
STATUTORY INSTRUMENTS

1998 No. 1594 (S. 84)

NATIONAL HEALTH SERVICE, SCOTLAND

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

<i>Made</i>	- - - -	<i>29th June 1998</i>
<i>Laid before Parliament</i>		<i>10th July 1998</i>
<i>Coming into force</i>	- -	<i>31st July 1998</i>

The Secretary of State, in exercise of the powers conferred on him by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(1) and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury(2), hereby makes the following Regulations:

PART I
PRELIMINARY

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service (Scotland) (Injury Benefits) Regulations 1998 and shall come into force on 31st July 1998.

(2) In their application to a person mentioned in regulation 3(1)(e) or (f), these Regulations shall have effect from 1st April 1998.

Interpretation

2.—(1) In these Regulations—

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(3);

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- (1) 1972 c. 11; section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c. 58), Part II of Schedule 7, and sections 10(2A), (3A) and (6) and 12(4A) were inserted, and sections 10(1), 12(2) and (4) amended, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and 10.
- (2) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).
- (3) 1997 c. 46.

“the 1961 Regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1961(4);

“the 1980 Regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1980(5);

“the Superannuation Scheme Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(6);

“the previous Regulations” means the National Health Service (Scotland) (Injury Benefits) Regulations 1974(7);

“assistant practitioner” means—

- (a) an employee of a medical practitioner, or dental practitioner on the list of a Health Board, being himself a medical practitioner or dental practitioner who, in such employment, is engaged in assisting his employer in the actual discharge of his duties as such practitioner and for whose employment the consent of the Health Board has been obtained; or
- (b) a medical practitioner who is being trained in general practice as a trainee general practitioner under arrangements made by the Secretary of State;

“average remuneration” means—

- (a) in relation to a person other than a practitioner, such amount as would be or would have been his final year’s pensionable pay, within the meaning of regulation A2 of the Superannuation Scheme Regulations, as an officer to whom those Regulations apply (assuming, in the case of a person to whom regulation 3(1)(c) applies, that he was in receipt of the pensionable pay which would, in the opinion of the Secretary of State, have been payable if he were employed whole-time by an employing authority on similar duties);

or

- (b) in relation to a practitioner, the yearly average of such amount as would be or would have been his uprated earnings, within the meaning of paragraph 11(2) of Schedule 1 to the Superannuation Scheme Regulations, as a practitioner to whom those Regulations apply,

calculated as if he had retired—

- (i) in the case of a person eligible for an allowance under regulation 4(3), on the date on which he ceased to be employed as a person to whom regulation 3(1) applies;
- (ii) in the case of a person eligible for an allowance under regulation 4(4) or (5), on the date on which his emoluments were reduced;
- (iii) in the case of any other person, on the date on which by reason of the injury or disease his employment ceased:

Provided that in respect of a person to whom regulation 3(1)(a) applies who, immediately before he ceased to be employed by reason of the injury or disease or as a person to whom regulation 3(1) applied, or immediately before the date on which his emoluments were reduced, as the case may be, was employed as a specialist registrar, senior registrar, registrar, senior house officer or house officer, average remuneration shall be increased to the amount which in the opinion of the Secretary of State represents the average remuneration of a general medical practitioner, or a general dental practitioner, as the case may be, of comparable age;

(4) S.I. 1961/1398, which was revoked by the National Health Service (Superannuation) (Scotland) Regulations 1980 (S.I. 1980/1177).

(5) S.I. 1980/1177, which was revoked by the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365).

(6) S.I. 1995/365, amended by S.I. 1997/1434 and 1916.

(7) S.I. 1974/1838, amended by S.I. 1986/587 and S.I. 1992/3046.

“dental list” means a list prepared in accordance with regulations made under section 25(2)(a) of the National Health Service (Scotland) Act 1978⁽⁸⁾;

“emoluments” means all salary, wages, fees and other payments paid or made to a person as such for his own use, and also the money value of any accommodation or other allowances in kind appertaining to his employment, but does not include payments for overtime which are not a usual incident of his employment, or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other money to be spent, or to cover expenses incurred, by him for the purposes of his employment; and where fees or other variable payments were made to a person as part of his emoluments during any period immediately preceding a reduction of emoluments, the amount in respect of fees or other variable payments to be included in the emoluments shall be the average of the fees or other payments paid to him during the period of three years immediately preceding the reduction of the emoluments, or such other period as the Secretary of State may think reasonable in the circumstances;

