STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 3.E

DEATH BENEFTS

Pensions for surviving adults

3.E.1 Surviving adult dependants' pensions

(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life.

(2) In this Part "surviving adult dependant", in relation to a deceased member or former member, means the member's or former member's surviving spouse, civil partner or nominated partner.

(3) For the rate at which the pension referred to in paragraph (1) is payable see regulations 3.E.3 to 3.E.7 and, in any case where that pension includes additional pension, regulations 3.C.14(4) and 3.C.16(3).

3.E.2 Meaning of "surviving nominated partner"

(1) A person is a surviving nominated partner in relation to a member for the purposes of this Part if—

(a) the person and the member jointly made and signed a declaration in such form as the Secretary of State requires that remains effective at the member's death, and

(b) the person satisfies the Secretary of State that for a continuous period of 2 years ending with the member's death—

(i) the person and the member were living together in an exclusive relationship as if they were husband and wife or civil partners,

(ii) the person and the member were not prevented from marrying or forming a civil partnership, and

(iii) the person was financially dependent on the member or the person and the member were financially interdependent.

(2) A declaration for the purposes of paragraph (1)(a) ceases to have effect if—

(a) it is revoked by the member or other person by a signed notice in writing to the Secretary of State in such form as the Secretary of State may require or is willing to accept,

(b) the member makes a further declaration for the purpose of paragraph (1)(a), or

(c) the person or the member marries or forms a civil partnership.

3.E.3 Amount of pensions under regulation 3.E.1: active members

(1) In the case of an active member, for the period of 6 months beginning with the day after the member's death ("the initial period"), the rate of the pension payable under regulation 3.E.1(1)(a) is equal to the average rate of the member's pensionable earnings during the last complete quarter before he died if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph.

(2) Subject to paragraph (3), after the initial period, if the member dies with 2 or more years of qualifying service, the annual amount of the pension payable under regulation 3.E.1—

(a) if the member has not reached the age of 65, is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 3.D.7 to which the member would have been entitled if on the date of death the member had become entitled to such a pension, and

(b) if the member has reached the age of 65, is equal to the appropriate proportion of the pension under regulation 3.D.1 (normal retirement pensions) to which the member would have been entitled if on the date of death the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count.

(3) After the initial period, if the member dies with less than 2 years of qualifying service but after reaching the age of 65, the annual amount of the pension payable under regulation 3.E.1 is equal to the appropriate proportion of the pension to which the member would have been entitled (disregarding any additional pension) if on the date of death the member had become entitled to a pension under regulation 3.D.1 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

(4) After the initial period, if—

(a) the member dies with less than 2 years qualifying service and before reaching the age of 65, and

(b) the surviving adult has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under the Scheme,

the annual amount of the pension payable under regulation 3.E.1 is equal to that guaranteed minimum, unless paragraph (5) applies.

(5) This paragraph applies if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act.

(6) This regulation is subject to regulation 3.E.7.

3.E.4 Amount of pensions under regulation 3.E.1: pensioner members

(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 3.E.1 is equal to the rate of the member's pension in payment at the time of death if that amount is greater than the sum of—

(a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph, and

(b) the amount of the children's pensions otherwise payable under this Part.

(2) At any time when the rate is not the rate mentioned in paragraph (1), the rate of the surviving adult dependant's pension in the case of the death of a pensioner member is equal to the appropriate proportion of the pension to which the member was entitled on the date of death (disregarding any additional pension).

(3) For the purposes of paragraph (1)—

(a) any reduction in the rate of the pension under Chapter 3.H (abatement), and

(b) if the member was in receipt of a pension payable under regulation 3.D.4 (early payment of pensions with actuarial reduction), any reduction made under that regulation by reason of the payment of the pension before the age of 65,

is ignored.

(4) In this regulation "the initial period" means—

(a) if the member leaves one or more dependent children who are dependant on the surviving adult dependant, the period of 6 months beginning with the day after the member's death, and

(b) otherwise the period of 3 months beginning with that day.

(5) For the purposes of paragraph (4) a child born after the member's death is treated as having been born before it.

(6) If a member who has had a tier 2 ill-health retirement pension under regulation 3.D.7 replaced by a tier 1 ill-health retirement pension (by virtue of regulation 3.G.4(2))—

(a) is in further NHS employment and dies before the end of the initial period (within the meaning of that regulation), or

(b) is in further employment that is not NHS employment and dies within a period of one year beginning with the day on which that further employment ceased to be an excluded employment (within the meaning of that regulation),

the member's pension referred to in paragraph (1) means that member's original tier 2 ill-health pension.

(7) This regulation is subject to regulation 3.E.7 (re-employed pensioners: adult survivor pensions in initial period).

(8) For the purposes of paragraphs (1) and (2), 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 (1) where the benefits under this regulation form part of benefits payable under regulation 3.E.7.

3.E.5 Amount of pensions under regulation 3.E.1: deferred members

(1) In the case of a deferred member—

(a) who left pensionable service less than 12 months before the date of death, and

(b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service,

the rate of the pension payable under regulation 3.E.1 is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 3.D.7 to which the member would have been entitled if on the date the member's pensionable service ceased the member had become entitled to such a pension under regulation 3.D.7 (but disregarding any additional pension).

(2) In the case of any other deferred member, the rate of the pension payable under regulation 3.E.1 is equal to the appropriate proportion of the pension under regulation 3.D.1 (normal retirement pensions) in respect of any period of pensionable service to which the member would have been entitled if on the date of death the member had become entitled to such a pension.

3.E.6 Recent leavers

(1) If—

(a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the recent leaver under the Scheme, and

(b) the member has died before reaching the age of 65,

the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

(2) This paragraph applies if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act.

(3) In this Part "recent leaver" means a person—

(a) who left pensionable service less than 12 months before the date of death,

(b) who is not a deferred member or a pensioner member because of rights resulting from that employment, and

(c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

3.E.7 Re-employed pensioners: adult survivor pensions in initial period

(1) This regulation applies if, apart from this regulation, both regulations 3.E.3(1) and 3.E.4(1) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulation 3.E.3(1) and 3.E.4(1) during the initial period (as defined in the respective regulations) shall instead be the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 3.E.1 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 member's pension payable at that time after taking account of any reduction in the rate of the pension under Chapter 3.H (abatement).

(4) Paragraph (3)(a) does not apply if—

(a) the rate of the pension payable to the surviving adult in respect of later service, and

(b) any children's pension that would otherwise be payable in respect of later service under this Part,

would be greater.