
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

**The National Health Service Pension
Scheme (Scotland) Regulations 2008**

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.E

DEATH BENEFITS

Pensions for surviving adults

Surviving adult dependants' pensions

3.E.1.—(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) (effect of payment of additional contributions under this Chapter) and 3.C.16(3) (effect of part payment of periodical contributions).

Meaning of “surviving nominated partner”

3.E.2.—(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 Scottish Ministers require that remains effective at the member’s death; and
- (b) the person satisfies the Scottish Ministers 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 Scottish Ministers in such form as the Scottish Ministers may require or are 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.

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

3.E.3.—(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 or she 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 upper tier 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 year’s qualifying service and before reaching the age of 65; and
- (b) the surviving adult has a guaranteed minimum under section 17 (minimum pension for widows and widowers) 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 Scottish Ministers' 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) (payment of state scheme premiums on termination of certified status) of the 1993 Act.

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

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

3.E.4.—(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 3.E.1(1)(a) 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 an upper tier ill health retirement pension under regulation 3.D.8 (reassessment of entitlement to ill health pension determined under regulation 3.D.7) replaced by a lower tier 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 upper tier ill health pension.

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

(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.

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

3.E.5.—(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 upper tier 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.

Recent leavers

3.E.6.—(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 Scottish Ministers 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.

Re-employed pensioners: adult survivor pensions in initial period

3.E.7.—(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) is instead 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 or she 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.

Pensions for dependent children

Surviving children's pensions

3.E.8.—(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 2 or more dependent children, they are entitled to such shares of the pension as the Scottish Ministers 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 Scottish Ministers so decide, 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 2 of them; and

(b) the amount payable is equal to the sum of the 2 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) (effect of part payment of additional contributions) and 3.C.16(3) (repayment of contributions).

Meaning of “dependent child”

3.E.9.—(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 dependant 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 dependant 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 dependant on the deceased for 2 years or (if less) half the person’s life when the deceased ceased to be an active member.

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

3.E.10.—(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 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 regulation 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 is entitled to an upper tier 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 2 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 2 or more dependent children; and
 - (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 2 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 the member 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 (abatment) and any additional pension).

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

3.E.11.—(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 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 2 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 2 or more dependent children; and
 - (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 2 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 (abatment) 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 paragraph (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.E15.

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

3.E.12.—(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 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 2 or more dependent children; and

(b) otherwise–

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

(ii) two-thirds if there are 2 or more dependent children.

Amount of children’s pension under regulation 3.E.8: recent leavers

3.E.13.—(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 dependent child or children or a surviving spouse or civil partner of a parent of the dependant child or children and a surviving adult’s pension is payable—
 - (aa) one-quarter if there is only one dependant child; and
 - (bb) one-half if there are two or more dependant children; and
 - (ii) otherwise—
 - (aa) one-third if there is only one dependant child; and
 - (bb) two-thirds if there are two or more dependant children.

Power to increase pension in respect of children not maintained by surviving parent etc.

3.E.14.—(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 Scottish Ministers may increase the amount of the pension that would 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.

Amount of children’s pension under regulation 3.E.8: re-employed pensioners

3.E.15.—(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 or she 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 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.

Lump sum death benefits

Lump sum benefits on death: introduction

3.E.16.—(1) If a member or a recent leaver dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

- (a) the member is—
 - (i) a pensioner member; or
 - (ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable; and
- (b) the death takes place more than 5 years after the member's pension becomes payable.

Amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)

3.E.17.—(1) The lump sum payable on the death of an active member, who is not also a deferred member or a pensioner member, is an amount equal to twice the annual average of the member's uprated earnings at the date of death.

