
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

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

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.J

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Scheme administrator

Appointment of scheme administrator

3.J.1 For the purposes of this Part and of Part 4 of the 2004 Act, the scheme administrator is the Scottish Public Pensions Agency.

Claims

Claims for benefits

3.J.2 A person claiming to be entitled to benefits under this Part must make a claim in writing to the Scottish Ministers and provide such evidence of entitlement as the Scottish Ministers may require.

Power to extend time limits

Power to extend time limits

3.J.3 The Scottish Ministers may extend any time limit mentioned in this Part as it applies in any particular case.

Beneficiaries who are incapable of looking after their affairs

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3.J.4.—(1) In the case of a beneficiary who, in the opinion of the Scottish Ministers, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Scottish Ministers may—

- (a) use any amount due to the beneficiary under the scheme for the beneficiary's benefit; or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Scottish Ministers from any obligation under the scheme in respect of the amount.

Commutation of small pensions

Commutation of small pensions

3.J.5.—(1) The Scottish Ministers may pay any person entitled to a pension under the scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under the scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as apply)—

- (a) the contracting-out requirements;
- (b) the preservation requirements;
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997⁽¹⁾;
- (d) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000⁽²⁾;
- (e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the 2004 Act: trivial commutation lump sums for the purposes of Part 4 of that Act); and
- (f) the lump sum death benefit rule (see, in particular, paragraph 20 of that Schedule: trivial commutation lump sum death benefit for the purposes of that Part).

(3) The lump sum must be calculated by the Scottish Ministers in accordance with advice from the scheme actuary.

(4) The payment of a lump sum under this regulation discharges all liabilities of the Scottish Ministers in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

Reduction in and forfeiture of benefits

Reduction in benefits in cases where loss caused by member's crime, negligence or fraud

3.J.6.—(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Scottish Ministers—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss; or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

- (a) is a guaranteed minimum pension or safeguarded rights which are derived from rights to such a pension; or
- (b) arise out of a transfer payment.

(1) S.I.1997/785.

(2) S.I. 2000/1054.

(3) If the Scottish Ministers propose to exercise the power under paragraph (1), the Scottish Ministers must give the member 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 may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—

- (a) under the order of a competent court; or
- (b) in consequence of an award of an arbiter to be appointed (failing agreement by the parties) by the sheriff, or, in England and Wales arbitrator.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

Forfeiture of rights to benefits

3.J.7.—(1) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in paragraph (2); and
- (b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are—

- (a) an offence in connection with employment that qualifies the member to belong to the scheme, in respect of which the Scottish Ministers have issued a forfeiture certificate; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989⁽³⁾ for which the member has been sentenced on the same occasion to—
 - (i) a term of imprisonment of at least 10 years; or
 - (ii) 2 or more consecutive terms amounting in the aggregate to at least 10 years.

(3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Scottish Ministers are satisfied that the offence—

- (a) has been gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

(4) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is—

- (a) the member's widow, widower, nominated partner or surviving civil partner, or surviving nominated partner;
- (b) a dependant of the member;
- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 3.E.21(3) (payment of lump sums on death); or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

(6) A guaranteed minimum pension or safeguarded rights which are derived from rights to such pensions may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2) (b).

(3) 1911 c. 28, 1920 c. 75, 1939 c. 121 and 1989 c. 6.

Provisions about tax

Deduction of tax

3.J.8.—(1) The Scottish Ministers may deduct from any payment under the scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) which is a benefit crystallisation event under section 216 (benefit crystallisation events and amounts crystallised) of the 2004 Act; and
- (b) a lifetime allowance charge under section 214 (lifetime allowance charge) of that Act arises when that event occurs,

the tax charged must be paid by the scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the scheme administrator a statement in accordance with regulation 3.E.22 (tax treatment under the 2004 Act of lump sums payable on pensioners' death) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act; and
- (b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the scheme administrator may deduct the tax payable under section 206 of that Act (special lump sum death benefits charge) from the lump sum.

Interest on delayed payments

Interest on late payment of benefits and refunds of contributions

3.J.9.—(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum or refund of contributions under the scheme (other than any amount due under regulation 3.C.5 or 3.C.6) or interim award.

