
STATUTORY INSTRUMENTS

1998 No. 1594

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

PART III

BENEFITS ON DEATH OF INJURED PERSON

Grounds of entitlement

6. If a person to whom these Regulations apply dies as a result of, or his death was, in the opinion of the Secretary of State, substantially hastened by, the injury or disease, the Secretary of State shall pay in respect of that person (hereinafter referred to as “the deceased”) the benefits provided in this part of these Regulations, except that such benefits shall not be payable in respect of an injury or disease wholly or mainly due to, or seriously aggravated by, the culpable negligence or misconduct of the deceased.

Widow’s or widower’s allowance

7.—(1) Subject to the provisions of this regulation and to regulation 10, there shall be payable to the widow or widower of a person mentioned in regulation 6 an annual allowance of the amount, if any, which when added to the amount of any pension payable under a relevant pension scheme in respect of the deceased, to or for the benefit of the widow or widower, will provide an income of 45 per cent of the deceased’s average remuneration.

(2) Subject to paragraph (3), for the first 6 months immediately following the death of a person who at the date of his or her death was entitled to an allowance under these Regulations there shall be payable to the widow or widower an annual allowance of the amount, if any, which when added to the amount of any pension under a relevant pension scheme in respect of the deceased will provide an income of the percentage of average remuneration by reference to which the deceased’s annual allowance was calculated:

Provided that this paragraph shall not apply where the aggregate of annual allowances otherwise payable under paragraph (1) and regulations 8(1) and 9(1) would exceed an allowance payable under this paragraph.

- (3) A widow or widower shall not be entitled to receive an allowance—
- (a) if the marriage took place after the deceased last ceased to be employed as a person to whom these Regulations apply or after the date on which his or her earning ability was reduced as a result of the injury or disease, whichever is the later;
 - (b) if at the date of the deceased’s death such widow or widower and a man or, as the case may be, a woman to whom she or he is not married are living together as husband and wife; or
 - (c) in respect of any period after such widow or widower remarries or during which she or he lives together with another person as if she or he was married to that other person, so, however, that where such marriage has terminated, the Secretary of State may restore an

allowance to a widow or widower if he is satisfied that such widow or widower is suffering hardship.

(4) Where the deceased died before 6th April 1988, a widower shall not be entitled to receive an allowance unless, at the date of the deceased's death, he was incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living and was wholly or mainly dependent upon the deceased.

Child's allowance

8.—(1) Subject to the provisions of this regulation and to regulation 10, on the death of a person mentioned in regulation 6 or, where an allowance is payable under regulation 7(2), on the termination of payment of that allowance, there shall be payable to any dependent child or children an annual allowance of the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to, or for the benefit of, such child or children will provide an income of 10 per cent of the deceased's average remuneration multiplied by the number of children not exceeding four, or of twice that sum where there is no surviving parent:

Provided that where the Secretary of State is satisfied that a surviving parent is not maintaining such child or children, he may pay the allowance as if there were no surviving parent.

(2) Subject to the provisions of this regulations, "dependent child" means any child who is—

- (a) a child or grandchild of the deceased;
- (b) a step-child of the deceased by a marriage entered into before the date on which the deceased ceased to be in employment mentioned in regulation 3(1) or a child legally adopted by the deceased before that date;
- (c) a brother or sister, or a child of a brother or sister, of the deceased or the deceased'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 deceased ceased to be in employment mentioned in regulation 3(1), the deceased had intended to adopt or a child who, at that time, had been dependent on the deceased for 2 years or (if less) half the child's life;

and who satisfies the requirements of paragraph (3).

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

- (a) born before the deceased ceased to be in employment mentioned in regulation 3(1) and who was dependent on the deceased when the deceased died and, if the deceased died after ceasing to be in employment mentioned in regulation 3(1), was also dependent on the deceased when the deceased ceased to be in such employment; or
- (b) born one year or less after the deceased ceased to be in employment mentioned in regulation 3(1) and who either was dependent on the deceased both immediately after being born and when the deceased died, or would have become dependent on the deceased if the deceased had not died before the child was born.

(4) 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 full-time training for a trade, profession or vocation, where the Secretary of State is satisfied that the child intends to return to some such education or training; or

(e) under age 19 and not engaged in remunerative full-time work and not entitled to income support in terms of section 124 of the Social Security Contributions and Benefits Act 1992(1).

(5) 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.

(6) In this regulation, the “allowable maximum” means the amount to which a pension under the pension scheme regulations of £1,702 a year beginning on 11th April 1994 would have been increased under Part I of the Pensions (Increase) Act 1971(2) 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.

(7) An allowance payable under this regulation shall be paid to the child, or, in such proportion as the Secretary of State thinks fit, to the children, entitled thereto:

Provided that the Secretary of State may, if he thinks fit, pay the allowance to such other person or persons as he may specify and such person or persons shall apply such allowance, in accordance with any directions given by the Secretary of State, for the benefit of the child or children entitled thereto.

(8) Where a child is a dependent child by virtue of regulation 8(4)(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.

