3) [S.I. 1972/1265 \(N.I. 14\)](#)
- (4) [S.I. 1997/1177\(N.I. 7\)](#)
- (5) [S.R. 1995 No. 95](#) as amended by [S.R. 1997 No. 217](#); [S.R. 1997 No. 390](#); [S.R. 1998 No. 299](#) and [S.R. 1999 No. 293](#)
- (6) [S.R. 1975 No. 85](#) as amended by [S.R. 1986 No. 151](#); [S.R. 1991 No. 506](#)

“average remuneration” means—

- (a) in relation to a person other than a practitioner, such amount as would be or would have been his final year’s superannuable pay, within the meaning of regulation 3(6) of the superannuation scheme Regulations, as an officer to whom those Regulations apply (assuming, in the case of a person to whom regulation 3(1)(c) applies, that he was in receipt of the superannuable pay which would in the opinion of the Department, have been payable if he were employed whole-time by an employing authority on similar duties); or
- (b) in relation to a practitioner, the yearly average of such amount as would be or would have been his uprated earnings, calculated in accordance with paragraph 11(2) of Schedule 2 to the superannuation scheme Regulations, as a practitioner to whom those Regulations apply;

calculated as if he had retired—

- (i) in the case of a person eligible for an allowance under regulation 4(3), on the date on which he ceased to be employed as a person to whom regulation 3(1) applies;
- (ii) in the case of a person eligible for an allowance under regulation 4(4) or (5), on the date on which his emoluments were reduced;
- (iii) in the case of any other person, on the date on which by reason of the injury or disease his employment ceased:

Provided that in respect of a person to whom regulation 3(1)(a) applies who, immediately before he ceased to be employed by reason of the injury or disease or as a person to whom regulation 3(1) applies, or immediately before the date on which his emoluments were reduced, as the case may be, was employed as senior registrar, registrar, specialist registrar, senior house officer or house officer, his average remuneration shall be increased to the amount which in the opinion of the Department represents the average remuneration of a general medical practitioner, or a general dental practitioner, as the case may be, of comparable age;

“dental hygienist” means a person whose name is included in the roll of dental hygienists referred to in regulation 21 of the Dental Auxiliaries Regulations 1986(7);

“dental list” means a list prepared in accordance with Regulations under Article 61(2)(a) of the 1972 Order;

“dental pilot scheme employee” means a person who is performing personal dental services in accordance with a pilot scheme, and is employed by a person who is providing those services;

“dental therapist” means a person whose name is included in the roll of dental therapists referred to in regulation 25 of the Dental Auxiliaries Regulations 1986;

“Department” means the Department of Health, Social Services and Public Safety;

“emoluments” means all salary, wages, fees and other payments paid or made to a person as such for his own use, and also the money value of any accommodation or other allowances in kind appertaining to his employment, but does not include payments for overtime which are not a usual incident of his employment, or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other money to be spent, or to cover expenses incurred, by him for the purposes of his employment; and where fees or other variable payments were made to a person as part of his emoluments during any period immediately preceding a reduction of emoluments, the amount in respect of fees or other variable payments to be included in the emoluments shall be the average of the fees or other variable payments paid to him during the period of 3 years immediately preceding the reduction of the emoluments, or such other period as the Department may think reasonable in the circumstances;

“employing authority” means—

- (a) a Health and Social Services Board;
- (b) a HSS Trust;
- (c) the Agency;
- (d) the National Board for Nursing, Midwifery and Health Visiting for Northern Ireland established under section 5 of the Nurses, Midwives and Health Visitors Act 1979<sup>(8)</sup>;
- (e) any special agency established under Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990<sup>(9)</sup>; and
- (f) any such other body that is constituted under any transferred provision relating to health services and which the Department agrees to treat as an employing authority for the purposes of these Regulations;

“Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the 1972 Order;

“health services” has the meaning assigned to it by Article 2(2) of the 1972 Order;

“HSS dental employee” means a person who, in connection with the provision of health services, is employed by—

- (a) a Health and Social Services Board;
- (b) a HSS Trust;
- (c) a registered dentist; or
- (d) a registered dentist who is providing personal dental services in accordance with a pilot scheme;

“HSS Trust” means a Health and Social Services Trust established under the Health and Personal Social Services (Northern Ireland) Order 1991<sup>(10)</sup>;

“medical list” means the list kept under Regulations under Article 56(2)(a) of the 1972 Order;

“medical pilot scheme employee” means a person who, in connection with a the provision of personal medical services in accordance with a pilot scheme, is employed by a person providing those services;

“personal dental services” has the meaning given in Article 3(7) of the 1997 Order;

“personal medical services” has the meaning given in Article 3(7) of the 1997 Order;

“pilot scheme” has the meaning given in Article 3(1) of the 1997 Order;

“pilot services” has the meaning given in Article 3(4) of the 1997 Order;

“practitioner” means—

- (a) a registered medical practitioner or a registered dentist whose name is included in the medical list of a Health and Social Services Board or, as the case may be, on the dental list of a Health and Social Services Board, other than a registered dentist who is employed by a Health and Social Services Board or a HSS Trust;
- (b) an assistant practitioner;
- (c) a registered medical practitioner or a registered dentist who is providing piloted services under a pilot scheme;
- (d) a registered dentist who contracts with a person providing piloted services to carry out personal dental services in accordance with a pilot scheme; and

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<sup>(8)</sup> 1979 c. 36 as amended by 1992 c. 16