(2) The lump sum payable on the death of a pensioner member, who is not also an active member or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

- (a) an amount equal to five times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member; and
 - (b) an amount equal to twice the annual average of the member's uprated earnings at the date of death, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).
- (3) The lump sum payable on the death of a deferred member, who is not an active member or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.
- (4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.
- (5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 3.D.1 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).
- (6) If a pensioner member exercised the option under regulation 3.D.10 (general option to exchange part of pension for lump sum), the reference in paragraph (2)(a) to the annual rate of the member's pension is to the pension payable after the exercise of that option.
- (7) If a pensioner member exercised the option under regulation 3.D.14 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.
- (8) For the purposes of this regulation, the fact that a person—
- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55);
 - (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option; or
 - (c) is a pensioner member by virtue of being entitled to a pension under that regulation,
- is ignored.

Amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments)

- 3.E.18.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—
- (a) is an active member otherwise than in service in an employment in respect of which the member has exercised the option under regulation 3.D.5; and
 - (b) is also a pensioner member.
- (2) The lump sum is an amount equal to the sum of—
- (a) 5 times the annual rate of the pension—
 - (i) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased had not reached the age of 65 on the date of death; and
 - (ii) payable under regulation 3.D.1 (normal retirement pensions), if the deceased had reached the age of 65 on the date of death,to which the member would have been entitled on the date of death; and
 - (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—

- (i) 5 times the annual rate of the pension payable after exercising any option under regulation 3.D.10 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member; and
- (ii) an amount equal to twice the annual average of the member's uprated earnings at the date of death by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).

(3) If the pensioner member exercised the option under regulation 3.D.14 (election to allocate pension), the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

Amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5

3.E.19.—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 3.D.5; and
 - (b) is a pensioner member by virtue of being entitled to a pension under that regulation.
- (2) The lump sum is an amount equal to the sum of—
- (a) twice the appropriate fraction of the annual average of the member's uprated earnings at the date of death; and
 - (b) if the member had been entitled to any pensions under regulation 3.D.5 for less than 5 years, the lesser of—
 - (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)); and
 - (ii) the aggregate lump sum cap (see paragraph (4)).

(3) The guarantee amount for a pension under regulation 3.D.5 is 5 times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the annual average of the member's uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 3.D.5 was calculated, less the total of any lump sums paid to the member in exchange for pensions under regulation 3.D.5 as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum).

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

$$\frac{DPS}{TDPS}$$

where—

DPS is, where the member continues in pensionable service as an active member on the option day (or the last such option day if the option has been exercised more than once), the total percentage of the pension which does not form part of the specified percentage of pension at the option day; and

TDPS is the aggregate of DPS and the total percentage of the pension (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pension.

Amount of lump sum: pension credit members

3.E.20.—(1) The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member’s pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 3.D.2 if the member had reached the age of 65 on the date of death, multiplied by 2.25.

(2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

- (a) the annual amount of the pension that would have been payable to the member during so much of the period of 5 years beginning with the date on which the pension became payable as falls after the date of death; and
- (b) $2AUE - CLS$

where—

AUE is the amount as at the valuation day of the annual average of the uprated earnings of the debit member from whose rights the pension credit member’s pension credit is derived; and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 3.D.2 (pension credit members).

(3) For the purposes of paragraph (2) the annual amount of the pension is taken to be the sum of—

- (a) the annual amount of the pension as at the beginning date for that pension; and
- (b) the increase (if any) in that annual amount under the Pensions (Increase) Act 1971 payable as at the date of death.

(4) In this regulation—

“valuation day” means the day referred to in section 29(7) of the 1999 Act; and

“the beginning date”, in relation to a pension, has the meaning given by section 8(2A) of the Pensions (Increase) Act 1971.

Payment of lump sums on death

3.E.21.—(1) A lump sum payable under regulation 3.E.16 must be paid in accordance with this regulation.

(2) The lump sum must be paid to the member’s personal representatives, except so far as it is payable to a different person under paragraph (4) or (6).

(3) A member may give notice to the Scottish Ministers—

- (a) specifying—
 - (i) the member’s personal representatives;
 - (ii) one or more other individuals; or
 - (iii) one incorporated or unincorporated body,to whom the lump sum is to be paid; and

(b) where 2 or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member—

- (a) has given notice under paragraph (3) specifying a person; and
- (b) has not revoked that notice,

the lump sum (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made; or
- (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(6) If the member—

- (a) leaves a surviving adult dependant; and
- (b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an offence specified in regulation 3.J.7(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)—

- (a) must be given in writing; and
- (b) may be revoked at any time by a further notice in writing.

