
STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 3.J

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Scheme administrator

3.J.1 Appointment of Scheme administrator

3.J.1 For the purposes of this Part and of Part 4 of the 2004 Act, the Scheme administrator is the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(1).

Claims

3.J.2 Claims for benefits

3.J.2 A person claiming to be entitled to benefits under this Part must make a claim in writing to the Secretary of State and provide such evidence of entitlement as the Secretary of State may require.

Power to extend time limits

3.J.3 Power to extend time limits

3.J.3 The Secretary of State may extend any time limit mentioned in this Part as it applies in any particular case.

Beneficiaries who are incapable of looking after their affairs

3.J.4 Beneficiaries who are incapable of looking after their affairs

(1) In the case of a beneficiary who, in the opinion of the Secretary of State, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Secretary of State may—

- (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit, or
- (b) pay it to some other person to do so.

(1) The Authority was established by [S.I. 2005/2414](#).

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Secretary of State from any obligation under the Scheme in respect of the amount.

Commutation of small pensions

3.J.5 Commutation of small pensions

(1) The Secretary of State may pay any person entitled to a pension under the Scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under the Scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as apply)—

- (a) the contracting-out requirements,
- (b) the preservation requirements,
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997(2),
- (d) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000(3),
- (e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the 2004 Act: trivial commutation lump sums for the purposes of Part 4 of that Act), and
- (f) the lump sum death benefit rule (see, in particular, paragraph 20 of that Schedule: trivial commutation lump sum death benefit for the purposes of that Part).

(3) The lump sum must be calculated by the Secretary of State in accordance with advice from the Scheme actuary.

(4) The payment of a lump sum under this regulation discharges all liabilities of the Secretary of State in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

Reduction in and forfeiture of benefits

3.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.

(2) [S.I. 1997/785](#).
(3) [S.I. 2000/1054](#).

(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.

3.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 3.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⁽⁴⁾ (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)⁽⁵⁾.

Provisions about tax

3.J.8 Deduction of tax

(1) The Secretary of State may deduct from any payment under the Scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) is a benefit crystallisation event under section 216 of the 2004 Act, and
- (b) a lifetime allowance charge under section 214 of that Act arises when that event occurs,

the tax charged must be paid by the Scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the Scheme administrator a statement in accordance with regulation 3.E.22 (tax treatment under the 2004 Act of lump sums payable on pensioners' death) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act, and
- (b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of that Act (special lump sum death benefits charge) from the lump sum.

Interest on delayed payments

3.J.9 Interest on late payment of benefits and refunds of contributions

(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum, refund of contributions under the Scheme (other than any amount due under regulation 3.C.5 or 3.C.6) or interim award.

(3) The Secretary of State must pay interest on the unpaid amount to the person to whom it should have been paid unless the Secretary of State is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with three-monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, “due date”, in relation to an unpaid amount, means—

(4) 1870 c. 32.

(5) 1948 c. 58.

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 3.D, the day immediately following that of the member's retirement from pensionable employment,
 - (b) in the case of an amount in respect of a pension payable on a member's death, the day after the date of death,
 - (c) in the case of an amount in respect of a lump sum under Chapter 3.E that is payable to the member's personal representatives, the earlier of—
 - (i) the date on which probate or letters of administration were produced to the Secretary of State, and
 - (ii) the date on which the Secretary of State was satisfied that the lump sum may be paid as provided in regulation 3.E.21(9) (amount of lump sum: dual capacity members),
 - (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member's death, and
 - (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Secretary of State received from Her Majesty's Commissioners of Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 3.C.16(3) or (4) (repayment of contributions).
- (6) If, on the date which, in accordance with paragraph (5), would have been the due date for an unpaid amount in respect of a pension, lump sum or refund of contributions, the Secretary of State was not in possession of all the information necessary for the calculation of the amount payable in respect of the pension, lump sum or refund, the due date for the unpaid amount is the first day on which the Secretary of State was in possession of that information.
- (7) In this regulation, "interim award" means—
- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under the Scheme pending final calculation of the full value of that benefit, and
 - (b) any amount paid that increases the amount of an earlier payment due to a backdated or later increase in pensionable pay.