<sup>(9)</sup> S.I. 1990/247 (N.I. 1)

<sup>(10)</sup> S.I. 1991/194 (N.I. 1)

- (e) a registered medical practitioner or registered dentist who is a medical pilot scheme employee or, as the case may be, a dental pilot scheme employee, and—
- (i) whose name appears on the medical list, or as the case may be, the dental list of a Health and Social Services Board, other than a registered dentist who was employed by a Health and Social Services Board or HSS Trust; or
  - (ii) who was an assistant practitioner;  
immediately prior to the commencement of employment as a medical or dental pilot scheme employee;

“quarter” means a 3 month period ending on the last day of March, June, September or December;

“registered dentist” has the meaning given in section 53(1) of the Dentists Act 1984<sup>(11)</sup>;

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983<sup>(12)</sup>;

“relevant pension scheme” means any form of arrangement, whether subsisting by virtue of a transferred provision, trust, contract or otherwise for the provision of superannuation benefits in connection with an employment mentioned in regulation 3(1), including a personal pension scheme as defined in section 1 of the Pensions Schemes (Northern Ireland) Act 1993<sup>(13)</sup>, or an additional pension referred to in section 44(3)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(14)</sup>, but excluding—

- (a) any arrangements for the provision of benefits under legislation related to social security, other than the said additional pension;
- (b) any arrangement for the provision of benefits paid by additional voluntary contributions under which the rate or amount of benefit payable is calculated by reference to the proceeds of the investment of those contributions;

“the Scheme” means the Health and Personal Social Services Superannuation Scheme for Northern Ireland the rules of which are set out in superannuation scheme Regulations;

“service” has the meaning given in regulation 6.

(2) Where any pension or child’s allowance which is or would have been payable under a relevant pension scheme is taken into account for the purpose of any calculation under these Regulations, such pension or allowance shall exclude any amount by which it is or would have been increased under the Pensions (Increase) (Northern Ireland) Order 1974<sup>(15)</sup>.

## Part II

### Injury Benefits

#### Persons to whom these Regulations apply

**3.—**(1) Subject to paragraph (3), and regulation 17, these Regulations shall apply to any person who while he—

- (a) is in the paid employment of an employing authority;
- (b) is a practitioner;

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<sup>(11)</sup> 1984 c. 24

<sup>(12)</sup> 1983 c. 54

<sup>(13)</sup> 1993 c. 49

<sup>(14)</sup> 1992 c. 7

<sup>(15)</sup> S.I. 1974/1267 (N.I. 2)

- (c) holds an appointment with an employing authority the terms of which declare it to be honorary;
  - (d) holds an appointment as a member of such body constituted under the 1972 Order as the Department may approve;
  - (e) is a provider of piloted services other than a person to whom paragraph (2) applies;
  - (f) is a registered medical practitioner who is a medical scheme employee and whose employment as such requires the consent of a Health and Social Services Board with which the person providing piloted services has agreed to provide piloted services;
  - (g) is a registered dentist who is a dental pilot scheme employee;
  - (h) is a registered dentist who is engaged under a contract for services by a person providing piloted services to carry out personal dental services in accordance with a pilot scheme;
  - (i) is a dental therapist who is a dental pilot scheme employee; or
  - (j) is a dental hygienist who—
    - (i) is employed as a dental pilot scheme employee otherwise than by a HSS Trust; and
    - (ii) was, immediately before the commencement of such employment, a member of the Scheme, to whom these Regulations applied.(hereinafter referred to in this regulation as “his employment”), sustains an injury, or contracts a disease, to which paragraph (3) applies.
- (2) This paragraph applies to a provider of personal dental services under a pilot scheme who is neither a registered dentist or a dental therapist, and—
- (a) who—
    - (i) immediately prior to the commencement of the pilot scheme, was a HSS dental employee, and
    - (ii) was not at that time a member of the Scheme; or
  - (b) to whom these Regulations did not apply immediately prior to the commencement of the pilot scheme.
- (3) This paragraph applies to an injury which is sustained and to a disease which is contracted in the course of the person’s employment and which is wholly or mainly attributable to his employment and also to any other injury sustained and, similarly, to any other disease contracted if—
- (a) it is wholly or mainly attributable to the duties of his employment;
  - (b) it is sustained while, as a volunteer at an accident or emergency, he is providing health services which his professional training and code of conduct would require him to volunteer; or
  - (c) it is sustained while he is travelling as a passenger in a vehicle to or from his place of employment with the permission of the employing authority and if in addition—
    - (i) he was under no obligation to the employing authority to travel in the vehicle but, if he had been, the injury would have been sustained in the course of, and have been wholly or mainly attributed to, his employment, and
    - (ii) at the time of the injury the vehicle was being operated, otherwise than in the ordinary course of a public transport service, by or on behalf of the employing authority or by some other person by whom it was provided in pursuance of arrangements made with the authority.
- (4) These Regulations shall not apply to any person in relation to any injury or disease wholly or mainly due to, or seriously aggravated by, his own culpable negligence or misconduct.

### Scale of benefit

4.—(1) Subject to paragraph (5), benefits in accordance with this regulation shall be payable by the Department to any person to whom regulation 3(1) applies whose earning ability is permanently reduced by more than 10 per cent. by reason of the injury or disease.