(3) The Scottish Ministers must pay interest on the unpaid amount to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with 3 monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, “due date”, in relation to an unpaid amount, means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 3.D (members' retirement benefits), the day immediately following that of the member's retirement from pensionable employment;
- (b) in the case of an amount in respect of a pension payable on a member's death, the day after the date of death;
- (c) in the case of an amount in respect of a lump sum under Chapter 3.E (death benefits) that is payable to the member's personal representatives, the earlier of—

- (i) the date on which probate or letters of administration were produced to the Scottish Ministers; and
 - (ii) the date on which the Scottish Ministers were satisfied that the lump sum may be paid as provided in regulation 3.E.21(9) (payment of lump sum on death); and
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member's death; and
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Scottish Ministers received from the Commissioners of Her Majesty's Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 3.C.16(3) or (4) (repayment of contributions).
- (6) If, on the date which, in accordance with paragraph (5), would have been the due date for an unpaid amount in respect of a pension, lump sum or refund of contributions, the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount payable in respect of the pension, lump sum or refund, the due date for the unpaid amount is the first day on which the Scottish Ministers were in possession of that information.
- (7) In this regulation, "interim award" means—
- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under the scheme pending final calculation of the full value of that benefit; and
 - (b) any amount paid that increases the amount of an earlier payment due to a backdated or later increase in pensionable pay.

Determinations

Determination of questions

3.J.10.—(1) Except as otherwise provided by this Part, any question arising under the scheme is to be determined by the Scottish Ministers.

(2) Any such disagreement as is referred to in section 50 of the 1995 Act (resolution of disputes) must be resolved by the Scottish Ministers in accordance with any arrangements applicable under that section.

(3) The Scottish Ministers, in relation to decisions under paragraph (4), may require a person to submit to a medical examination by a registered medical advisor selected by the Scottish Ministers and the Scottish Ministers in making any decision must take that report into consideration together with any medical evidence submitted by the person.

(4) This paragraph applies to any decision as to a person's health or degree of physical or mental infirmity or impairment that is required for the purposes of this Part and, in particular, any such decision required for the purposes of—

- (a) regulation 3.D.7(2)(a) or (3)(a) (early retirement on ill health (active members));
- (b) regulation 3.D.8(1)(a) or (b) or (3) (provisional ill health awards);
- (c) regulation 3.D.9(1)(a) or (2)(a) (early retirement on ill health (deferred members));
- (d) regulation 3.D.15(6)(b) (procedure for allocation election under regulation 3.D.14);
- (e) regulation 3.E.9(1)(b)(ii) (meaning of "dependent child"); or
- (f) regulation 3.J.4(1) (beneficiaries who are incapable of looking after their affairs).

General prohibition on unauthorised payments

General prohibition on unauthorised payments

3.J.11 Nothing in these rules requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 of the 2004 Act (see section 160(5)(4) (payments by registered pension schemes) of that Act).

Prohibition on assignment or charging of benefits

Prohibition on assignment or charging of benefits

3.J.12.—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under the scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under the scheme, no part of the benefit may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under section 310 of the Insolvency Act 1986(5) (income payments orders).

Record keeping and contribution estimates

Employing authority record keeping and contribution estimates

3.J.13.—(1) As regards a member who is a principal medical practitioner, in respect of each financial year—

- (a) the member must provide the contracting Health Board or someone acting on its behalf with a certificate of their pensionable earnings based on—
 - (i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
 - (ii) the return that member has made to Her Majesty's Revenue & Customs in respect of their earnings for that year,

no later than one month from the date on which that return was required to be submitted to Her Majesty's Revenue & Customs;

- (b) a contracting Health Board or someone acting on its behalf must forward to the Scottish Ministers a copy of the records maintained under regulation 3.C.5(17)(b) within one month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.

(2) As regards all other members under this Part, employing authorities must keep records of all—

- (a) contributions deducted in accordance with this Part; and
- (b) contributions to the scheme made under regulation 3.C.3 (contributions by employing authorities: general),

in a manner approved by the Scottish Ministers, and, except where the Scottish Ministers waive such requirement, provide a statement in respect of such matters in respect of all members to the Scottish Ministers within 2 months of the end of each financial year.

(4) Section 160 was amended by the Finance Act 2006 (c. 25), Schedules 21 and 23 and the Finance Act 2007 (c. 11), Schedule 20, paragraph 5.

(5) 1986 c. 45. Section 310 was amended by paragraph 15 of Schedule 3 to the 1995 Act, paragraph 2 of Schedule 2 to the 1999 Act and section 259 of the Enterprise Act 2002 (c. 40)

(3) In respect of each financial year, employing authorities must also provide the Scottish Ministers with the best estimate in writing that can reasonably be made of the total contributions due to the scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general) within 2 months of the end of each such year.