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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

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

**PART T**

**GENERAL RULES ABOUT BENEFITS**

**Claims for benefits**

**T1.**—(1) A person claiming to be entitled to benefits under these Regulations (“the claimant”) must make a claim in writing to the Scottish Ministers in such form as the Scottish Ministers may from time to time require.

(2) Pursuant to such a claim, the claimant and the member’s employing authority (including any previous employing authority of the member) must provide such—

- (a) evidence of entitlement;
- (b) authority or permission as may be necessary for the release by third parties of information in their possession relating to the member or, where relevant, the claimant; and
- (c) other information the Scottish Ministers consider is relevant to the claim,

as the Scottish Ministers may from time to time require for the purposes of these Regulations.

(3) A claim referred to in paragraph (1) may be given to the Scottish Ministers by a person other than the claimant.

(4) The Scottish Ministers may accept any claim for benefits in relation to which this regulation applies, and any evidence, authority or permission given in connection with that claim, if it is made or given by means of an electronic communication that is approved by the Scottish Ministers for that purpose.

**Deduction of tax**

**T2.** The Scottish Ministers will be entitled to deduct from any payment under this Section of the scheme any tax for which they may be liable in respect of it.

**Deduction of tax: further provisions**

**T3.**—(1) For the purposes of these Regulations and the 2004 Act, the scheme administrator will be the Scottish Ministers.

(2) Subject to paragraph (3), if a person’s entitlement to a benefit under these Regulations—

- (a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act (benefit crystallisation events and amounts crystallised); and
- (b) a lifetime allowance charge under that Act is payable in respect of that event,

that charge will be paid by the scheme administrator.

(3) The member's present or future benefits in respect of which any charge under paragraph (2) arises will be reduced by an amount that fully reflects the amount of tax paid by the scheme administrator and will be calculated by reference to advice provided by the scheme actuary for that purpose.

(4) Where a person is entitled to a benefit under these Regulations the person must (whether or not the person intends to rely on entitlement to an enhanced lifetime allowance, or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine—

- (a) whether any lifetime allowance is payable in respect of the benefit and, if so,
- (b) the amount of that charge.

(5) If a person applying for a benefit under these Regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act (enhanced lifetime allowance regulations), the person must give to the scheme administrator—

- (a) the reference number issued by Revenue and Customs under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006(1) in respect of that entitlement; and
- (b) the information referred to in paragraph (4).

(6) The information referred to in paragraph (4) or, as the case may be, paragraph (5) must be given to the scheme administrator—

- (a) at the time the person makes a claim for a benefit; or
- (b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.

(7) Where the person fails to provide all, or part of, the information referred to in paragraph (4) or, as the case may be, paragraph (5) within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(8) Subject to regulation F2(4), where—

- (a) a member has given notice to the scheme administrator in accordance with regulation F2(3) 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 Part 2 of Schedule 29 to the 2004 Act; and
  - (b) has not revoked that notice,
- the scheme administrator will deduct tax at 35% (or such other rate as applies under the 2004 Act) from the lump sum payable in accordance with section 206 of the 2004 Act (special lump sum death benefits charge).

(9) For the purposes of this regulation, “enhanced lifetime allowance” and “enhanced protection” are to be construed in accordance with Schedule 36 to the 2004 Act.

### **Benefits not assignable**

**T4.**—(1) Any assignment of, or charge on or security over, or any agreement to assign or charge or grant a security over, any right to benefit under this Section of the scheme is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under this Section of the scheme, no part of the benefit will be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy or sequestration of any person entitled to a benefit under this Section of the scheme, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985<sup>(2)</sup> or under section 310 of the Insolvency Act 1986<sup>(3)</sup> (income payments orders) that requires the Scottish Ministers to pay all or part of the benefit to the person's trustee in bankruptcy, the Scottish Ministers must comply with that order.