(2) Where a person to whom regulation 3(1) applies ceases to be employed as such a person by reason of the injury or disease and no allowance or lump sum, other than an allowance under paragraph (5), has been paid under these Regulations in consequence of the injury or disease, there shall be payable, from the date of cessation of employment, an annual allowance of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of his average remuneration shown in whichever column of the Table hereunder is appropriate to his service in relation to the degree by which his earning ability is reduced at that date.

#### TABLE

#### SERVICE

(1) <i>Degree of reduction of earning ability</i>	(2) <i>Less than 5 years</i>	(3) <i>5 years and over but less than 15 years</i>	(4) <i>15 years and over but less than 25 years</i>	(5) <i>25 years and over</i>
More than 10% but not more than 25%	15%	30%	45%	60%
More than 25% but not more than 50%	40%	50%	60%	70%
More than 50% but not more than 75%	65%	70%	75%	80%
More than 75%	85%	85%	85%	85%

(3) Where, before attaining age 60, a person to whom regulation 3(1) applies ceases to be employed as such a person other than by reason of the injury or disease and no allowance or lump sum, other than an allowance under paragraph (5), has been paid under these Regulations in consequence of the injury or disease, he may be paid, from the date on which he attains age 60, or such earlier date as the Department may in any particular case allow, an annual allowance of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of his average remuneration shown in whichever column of the Table in paragraph (2) is appropriate to his service in relation to the degree by which his earning ability is reduced by reason of the injury or disease at that date.

(4) Where a person to whom regulation 3(1) applies suffers a reduction in the emoluments of an employment mentioned in that regulation, by reason of the injury or disease, there shall be payable from the date of that reduction, an annual allowance—

- (a) of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6), will provide an income of the percentage of his average remuneration shown in whichever column of the Table in

paragraph (2) is appropriate to his service in relation to the degree by which his earning ability is reduced at the date that his emoluments were reduced; or

- (b) of the amount, if any, which, when added to the value, expressed as an annual amount, of any pension specified in paragraph (6)(a), will provide an income at the annual rate at which a pension would have been payable to the person under his relevant pension scheme if, on the day before such reduction, he had ceased to be employed and was incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body;

whichever is the greater:

Provided that regulation 14(4) shall apply to that allowance as if the person had ceased to be employed on the day before his emoluments were reduced and had been re-employed on the following day with the reduced emoluments.

(5) Where, on or after 1st April 1992, a person to whom regulation 3(1) applies, or to whom regulation 3(1) of the previous Regulations applied, is or was on leave of absence from an employment mentioned in that regulation with reduced emoluments by reason of the injury or disease, there shall be payable by that person's employing authority on behalf of the Department, during or in respect of the period of such leave and without regard to any reduction in the person's earning ability, an annual allowance of the amount, if any, which when added to the aggregate of—

- (a) the emoluments payable to the person during his leave of absence, and
- (b) the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) (including the value of any equivalent benefits payable under the enactments consolidated by the Social Security Contributions and Benefits (Northern Ireland) Act 1992,

will provide an income of 85 per cent. of his average remuneration.

(6) The pensions and benefits specified in this paragraph are—

- (a) any pension payable to the person under a relevant pension scheme disregarding any reduction in the amount of that pension under regulation 92 (Offset for crime, negligence or fraud) or regulation 93 (Loss of rights to benefits) of the superannuation scheme Regulations and disregarding any increase in the amount of that pension, under the Pensions (Increase) Act (Northern Ireland) 1971<sup>(16)</sup> after the date at which the average remuneration used in the calculation of the allowance was calculated;
- (b) any of the following benefits, at the rates in operation at the date on which the employment ceased or the emoluments were reduced, as the case may be, which are payable to the person—
  - (i) disablement pension payable under section 103 of, or disablement gratuity payable under section 106 of, and paragraph 9 of Schedule 7 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992) or so much of any such pension or gratuity as relates to the injury or disease (hereinafter referred to as “the relevant part”), together with—
- (a) any increase in such pension payable by way of unemployability supplement under paragraph 2 of that Schedule (or so much of any such increase as is proportionate to the

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<sup>(16)</sup> 1971 c. 35 (N.I.); Part I of the Act was amended by Article 23(1) of, and paragraphs 8 to 10 of Schedule 6, to the Superannuation (Northern Ireland) Order 1972 (S.I. 1972/1073 (N.I. 10)): Articles 5(2) and (3) of the Pensions (Increase) (Northern Ireland) Order 1974 (S.I. 1974/1267 (N.I. 2)): Article 74(2) of, and Schedule 6 to, the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)) and Article 2 of the Pensions Increase (Reduction of Qualifying Age) Order 1972 (S.R. & O. (N.I.) 1972 No. 264). See also Articles 69 and 69A of the Social Security Pensions (Northern Ireland) Order 1975 which have effect as if they were contained in Part V of that Act. Article 69A was inserted by the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) Article 10(3))



relevant part of the said pension) but excluding any increase in that supplement under paragraph 3(17) of Schedule 7; and

- (b) any increase in such pension payable under paragraphs 4(18) or 6 of Schedule 7 (dependants) or so much of any such increase as is proportionate to the relevant part of the said pension;

but excluding any increase under section 104 (increase where constant attendance is needed) or section 105 (increase for exceptionally severe disablement) of that Act;

- (ii) incapacity benefit payable under section 30A(19) of that Act in respect of the injury or disease, together with any increase in benefit payable under sections 51A(20) (special provision for married people), 80 (beneficiary's dependant children), 83A(21) (pension increase for spouse), 85(22) (increase—person with care of children), 86A(23) (increase for adult dependants) or 87(24) (rate of increase where associated retirement pension is attributable to reduced contributions) of that Act;
- (iii) severe disablement allowance payable under section 68(25) of that Act in respect of the injury or disease, together with any increase payable under section 90 (dependants) of that Act;
- (iv) reduced earnings allowance payable under paragraph 11(26) of Schedule 7 to that Act in respect of the injury or disease;
- (v) retirement allowance payable under paragraph 13(27) of Schedule 7 to that Act in respect of the injury or disease.