“employing authority” means—

- (a) a Health Board or Special Health Board established under section 2 the National Health Service (Scotland) Act 1978⁽⁹⁾;
- (b) the Common Services Agency for the Scottish Health Service established under section 10 of that Act⁽¹⁰⁾;
- (c) a National Health Service trust established under section 12A of that Act⁽¹¹⁾;
- (d) in respect of employment in a state hospital provided under section 102 of that Act⁽¹²⁾, the Secretary of State or, where the hospital is managed on his behalf by a committee constituted under section 91 of the Mental Health (Scotland) Act 1984⁽¹³⁾, a Health Board or the Common Services Agency, the body so managing it;
- (e) any other body which is constituted under an Act relating to health services and which the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

“medical list” means a list prepared in accordance with regulations made under section 19(2) (a) of the National Health Service (Scotland) Act 1978;

“personal pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993⁽¹⁴⁾;

“pilot scheme” has the meaning given in section 1(1) of the 1997 Act;

“pilot scheme employee” has the meaning given in section 2(3) of the 1997 Act;

“piloted services” has the meaning given in section 1(4) of the 1997 Act;

“practitioner” means—

- (a) a medical practitioner or a dental practitioner on the medical list or, as the case may be, the dental list of a Health Board;
- (b) an assistant practitioner;
- (c) a medical practitioner who is providing piloted services; or
- (d) a medical practitioner who is a pilot scheme employee and

⁽⁸⁾ 1978 c. 29.

⁽⁹⁾ Section 2 was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 28 and Schedules 9 and 10.

⁽¹⁰⁾ Section 10 was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 2 and by the 1990 Act, Schedule 10.

⁽¹¹⁾ Section 12A was inserted by the 1990 Act, section 31.

⁽¹²⁾ section 102 was substituted by the State Hospitals (Scotland) Act 1994 (c. 16), section 1.

⁽¹³⁾ 1984 c. 36.

⁽¹⁴⁾ 1993 c. 48.

- (i) whose name appears on the medical list of a Health Board, or
 - (ii) who was an assistant practitioner,
- prior to the commencement of the pilot scheme;

“relevant pension scheme” means any form of arrangement, whether subsisting by virtue of an Act of Parliament, trust, contract or otherwise for the provision of pension benefits in connection with employment mentioned in regulation 3(1), including a personal pension scheme or the additional pension referred to in section 44(3)(b) of the Social Security Contributions and Benefits Act 1992⁽¹⁵⁾, but excluding—

- (a) any arrangements for the provision of benefits under legislation relating to social security, other than the said additional pension;
- (b) any arrangement for the provision of benefits paid for by additional voluntary contributions under which the rate or amount of benefit payable is calculated by reference to the proceeds of the investment of those contributions;

“service” has the meaning given in regulation 5.

(2) Where any pension or child’s allowance which is or would have been payable under a relevant pension scheme is taken into account for the purpose of any calculation under these Regulations, such pension or allowance shall exclude any amount by which it is or would have been increased under the Pensions (Increase) Act 1974⁽¹⁶⁾.

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⁽¹⁷⁾, 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;

⁽¹⁵⁾ 1992 c. 4.

⁽¹⁶⁾ 1974 c. 9.

⁽¹⁷⁾ 1978 c. 29.

- (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 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%	&15percent;	&30percent;	&45percent;	&60percent;
More than 25% but not more than 50%	40%	50%	60%	70%

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<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>
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(18), 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(19) 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 unemployability 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 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(20) 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(21) 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(22);
 - (iii) severe disablement allowance payable under section 68 of the Social Security Contributions and Benefits Act 1992(23) 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

(18) 1971 c. 56.

(19) 1992 c. 4.

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

(21) 1992 c. 4; section 30A was inserted by section 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18) (“the 1994 Act”).

(22) 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.

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

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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.

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.

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⁽²⁴⁾.

(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⁽²⁵⁾ 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-

⁽²⁴⁾ 1992 c. 4; section 124 was amended by the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 30 and Schedule 3.

⁽²⁵⁾ 1971 c. 56.

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:

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(26) 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.

