
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

**The National Health Service Pension
Scheme (Scotland) Regulations 2008**

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.E

DEATH BENEFITS

Lump sum death benefits

Lump sum benefits on death: introduction

3.E.16.—(1) If a member or a recent leaver dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

(a) the member is—

(i) a pensioner member; or

(ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable; and

(b) the death takes place more than 5 years after the member's pension becomes payable.

Amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)

3.E.17.—(1) The lump sum payable on the death of an active member, who is not also a deferred member or a pensioner member, is an amount equal to twice the annual average of the member's uprated earnings at the date of death.

(2) The lump sum payable on the death of a pensioner member, who is not also an active member or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

(a) an amount equal to five times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member; and

(b) an amount equal to twice the annual average of the member's uprated earnings at the date of death, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).

(3) The lump sum payable on the death of a deferred member, who is not an active member or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.

(4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.

(5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 3.D.1 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).

(6) If a pensioner member exercised the option under regulation 3.D.10 (general option to exchange part of pension for lump sum), the reference in paragraph (2)(a) to the annual rate of the member's pension is to the pension payable after the exercise of that option.

(7) If a pensioner member exercised the option under regulation 3.D.14 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

(8) For the purposes of this regulation, the fact that a person—

- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55);
- (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option; or
- (c) is a pensioner member by virtue of being entitled to a pension under that regulation,

is ignored.

Amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments)

3.E.18.—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member otherwise than in service in an employment in respect of which the member has exercised the option under regulation 3.D.5; and
- (b) is also a pensioner member.

(2) The lump sum is an amount equal to the sum of—

- (a) 5 times the annual rate of the pension—
 - (i) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased had not reached the age of 65 on the date of death; and
 - (ii) payable under regulation 3.D.1 (normal retirement pensions), if the deceased had reached the age of 65 on the date of death,

to which the member would have been entitled on the date of death; and

- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—
 - (i) 5 times the annual rate of the pension payable after exercising any option under regulation 3.D.10 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member; and
 - (ii) an amount equal to twice the annual average of the member's uprated earnings at the date of death by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).

(3) If the pensioner member exercised the option under regulation 3.D.14 (election to allocate pension), the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

Amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5

3.E.19.—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 3.D.5; and
 - (b) is a pensioner member by virtue of being entitled to a pension under that regulation.
- (2) The lump sum is an amount equal to the sum of—
- (a) twice the appropriate fraction of the annual average of the member’s uprated earnings at the date of death; and
 - (b) if the member had been entitled to any pensions under regulation 3.D.5 for less than 5 years, the lesser of—
 - (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)); and
 - (ii) the aggregate lump sum cap (see paragraph (4)).

(3) The guarantee amount for a pension under regulation 3.D.5 is 5 times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the annual average of the member’s uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 3.D.5 was calculated, less the total of any lump sums paid to the member in exchange for pensions under regulation 3.D.5 as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).

(5) In this regulation “the appropriate fraction” means—

$$\frac{DPS}{TDPS}$$

where—

DPS is, where the member continues in pensionable service as an active member on the option day (or the last such option day if the option has been exercised more than once), the total percentage of the pension which does not form part of the specified percentage of pension at the option day; and

TDPS is the aggregate of DPS and the total percentage of the pension (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pension.

Amount of lump sum: pension credit members

3.E.20.—(1) The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member’s pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 3.D.2 if the member had reached the age of 65 on the date of death, multiplied by 2.25.

(2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

- (a) the annual amount of the pension that would have been payable to the member during so much of the period of 5 years beginning with the date on which the pension became payable as falls after the date of death; and
- (b) $2AUE - CLS$

where—

AUE is the amount as at the valuation day of the annual average of the uprated earnings of the debit member from whose rights the pension credit member's pension credit is derived; and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 3.D.2 (pension credit members).

(3) For the purposes of paragraph (2) the annual amount of the pension is taken to be the sum of—

- (a) the annual amount of the pension as at the beginning date for that pension; and
- (b) the increase (if any) in that annual amount under the Pensions (Increase) Act 1971 payable as at the date of death.

(4) In this regulation—

“valuation day” means the day referred to in section 29(7) of the 1999 Act; and

“the beginning date”, in relation to a pension, has the meaning given by section 8(2A) of the Pensions (Increase) Act 1971.

Payment of lump sums on death

3.E.21.—(1) A lump sum payable under regulation 3.E.16 must be paid in accordance with this regulation.

(2) The lump sum must be paid to the member's personal representatives, except so far as it is payable to a different person under paragraph (4) or (6).

(3) A member may give notice to the Scottish Ministers—

- (a) specifying—
 - (i) the member's personal representatives;
 - (ii) one or more other individuals; or
 - (iii) one incorporated or unincorporated body,
 to whom the lump sum is to be paid; and

(b) where 2 or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member—

- (a) has given notice under paragraph (3) specifying a person; and
- (b) has not revoked that notice,

the lump sum (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(6) If the member—

(a) leaves a surviving adult dependant; and

(b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an offence specified in regulation 3.J.7(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)—

(a) must be given in writing; and

(b) may be revoked at any time by a further notice in writing.

(9) The Scottish Ministers may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

(a) £5,000; or

(b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965⁽¹⁾ as the amount to be treated as substituted for references to £500 in section 1 of that Act.

Tax treatment under the 2004 Act of lump sums payable on pensioners' deaths

3.E.22.—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the 2004 Act as a pension protection lump sum death benefit if the member has given the scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation "pensioner's lump sum" means—

(a) a lump sum payable under regulation 3.E.16 to which regulation 3.E.17(2) applies; or

(b) so much of a lump sum payable under regulation 3.E.16 as is calculated under regulation 3.E.18(2).

(3) Paragraph (4) applies if the person who is the scheme administrator for the purposes of section 206 of the 2004 Act ("the administrator") is liable for tax under that section in respect of a pension protection lump sum death benefit.

(4) The administrator may deduct from the lump sum the tax payable in respect of it.

(1) 1965 c. 32.