(7) Where the relevant pension scheme is the Federated Superannuation System for Universities, the Federated Superannuation Scheme for Nurses and Hospital Officers or any other scheme under which the benefits may be paid otherwise than as an annual pension, and all or part of the contributions to the scheme on behalf of the person have been paid from public funds, the pension payable thereunder shall, for the purposes of paragraph (6)(a), be deemed to include three-quarters of such sum that, in the option of the Department, represents the value, expressed as an annual amount, of the benefits of the policies or accumulated investments held under the scheme on behalf of the person.

(8) Where a practitioner has received payments under regulation 65 of the 1962 Regulations or under regulation 72 of the 1984 Regulations, there shall, for the purposes of paragraph (6)(a), be deemed to be payable to him a pension of such amount, if any, as the Department thinks fit, but not exceeding the amount of the pension to which the practitioner would, if he had not been entitled to such payments, have become entitled under those regulations, in respect of the period or periods for which such payments were made to him, if he had attained age 60 and had served the minimum period of qualifying service.

(9) A person mentioned in paragraph (2) or (3), or a person mentioned in paragraph (4) who subsequently ceases to be employed as such a person by reason of the injury or disease, shall be

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(17) Paragraph 3 was amended by paragraph 37 of Schedule 7 to the Pension Schemes (Northern Ireland) Act 1993 (c. 49) and paragraph 41(2) of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(18) Paragraph 4 was amended by Article 2 of S.R. 1999 No. 94

(19) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(20) Section 51A was inserted by paragraph 18(6) of Schedule 2 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(21) Section 85A was inserted by paragraph 2(1) of Schedule 2 to the Pensions (Northern Ireland) Order 1995

(22) Section 85 was amended by paragraphs 14(d) and 18(10) of Schedule 2 to the Pensions (Northern Ireland) Order 1995

(23) Section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(24) Section 87 was amended by paragraph 24 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and paragraph 9 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

(25) Section 68 was amended by regulation 2(2) of S.R. 1994 No. 370 and Article 11 of, and paragraph 18 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(26) Paragraph 11 was modified by regulation 12A of S.R. 1986 No. 179 which was inserted by regulation 3 of S.R. 1994 No. 347

(27) Paragraph 13 was amended by paragraph 19(3) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995



entitled to receive a lump sum of the proportion of average remuneration shown in column (2) of the Table hereunder in relation to the degree by which his earning ability is reduced.

**TABLE**

(1) <i>Degree of reduction of earning ability</i>	(2) <i>Proportion of average remuneration</i>
More than 10% but not more than 25%	One-eighth
More than 25% but not more than 50%	One-quarter
More than 50% but not more than 75%	Three-eighths
More than 75%	One-half

### **Recovery of costs**

5.—(1) Where, during the period commencing 1st April 1992 and ending on 30th November 2001, an allowance or any part of an allowance, or lump sum, under paragraph (2), (3), (4) or (9) of regulation 4 or, regulation 7, 8, 9, or 11 of the previous Regulations, was paid to or in respect of a person to whom regulation 3(1) of the previous Regulations applied, that person's employing authority shall be liable to pay a contribution to the Department in accordance with paragraph (5) representing—

- (a) the total amount of such allowance or such part of it; or
- (b) the total amount of such lump sum;

together with the cost of providing an increase to it under Part I of the Pensions (Increase) Act (Northern Ireland) 1971.

(2) Subject to paragraph (3), where, on or after 1st November 2001, a claim is made for an allowance or any part of it, or lump sum under paragraphs (2), (3), (4) or (9) of regulation 4, or regulations 8, 9, 10, or 12 by or in respect of a person to whom regulation 3(1) of these Regulations applies, that person's employing authority shall, on the payment by the Department pursuant to that claim of the allowance or any part of it, or, as the case may be, of the lump sum, be liable to pay a contribution to the Department in accordance with paragraph (5) representing—

- (a) the total amount of such allowance or such part; or
- (b) the total amount of such lump sum;

together with the cost of providing increases to it under Part I of the Pensions (Increase) Act (Northern Ireland) 1971.

(3) In paragraphs (1) and (2) of this regulation "that person's employing authority" means the employing authority by which he was employed at the date a claim to an allowance payable under these Regulations or the previous Regulations was made, or if the date of claim falls after he has ceased to be in employment, the employing authority by whom he was last employed.

(4) Paragraph (2) shall not apply to any claim made on or after 2001 where that claim is made in respect of a person who dies on or after that date but who was, before that date, in receipt of an allowance or lump sum under paragraphs (2), (3), (4) or (9) of regulation 4 or who would, before that date, have received such an allowance or lump sum under any of those paragraphs but for—

- (a) the total amount of such allowance or such part; or
- (b) the total amount of such lump sum;

together with the cost of providing pensions increases to it under Part I of the Pensions (Increases) Act (Northern Ireland) 1971.

(5) Contributions payable to the Department under paragraph (1) shall be paid not later than one month from the end of the quarter in which the lump sum referred to in that paragraph was paid or, in any case where that period has expired, within such longer period as the Department may allow.

(6) Contributions payable to the Department under paragraph (2) shall be paid not later than one month from the end of the quarter in which the allowance or any part of it, or as the case may be, the lump sum, referred to in that paragraph was paid.

(7) This regulation shall apply to—

- (a) a practitioner;
- (b) a person providing piloted services;
- (c) a registered dentist who is engaged, under a contract for services, by a person providing piloted services to carry out personal dental services in accordance with a pilot scheme;
- (d) a registered medical practitioner who is a medical pilot scheme employee; and
- (e) a dental pilot scheme employee who is employed as such otherwise than by a HSS Trust, as if he were an officer employed by the Health and Social Services Board in whose area he is providing services or, as the case may be, the Health and Social Services Board, with which the person providing piloted services has agreed to provide piloted services.

#### **Meaning of service**

6. A person's service shall comprise all of the periods which at the date on which he ceased to hold an employment or appointment mentioned in regulation 3(1), or on which the emoluments of such employment or appointment were reduced, as the case may be, fell within any of the following descriptions, but no period shall be taken into account under more than one description—

- (a) any period during which he held such employment or appointment;
- (b) any period of employment that would be taken into account for any purpose of a relevant pension scheme; and
- (c) any other period that the Department may approve in any particular case.

### **Part III**

#### **Benefits on Death of Injured Person**

##### **Grounds of entitlement**

7. If a person to whom these Regulations apply dies as a result of, or his death was, in the opinion of the Department, substantially hastened by, the injury or disease, the Department shall pay in respect of that person (hereinafter referred to as "the deceased") the benefits described in this Part, except that such benefits shall not be payable in respect of an injury or disease wholly or mainly due to, or seriously aggravated by, the culpable negligence or misconduct of the deceased.

##### **Widow's or widower's allowance**

8.—(1) Subject to the provisions of this regulation and to regulation 11 there shall be payable to the widow or widower of a person mentioned in regulation 7 an annual allowance of the amount, if any, which when added to the amount of any pension payable under a relevant pension scheme in respect of the deceased, to or for the benefit of the widow or widower, will provide an income of 45 per cent. of the deceased's average remuneration.

(2) Subject to paragraph (3), for the first six months immediately following the death of a person who, at the date of his death was entitled to an allowance under these Regulations, there shall be

payable to the widow or widower an annual allowance of the amount, if any, which when added to the aggregate mentioned in paragraph (1) will provide an income of the percentage of average remuneration by reference to which the deceased's annual allowance was calculated:

Provided that this paragraph shall not apply where the aggregate of annual allowances otherwise payable under paragraph (1) and regulations 9(1) and 10(1) would exceed an allowance payable under this paragraph.

- (3) A widow or widower shall not be entitled to receive an allowance—
  - (a) if the marriage took place after the deceased last ceased to be employed as a person to whom these Regulations apply or after the date on which his earning ability was reduced as a result of the injury or disease, whichever is the later;
  - (b) if at the date of the deceased's death such widow or widower and a man or, as the case may be, a woman to whom she or he is not married are living together as husband and wife; or
  - (c) in respect of any period after such widow or widower remarries or during which she or he lives together with another person as if she or he was married to that other person, so, however, that where such marriage has terminated, the Department may restore an allowance to a widow or widower if it is satisfied that such widow or widower is suffering hardship.
- (4) Where the deceased died before 6th April 1988, a widower shall not be entitled to receive an allowance unless, at the date of the deceased's death, he was incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living and was wholly or mainly dependent upon the deceased.

### **Child's allowance**

9.—(1) Subject to the provisions of this regulation and to regulation 11, on the death of a person mentioned in regulation 7 or, where an allowance, is payable under regulation 8(2), on the termination of payment of that allowance, there shall be payable to any dependent child an annual allowance of the amount, if any, which, when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to, or for the benefit of, such child, will provide an income of 10 per cent of the deceased's average remuneration multiplied by the number of children not exceeding four, or of twice that sum where there is no surviving parent:

Provided that where the Department is satisfied that a surviving parent is not maintaining such a child, it may pay the allowance to or for the benefit of that child as if there were no surviving parent.

- (2) Subject to the provisions of this regulation, "dependent child" means any child who is—
  - (a) a child or grandchild of the deceased;
  - (b) a step-child of the deceased by a marriage entered into before the date which the deceased ceased to be in employment mentioned in regulation 3(1) or a child legally adopted by the deceased before that date;
  - (c) a brother or sister, or a child of a brother or sister, of the deceased or the deceased's spouse (any half-brother or step-brother being treated as a brother and any half-sister or step-sister being treated as a sister for this purpose); or
  - (d) a child who, immediately before the deceased ceased to be in employment mentioned in regulation 3(1), the deceased had intended to adopt or a child who at that time had been dependant on the deceased for two years or (if less) for half of the child's life;

and who satisfies the requirements of paragraph (3).

