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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 2011**

**PART V**

**PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE  
OR ON DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP**

**PRELIMINARY PROVISIONS**

*APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS*

**“Appropriate rights”/ “Pension credit benefits” under the Scheme**

**V11.**—(1) Except as referred to in regulation V15 or otherwise in this Regulation, the “appropriate rights” under the Scheme to which a pension credit member is entitled consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The value of the pension referred to in this paragraph is to equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(4) A pension credit member is entitled to pension credit benefits on reaching normal benefit age.

(5) The pension credit benefits are payable immediately on reaching normal benefit age and may not be deferred.

(6) A pension payable in accordance with this regulation is payable to the pension credit member for life.

(7) A pension credit member is entitled to a lump sum calculated on the same basis as if the pension was a deferred pension under the Scheme.

(8) Except where the member opts to exchange part of the member's pension under paragraph (9) the lump sum is to be equal to three times the annual rate of pension except that no lump sum on retirement shall be paid to the credit member if the corresponding pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

(9) If a pension credit member opts to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, for every £1 by which the pension credit member's annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(10) An option under paragraph (9) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(11) In paragraph (10) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these Regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(12) A pension credit member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(13) The option under paragraph (9) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.

#### **Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

**V12.**—(1) Subject to paragraph (2), a pension credit member is entitled to the payment of the pension credit benefit described in regulation V11 on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in regulation V11(1) will be reduced by such amount as the Scottish Ministers, after taking the advice of the scheme actuary, may determine.

#### **Pension credit member dies after pension credit benefit becomes payable**

**V13.**—(1) If a pension credit member dies after the member's pension under the Scheme becomes payable, a lump sum on death is payable in accordance with regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death will be equal to 5 times the annual rate of the pension credit member's pension as calculated under regulation V11(3) less the amount of pension already paid.

(3) The maximum payment under this regulation must not exceed an amount calculated in accordance with paragraph (4) less the aggregate of—

- (a) the amount of any lump sum paid to the pension credit member in accordance with regulation V11 (8); and
- (b) the amount of any lump sum paid to the pension credit member in accordance with regulation V11(9).

(4) An amount calculated in accordance with this sub-paragraph is an amount equal to twice the amount on the valuation day of the final year's pensionable pay of the member from whose rights the pension credit is derived.

(5) The final year's pensionable pay under paragraph (3) will be increased by the amount that the member's benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971 <sup>M1</sup> if benefits had been preserved on the valuation day.

(6) Where a pension credit member referred to in paragraph (1) [F1died on or before 5th April 2011 and had] attained the age of 75 at the date of the pension credit member's death—

- (a) the lump sum referred to in that paragraph ceases to be payable; and
- (b) that lump sum is to be converted into an annual pension to be determined and paid in accordance with paragraph (6).

(7) The annual pension referred to in paragraph (5) will be—

- (a) determined in accordance with guidance and tables provided by the scheme actuary for the purpose of converting the amount of the lump sum into an annual pension;

- (b) paid to the person who would otherwise be entitled to receive the lump sum in accordance with regulation F5 (payment of lump sum); and
- (c) paid to that person from the day after the pension credit member's death until the fifth anniversary of the day the pension credit member's pension under this Section of the scheme became payable.

(8) If, in accordance with regulation F5, a pension credit member has given notice that more than one person is to receive a share of the lump sum, each such person will receive the same percentage of the annual pension as was specified for that person in the pension credit member's notice.

(9) If, in accordance with regulation F5, the annual pension is to be paid to the pension credit member's personal representatives they may, as part of the distribution of the pension credit member's estate, give irrevocable notice to the Scottish Ministers—

- (a) specifying—
  - (i) one or more individuals; or
  - (ii) one incorporated or unincorporated body, to whom the benefit of the pension under this regulation from the date of receipt of the notice by the Scottish Ministers is to be assigned; and
- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (10) applies.

(10) This paragraph applies if—

- (a) the person specified in the notice has died before payment can be made;
- (b) payment to the person or body specified in the notice is not, in the opinion of the Scottish Ministers, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation T7(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the pension credit member's death is forfeited.

(11) The prohibition on assignation of pension credit benefits in regulation V23 shall not apply to an assignation by personal representatives under this regulation.

#### **Textual Amendments**

- F1** Words in reg. V13(6) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), **13**

#### **Marginal Citations**

- M1** 1971 c.56.

### **Pension credit member dies before pension credit benefit becomes payable**

**V14.—**(1) If a pension credit member dies before the member's pension under the Scheme becomes payable, a lump sum is payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum will be equal to 3 times the annual rate of the pension credit member's pension calculated under regulation V11(3).

### **Additional contributions and additional periods**

**V15.**—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, is not allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made <sup>M2</sup>.

(2) The provisions of paragraph (1) are relaxed if in line with any taxation exception or concession, which Revenue and Customs may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 <sup>M3</sup> and any modifications thereto made by Revenue and Customs from time to time under paragraph 18(10) and (11) of that Schedule <sup>M4</sup>, or otherwise.

#### **Marginal Citations**

- M2** See section 590(3)(bb) of the Taxes Act, inserted by paragraph 2(3) of Schedule 10 to the [Finance Act 1999 \(c.16\)](#).
- M3** [1999 c.16](#).
- M4** See [S.I.s 2000/1085](#) and [1093](#).

### **Commutation: small pensions**

**V16.**—(1) Regulation T8 applies if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) A pension may be treated as “trivial” under regulation T8 in respect of the retirement pension payable to a pension credit member in respect of a pension credit providing that the total benefit payable to the pension credit member, including any pension credit benefit, is of an amount that complies with the provisions of paragraphs 7 to 9 of Part 1 of Schedule 29 to the 2004 Act (lump sum rule: trivial commutation lump sum) at normal benefit age.

### **Commutation: exceptional ill-health**

**V17.**—(1) The whole of the pension element payable in respect of the pension credit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum will be equal to five times the annual rate of the pension to which the pension credit member would have been entitled as calculated under regulation V11(3) of this Part if on the date of commutation the member had already reached the normal benefit age and is payable in addition to any retirement lump sum as calculated under regulation V11(7), (8) and (9) of this Part.

### **Pension Transfers**

**V18.** The Scottish Ministers must not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, Cross Heading: APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS.