
STATUTORY INSTRUMENTS

1998 No. 1594

**The National Health Service (Scotland)
(Injury Benefits) Regulations 1998**

PART II

INJURY BENEFITS

Persons to whom the Regulations apply

3.—(1) Subject to paragraph (3) of this regulation and regulation 16, these Regulations apply to any person who, while he—

- (a) is in the paid employment of an employing authority;
- (b) is a practitioner;
- (c) holds an appointment with an employing authority the terms of which declare it to be honorary;
- (d) holds an appointment as a member of such body, constituted under the National Health Service (Scotland) Act 1978(1), as the Secretary of State may approve;
- (e) is providing piloted services; or
- (f) is a medical practitioner who is a pilot scheme employee and for whose employment the consent of the Health Board which is a participant in the pilot scheme in question has been obtained,

(hereinafter referred to in this regulation as “his employment”), sustains an injury, or contracts a disease, to which paragraph (2) applies.

(2) This paragraph applies to an injury which is sustained and to a disease which is contracted in the course of the person’s employment and which is wholly or mainly attributable to his employment and also to any other injury sustained and any other disease contracted, if—

- (a) it is wholly or mainly attributable to the duties of his employment;
- (b) it is sustained or, as the case may be, contracted, while, as a volunteer at an accident or emergency, he is providing health services which his professional training and code of conduct would require him to volunteer; or
- (c) it is sustained or, as the case may be, contracted while he is travelling as a passenger in a vehicle to or from his place of employment with the permission of the employing authority and if in addition—
 - (i) he was under no obligation to the employing authority to travel in the vehicle but, if he had been, the injury would have been sustained, or the disease contracted, in the course of, and have been wholly or mainly attributable to, his employment, and
 - (ii) at the time of the injury or the contracting of the disease the vehicle was being operated, otherwise than in the ordinary course of a public transport service, by or on

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behalf of the employing authority or by some other person by whom it was provided in pursuance of arrangements made with the authority.

(3) These Regulations shall not apply to any person in relation to any injury or disease wholly or mainly due to, or seriously aggravated by, his own culpable negligence or misconduct.

Scale of benefits

4.—(1) Benefits in accordance with this regulation shall be payable by the Secretary of State to any person to whom regulation 3(1) applies whose earning ability is permanently reduced by more than 10 per cent by reason of the injury or disease, but, in the case of a person to whom paragraph (5) applies, the Secretary of State shall pay those benefits without regard to any reduction in the person's earning ability.

(2) Where a person to whom regulation 3(1) applies ceases to be employed as such a person by reason of the injury or disease and no allowance or lump sum, other than an allowance under paragraph (5), has been paid under these Regulations in consequence of the injury or disease, there shall be payable, from the date of cessation of employment, an annual allowance of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of his average remuneration shown in whichever column of the table hereunder is appropriate to his service in relation to the degree by which his earning ability is reduced at that date.

TABLE

<i>Degree of reduction of earning ability</i>	<i>Service</i>			
	<i>Less than 5 years</i>	<i>5 years and over but less than 15 years</i>	<i>15 years and over but less than 25 years</i>	<i>25 years and over</i>
(1)	(2)	(3)	(4)	(5)
More than 10% but not more than 25%	&15percnt;	&30percnt;	&45percnt;	&60percnt;
More than 25% but not more than 50%	40%	50%	60%	70%
More than 50% but not more than 75%	65%	70%	75%	80%
More than 75%	85%	85%	85%	85%

(3) Where, before attaining age 60, a person to whom regulation 3(1) applies ceases to be employed as such a person other than by reason of the injury or disease and no allowance or lump sum, other than an allowance under paragraph (5), has been paid under these Regulations in consequence of the injury or disease, he may be paid, from the date on which he attains age 60, or such earlier date as the Secretary of State may in any particular case allow, an annual allowance of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of his average remuneration shown in whichever column of the table in paragraph (2) is appropriate to his

service in relation to the degree by which his earning ability is reduced by reason of the injury or disease at that date.

(4) Where a person to whom regulation 3(1) applies suffers a reduction in the emoluments of an employment mentioned in that regulation by reason of the injury or disease, there shall be payable, from the date of that reduction, an annual allowance—

- (a) of the amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6), will provide an income of the percentage of his average remuneration shown in whichever column of the table in paragraph (2) is appropriate to his service in relation to the degree by which his earning ability is reduced at the date that his emoluments were reduced; or
- (b) of the amount, if any, which, when added to the value, expressed as an annual amount, of any pension specified in paragraph (6)(a), will provide an income at the annual rate at which a pension would have been payable to the person under his relevant pension scheme if, on the day before such reduction, he had ceased to be employed and was incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body;

whichever is the greater:

Provided that regulation 13(4) shall apply to that allowance as if the person had ceased to be employed on the day before his emoluments were reduced and had been re-employed on the following day with the reduced emoluments.

(5) Where a person to whom regulation 3(1) applies is on leave of absence from an employment mentioned in that regulation with reduced emoluments by reason of the injury or disease, there shall be payable during the period of such leave an annual allowance of the amount, if any, which when added to the aggregate of—

- (a) the emoluments payable to the person during his leave of absence, and
- (b) the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6),

will provide an income of 85 per cent of his average remuneration.

