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STATUTORY INSTRUMENTS

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**1995 No. 300**

The National Health Service Pension Scheme Regulations 1995

PART H

*Child Allowance*

**Dependent child**

**H1.**—(1) Subject to the provisions of this regulation, “dependent child” means any child who is—

- (a) a child or grandchild of the member;
- (b) a step-child of the member by a marriage entered into before the date on which the member leaves pensionable employment or a child legally adopted by the member before that date;
- (c) a brother or sister, or a child of a brother or sister, of the member or the member’s spouse (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose); or
- (d) a child who, immediately before the member left pensionable employment, the member had intended to adopt, or a child who, at that time, had been dependent on the member for 2 years or (if less) half the child’s life;

and who satisfies the requirements of paragraph (2).

(2) The requirements of this paragraph are satisfied by any child described in paragraph (1) who is—

- (a) born before the member leaves pensionable employment and who is dependent on the member when the member dies and, if the member dies after leaving pensionable employment, is also dependent on the member when the member leaves pensionable employment; or
- (b) born one year or less after the member leaves pensionable employment and who either is dependent on the member both immediately after being born and when the member dies, or would have become dependent on the member if the member had not died before the child was born.

(3) A child is a dependent child for so long as he is—

- (a) under age 17; or
- (b) aged 17 or over and continuing in full-time education; or
- (c) aged 17 or over and participating in full-time training for a trade, profession or vocation, for which he is not receiving remuneration in excess of the allowable maximum; or
- (d) aged 17 or over and taking a break in such full-time education or training providing the Secretary of State is satisfied that the child intends to return to some such education or training.

(4) A child who is aged 17 or over and who has ceased to be a dependent child will be treated as a dependent child if he returns to full-time education, or to full-time training for a trade, profession

or vocation for which he is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.

(5) In this regulation, the “allowable maximum” means the amount to which a pension of £1702 a year beginning on 11th April 1994 would have been increased under Part I of the Pensions (Increase) Act 1971 at the date in question (calculated as if the words “for a period of not less than two years” in section 3(3)(d) of that Act were omitted), plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.

(6) A child who is incapable of earning a living because of permanent physical or mental infirmity from which he was suffering at the time the member died or from which he started to suffer whilst qualifying as a dependent child will be treated as a dependent child for so long as he remains incapable of earning a living.

### **Payment of allowance**

**H2.**—(1) Subject to the following provisions of this regulation, if a member dies in the circumstances described in any of regulations H3 to H7 and leaves a dependent child, the dependent child shall be entitled to a child’s allowance as described in this regulation and in whichever of regulations H3 to H7 is applicable.

(2) If a dependent child is born after the member’s death, a child allowance shall be payable as if the child had been born before the member died.

(3) The child allowance will be paid to the child or, where the Secretary of State so decides to some other person for the child’s benefit and, where there is more than one dependent child, the allowance will be shared between them in such shares as the Secretary of State may decide from time to time.

(4) Where a child is a dependent child by virtue of regulation H1(3)(d), the child allowance shall cease to be payable after 12 months if the child has not then returned to full-time education, or full-time training for a trade, profession or vocation, but will be reinstated if the child later returns to some such education or training and the Secretary of State is satisfied that the child intended to do so from the start of the break.

(5) No allowance shall be payable to, or for the benefit of, a child who is incapable of earning a living because of permanent physical or mental infirmity for any period exceeding one month during which the child is maintained out of money provided by Parliament in a hospital or other institution.

(6) Where a child is a dependent child in relation to 2 or more members, all of whom die, a child allowance shall be payable in respect of not more than 2 of those members and, if there are more than 2 such members, shall be equal to the sum of the 2 highest allowances.

(7) The child allowance shall cease to be payable when there is no remaining dependent child.

### **Member dies in pensionable employment**

**H3.**—(1) The child allowance payable in the case of a member who dies whilst in pensionable employment will be as described in this regulation.

(2) Subject to paragraph (3), the allowance will be calculated, as described in whichever of paragraphs (4) or (7) apply, as a proportion of the pension that would have been payable to the member under the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he died.

(3) If the member dies with less than 5 years’ pensionable service, the allowance will be calculated as if the pension described in paragraph (2) were based on the shorter of—

- (a) 10 years’ pensionable service, and

(b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(4) Subject to paragraphs (5) to (8), if the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(5) If a widow's or widower's pension is payable at the rate mentioned in regulation G2(2), no allowance shall be payable in respect of any dependent child who is dependent on that widow or widower until the end of the first 6 months after the member's death.

(6) If a widow's or widower's pension is payable at the rate mentioned in regulation G2(2) but there is a dependent child who is not dependent on that widow or widower, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(7) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first 6 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(8) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G2 (member dies in pensionable employment), the allowance will be paid at the rates described in paragraph (7).

#### **Member dies after pension becomes payable**

**H4.**—(1) The child allowance payable in the case of a member who dies after a pension under the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraph (8), the allowance will be calculated, as described in whichever of paragraphs (3) or (4) apply, as a proportion of the amount of the member's pension or, if greater, the amount that the member's pension would have been if it had been based on the shorter of—

(a) 10 years' pensionable service, and

(b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(3) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will, subject to paragraphs (5) to (7), be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(4) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first 6 months after the member's death will be equal to the member's pension, calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment).

(5) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G3 (member dies after pension becomes payable), the allowance will be paid at the rates described in paragraph (4).

(6) If a widow's or widower's pension is payable at the rate mentioned in regulation G3(2), no allowance shall be payable in respect of any dependent child who is dependent on the widow or widower until the end of the first 6 months after the member's death.

(7) If a widow's or widower's pension is payable at the rate mentioned in regulation G3(2) but there is a dependent child who is not dependent on that widow or widower, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pension.

(8) Where the member was in receipt of a pension payable under regulation E5 (early retirement pension with actuarial reduction), the member's pension referred to in paragraph (2) means the member's pension calculated without regard to the reduction made under regulation E5(2).

### **Member dies with preserved pension**

**H5.**—(1) The child allowance payable on the death of a member with a preserved pension under regulation L1 that has not become payable will be as described in this regulation.

(2) If the member dies within 12 months after leaving pensionable employment, the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the pension described in regulation H3(2) and, where applicable, H3(3) as if the member had died on the day he left pensionable employment.

(3) If the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on the shorter of—

- (a) 10 years' pensionable service, and
- (b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(4) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) or (3) (whichever is applicable) if there is only one dependent child and one-half if there are two or more.

(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) or (3) (whichever is applicable) if there is only one dependent child and two-thirds if there are two or more.

(6) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G4 (member dies with preserved pension), the allowance will be paid at the rate described in paragraph (5).

### **Member dies within 12 months after leaving pensionable employment without pension or preserved pension.**

**H6.**—(1) The child allowance payable in a case where a member leaves pensionable employment, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1, and dies within 12 months after leaving and before receiving a refund of contributions under regulation L2, will be as described in this regulation.

(2) The child allowance will be calculated as described in regulation H5 (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 L1.

### **Dependent child not being maintained by surviving parent or spouse of a parent**

**H7.**—(1) If a member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but that dependent child is not being maintained by the surviving parent (or spouse of a

parent), the Secretary of State may increase the amount of the child allowance that would otherwise be payable under these Regulations.

(2) The allowance may, at the Secretary of State's discretion, be increased up to an amount equal to the amount that would have been payable if there were no surviving parent (or spouse of a parent).