- (3) The requirements of this paragraph are satisfied by any child described in paragraph (2) who was—

- (a) born before the deceased ceased to be in employment mentioned in regulation 3(1) and who was dependent on the deceased when the deceased died and, if the deceased died after ceasing to be in employment mentioned in regulation 3(1), was also dependent on the deceased when the deceased ceased to be in such employment; or
  - (b) born one year or less after the deceased ceased to be in employment mentioned in regulation 3(1) and who either was dependent on the deceased both immediately after being born and when the deceased died, or would have become dependent on the deceased if the deceased had not died before the child was born.
- (4) A child is a dependent child for so long as he is—
- (a) under age 17; or
  - (b) aged 17 or over and continuing in full-time education; or
  - (c) aged 17 or over and participating in full-time training for a trade, profession or vocation, for which he is not receiving remuneration in excess of the allowable maximum; or
  - (d) aged 17 or over and taking a break in such full-time education or training providing the Department is satisfied that the child intends to return to some such education or training.
- (5) A child who is aged 17 or over and who has ceased to be a dependent child will be treated as a dependent child if he returns to full-time education, or to full-time training for a trade, profession or vocation for which he is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.
- (6) In this regulation, the “allowable maximum” means the amount to which a pension under the superannuation scheme Regulations of £1807 a year beginning on 8th April 1994 would have been increased under Part I of the Pension (Increase) Act (Northern Ireland) 1971 at the date in question (calculated as if the words “for a period of not less than two years” in section 3(3)(d) of that Act were omitted), plus the yearly amount of any expenses necessarily incurred for the purposes of education or training.
- (7) An allowance payable under this regulation shall be paid to the child, or, in such proportion as the Department thinks fit, to the children, entitled thereto:

Provided that the Department may, if it thinks fit, pay the allowance to such other person or persons as it may specify and such person or persons shall apply such allowance in accordance with any directions given by the Department for the benefit of the child entitled thereto.

### **Dependent relative’s allowance**

**10.—**(1) Subject to paragraph (4) and to regulation 11, on the death of a person mentioned in regulation 7 or, where any allowance is payable under regulation 8(2), on the termination of payment of that allowance, an annual allowance calculated in accordance with paragraph (2) or (3), as the case may be, shall be payable to—

- (a) a parent who, is either the deceased’s mother or his father or his spouse’s mother or father, and who was wholly or mainly dependent on the deceased at the date of his death; and
- (b) each child who has attained the age of 17 years, and is not receiving full-time education or undergoing full-time training for a trade, profession or vocation, but who if he had not attained the age of 17 years would be entitled to an allowance under regulation 9, and who was incapable by reason of permanent ill-health or infirmity of mind or body of earning his living at the date of the death of the deceased or at the date he ceased to be entitled to an allowance under regulation 9, whichever is the later, and has at all times since then been so incapable.

(hereinafter referred to as “a dependent relative”).

(2) The annual allowance payable to a dependent relative referred to in paragraph (1)(a) shall be payable to the first dependent relative therein mentioned who is eligible at any one time and shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent. of the deceased's average remuneration, or of 45 per cent., during any period in which there is no widow or widower of the deceased to whom an allowance is or might be payable under regulation 8:

Provided that where the Department is satisfied that during any period that dependent relative is not being maintained by a surviving spouse of the deceased, it may pay the allowance during such a period as if there were no surviving spouse.

(3) The annual allowance payable to a dependent relative referred to in paragraph (1)(b) shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent. of the deceased's average remuneration, or of 45 per cent. of that amount, where the dependent relative has no surviving parent:

Provided that where the Department is satisfied that during any period that dependent relative is not being maintained by a surviving parent, it may pay the allowance during such period as if there were no surviving parent.

(4) A dependent relative shall not be entitled to receive an allowance—

- (a) if he subsequently marries or is living together with another person as husband and wife; or
- (b) in respect of any period exceeding one month during which he is maintained out of money appropriated by Act of the Northern Ireland Assembly in a hospital or other institution so maintained.

(5) An allowance payable to a dependent relative may be paid to such other person as the Department may specify and that person shall apply the benefits, in accordance with any directions given by the Department, for the benefit of that dependent relative.

(6) In paragraph (1)(a), a reference to a parent includes a reference to a step-parent and an adoptive parent.

### **Restriction of allowances**

**11.** Where, apart from this regulation, the aggregate of the annual rates of allowances payable under regulations 8 to 10 and of any pensions or benefits taken into account in calculating the allowances would exceed the rate of the deceased's average remuneration, the individual allowances shall be reduced by such amounts as the Department may from time to time think fit so that such aggregate does not exceed the rate of the deceased's average remuneration.

### **Lump sum payment on death**

**12.—(1)** On the death of a person mentioned in regulation 7 a lump sum of one half of his average remuneration—

- (a) shall be payable to the widow or widower to whom an allowance in respect of the deceased is payable under regulation 8;
- (b) if not payable under (a), shall be payable to the child of the deceased or of his spouse, to whom an allowance in respect of the deceased is payable under regulation 9 or 10(1)(b) and (3);
- (c) if not payable under (a) or (b), shall be payable to a dependent relative, to whom an allowance in respect of the deceased is payable under regulation 10(1)(a) and (2); or

- (d) if not payable under (a), (b) or (c), shall be payable to any other or among any other children to whom an allowance in respect of the deceased is payable under regulation 9 or 10(1)(b) and (3):

Provided that a lump sum shall not be paid under this regulation if a lump sum has been paid to the deceased under regulation 4(9) in respect of the same injury or disease.

(2) The provisions of regulations 9(7) or 10(5), as the case may be, shall apply in respect of a payment under paragraph (1)(b), (c) or (d).

### **Incidental provisions**

**13.**—(1) For the purposes of this Part, the amount of a pension payable under a relevant pension scheme shall be deemed not to include any amount by which that pension is increased under the Pensions (Increase) Act (Northern Ireland) 1971 after the date at which the average remuneration used in the calculation of the allowance was calculated.