PART IV

REVIEW OF ALLOWANCE AND MISCELLANEOUS

Review and adjustment of allowance

13.—(1) The Secretary of State shall review the amount of an allowance payable under Part II of these Regulations in the light of—

- (a) a further reduction of the person’s earning ability by reason of the injury or disease;
- (b) the commencement or cessation of payment to the person of a benefit mentioned in regulation 4(6)(b), by reason of the injury or disease; or
- (c) the commencement of a pension payable to the person under a relevant pension scheme or an increase in such a pension not being an increase under the Pensions (Increase) Act 1971; and for this purpose such pension shall be deemed to be reduced proportionately by the amount by which an official pension, that began on the date at which the average remuneration used in the calculation of the allowance was calculated, would have been increased under the Pensions (Increase) Act 1971 by the date of the increase or commencement of the first mentioned pension.

(2) A person not entitled to benefits under these Regulations by reason only that his earning ability was not permanently reduced by more than 10 per cent shall be entitled to receive such benefits if, in consequence of a further reduction by reason of the injury or disease, his earning ability is permanently reduced in aggregate by more than 10 per cent, except that such benefits shall not be payable in respect of any period before such further reduction or for a period of more than 13 weeks before the Secretary of State is notified in writing of such further reduction, whichever is the later.

(3) The Secretary of State shall review the amount of an allowance payable under Part III of these Regulations in the light of any reduction in, or the cessation of, a pension under a relevant pension scheme in respect of the deceased payable to the person entitled to such allowance.

(4) Where a person who is entitled to an allowance under Part II again becomes employed in employment mentioned in regulation 3(1) or becomes employed in an employment mentioned in any corresponding provision in force in England and Wales, Northern Ireland or the Isle of Man, then, whilst he continues in such employment, the allowance under Part II shall be abated by any amount by which it would, when aggregated with his relevant income, exceed the amount of his former earnings.

(5) For the purposes of paragraph (4)—

- (a) “relevant income” means the amount of any emoluments payable to the person in question in respect of the further employment plus the amount of any pension payable to him under a relevant pension scheme;
- (b) “former earnings” means, in relation to that person, the average remuneration by reference to which the allowance was determined or the annual rate of his emoluments at the date on which the allowance became payable, whichever is higher, increased by the amount by which a pension beginning on the date on which the allowance became payable would have been increased under Part I of the Pensions (Increase) Act 1971;
- (c) where the further employment is employment of the type mentioned in regulation 3(1)(c), that person shall be deemed to be in receipt of emoluments equal in amount to those which would have been payable, in the opinion of the Secretary of State, to a person employed whole-time by an employing authority on similar duties.

(6) Where a person ceased to be employed before 1st January 1993, for the purpose of paragraph (1)(b) of this regulation the benefit mentioned in regulation 4(6)(b)(v) shall be disregarded.

Loss of rights to benefit

14. The Secretary of State may direct that all or part of any benefit under these Regulations payable to or in respect of a person to whom these Regulations apply be forfeited if that person is convicted of any of the following offences committed before the benefit becomes payable—

- (a) an offence in connection with employment mentioned in regulation 3(1), which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to a serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Act 1911 to 1989⁽²⁷⁾ for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least 10 years.

Offset for crime, negligence or fraud

15.—(1) If he is satisfied that a loss to public funds occurs as a result of the criminal, negligent or fraudulent act or omission of a person to whom these Regulations apply, the Secretary of State may reduce any benefit under these Regulations payable to, or in respect of, that person by an amount equal to the loss.

(2) If the loss to public funds is equal to or greater than the value of the benefit under these Regulations payable to or in respect of the person, a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Secretary of State shall give the person a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the person's obligation to make good the loss has become enforceable under the order of a court or arbiter.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

Officers transferred in consequence of reorganisation

16.—(1) This regulation shall apply to or in respect of any person who was transferred to the employment of an employing authority under the National Health Service (Scotland) Act 1972⁽²⁸⁾ and who, having remained in the employment of that authority without a break of one day or more, suffers an injury or contracts a disease in respect of which, had he remained in his previous employment, he would have been eligible to receive benefits by virtue of any enactment, scheme or arrangement associated with that employment.

