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STATUTORY INSTRUMENTS

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**2008 No. 653**

The National Health Service Pension Scheme Regulations 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.J

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

*Reduction in and forfeiture of benefits*

**2.J.6 Reduction in benefits in cases where loss caused by member's crime, negligence or fraud**

(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Secretary of State—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss, or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

- (a) is a guaranteed minimum pension or safeguarded rights which are derived from rights to such a pension, or
- (b) arise out of a transfer payment.

(3) If the Secretary of State proposes to exercise the power under paragraph (1), the Secretary of State must give the member 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 may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—

- (a) under the order of a competent court, or
- (b) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

**2.J.7 Forfeiture of rights to benefits**

(1) The Secretary of State may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in paragraph (2), and
  - (b) the offence was committed before the benefit or other amount becomes payable.
- (2) The offences are—
- (a) an offence in connection with employment that qualifies the member to belong to the Scheme, in respect of which the Secretary of State has issued a forfeiture certificate,
  - (b) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
    - (i) a term of imprisonment of at least 10 years, or
    - (ii) two or more consecutive terms amounting in the aggregate to at least 10 years.
- (3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Secretary of State is satisfied that the offence—
- (a) has been gravely injurious to the State, or
  - (b) is liable to lead to serious loss of confidence in the public service.
- (4) The Secretary of State may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.
- (5) This paragraph applies to a person who is—
- (a) the member’s widow, widower, nominated partner or surviving civil partner,
  - (b) a dependant of the member,
  - (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 2.E.21(3) (payment of lump sum on death), or
  - (d) a person to whom such benefits or amounts are payable under the member’s will or on the member’s intestacy.
- (6) A guaranteed minimum pension or safeguarded rights which are derived from rights to such pensions may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2) (b).
- This is subject to paragraph (7).
- (7) This regulation is without prejudice to section 2 of the Forfeiture Act 1870(1) (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 70(2) of the Criminal Justice Act 1948)(2).

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(1) 1870 c. 32.  
(2) 1984 c. 58.