(9) The Scottish Ministers may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

- (a) £5,000; or
- (b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965⁽¹⁾ as the amount to be treated as substituted for references to £500 in section 1 of that Act.

Tax treatment under the 2004 Act of lump sums payable on pensioners' deaths

3.E.22.—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the 2004 Act as a pension protection lump sum death benefit if the member has given the scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation “pensioner's lump sum” means—

- (a) a lump sum payable under regulation 3.E.16 to which regulation 3.E.17(2) applies; or
- (b) so much of a lump sum payable under regulation 3.E.16 as is calculated under regulation 3.E.18(2).

(3) Paragraph (4) applies if the person who is the scheme administrator for the purposes of section 206 of the 2004 Act (“the administrator”) is liable for tax under that section in respect of a pension protection lump sum death benefit.

(1) 1965 c. 32.

- (4) The administrator may deduct from the lump sum the tax payable in respect of it.

Miscellaneous and general provisions

Death during period of absence

3.E.23.—(1) This regulation applies if a person dies during a period when the person—

- (a) is absent from work because of illness or injury;
- (b) is on ordinary maternity leave;
- (c) is on ordinary adoption leave; or
- (d) is on paternity leave or parental leave,

and the earnings used to calculate the person's pensionable pay have ceased to be paid before the person's death.

(2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

Polygamous marriages

3.E.24.—(1) This regulation applies if—

- (a) a member dies without leaving a surviving adult dependant; and
- (b) at the date of death the member was married to one or more persons under a law which permits polygamy.

(2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable—

- (a) if there is one such person, to that person; or
- (b) if there are 2 or more such persons, to those persons in equal shares.

(3) Such a person's or persons' share of a pension will not be increased on the death of any such person.

Dual capacity membership: death benefits

3.E.25.—(1) This paragraph applies if the deceased member was—

- (a) a member of the scheme of 2 or more of the kinds specified in paragraph (2);
- (b) a pensioner member in respect of 2 or more pensions; or
- (c) a deferred member in respect of 2 or more pensions.

(2) The kinds of member are—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member; and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable in respect of the member under this Chapter as if 2 or more members of the kinds in question had died (so that 2 or more pensions or lump sums are payable in respect of the one deceased member); and
- (b) the amounts payable are determined accordingly.

(4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.

(5) In relation to the specific provision referred to in paragraph (3), see, in particular—

- (a) regulation 3.E.3 (amount of pensions under regulation 3.E.1: active members);
- (b) regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members);
- (c) regulation 3.E.7 (re-employed pensioners: adult survivor pensions in initial period);
- (d) regulation 3.E.8 (surviving children's pensions);
- (e) regulation 3.E.15 (amount of children's pension under regulation 3.E.8: re-employed pensioners);
- (f) regulation 3.E.16 (lump sum benefits on death: introduction);
- (g) regulation 3.E.18 (amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments));
- (h) regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5); and
- (i) Chapter 3.G (re-employment and rejoining the scheme).

(6) If a person who is a pension credit member is entitled to 2 or more pension credits—

- (a) benefits are payable in respect of the person under this Chapter as if the person were 2 or more persons, each being entitled to one of the pension credits (so that 2 or more pensions or lump sums are payable in respect of the one pension credit member); and
- (b) the amounts of those benefits are determined accordingly.

Guaranteed minimum pensions for surviving spouses and civil partners

3.E.26.—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum pension under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person;
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person; and
- (c) paragraph (2) is without prejudice to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Paragraph (2) does not apply to a pension that is forfeited—

- (a) as a result of a conviction for treason; or
- (b) in a case where an offence within regulation 3.J.7(2)(b) (forfeiture of rights to benefits) is committed.