(2) Where the relevant pension scheme is a scheme mentioned in regulation 4(7), the pension payable under such a scheme shall, for the purposes of this Part, be deemed to include such sum, if any, which, in the opinion of the Department, represents the value, expressed as an annual amount, of the benefits payable under that scheme in respect of the deceased to the person entitled to the allowance.

(3) Where the deceased was a practitioner who received payments under regulation 65 of the 1962 Regulations or regulation 72 of the 1984 Regulations, there shall, for the purposes of regulations 8 to 10, be deemed to be payable under the relevant pension scheme a pension of such amount, if any, as the Department thinks fit, but not exceeding the amount of the widow's or the widower's pension or the child's allowance, as the case may be, which would, if the deceased had not been entitled to such payments, have been payable under the superannuation scheme Regulations in respect of the period for which such payments were made to him.

(4) Any child who becomes entitled to benefits in respect of more than one deceased shall be entitled to receive benefits in respect of not more than two deceased and if a benefit would be payable in respect of more than two, then the benefit shall be equal to the sum of the two highest benefits.

## **Part IV**

### **Review of Allowances and Miscellaneous**

#### **Review and adjustment of allowance**

**14.**—(1) The Department shall review the amount of an allowance payable under Part II in the light of—

- (a) a further reduction of the person's earning ability by reason of the injury or disease;
- (b) the commencement or cessation of payment to the person of a benefit mentioned in regulation 4(6)(b), by reason of the injury or disease; or
- (c) the commencement of a pension payable to the person under a relevant pension scheme or an increase in such a pension not being an increase under the Pensions (Increase) Act (Northern Ireland) 1971; and for this purpose such pension shall be deemed to be reduced proportionately by the amount by which an official pension, that began on the date at which the average remuneration used in the calculation of the allowance was calculated, would have been increased under the Pensions (Increase) Act (Northern Ireland) 1971 by the date of the increase or commencement of the first mentioned pension.

(2) A person not entitled to benefits under these Regulations by reason only that his earning ability was not permanently reduced by more than 10 per cent. shall be entitled to receive such benefits if, in consequence of further reduction by reason of the injury or disease, his earning ability is permanently reduced in aggregate by more than 10 per cent., except that such benefits shall not be payable in respect of any period before such further reduction or for a period of more than 13 weeks before the Department is notified in writing of such further reduction, whichever is the later.

(3) The Department shall review the amount of an allowance payable under Part III in the light of any reduction in, or the cessation of, a pension under the relevant pension scheme in respect of the deceased payable to the person entitled to such allowance.

(4) Where a person who is entitled to an allowance under Part II again becomes employed in an employment mentioned in regulation 3(1) or becomes employed in an employment mentioned in any corresponding provision in operation in England and Wales, Scotland or the Isle of Man, then, whilst he continues in such employment, the allowance under Part II shall be abated by any amount by which it would, when aggregated with his relevant income, exceed the amount of his former earnings.

For the purposes of this paragraph—

- (a) “relevant income” means the amount of any emoluments payable to the person in question in respect of the further employment plus the amount of any pension payable to him under a relevant pension scheme;
- (b) “former earnings” means, in relation to that person, the average remuneration by reference to which the allowance was determined or the annual rate of his emoluments at the date on which the allowance became payable, whichever is higher;
- (c) where the further employment is employment of the type mentioned in regulation 3(1)(c), that person shall be deemed to be in receipt of emoluments equal in amount to those which would have been payable, in the opinion of the Department, to a person employed whole-time, by an employing authority on similar duties.

(5) Where, on review of an allowance under the previous Regulations, regulation 4(6)(b)(vi) of those Regulations did not apply by reason that the person to whom the allowance was payable was not in the employment of an employing authority on or after the 1st April 1991 then, on any further review of the allowance payable to that person under these Regulations, no account shall be taken of any amount mentioned in regulation 4(6)(b)(iv) or (v)(**28**).

### **Loss of rights to benefit**

**15.** The Department may direct that all or part of any benefit under these Regulations payable to or in respect of a person be forfeited if that person is convicted of any of the following offences committed before the benefit becomes payable—

- (a) an offence in connection with employment mentioned in regulation 3(1), which is certified by the Department either to have been gravely injurious to the State or to be liable to lead to a serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Acts 1911 to 1989(**29**) for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

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(28) Paragraphs (6)(iv) and (v) were inserted into the previous Regulations by S.R. 1986 No. 151

(29) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6



### **Offset for crime, negligence or fraud**

16.—(1) If a loss to public funds occurs as a result of the criminal, negligent or fraudulent act or omission of a person to whom these Regulations apply, the Department may reduce any benefit under these Regulations payable to, or in respect of, that person by an amount equal to the loss.

(2) If the loss to public funds is equal to or greater than the value of the benefit under these Regulations payable to or in respect of the person, a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Department shall give the person a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the person's obligation to make good the loss has become enforceable under the order of a court or arbitrator.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

### **Officers transferred in consequence of reorganisation**

17.—(1) This regulation shall apply to or in respect of any person who was transferred to the employment of an employing authority under the 1972 Order and who, having remained in the employment of that authority without a break of one day or more, suffers an injury or contracts a disease in respect of which, had he remained in his previous employment, he would have been eligible to receive benefits by virtue of any transferred provision, scheme or arrangement associated with that employment.

