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STATUTORY INSTRUMENTS

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**2008 No. 653**

**The National Health Service Pension Scheme Regulations 2008**

**PART 3**

**BENEFITS FOR PRACTITIONERS ETC.**

**CHAPTER 3.E**

**DEATH BENEFITS**

*Pensions for dependent children*

**3.E.8 Surviving children's pensions**

(1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them.

(2) This is subject to paragraphs (7) to (9).

(3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.

(4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.

(5) If a member or a recent leaver dies leaving two or more dependent children, they are entitled to such shares of the pension as the Secretary of State may from time to time decide.

(6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Secretary of State so decides, to another person for the dependent child's benefit.

(7) No pension is payable in respect of any dependant children who on the deceased's death are dependant on an adult who is entitled to a surviving adult's pension whilst that pension is payable at the rate mentioned in regulation 3.E.4(1) or 3.E.7(3)(b), except so much of that pension as is additional pension.

(8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.

(9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of three or more persons who were deceased members or recent leavers—

(a) a pension is only payable in respect of two of them, and

(b) the amount payable is equal to the sum of the two highest pensions.

(10) For the rate at which the pension referred to in paragraph (1) is payable, see regulations 3.E.10 to 3.E.15 and, in any case where that pension includes additional pension, regulations 3.C.14(4) and 3.C.16(3).

### **3.E.9 Meaning of “dependent child”**

(1) In this Part “dependent child”, in relation to a deceased member or recent leaver, means a person who—

- (a) meets the relationship condition (see paragraph (2)),
- (b) either—
  - (i) has not reached the age of 23, or
  - (ii) in the opinion of the Scheme administrator was financially dependent on the deceased at the date of death because of physical or mental infirmity and remains so,
- (c) was born—
  - (i) whilst the deceased was an active member, or
  - (ii) within one year after the deceased ceased to be an active member,
- (d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased—
  - (i) at the date of death, and
  - (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member, and
- (e) in the case of a person within sub-paragraph (c)(ii)—
  - (i) was dependent on the deceased both at birth and at the deceased’s death, or
  - (ii) if the person was born after the deceased’s death, would have been dependent on the deceased had the deceased not died before the person’s birth.

(2) A person meets the relationship condition if the person is—

- (a) a natural child or natural grandchild of the deceased,
- (b) an adopted child of the deceased who was adopted whilst the deceased was an active member,
- (c) a step-child of the deceased whose natural or adoptive parent is the deceased’s surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member,
- (d) in a case where the deceased left a surviving nominated partner with whom the deceased was living as mentioned in regulation 3.E.2(1)(b)(i) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased’s surviving nominated partner,
- (e) a brother or sister, or a child of a brother or sister, of the member or the member’s spouse or civil partner or nominated partner,
- (f) a half-brother or half-sister, or a child of a half-brother or half-sister, of the member or the member’s spouse or civil partner or nominated partner,
- (g) a person whom, in the opinion of the Scheme administrator, the deceased intended when the deceased ceased to be an active member to adopt, or
- (h) a person who had been dependent on the deceased for 2 years or (if less) half the person’s life when the deceased ceased to be an active member.

### **3.E.10 Amount of children’s pension under regulation 3.E.8: deceased active members**

(1) This regulation applies for determining the annual amount of the pension payable under regulation 3.E.8(1) if at the date of death the deceased was an active member of the Scheme who was not also a pensioner member.

(2) Subject to paragraphs (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under 3.D.1 inclusive of any increase due to such enhancement period, if any, as would have applied for the purposes of regulation 3.D.7(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death.

(4) In this regulation “the appropriate fraction” means—

(a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant’s pension is payable under regulation 3.E.1—

(i) one-quarter if there is only one dependent child, and

(ii) one-half if there are two or more dependent children,

(b) if there is a such a parent or spouse or partner of a parent, but no surviving adult dependant’s pension is payable under regulation 3.E.1—

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children,

(c) if there is no such parent nor spouse nor partner of such a parent—

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children.

(5) If—

(a) a surviving adult dependant’s pension is payable under regulation 3.E.1, and

(b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension payable in respect of that child for the first 3 months after the deceased’s death is equal to the average rate of the member’s pensionable earnings during the last complete quarter before he died.

(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependant child or children for the period of 6 months beginning with the deceased’s death is equal to the rate of the member’s pension at the date of death (disregarding any reduction made under Chapter H (abatement) and any additional pension).

### **3.E.11 Amount of children’s pension under regulation 3.E.8: deceased pensioner members**

(1) This regulation applies for determining the annual amount of the pension payable under regulation 3.E.8(1) if at the date of death the deceased was a pensioner member of the Scheme who was not also an active member.

(2) Subject to paragraphs (5), (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means the greater of—

(a) twice the appropriate proportion of the deceased’s annual pension (disregarding any additional pension), and

(b) twice the appropriate proportion of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years’ pensionable service (disregarding any additional pension).