Determinations

3.J.10 Determination of questions

- (1) Except as otherwise provided by this Part, any question arising under the Scheme is to be determined by the Secretary of State.
- (2) Any such disagreement as is referred to in section 50 of the 1995 Act (resolution of disputes) must be resolved by the Secretary of State in accordance with any arrangements applicable under that section.

3.J.11 Determinations by medical practitioners

- (1) The Secretary of State may make arrangements for functions under this Part in relation to decisions within paragraph (2) that are exercisable by the Secretary of State to be discharged by—
 - (a) a registered medical practitioner (whether practising alone or as part of a group) whom the Secretary of State has approved to act on the Secretary of State's behalf, or
 - (b) a corporate or unincorporated body which—
 - (i) employs registered medical practitioners (whether under a contract of service or a contract for services), and
 - (ii) is so approved.

(2) This paragraph applies to any decision as to a person's health or degree of physical or mental infirmity or impairment that is required for the purposes of this Part and, in particular, any such decision required for the purposes of—

- (a) regulation 3.D.7(2)(a) or (3)(a) (early retirement on ill-health (active members)),
- (b) regulation 3.D.8(1)(a) or (b) or (3) (re-assessment of ill-health pension),
- (c) regulation 3.D.9(1)(a) or (2)(a) (early retirement on ill-health (deferred members)),
- (d) regulation 3.D.15(6)(b) (procedure for allocation election under regulation 3.D.14),
- (e) regulation 3.E.9(1)(b)(ii) (meaning of “dependent child”),
- (f) regulation 3.J.4(1) (beneficiaries who are incapable of looking after their affairs).

General prohibition on unauthorised payments

3.J.12 General prohibition on unauthorised payments

3.J.12 Nothing in these Regulations requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 of the 2004 Act (see section 160(5) of that Act).

Prohibition on assignment or charging of benefits

3.J.13 Prohibition on assignment or charging of benefits

(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under the Scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under the Scheme, no part of the benefit may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under section 310 of the Insolvency Act 1986(6) (income payments orders).

Record keeping and contribution estimates

3.J.14 Employing authority and certain member record keeping and contribution estimates

(1) As regards a member who is a type 1 medical practitioner, in respect of each financial year—

- (a) the member shall provide the host Trust or Board with a certificate of their pensionable earnings based on—
 - (i) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
 - (ii) the return that member has made to Her Majesty's Revenue & Customs in respect of their earnings for that year,
- (b) no later than 1 month from the date on which that return was required to be submitted to Her Majesty's Revenue & Customs;
- (c) a host Trust or Board shall forward to the Secretary of State a copy of the records maintained under regulation 3.C.5(17)(b) within 1 month of the end of the financial year immediately following the financial year to which the return in paragraph (1)(a)(ii) relates.

(6) 1986 c. 45. Section 310 is amended by paragraph 15 of Schedule 3 to the Pensions Act 1995 (c. 26), paragraph 2 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30) and section 259 of the Enterprise Act 2002 (c. 40).

- (2) As regards all other members under this Part, employing authorities shall keep records of all—
- (a) contributions deducted in accordance with this Part; and
 - (b) contributions to the Scheme made under regulation 3.C.3 (contributions by employing authorities: general),

in a manner approved by the Secretary of State, and, except where the Secretary of State waives such requirement, provide a statement in respect of such matters in respect of all members to the Secretary of State within 2 months of the end of each financial year.

(3) In respect of each financial year, employing authorities, including host Trusts or Boards, shall also provide the Secretary of State with the best estimate in writing that can reasonably be made of the total contributions due to the Scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general) within 2 months of the end of each such year.