### **Beneficiary who is incapable**

**T5.**—(1) If the Scottish Ministers consider that a beneficiary is unable to look after the beneficiary's affairs (by reason of illness, mental disorder, minority or otherwise), the Scottish Ministers may use any amounts due to the beneficiary for the beneficiary's benefit or may pay them to some other person to do so.

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

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

**T6.**—(1) If they are satisfied that a loss to public funds has occurred as a result of a member's criminal, fraudulent or negligent act or omission, the Scottish Ministers may reduce any benefits or other amounts payable to, or in respect of, the member (other than guaranteed minimum pensions and benefits arising out of a transfer payment) by an amount equal to the loss.

(2) If the loss to public funds is greater than the value of the benefits or other amounts payable to or in respect of the member a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) 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 in benefits will be made until the member's obligation to make good the loss has become enforceable under the order of a court or arbiter.

(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.

### **Loss of rights to benefits**

**T7.**—(1) Subject to paragraph (3), the Scottish Ministers may direct that all or part of any benefit payable to, or in respect of, a member be forfeited if the member is convicted of any of the following offences, committed before the benefit becomes payable:—

- (a) an offence in connection with employment to which this Section of the scheme applies which is certified by the Scottish Ministers either to have been gravely injurious to the State or to be liable to lead to 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<sup>(4)</sup> for which the member 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.

(2) Subject to paragraph (3), the Scottish Ministers may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is—

- (a) the member's widow, widower, surviving nominated partner or surviving civil partner; or

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(2) 1985 c.66.

(3) 1986 c.45.

(4) 1911 c.28; 1920 c.75; 1939 c.121; 1989 c.6.S

- (b) a dependent of the member; or
- (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice or nomination given under regulation F5; or
- (d) a person to whom such benefits or amounts are payable under the member's will or on their intestacy,

and that person is convicted of the offence of murder or culpable homicide of that member or of any other offence of which the unlawful killing of that member is an element.

- (3) A guaranteed minimum pension may be forfeited only if paragraph (1)(b) or (c) applies.

### **Commutation of trivial pensions**

**T8.**—(1) Where a person has become entitled to a pension of a trivial amount, the Scottish Ministers may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person's death.

(2) Any lump sum payable under this regulation will be calculated by the Scottish Ministers, after consulting the scheme actuary.

(3) A pension may be treated as trivial only if all benefits payable to the person concerned under this Section of the scheme are of an amount consistent with—

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule and lump sum death benefit rule.

(4) A payment made under paragraph (1) discharges the Scottish Minister's liability in respect of that pension and of any benefits that might otherwise have become payable on that person's death.

### **Reduction in benefits to take account of benefits under the National Insurance Acts**

**T9.**—(1) This regulation applies to members—

- (a) who had ceased to be in pensionable employment before the coming into force of the 1995 Regulations unless after that date they return to pensionable employment; or
- (b) who became entitled to receive a pension under the 1980 Regulations and who, before the coming into force of the 1995 Regulations, returned to pensionable employment, in which case the pension under the 1980 Regulations will be subject to this regulation unless their benefits fall to be calculated by reference to combined pensionable service before and after the coming into force of the 1995 Regulations.

(2) Where this regulation applies, pensions payable under this Section of the scheme to women who have reached age 60 and men who have reached age 65 will be reduced in accordance with paragraph (3) to take account of benefits payable under the National Insurance Act 1946<sup>(5)</sup> and the National Insurance Act 1965<sup>(6)</sup>.

(3) The reduction referred to in paragraph (2) will be £1.70 for each year of pensionable service after 4th July 1948 and before 1st April 1980, or such lesser reduction as would have applied under regulation 56 of the previous Regulations.

(4) Benefits for members who paid contributions under section 1(1)(b) of the National Insurance Act 1959<sup>(7)</sup>, section 4 of the National Insurance Act 1965<sup>(8)</sup> or the corresponding provisions of

<sup>(5)</sup> 1946 c.67; this Act was repealed by the Social Security Act 1973 (c.38), Schedule 28 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

<sup>(6)</sup> 1965 c.51.

