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STATUTORY INSTRUMENTS

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**1995 No. 300**

**The National Health Service Pension Scheme Regulations 1995**

**PART G**

*Widows and widowers*

**Widow's pension**

**G1.**—(1) Subject to the following provisions of this regulation, if a male member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widow, the widow shall be entitled to a pension as described in whichever of regulations G2 to G6 applies.

(2) Subject to paragraphs (3) to (5)—

- (a) no widow's pension shall be payable in respect of any period during which the widow and a man to whom she is not married are living together as husband and wife; and
- (b) the widow shall cease to be entitled to a widow's pension if she remarries.

(3) Nothing in paragraph (2) shall affect any entitlement to a widow's guaranteed minimum pension under the scheme.

(4) The Secretary of State may pay a pension to a widow who has remarried, or who is living together as husband and wife with a man to whom she is not married, if the Secretary of State is satisfied that the widow will otherwise suffer severe financial hardship.

(5) The Secretary of State may pay a pension to a widow who has remarried if the later marriage comes to an end and the Secretary of State is satisfied that the widow will otherwise suffer hardship.

(6) The amount of any pension payable under paragraph (4) or (5) may, at the Secretary of State's discretion, be equal to, or less than, the original widow's pension and the Secretary of State may (subject to any widow's guaranteed minimum pension) vary the amount, or stop paying the pension, at any time.

(7) If a dependent child is born after the member's death, any entitlement to a widow's pension under regulation G2 (member dies in pensionable employment) or G3 (member dies after pension becomes payable) will be recalculated as if the child had been born before the member died.

**Member dies in pensionable employment**

**G2.**—(1) The widow's pension payable on a member's death in pensionable employment will be as described in this regulation.

(2) The widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the rate of the member's pensionable pay when he died if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with 2 years' or more qualifying service, the widow's pension will be equal to one-half 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.

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with less than 2 years' qualifying service but after reaching age 60, the widow's pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had retired with a pension under regulation E1 (normal retirement pension) on the day he died.

(5) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with less than 2 year's qualifying service and before reaching age 60, the widow will receive a pension equal to her guaranteed minimum pension under the scheme, unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

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

**G3.**—(1) Subject to regulation G6 (member marries after leaving pensionable employment) and regulation S4 (benefits on death in pensionable employment after pension becomes payable), the widow's pension payable on a member's death after a pension under the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraph (3), the widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the member's pension if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) For the purpose of paragraph (2), no account will be taken of any reduction to the member's pension under regulation S2 (reduction of pension on return to NHS employment).

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), the widow's pension will be equal to one-half of the member's pension.

(5) 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 (4) means the member's pension calculated without regard to any reduction made under regulation E5(2).

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

**G4.**—(1) Except where regulation G6 applies (member marries after leaving pensionable employment), the widow's pension payable on the death of a member with a preserved pension under regulation L1 (preserved pension) that had not become payable at the date of death will be as described in this regulation.

(2) If the member dies within 12 months after leaving pensionable employment, the widow's pension will be equal to one-half 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 left pensionable employment.

(3) If the member dies 12 months or more after leaving pensionable employment, the widow's pension will be equal to one-half of the member's preserved pension.

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

**G5.**—(1) This regulation applies if 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.

(2) If the member dies before receiving a refund of contributions under regulation L2 or before a transfer payment is made to which regulation M5 applies (early leaver without pension or preserved pension), the widow shall be entitled to a widow's guaranteed minimum pension unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

### **Member marries after leaving pensionable employment**

**G6.**—(1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service after 5th April 1978.

(3) If the member dies after his pension under the scheme becomes payable, the widow's pension for the first 3 months after the member's death (6 months if the member dies leaving at least one dependent child dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable).

### **Widower's pension**

**G7.**—(1) Subject to the following provisions of this regulation, if a female member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widower, the widower shall be entitled to a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for widowers in like manner as they apply to pensions for widows.

(3) When calculating a widower's pension, any part of a member's benefit that is based on pensionable service before the 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

(4) Where regulation G2(3) or G4(2) applies to the calculation of the widower's pension on a member's death in pensionable employment or with a preserved pension—

(a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3), in the pensionable service on which the member's pension under regulation E2 (early retirement pension on grounds of ill-health) would have been based; and

(b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.

(5) Where regulation G3(2) applies to the calculation of the widower's pension, so that the widower's pension is equal to the member's pension for a limited period, the widower's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a female member, those regulations as applicable to the member's widower (if any).

### **Dependent widower's pension**

**G8.**—(1) A female member may, by giving notice in writing to the Secretary of State prior to leaving pensionable employment, nominate her husband to receive a dependent widower's pension on her death.

(2) The Secretary of State shall accept a member's nomination only if she is satisfied that the member's husband is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(3) If the Secretary of State has accepted a member's nomination and the member subsequently dies before her husband, the dependent widower shall be entitled to a dependent widower's pension.

(4) The dependent widower's pension will be calculated in the same way as a widow's pension under regulations G1 to G6 (pensions for widows), but based only on the member's pensionable service before 6th April 1988.

(5) If the Secretary of State has accepted a member's nomination for a dependent widower's pension and the member's pensionable service started before 25th March 1972 any lump sum payable to the member under regulation E6 (lump sum on retirement) will be reduced by an amount equal to 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement lump sum)).

(6) Where regulation E2(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **Increased widower's pension**

**G9.**—(1) If a female member elected before 1st July 1989 to buy an increased widower's pension, the widower's pension described in regulation G7 will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation 18B of the previous regulations<sup>(1)</sup> (purchase of increased widower's pension).

(2) Subject to paragraph (3), any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 and by the yearly rate of the part of the member's pension that is based on pensionable service after 24th March 1972 plus, in each case, the relevant daily proportion of that rate for each additional day.

(3) Where regulation E2(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Where the member elected to buy an unreduced retiring allowance under paragraph 3 of Schedule 7A to the previous regulations<sup>(2)</sup>, regulations Q2 (right to buy an unreduced retirement lump sum) and Q7 (part payment for additional service or unreduced retirement lump sum) will apply to such election as if it had been made under regulation Q2.

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(1) Regulation 18B was inserted into the previous regulations by regulation 11(2) of S.I.1989/804.

(2) Schedule 7A was inserted into the previous regulations by regulation 11(3) of S.I. 1989/804.