(4) In this regulation “the appropriate fraction” means—

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 3.E.1—
    - (i) one-quarter if there is only one dependent child, and
    - (ii) one-half if there are two or more dependent children,
  - (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 3.E.1—
    - (i) one-third if there is only one dependent child, and
    - (ii) two-thirds if there are two or more dependent children,
  - (c) if there is no such parent or spouse or partner of a parent—
    - (i) one-third if there is only one dependent child, and
    - (ii) two-thirds if there are two or more dependent children.
- (5) If—
- (a) a surviving adult dependant's pension is payable under regulation 3.E.1, and
  - (b) there is a dependent child who is not dependent on the person entitled to that pension,
- the rate of the pension in respect of that child for the first 3 months after the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any additional pension).
- (6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any reduction made under Chapter 3.H (abatement) and any additional pension).
- (7) If the deceased member's pension was payable under regulation 3.D.4 (early payment of pensions with actuarial reduction), the reference in paragraph (3)(a) and (b) to the member's pension is a reference to the amount that the member's pension would have been if it had been calculated without the reduction mentioned in paragraph (2)(b) of that regulation.
- (8) For the purposes of paragraphs (3), (5) and (6), any reduction to the member's pension under regulation 3.D.10 (general option to exchange part of pension for lump sum) will be ignored, except any reduction for the purposes of paragraph (3) where the benefits under this regulation form part of benefits payable under regulation 3.E.15.

### **3.E.12 Amount of children's pension under regulation 3.E.8: deceased deferred members**

- (1) This regulation applies for determining the annual amount of the pension payable under regulation 3.E.8(1) (surviving children's pensions) if at the date of death the deceased was a deferred member of the Scheme who was not also an active member or a pensioner member.
- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation "the basic death pension"—
- (a) if the deceased died within 12 months after ceasing to be an active member, means the amount that would be the basic death pension for the purposes of regulation 3.E.10 if the deceased had died on the day of so ceasing (disregarding any additional pension), and
  - (b) otherwise, means the greater of—
    - (i) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under 3.D.1 on the date of death (disregarding any additional pension), and
    - (ii) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been

calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension).

- (4) In this regulation "the appropriate fraction" means—
- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—
    - (i) one-quarter if there is only one dependent child, and
    - (ii) one-half if there are two or more dependent children,
  - (b) otherwise—
    - (i) one-third if there is only one dependent child, and
    - (ii) two-thirds if there are two or more dependent children.

### **3.E.13 Amount of children's pension under regulation 3.E.8: recent leavers**

(1) This regulation applies for determining the annual amount of the pension payable under regulation 3.E.8(1) if at the date of death the deceased was a recent leaver.

- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation—
- (a) "the basic death pension" means twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 3.D.1 on the date of death and the pension had been calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension), and
  - (b) "the appropriate fraction" means—
    - (i) if there is a surviving parent of the dependant child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—
      - (aa) one-quarter if there is only one dependent child, and
      - (bb) one-half if there are two or more dependent children,
    - (ii) otherwise—
      - (aa) one-third if there is only one dependent child, and
      - (bb) two-thirds if there are two or more dependent children.

### **3.E.14 Power to increase pension in respect of children not maintained by surviving parent etc**

- (1) This regulation applies if—
- (a) a member dies leaving a dependent child or children,
  - (b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children, and
  - (c) the dependent child or children are not being maintained by that surviving parent, spouse or partner.
- (2) The Secretary of State may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependent child or children.
- (3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

### **3.E.15 Amount of children's pension under regulation 3.E.8: re-employed pensioners**

(1) This regulation applies for determining the annual amount of a pension payable under regulation 3.E.8(1) if at the date of death the deceased was an active member who was also a pensioner member of the Scheme.

(2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the sum of—

- (a) the average rate of the member's pensionable earnings during the last complete quarter before he died, and
- (b) the rate of the pension being received by the deceased at the date of death (after taking account of any abatement under Chapter 3.H).

(3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service shall be paid as the appropriate fraction of twice the appropriate proportion of the rate of pension described in—

- (a) regulation 3.D.7(5) of this Part if the deceased has not reached the age of 65 on the date of death, or
- (b) regulation 3.D.1 of this Part if the deceased has reached the age of 65 on the date of death.

(4) In this regulation "appropriate fraction" has the meaning given in regulation 3.E.10(4).

(5) If any dependent child was a dependent child both at the time when the pensionable service in respect of which the pension is payable ceased and at the date of death, the annual amount of the pension in respect of the dependent child or children is the sum of—

- (a) the annual amount that would be payable in respect of the child under regulation 3.E.10 as a result of the member dying whilst an active member if that regulation applied to members who are also pensioner members (disregarding the pensionable service in respect of which the pension is payable ("the pension service") and any additional pension), and
- (b) the annual amount that would be payable in respect of the child under regulation 3.E.11 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members (having regard only to the pension service and disregarding any additional pension).

(6) If, apart from this paragraph, the sum of—

- (a) the relevant service (as defined in regulation 3.E.10(4)) for the purposes of the calculation of the annual amount referred to in paragraph (5)(a), and
- (b) the pension service,

would be less than 10 years' pensionable service, the deceased's relevant service for the purposes of that calculation is increased by the length of the shortfall.