<sup>(7)</sup> 1959 c.47; this Act was repealed by S.L.R. 1965 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

<sup>(8)</sup> 1965 c.51; section 4 was amended by the National Insurance Act 1966 (c.6), section 1, by the National Insurance Act 1969 (c.44), section 1, and by the National Insurance Act 1971 (c.50), section 1.

the National Insurance Act (Northern Ireland) 1959<sup>(9)</sup> or the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald) will be reduced to take account of benefits payable under those Acts (provided that no such reduction shall be of a greater amount than that which would have applied under Schedule 10 of the 1980 Regulations).

(5) Any amount by which a member's pension is reduced under this regulation will be ignored for the purposes of calculating—

- (a) the member's retirement lump sum, and
- (b) the lump sum, any widow or widower's pension and any child allowance, payable on the member's death in pensionable employment or, subject to paragraph (6), after becoming entitled to receive a pension.

(6) For the purpose of calculating any higher rate spouse's pension or child allowance that becomes payable on a member's death after becoming entitled to receive a pension, if the member dies after reaching age 60 (if a woman) or 65 (if a man), the references to the member's pension in regulations G3(2) and H4(2)(b) and (8) (member dies after pension becomes payable) are to the member's pension as reduced by virtue of this regulation.

#### **Interest on late payment of benefits**

**T10.**—(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Scottish Ministers must pay interest, calculated in accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above will not be payable where the Scottish Ministers are satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above will be calculated at the base rate on a day to day basis from the due date to the date of payment, and will be compounded with three-monthly rests.

(4) In this regulation—

“base rate” means the official Bank Rate for the time being quoted by the Bank of England;

“due date” means the later of, either, the applicable day described in sub-paragraph (a), and the day described in sub-paragraph (b), or the applicable day in sub-paragraph (aa) and the applicable day in sub-paragraph (b) (whichever is applicable)—

- (a) (i) in the case of a lump sum under Part F above, the day immediately following the day of the member's death, unless the lump sum falls to be paid to the member's personal representative, in which case it means—
  - (aa) the day on which confirmation probate or letters of administration are produced to the Scottish Ministers; or
  - (bb) the day on which the Scottish Ministers are satisfied that the lump sum may be paid as provided in regulation F5(4),whichever is the earlier;
- (ii) in the case of a pension payable on a member's death other than a pension payable under regulation F2 the day immediately following the day of this death;
- (iii) in the case of a pension under regulation E12, the day on which the pension becomes payable in accordance with that regulation;

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(9) 1959 c.21 (N.I.).

- (iv) in the case of a refund of contributions, the day after that on which the Scottish Ministers receive from Revenue and Customs the information they require for the purposes of compliance with paragraphs (2) to (4) of regulation E15; and
- (v) in any other case, the day immediately following that of the member's retirement from pensionable employment; and
- (b) in the case of an amount in respect of pension under regulation F2 (lump sum when member dies after pension becomes payable) that is payable to—
  - (i) the member's personal representatives, the date on which confirmation, probate or letters of administration were produced to the Scottish Ministers;
  - (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation F2(10) was received by the Scottish Ministers; and
  - (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death.
- (c) the first day on which the Scottish Ministers are in possession of all information (including information which the Scottish Ministers obtain in connection with a determination under regulation E4(3)) necessary to be able to calculate the value of the qualifying payment;

“qualifying payment” means any amount payable by way of a pension or lump sum, or by way of a refund of contributions, under these Regulations, and for these purposes—

- (a) any amount paid by way of an interim payment calculated by reference to an expected pension benefit award, pending final calculation of the full value of that benefit; or
- (b) any amount paid that increases the amount of an earlier payment due to—
  - (i) a backdated or later increase in pensionable pay; or
  - (ii) the payment of an upper tier pension under regulation E3 in place of a lower tier pension being paid to a member following a determination by the Scottish Ministers under regulation E4(3),

will be treated as a separate qualifying payment;