
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 96

**The National Health Service Superannuation Scheme
(Miscellaneous Amendments) (Scotland) Regulations 2015**

PART 4

**Amendment of the National Health Service
(Scotland) (Injury Benefits) Regulations 1998**

General

46. The National Health Service (Scotland) (Injury Benefits) Regulations 1998(1) are amended in accordance with regulations 47 to 50.

Amendment of regulation 2

47. regulation 2(1) (interpretation)—

(a) insert at the appropriate place in alphabetical order—

““the 2015 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2015;

“civil partner” and “civil partnership” are to be construed in accordance with regulation 2B;

“marriage” and “married” do not include a reference to marriage of a same sex couple unless otherwise provided;

“widow” and “widower” do not include a reference to marriage of a same sex couple;”;

(b) omit the definition of “average remuneration”;

(c) for the definition of “NHS employment”, substitute—

““NHS employment” has the same meaning as in the 2011 Regulations, the 2013 Regulations or the 2015 Regulations, as the case may be;”;

(d) in the definition of “practitioner”—

(i) for “or 2013 Regulations”, substitute “, the 2013 Regulations or the 2015 Regulations”; and

(ii) after paragraph (ii), insert—

“(iii) who is referred to in Part 2 or 3 of Schedule 5 to the 2015 Regulations;”;

(e) in the definition of “the Scheme”, for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”.

New regulations 2A and 2B

48.—(1) After regulation 2, insert—

“Meaning of “average remuneration”

2A.—(1) In these Regulations, “average remuneration” means—

- (a) in relation to a practitioner to whom the 2011 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner’s uprated earnings in accordance with paragraph 11 of Schedule 2 to those Regulations;
- (b) in relation to a practitioner to whom the 2013 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner’s uprated earnings in accordance with regulation 3.D.1(4)(b) of those Regulations;
- (c) in relation to a practitioner whom the 2015 Regulations apply, that person’s yearly average earnings;
- (d) in relation to a person other than a practitioner to whom the 2011 Regulations apply, such amount as would be or would have been (as the case may be) that person’s final year’s pensionable pay under regulation C1(6) of those Regulations, (assuming, in the case of a person to whom regulation 3(1)(c) applies, that the person was in receipt of the pensionable pay which would, in the opinion of the Scottish Ministers, have been payable if the person were employed whole-time by an employing authority on similar duties);
- (e) in relation to a person other than a practitioner to whom the 2013 Regulations apply, such amount as would be, or would have been, that person’s reckonable pay under regulation 2.A.11 of those Regulations;
- (f) in relation to a person other than a practitioner to whom the 2015 Regulations apply, such amount as would be, or would have been, that person’s yearly average earnings.

(2) The yearly average, final year’s pensionable pay and reckonable pay referred to in paragraph (1) are to be calculated as if the person to whom regulation 3(1) applies had retired—

- (a) in the case of a person eligible for an allowance under regulation 4(3A) or (3D), on the date on which that person ceased to be employed as a person to whom regulation 3(1) applies;
- (b) in the case of a person eligible for an allowance under regulation 4(4), (4B), (5) or (5C), on the date on which that person’s emoluments were reduced;
- (c) in the case of any other person, on the date on which by reason of the injury or disease that person’s employment ceased.

This is subject to paragraphs (3) and (4).

(3) This paragraph applies to a person to whom regulation 3(1)(a) applies who was employed as a senior registrar, registrar, specialist registrar, senior house officer or house officer immediately before—

- (a) ceasing to be employed by reason of the injury or disease or as a person to whom that regulation applies; or
- (b) the date on which that person’s emoluments were reduced.

(4) In the case of a person to whom paragraph (3) applies, average remuneration shall be increased to the amount which in the opinion of the Scottish Ministers represents the average remuneration of a general medical practitioner or, as the case may be, a general dental practitioner.

(5) In the case of a person to whom the 2015 Regulations apply and who is not a practitioner, that person's yearly average earnings are the greater of—

- (a) the optimum re-valued pensionable earnings in that person's NHS employment; and
- (b) the annual rate of pay for that employment at the time it ceased.

(6) In the case of a person to whom the 2015 Regulations apply and who is a practitioner, that person's yearly average earnings are the average of the annual amounts that would be, or would have been, the person's re-valued pensionable earnings in respect of practitioner service or service which is treated as practitioner service.

(7) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the person has the greatest amount of re-valued pensionable earnings.

(8) The annual rate of pay is the sum of—

- (a) the annual rate of so much of what was or would have been the person's pensionable earnings immediately before any pension became payable or would have become payable as consisted of salary, wages, or other regular payments of a fixed nature; and
- (b) so much of any fees and other regular payments not of a fixed nature as—
 - (i) was payable to the person during the period of 12 months ending with the day the employment ceased; and
 - (ii) formed, or would have formed, part of the person's pensionable earnings.”.

(2) After regulation 2A (inserted by paragraph (1) above), insert—

“Civil partnerships and marriage of same sex couples

2B.—(1) In these Regulations, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.”.

Amendment of regulation 4

49. In regulation 4 (scale of benefits)—

(a) in paragraph (6)(a)—

(i) for paragraphs (i) and (ii), substitute—

“(i) reduction in the amount of that pension under regulation T6 or T7 of the 2011 Regulations, regulation 2.J.7, 2.J.8, 3.J.7 or 3.J.8 of the 2013 Regulations or paragraph 11 or 12 of Schedule 3 to the 2015 Regulations (all of which deal with offset and loss of rights to benefits);

- (ii) reduction in the amount of that pension under regulation E3(7), E12(7) or E17 of the 2011 Regulations, regulation 2.D.14, 2.D.15, 3.D.10 or 3.D.11 of the 2013 Regulations or regulation 76 or 108 of the 2015 Regulations (all of which deal with exchanging a pension for a lump sum in cases of serious ill health);”; and
- (ii) for paragraph (iv), substitute—
 - “(iv) reduction in the amount of that pension under regulation T3(14)(b) of the 2011 Regulations, regulation 2.J.9(10)(b) or 3.J.9(10)(b) of the 2013 Regulations or paragraph 16 of Schedule 3 to the 2015 Regulations (all of which deal deduction of tax);”; and
- (b) after sub-paragraph (b) of paragraph (10), insert—
 - “(c) in respect of a person who is or is eligible to be a member of the scheme set out in the 2015 Regulations—
 - (i) the person’s state pension age; or
 - (ii) 65, if that is higher.”.

Amendment of regulation 8

50. In regulation 8(6) (child’s allowance), for “or the 2013 Regulations” substitute “, the 2013 Regulations or the 2015 Regulations”.