
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

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.