Dependent relative’s allowance

9.—(1) Subject to paragraph (4) and to regulation 10, on the death of a person mentioned in regulation 6 or, where an allowance is payable under regulation 7(2), on the termination of payment of that allowance, an annual allowance calculated in accordance with paragraph (2) or (3), as the case may be, shall be payable to—

- (a) a parent who is either the deceased’s mother or his father or his spouse’s mother or father, and who was wholly or mainly dependent on the deceased at the date of his death; and
- (b) each child who has attained the age of 17 years and is not receiving full-time education or undergoing full-time training for a trade, profession or vocation, but who, if he or she had not attained the age of 17 years, would be entitled to an allowance under regulation 8, and who was incapable by reason of permanent ill-health or infirmity of mind or body of earning his or her own living at the date of the death of the deceased or at the date he or she ceased to be entitled to an allowance under regulation 8, whichever is the later, and has at all times since then been so incapable,

(hereinafter referred to as “a dependent relative”).

(2) The annual allowance payable to a dependent relative referred to in paragraph (1)(a) shall be payable to the first dependent relative therein mentioned who is eligible at any one time and shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent of the deceased’s average remuneration, or of 45 per cent during any period in which there is no widow or widower of the deceased to whom an allowance is or might be payable under regulation 7:

(1) 1992 c. 4; section 124 was amended by the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 30 and Schedule 3.

(2) 1971 c. 56.

Provided that where the Secretary of State is satisfied that during any period that dependent relative is not being maintained by a surviving spouse of the deceased, he may pay the allowance during such period as if there were no surviving spouse.

(3) The annual allowance payable to a dependent relative referred to in paragraph (1)(b) shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent of the deceased's average remuneration, or of 45 per cent where the dependent relative has no surviving parent:

Provided that where the Secretary of State is satisfied that during any period that dependent relative is not being maintained by a surviving parent, he may pay the allowance during such period as if there were no surviving parent.

(4) A dependent relative shall not be entitled to receive an allowance—

- (a) if he or she subsequently marries or is living together with another person as husband and wife; or
- (b) in respect of any period exceeding one month during which he or she is maintained out of money provided by Parliament in a hospital or other institution so maintained.

(5) An allowance payable to a dependent relative may be paid to such other person as the Secretary of State may specify and that person shall apply the allowance, in accordance with any directions given by the Secretary of State, for the benefit of that dependent relative.

(6) In paragraph (1)(a), a reference to a parent includes a reference to a step-parent and an adoptive parent.

Restriction of allowances

10. Where, apart from this regulation, the aggregate of the annual rates of allowances payable under regulations 7 to 9 and of any pensions or benefits taken into account in calculating the allowances would exceed the rate of the deceased's average remuneration, the individual allowances shall be reduced by such amounts as the Secretary of State may from time to time think fit so that such aggregate does not exceed the rate of the deceased's average remuneration.

Lump sum payment on death

11.—(1) On the death of a person mentioned in regulation 6 a lump sum of one-half of his average remuneration—

- (a) shall be payable to the widow or widower to whom an allowance in respect of the deceased is payable under regulation 7;
- (b) if not payable under (a) above, shall be payable to the child or among the children of the deceased or of his spouse, to whom an allowance in respect of the deceased is payable under regulation 8 or 9(1)(b) and (3);
- (c) if not payable under (a) or (b) above, shall be payable to a dependent relative to whom an allowance in respect of the deceased is payable under regulation 9(1)(a) and (2); or
- (d) if not payable under (a), (b) or (c) above, shall be payable to any other child or among any other children to whom an allowance in respect of the deceased is payable under regulation 8 or 9(1)(b) and (3);

Provided that a lump sum shall not be paid under this regulation if a lump sum has been paid to the deceased under regulation 4(9) in respect of the same injury or disease.

(2) The provisions of regulation 8(7) or 9(5), as the case may be, shall apply in respect of a payment under paragraph (1)(b), (c) or (d).

Incidental provisions

12.—(1) For the purposes of this Part of these Regulations, the amount of a pension payable under a relevant pension scheme shall be deemed not to include any amount by which that pension is increased under the Pensions (Increase) Act 1971(3) after the date at which the average remuneration used in the calculation of the allowance was calculated.

(2) Where the relevant pension scheme is a scheme mentioned in regulation 4(7), the pension payable under such a scheme shall, for the purposes of this Part of these Regulations, be deemed to include such sum, if any, which, in the opinion of the Secretary of State, represents the value, expressed as an annual amount, of the benefits payable under that scheme in respect of the deceased to the person entitled to the allowance.

(3) Where the deceased was a practitioner who received payments under regulation 72 of the 1961 Regulations or regulation 78 of the 1980 Regulations, there shall, for the purposes of regulations 7 to 9, be deemed to be payable under the relevant pension scheme a pension of such amount, if any, as the Secretary of State thinks fit, but not exceeding the amount of the widow's or the widower's pension or the child's allowance, as the case may be, which would if the deceased had not been entitled to such payments, have been payable under the superannuation scheme regulations in respect of the period or periods for which such payments were made to him or her.

(4) Any child or children who apart from this provision would become entitled to benefits in respect of more than one deceased shall be entitled to receive benefits in respect of not more than two deceased, and if benefits would apart from this provision be payable in respect of more than two deceased the total benefits paid to the child or, as the case may be, the children together shall be equal to the sum of the two highest benefits.