
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

**The National Health Service Superannuation
Scheme (Scotland) Regulations 2011**

PART F

LUMP SUM ON DEATH

Lump sum when member dies in pensionable employment

F1.—(1) If a member dies in pensionable employment before reaching age 75, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) A lump sum on death shall be payable in accordance with regulation F5 where on the day a member dies, the member is—

- (a) under the age of 70;
- (b) in NHS employment;
- (c) no longer required to pay contributions from a date before 1st April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulation E2(12) or R4(4) apply, not in receipt of any pension under any of regulations E1 to E11.

(3) A lump sum on death shall be payable in accordance with regulation F5 where, on the day the member died, the member is—

- (a) under the age of—
 - (i) 75 if not a special class officer; or
 - (ii) 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 1st April 2008 pursuant to regulation D1(26) or (27) (contributions by members); and
- (d) except where regulations E2(12) (early retirement pension (ill health)), E3(11) (ill health pension on early retirement) or R4(4) (members doing more than one job) apply, not in receipt of a pension under any of regulations E1 to E11.

(4) Subject to regulation S5 (benefits on death in pensionable employment after pension becomes payable), the lump sum on death will be equal to twice the member's final year's pensionable pay.

Lump sum when member dies after pension becomes payable

F2.—(1) Subject to paragraph (7), and except where a lump sum payment is made under regulation E2(8), if a member dies after a pension under this Section of the scheme becomes payable, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) Subject to regulation S5 the lump sum will be equal to 5 times the yearly rate of the member's pension (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed an amount equal to twice the member's final year's pensionable pay less an amount equal to the aggregate of—

- (a) the member's retirement lump sum paid under regulation E13 (lump sum on retirement); and
- (b) any lump sum paid to the member under regulation E17 (general option to exchange part of pension for lump sum).

(3) A person who retires from pensionable employment on, or after, 6th April 2006 may give notice to the scheme administrator in accordance with paragraph (4) below that any lump sum payable under this regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Part 2 of Schedule 29 to the 2004 Act.

(4) Such a notice—

- (a) shall be given in writing; and
- (b) may be revoked in writing at any time.

(5) A lump sum paid under this regulation in respect of a member who became entitled to a pension under regulations E1 to E12 before 6th April 2006, shall be treated as a pension protection lump sum death benefit but regulation T3(7) shall not apply.

(6) If a member who was in receipt of a substitute pension under regulation E5 (further employment after a benefit is paid under regulation E3) dies before the end of the protection period that applies to him under regulation E5(6)(a) or (b), the member's pension referred to in paragraph (2) means that member's original upper tier pension.

(7) Where a member referred to in paragraph (1) has attained the age of 75 at the date of the member's death—

- (a) the lump sum referred to in that paragraph ceases to be payable; and
- (b) shall instead be converted into an annual pension to be determined and paid in accordance with paragraph (8).

(8) The pension referred to in paragraph (7) shall be—

- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;
- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5; and
- (c) paid to that person from the day after the member's death until the fifth anniversary of the day the member's pension under this Section of the scheme became payable.

(9) If, in accordance with regulation F5, a member has given notice that more than one person is to receive a share of the lump sum, each such person shall receive the same percentage of the annual pension as was specified for that person in the member's notice.

(10) If, in accordance with regulation F5, the annual pension is to be paid to the member's personal representatives, they may, as part of the distribution of the member's estate, give irrevocable notice to the Scottish Ministers—

(a) specifying—

- (i) one or more individuals; or
- (ii) one incorporated or unincorporated body,
to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Scottish Ministers is to be assigned; and

- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made;
- (b) payment to the person or body specified in the notice is not, in the opinion of the Scottish Ministers, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T7(2) (loss of rights to benefits) 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.

(12) The prohibition on assignment of benefits in regulation T4 (benefits not assignable) shall not apply to an assignment by personal representatives under this regulation.

Lump sum where member dies with preserved pension

F3.—(1) If a member leaves pensionable employment with a preserved pension under regulation E12 (preserved pension) and dies before becoming entitled to receive a pension under this Section of the scheme, a lump sum will be paid in accordance with regulation F5.

