
STATUTORY INSTRUMENTS

1998 No. 1451

**The National Health Service Superannuation Scheme (Scotland)
(Additional Voluntary Contributions) Regulations 1998**

PART IV

Miscellaneous Provisions

Repayment of investments in certain cases

14.—(1) In the case of a person who—

- (a) ceases to be employed in pensionable employment;
- (b) is entitled to receive a refund of contributions under regulation E9 of the 1995 Regulations; and
- (c) has applied for and received such a refund of contributions,

the Secretary of State shall make arrangements for that person, subject to paragraph (2), to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of that person under regulation 7(1), 8(2) or 9(4) less the amount of tax chargeable under section 598 of the Taxes Act (charge to tax: repayment of employee's contributions).

(2) Where, in the circumstances mentioned in paragraph (1), contributions have been made by an employer, the Secretary of State shall make arrangements for that employer to receive a lump sum representing the total realisable value of the investments made by the Secretary of State in respect of contributions made by that employer under regulation 7(1) less the amount of tax chargeable under section 601 of the Taxes Act (charge to tax: payment to employers).

Payments by Secretary of State

15.—(1) Subject to paragraph (2), where an authorised provider fails to pay any amount due under an annuity or lump sum death benefit provided in accordance with these Regulations, the Secretary of State shall be liable to pay that amount.

(2) Where, on or after the date on which these Regulations come into force, a participator elects for benefits to be provided by an authorised provider other than the one selected by the Secretary of State, the Secretary of State shall not be liable under paragraph (1).

(3) Lump sums payable—

- (a) as mentioned in regulation 11(4); or
- (b) under regulation 11(7) or 12,

shall be paid to the deceased's spouse (provided no notice has been given under regulation F5(1) of the 1995 Regulations that the spouse is not to receive payment) or, if there is no spouse or such notice has been given, to the deceased's personal representatives.

(4) Lump sums payable under regulation 11(8) or 14(1) shall be paid to the participator.

(5) If when a participator dies a lump sum would have been payable under regulation 11(7) or 12, but the whole or part of that sum cannot be paid by reason of regulation 13 and paragraph 15 of the Schedule, any amount which cannot be paid under those provisions shall be used for the purchase of an annuity which complies with the provisions of regulation 11(2)(b) and (c) to provide a pension for—

- (a) the deceased's spouse, but if none is living,
- (b) any dependent child of the deceased;

provided that—

- (i) any such person shall be subject to any limit imposed by regulation 13 and paragraph 14 of the Schedule, and
- (ii) any amount remaining after the purchase of such a pension, or the whole amount if no such person as is mentioned in sub-paragraph (a) or (b) is living, less any amount of tax chargeable under section 599A of the Taxes Act⁽¹⁾ (charge to tax; payments out of surplus funds), shall be paid to the deceased's personal representatives.

(6) If, by reason of regulation 13 and paragraphs 7 to 14 inclusive of the Schedule, an annuity falling to be provided under regulation 11 is not payable in full, there shall, subject to paragraph (7), be paid to the participator the balance of the amount, or aggregate of amounts, not exceeding the prescribed amount as defined in paragraph (8), out of investments realised by virtue of regulation 11(5) which would otherwise have been applicable to the purchase of the annuity less the amount of any tax chargeable under section 599A of the Taxes Act.

(7) Where, in the circumstances mentioned in paragraph (6), contributions have been made by the employer, the balance (to the extent that it is attributable to contributions made by the employer) less the amount of any tax chargeable under section 601 of the Taxes Act, shall be paid to the employer.

(8) In paragraph (6) the reference to a prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act (discretionary approval) as the method to be used for calculating the amount of any surplus funds.

(9) In the case of a participator to whom benefits become payable under any of regulations E1 to E6 of the 1995 Regulations (retirement), the Secretary of State may realise such part of the investments made under these Regulations as is derived from any contributions made by the participator's employer without purchasing an annuity and, in that event, the amount shall be payable to the participator as a lump sum.

(10) In the case of a participator to whom regulation E2(7) or E6(5) of the 1995 Regulations applies (early retirement on grounds of ill health), the Secretary of State may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable as a lump sum less any charge to tax under section 599 of the Taxes Act.

Information

16.—(1) Persons making elections under these Regulations, and their employers, shall give the Secretary of State such information as he may reasonably require for the purposes of his functions under these Regulations.

(2) A person making—

- (a) an election under regulation 3(1)(b) or (6) to provide a lump sum death benefit, or
- (b) an election under regulation 5(2)(a),

(1) Section 599A was inserted by section 75 of, and paragraph 12 of Schedule 6 to, the Finance Act 1989 (c. 26).

shall, in particular, give the Secretary of State such information about his health as the Secretary of State may reasonably require.

Payments in respect of deceased persons

17.—(1) This regulation applies where a person dies and the total of—

- (a) any sums that were due to him under these Regulations, and
- (b) any sums payable under these Regulations to his personal representatives,

does not exceed the amount specified in any order for the time being in force for the purposes of section 1 of the Administration of Estates (Small Payments) Act 1965(2) and applying in relation to the death.

(2) Where this regulation applies the Secretary of State may, without requiring the production of proof of title, pay any amount due under paragraph 1(a) and (b)—

- (a) to the deceased's personal representatives, or
- (b) to the person, or to or among any one or more of any persons, appearing to him to be beneficially entitled to the estate

and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Benefits not assignable on bankruptcy

18.—(1) On the bankruptcy or sequestration of a person entitled to benefit under these Regulations, no part of the benefit shall be paid to any trustee or other person acting on behalf of creditors, except as provided for in paragraph (2).

(2) Where, following the bankruptcy or sequestration of any person entitled to benefit under these Regulations, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985(3) or under section 310 of the Insolvency Act 1986(4) that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy, the Secretary of State shall comply with that order.

Offset for crime, negligence or fraud

19. Where, in the circumstances set out in regulation T5 of the 1995 Regulations, there has been a loss to public funds, the Secretary of State may, in relation to benefits which arise by virtue of the employer's contributions, reduce the amount of any benefit payable to or in respect of a person under these Regulations, to the extent set out, and subject to the conditions specified, in that regulation.

Loss of rights to benefit

20. Where the circumstances are such that a direction may be made by the Secretary of State under regulation T6 of the 1995 Regulations, the Secretary of State may direct that all or part of any rights to benefit under these Regulations which arise by virtue of the employer's contributions be forfeited.

Determination of questions

21. Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Secretary of State.

(2) 1965 c. 32; the amount specified in S.I.1984/539 is £5,000.

(3) 1985 c. 66.

(4) 1986 c. 45.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