(6) The pensions and benefits specified in this paragraph are—

- (a) any pension payable to the person under a relevant pension scheme, disregarding any reduction in the amount of that pension under regulation T5 (offset for crime, negligence or fraud) or T6 (loss of rights to benefits) of the superannuation scheme regulations and disregarding any increase in the amount of that pension, under the Pensions (Increase) Act 1971(2), after the date at which the average remuneration used in the calculation of the allowance was calculated;
- (b) any of the following benefits, at the rates in operation at the date on which the employment ceased or the emoluments were reduced, as the case may be, which are payable to the person—
 - (i) disablement pension or gratuity payable under section 103 of the Social Security Contributions and Benefits Act 1992(3) or so much of any such pension or gratuity as relates to the injury or disease (hereinafter referred to as “the relevant part”), together with—
 - (a) any increase in such pension payable by way of unemployment supplement under paragraph 2 of Part I of Schedule 7 to that Act (or so much of any such increase as is proportionate to the relevant part of the said

(2) 1971 c. 56.

(3) 1992 c. 4.

pension) but excluding any increase in that supplement under paragraph 3 of Part I of Schedule 7 to that Act; and

- (b) any increase in such pension payable under paragraph 4(4) or 6 of Part I of Schedule 7 to that Act in respect of a dependant or so much of any such increase as is proportionate to the relevant part of the said pension;

but excluding any increase under sections 104 (increase where constant attendance is needed) or 105 (increase for exceptionally severe disablement) of that Act;

- (ii) incapacity benefit payable under section 30A of the Social Security Contributions and Benefits Act 1992(5) in respect of the injury or disease together with any increase in such benefit payable under section 80 (dependent children), 86A (increase for adult dependants) or 87 (rate of increase where associated retirement pension is attributable to reduced contributions) of that Act(6);
- (iii) severe disablement allowance payable under section 68 of the Social Security Contributions and Benefits Act 1992(7) in respect of the injury or disease together with any increase in such allowance payable under section 90 (dependants) of that Act;
- (iv) reduced earnings allowance payable under paragraph 11 of Part IV of Schedule 7 to the Social Security Contributions and Benefits Act 1992 in respect of the injury or disease;
- (v) where a person ceased to be employed on or after 1st January 1993 any retirement allowance payable under paragraph 13 of Part V of Schedule 7 to the Social Security Contributions and Benefits Act 1992 in respect of the injury or disease.

(7) Where the relevant pension scheme is the Federated Superannuation System for Universities, the Federated Superannuation Scheme for Nurses and Hospital Officers or any other scheme under which the benefits may be paid otherwise than as an annual pension, and all or part of the contributions to the scheme on behalf of the person have been paid from public funds, the pension payable thereunder shall, for the purposes of paragraph (6)(a), be deemed to include three-quarters of such sum that, in the opinion of the Secretary of State, represents the value, expressed as an annual amount, of the benefits of the policies or accumulated investments held under the scheme on behalf of the person.

(8) Where a practitioner has received payments under regulation 72 of the 1961 Regulations or under regulation 78 of the 1980 Regulations, there shall, for the purposes of paragraph (6)(a), be deemed to be payable to him a pension of such amount, if any, as the Secretary of State thinks fit, but not exceeding the amount of the pension to which the practitioner would, if he had not been entitled to such payments, have become entitled under those regulations, in respect of the period or periods for which such payments were made to him, if he had attained age 60 and had served the minimum period of qualifying service.

(9) A person mentioned in paragraph (2) or (3), or a person mentioned in paragraph (4) who subsequently ceases to be employed as such a person by reason of the injury or disease, shall be entitled to receive a lump sum of the proportion of average remuneration shown in column (2) of the table hereunder in relation to the degree by which his earning ability is reduced.

(4) Paragraph 4 was amended by [S.I. 1996/671](#) and [1997/577](#).

(5) [1992 c. 4](#); section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act [1994 \(c. 18\)](#) (“the 1994 Act”).

(6) Section 86A was inserted by section 2 of the 1994 Act; and section 87 was amended by the 1994 Act, Schedule 1, paragraph 24 and Schedule 2.

(7) Section 68 was amended by the 1994 Act, section 9 and Schedules 1 and 2 and by [S.I. 1994/2556](#).

TABLE

<i>Degree of reduction of earning ability</i>	<i>Proportion of average remuneration</i>
(1)	(2)
More than 10% but not more than 25%	One-eighth
More than 25% but not more than 50%	One-quarter
More than 50% but not more than 75%	Three-eighths
More than 75%	One-half

Meaning of service

5. A person's service shall comprise all of the periods which at the date on which he ceased to hold an employment or appointment mentioned in regulation 3(1), or on which the emoluments of such employment or appointment were reduced, as the case may be, fell within any of the following descriptions, but no period shall be taken into account under more than one description—

- (a) any period during which he held such employment or appointment;
- (b) any period of employment that would be taken into account for any purpose of a relevant pension scheme; and
- (c) any other period that the Secretary of State may approve in any particular case.