(2) The lump sum will be equal to 3 times the yearly rate of the member's preserved pension calculated as if the member had become entitled to it immediately before the member's death.

Lump sum when member dies within 12 months after leaving pensionable employment without immediate or preserved pension

F4.—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E12 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E15 (refund of contributions) or before a transfer payment is made under regulation M5 (early leaver without preserved pension), a lump sum is payable in accordance with regulation F5.

(3) The lump sum on death will be calculated as described in regulation F3 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation E12 and as if the member had become entitled to receive that pension immediately before the member's death.

Payment of lump sum

F5.—(1) A lump sum payable under any of regulations F1 to F4 will be paid in accordance with the following paragraphs.

(2) If a member dies without leaving a surviving partner and without having made a nomination in favour of another person, the lump sum will be paid to the member's personal representatives.

(3) If a member dies leaving a surviving partner and without having made a nomination in favour of another person, the lump sum will be paid to that surviving partner unless—

- (a) the member has given notice to the Scottish Ministers that the surviving partner is not to receive the payment and has not revoked that notice;
- (b) the surviving partner has been convicted of an offence specified in regulation T7(2) (loss of rights to benefits) and the Scottish Ministers have directed, as a consequence of that

conviction, that the surviving partner's right to payment in respect of the member's death is forfeited; or

- (c) payment to the surviving partner is not, in the opinion of the Scottish Ministers, reasonably practicable,

in which case the lump sum shall be paid to the member's personal representatives.

(4) If a member dies having made a nomination in favour of one person (whether or not he also leaves a surviving partner), the lump sum will be paid to that nominee unless—

- (a) the member has given notice to the Scottish Ministers revoking that nomination;
- (b) the nominee has died before the payment could be made;
- (c) the nominee has been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the nominee's right to payment in respect of the member's death is forfeited; or
- (d) payment to the nominee is not, in the opinion of the Scottish Ministers, reasonably practicable,

in which case the lump sum will be paid to the member's personal representatives.

(5) If a member dies having made a nomination in favour of two or more persons (whether or not the member also leaves a surviving partner) and has not given notice to the Scottish Ministers revoking that notice, the lump sum will be paid to those nominees, unless—

- (a) one or more of those nominees has—
 - (i) died before the payment could be made; or
 - (ii) been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the nominee or nominees' right to payment in respect of the member's death is forfeited; or
- (b) the Scottish Ministers are of the opinion that payment to one or more of the nominees is not reasonably practicable,

in which case the percentage of the lump sum due to that nominee, or as the case may be, those nominees will be paid to the member's personal representatives.

(6) A nomination may only be made by a member—

- (a) who is in pensionable employment in this Section of the scheme at the time of making the nomination; or
- (b) whose pensionable employment in this Section of the scheme ceased on, or after, 1st April 2008.

(7) A nomination must specify one or more persons who may be—

- (a) an individual;
- (b) a body corporate;
- (c) an unincorporated body; or
- (d) the member's personal representatives,

but is not entitled to specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraphs (b) or (c).

(8) A nomination or notice referred to in this regulation is only valid—

- (a) if addressed to the Scottish Ministers;
- (b) upon receipt by the Scottish Ministers;
- (c) if made (or revoked) in writing; and

(d) if it nominates the whole of the lump sum to a nominee and, in the case of a nomination specifying more than one person, if it also specifies the percentage of the lump sum to be paid to each such individual.

(9) A member who has any pensionable employment in this Section of the scheme on or after 1st April 2008 cannot give a notice referred to in paragraph (3)(a).

(10) If the lump sum on death does not exceed the specified amount, the Scottish Ministers may pay it to any person claiming to be the member's personal representative or to be entitled to a share of it, without requiring proof of the title of the person concerned.

(11) In paragraph (10), "the specified amount" means £5,000 or 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.

(12) In this regulation "surviving partner" means a—

- (a) widow;
- (b) widower;
- (c) civil partner; or
- (d) nominated partner,

who survives the member.

(13) In the case of a Waiting Period Joiner, a notice given by a member for the purposes of regulation 2.E.21 or 3.E.21 of the 2008 Section of the Scheme shall be treated as a nomination or notice given by the member for the purposes of this regulation.