(2) Where the Secretary of State is of the opinion that, in relation to any person to whom or in respect of whom this regulation applies, any benefits specified in paragraph (1)—

- (a) would, when taken as a whole, have been more favourable than any benefits payable under these Regulations, or
- (b) would have been payable where no benefits would have been payable under these Regulations,

⁽²⁷⁾ 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

⁽²⁸⁾ 1972 c. 58.

the Secretary of State, having regard to the provisions of such enactment, scheme or arrangement, may make such payments, to or in respect of such person, supplementary to any benefits which otherwise might be payable under these Regulations, as the Secretary of State considers equitable so that the benefits, taken as a whole, are not less favourable than those which might have been payable under such provisions.

Damages

17.—(1) The Secretary of State shall take into account against the benefits provided in these Regulations any damages or compensation recovered by any person in respect of the injury or disease or in respect of the death of a person to whom these Regulations apply, and such benefits may be withheld or reduced accordingly.

(2) For the purposes of paragraph (1), a person shall be deemed to have recovered damages whether they are paid in pursuance of a judgement or order of a court or by way of settlement or compromise of his or her claim and whether or not proceedings are instituted to enforce the claim.

(3) Where any payments in respect of a benefit under these Regulations are made before the right to, or the amount of, such damages or compensation is finally determined, then if and when a right to and the amount of such damages or compensation is finally determined the Secretary of State shall have the right to recover from the beneficiary an amount not exceeding—

- (a) where the amount of the payments made by the Secretary of State is less than the net amount of the damages or compensation, the amount of those payments;
- (b) where the amount of those payments is not less than the net amount of the damages or compensation, such part of those payments as is equal to the net amount of the damages or compensation.

(4) So far as any amount recoverable under this regulation represents a payment made by the Secretary of State from which income tax has been deducted before the payment, the proper allowance shall be made in respect of the amount so deducted, and in this regulation the expression “the net amount of the damages or compensation” means the amount of the damages or compensation after deducting any tax payable in the United Kingdom or elsewhere to which the damages or compensation are subject.

(5) No proceedings shall be brought to recover any amount under this regulation—

- (a) after the death of the recipient of the payments; or
- (b) after the expiration of two years from the date on which a right to, and the amount of, the damages or compensation is finally determined or from the date on which the final determination first came to the knowledge of the Secretary of State, if later.

(6) A certificate issued by the Secretary of State and stating the date on which the final determination of a right to, and of the amount of, any damages or compensation first came to his knowledge shall be admissible in any proceedings as sufficient evidence of that date.

Avoidance of duplicate benefits

18. If the Secretary of State is of the opinion that an injury or disease has been, or will be, taken into account for the purpose of any corresponding scheme the benefits of which or contributions towards which are payable out of public funds, he may make such deduction from the benefits under these Regulations as may appear to him to be equitable in order to secure that there may not be payable in respect of the same injury or disease benefits under these Regulations as well as benefits under a corresponding scheme.

Medical examination

19. The Secretary of State may require any person entitled, or claiming to be entitled, to an allowance under Part II of these Regulations, or under Part III of these Regulations on the grounds that he or she is incapable by reason of permanent ill-health or infirmity of mind or body of earning his or her own living, to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event the Secretary of State shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.

Benefits not assignable

20.—(1) Any assignation of, or charge on or security over, or any agreement to assign or charge or grant a security over, any right to benefit under these Regulations is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under these Regulations, no part of the benefit shall be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy or sequestration of any person entitled to a benefit under these Regulations, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985⁽²⁹⁾ or under section 310 of the Insolvency Act 1986⁽³⁰⁾ (income payment orders) 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.

Payment to personal representatives

21. Where, on the death of any person, any sum not exceeding £5,000 or such higher amount as would for the time being be applicable in relation to the death if these Regulations were an enactment to which section 1 of the Administration of Estates (Small Payments) Act 1965⁽³¹⁾ (maximum amount disposable on death without representation) applied, is due to or in respect of that person under these Regulations, the Secretary of State may dispense with proof of the title of the personal representatives of that person and pay that sum to the personal representatives or to the person, or to or among any one or more of any persons, appearing to the Secretary of State on such evidence as he deems satisfactory to be entitled by law to a beneficial interest therein 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.

Determination of questions

22. Any question arising under these Regulations as to the rights or liabilities of a person to whom these Regulations apply, or of a person claiming to be treated as such, or of the widow or widower or any dependant of such a person, shall be determined by the Secretary of State.

Option to persons detrimentally affected by these Regulations

23.—(1) This regulation applies in relation to any benefit which is payable to or in respect of a person who, having served in an employment or office, service in which qualified persons to participate in the benefits under the previous Regulations, ceased to serve therein before these Regulations came into force.