(2) Where the Department is of the opinion that, in relation to any person to whom or in respect of whom this regulation applies, any benefits specified in paragraph (1)—

- (a) would, when taken as a whole, have been more favourable than any benefits payable under these Regulations, or
- (b) would have been payable where no benefits would have been payable under these Regulations,

the Department, having regard to the transferred provision or to the provisions of such scheme or arrangement, may make such payments, to or in respect of such person, supplementary to any benefits which otherwise might be payable under these Regulations, as the Department considers equitable so that the benefits, taken as a whole, are not less favourable than those which might have been payable under such provisions.

### **Damages**

18.—(1) The Department shall take into account against the benefits provided in these Regulations any damages or compensation which are recovered by any person in respect of the injury or disease or in respect of the death of a person to whom these Regulations apply, and such benefits may be withheld or reduced accordingly.

(2) For the purposes of paragraph (1) a person shall be deemed to have recovered damages—

- (a) whether they are paid in pursuance of a judgement or order of the Court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce the claim; or
- (b) if they are recovered for his benefit in respect of a claim under the Fatal Accidents (Northern Ireland) Order 1977(30).

(3) Where any payments in respect of a benefit under these Regulations are made before the right to, or the amount of, such damages or compensation is finally determined, then if and when a right to and the amount of such damages or compensation is finally determined the Department shall have the right to recover from the beneficiary an amount not exceeding—

- (a) where the amount of the payments made by the Department is less than the net amount of the damages or compensation, the amount of those payments;
- (b) where the amount of those payments is not less than the net amount of the damages or compensation, such part of those payments as is equal to the net amount of the damages or compensation.

(4) So far as any amount recoverable under this regulation represents a payment made by the Department from which income tax has been deducted before the payment, the proper allowance shall be made in respect of the amount so deducted, and in this regulation the expression “the net amount of the damages or compensation” means the amount of the damages or compensation after deducting any tax payable in the United Kingdom or elsewhere to which the damages or compensation are subject.

(5) No proceedings shall be brought to recover any amount under this regulation—

- (a) after the death of the recipient of the payments; or
- (b) after the expiration of 2 years from the date on which a right to, and the amount of, the damages or compensation is finally determined or from the date on which the final determination first came to the knowledge of the Department, if later.

(6) A certificate issued by the Department and stating the date on which the final determination of a right to and of the amount of any damages or compensation first came to its knowledge shall be admissible in any proceedings as sufficient evidence of that date.

### **Avoidance of duplicate benefits**

**19.** If the department is of the opinion that an injury or disease has been, or will be, taken into account for the purpose of any corresponding scheme the benefits of which or contributions towards which, are payable out of public funds, it may make such deduction from the benefits under these Regulations as may appear to it to be equitable, in order to secure that there may not be payable in respect of the same injury or disease benefits under these Regulations as well as benefits under a corresponding scheme.

### **Medical examination**

**20.** The Department may require any person entitled, or claiming to be entitled, to an allowance under Part II, or under Part III on the grounds that he is incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living, to submit to a medical examination by a registered medical practitioner selected by the Department, and in that event the Department shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the Department shall take that report into consideration together with the report of the medical practitioner selected by the Department.

### **Benefits not assignable**

**21.** Subject to the provisions of any transferred provision in that behalf, any benefit to which a person becomes entitled under these Regulations shall be payable to, or in trust for, that person and shall not be assignable.

### **Payment to personal representatives**

22. Where, on the death of any person, any sum not exceeding £5,000 or such higher amount as would for the time being be applicable in relation to the death if these Regulations were a transferred provision to which section 6(1) of the Administration of Estates (Small Payments) Act (Northern Ireland) 1967<sup>(31)</sup> (maximum amount disposable on death without representation) applied, is due to or in respect of that person under these Regulations the Department may dispense with proof of the title of the personal representatives of that person and pay that sum to the personal representatives or to the person, or to or among any one or more of any persons, appearing to the Department on such evidence as it deems satisfactory to be entitled by law to a beneficial interest therein and any person to whom such a payment is made, and not the Department, shall thereafter be liable to account for any amount so paid.

### **Determination of questions**

23. Any question arising under these Regulations as to the rights or liabilities of a person to whom the Regulations apply, or of a person claiming to be treated as such, or of the widow or widower or any dependant of such a person, shall be determined by the Department whose determination shall be final.

### **Option to persons detrimentally affected by these Regulations**

24.—(1) This regulation applies in relation to any benefit which is payable to or in respect of a person who, having served in an employment or office, has service which qualifies persons to participate in the benefits provided under the previous Regulations, and has ceased to serve therein before these Regulations came into operation.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than he would have been if that provision had not applied, that person may elect that provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Department within 6 months of the coming into operation of these regulations or such longer period as the Department may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into operation of these Regulations) and in determining the entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if he had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

### **Revocations**

25. The Regulations specified in column 1 of the Schedule are hereby revoked to the extent mentioned in column 2 of that Schedule.

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(31) 1967 c. 5 (N.I.)

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 8th October 2001.

L.S.

*David C. Bingham*  
Senior Officer of the  
Department of Health, Social Services and  
Public Safety

The Department of Finance and Personnel hereby consents to the foregoing regulations  
Sealed with the Official Seal of the Department of Finance and Personnel on 8th October 2001.

L.S.

*J. G. Gilloway*  
Senior Officer of the  
Department of Finance and Personnel