(29) 1985 c. 66; section 32 was amended by the Child Support Act 1991 (c. 48), Schedule 5 and by the Pensions Act 1995 (c. 26), Schedule 3.

(30) 1986 c. 45; section 310 was amended by the Pensions Act 1995, Schedule 3.

(31) 1965 c. 32; section 1 was amended by S.I. 1995/300.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than he or she would have been in if the provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within six months of the coming into force of these Regulations or such longer period as the Secretary of State may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if he had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Revocations and savings

24.—(1) The Regulations specified in column 1 of the Schedule to these Regulations are hereby revoked to the extent mentioned in column 2 of that Schedule.

(2) Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.

St Andrew's House,
Edinburgh
24th June 1998

Brian Wilson
Minister of State, Scottish Office

We consent

29th June 1998

Jim Dowd
Bob Ainsworth
Lords Commissioners of Her Majesty's Treasury

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

SCHEDULE

Regulation 24(1)

REVOCATIONS

<i>Column 1</i> <i>Regulations/Orders</i>	<i>Column 2</i> <i>Extent of Revocation</i>
The National Health Service (Scotland) (Injury Benefits) Regulations 1974 (S.I. 1974/1838)	The whole Regulations
The National Health Service (Scotland) (Injury Benefits) Amendment Regulations 1986 (S.I. 1986/587)	The whole Regulations
The National Health Service (Superannuation, Premature Retirement and Injury Benefits) (Scotland) Amendment Regulations 1992 (S.I. 1992/3046)	Regulations 17 to 21

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace, with minor amendments, the National Health Service (Scotland) (Injury Benefits) Regulations 1974. They provide for the payment, by the Secretary of State, of injury benefits to or in respect of any person engaged in the National Health Service in Scotland whose earning ability is reduced or who dies as a result of an injury suffered or a disease contracted in the course of his or her duties.

Part I of the Regulations contains definitions.

Part II provides for injury benefits to living persons. Regulation 3 specifies the persons to whom the Regulations apply. These are extended to include providers of piloted services under a pilot scheme established in terms of the National Health Service (Primary Care) Act 1997 and registered medical practitioners who are pilot scheme employees in respect of whose employment the consent of the relevant Health Board has been obtained. Regulation 3(2) sets out the circumstances in which injury or disease may give rise to an entitlement to benefits. In particular, it provides that, for the Regulations to apply, the injury sustained or disease contracted in the course of a person's employment must be wholly or mainly attributable to his employment. The scale of benefits is specified in regulation 4. Where a person's earning ability is reduced permanently, an annual allowance of the amount necessary to provide an income of a specified level, inclusive of certain social security and relevant pension scheme benefits, is payable to that person according to the extent of the reduction of his earning ability and length of service. A lump sum is also payable to that person. There is also provision for the payment of a temporary allowance to a person who, as a result of an injury or disease, is on sick leave with reduced pay.

Part III specifies the benefits payable in respect of a person who dies as a result of, or whose death was hastened by, such an injury or disease. Allowances of the amount necessary to provide incomes of a specified level, inclusive of certain social security and occupational pension scheme benefits,

are payable to a widow or widower (regulation 7), dependent children (regulation 8) and dependent relatives (regulation 9). A lump sum may also be payable to one of these persons (regulation 11).

Part IV provides for an allowance to be reviewed and varied in the light of changed circumstances (regulation 13), for the loss of rights to benefit in limited circumstances (regulation 14), for the offsetting of benefit in circumstances of crime, negligence or fraud (regulation 15), for supplementary payments in respect of certain transferred officers (regulation 16), for the taking into account of damages recovered by or in respect of the injured person (regulation 17), for the avoidance of duplicate benefits (regulation 18) and for the determination of questions (regulation 22).

Regulation 23 makes provision for certain persons who might be detrimentally affected by any provisions of these Regulations to elect that those provisions shall not apply.

Regulation 24 and the Schedule make consequential revocations.

Section 12(1) of the Superannuation Act 1972 authorises the making of Regulations with retrospective effect. Regulation 1(2) provides that these Regulations shall have retrospective effect to 1st April 1998 in so far as they apply to providers of piloted services and pilot scheme employees.

These Regulations do not impose any costs on business.