
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

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

PART 5

**MEMBERS WHO RETURN TO PENSIONABLE
EMPLOYMENT AFTER PENSION BECOMES PAYABLE**

Benefits on death in pensionable employment after pension under regulation E2 becomes payable

S5.—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension under regulation E2 becomes payable; and
- (b) dies in pensionable employment.

(2) Subject to the modifications set out in paragraph (3) this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, is—
 - (i) under the age of 70;
 - (ii) in NHS employment;
 - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on or before 1st April 2008; and
 - (iv) except where regulation R4(4) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of later service.

(3) The modifications referred to in paragraph (2) are—

- (a) in paragraph (8), for “on the date of the member's death” substitute “ on the member's last day of pensionable employment ”;
- (b) in paragraph (12), for “pensionable pay when the member died” substitute “ final year's pensionable pay ”;
- (c) in paragraph (13), for “the 6 months immediately following the member's death” substitute “ the 3 months immediately following the member's death or the 6 months immediately following the member's death if the member leaves a dependent child ”;
- (d) in paragraph (16), for “the 6 month period” substitute “ the 3 month or, as the case may be, the 6 month period ”; and
- (e) in paragraph (17)—

- (i) for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
- (ii) for “at that time” substitute “ when the member died ”.

(4) Subject to the modifications set out in paragraph (5), this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, is—
 - (i) under the age of 75;
 - (ii) in NHS employment;
 - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on, or after, 2nd April 2008; and
 - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of the member's later service.

(5) The modifications referred to in paragraph (4) are—

- (a) in paragraph (8), for “on the date of the member's death” substitute “ on the member's last day of pensionable employment ”;
- (b) in paragraph (12), for “pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
- (c) in paragraph (11)—
 - (i) for “rate of pensionable pay when the member died” substitute “ final year's pensionable pay ”; and
 - (ii) for “at that time” substitute “ when the member died ”.

(6) In this regulation, the member's “previous service” and “later service” have the same meaning as in regulation S3(2).

(7) Where this regulation applies, a lump sum payable on the member's death will be payable in addition to any lump sum payable under regulation F2.

(8) The additional lump sum referred to in paragraph (7) will be equal to 5 times the amount of the pension that would have been payable to the member had the member left NHS employment and been entitled to a pension based on later service under regulation E1 (normal retirement pension) on the date of the member's death.

(9) If a member to whom this regulation applies leaves a surviving—

- (a) spouse or civil partner; or
- (b) [^{F1}scheme partner] (if the member became entitled to the pension referred to in paragraph (1) on or after 1st April 2008),

the amount of pension payable to the surviving spouse, civil partner or [^{F1}scheme partner] will be the aggregate of the amounts referred to in paragraphs (10) and (12).

(10) Subject to paragraph (14), the amount payable in respect of the member's previous service will be equal to the amount of the member's pension (if any) that was payable when the member died.

(11) The amount referred to in paragraph (10) will be paid for—

- (a) the 3 months immediately following the member's death; or
- (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or [^{F2}scheme partner].

(12) The amount payable in respect of the member's later service will be equal to the rate of the member's pensionable pay when the member died.

(13) The amount referred to in paragraph (12) will be paid for the 6 months immediately following the member's death.

(14) Paragraph (10) will not apply if the aggregate of the spouse's, civil partner's or [^{F3}scheme partner's pension] and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(15) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or [^{F4}scheme partner's pension] in respect of the member's previous service will be the amount determined in accordance with regulation G3 (widow's pension when member dies after pension becomes payable).

(16) Upon expiry of the 6 month period referred to in paragraph (13), the amount of the surviving spouse's, civil partner's or [^{F5}scheme partner's pension] in respect of the member's later service will be equal to one-half of the rate of pension mentioned in paragraph (8) that would have been payable to the member.

(17) If a member to whom this regulation applies leaves a dependent child but—

- (a) does not leave a surviving spouse or civil partner; and
- (b) a [^{F6}scheme partner's pension] is not payable in respect of the member's later service,

the child allowance, for the 6 months immediately following the member's death, will be equal to the aggregate of the member's rate of pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at that time.

(18) If a member to whom this regulation applies leaves a dependent child not dependent on a surviving spouse or civil partner and a [^{F7}scheme partner's pension] is not payable in respect of the member's later service, the child allowance, for the 6 months immediately following the member's death, will be the aggregate of the member's pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at the time.

(19) Subject to paragraph (20), except where a child allowance is payable at the rate mentioned in paragraph (17) or (18), the child allowance in respect of the member's later service will—

- (a) be paid as a proportion of the rate of pension mentioned in paragraph (8) that would have been payable to the member; and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (child allowance when member dies in pensionable employment).

(20) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated his previous service and when the member died, any child allowance payable under these Regulations will be calculated according to—

- (a) regulation H4 (child allowance when member dies after pension becomes payable) in respect of the pension already in payment; and
- (b) regulation H3 in respect of later pensionable employment.

(21) If the aggregate of the pensionable service used in the calculation referred to in paragraph (20)(a) and that used in the calculation referred to in paragraph (20)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(22) The amount of additional service referred to in paragraph (21) is the difference between 10 years pensionable service and the member's aggregated service.

Textual Amendments

- F1** Words in [reg. S5\(9\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(2)**
- F2** Words in [reg. S5\(11\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(3)**
- F3** Words in [reg. S5\(14\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(4)**
- F4** Words in [reg. S5\(15\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(5)**
- F5** Words in [reg. S5\(16\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(6)**
- F6** Words in [reg. S5\(17\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(7)**
- F7** Words in [reg. S5\(18\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.S.I.) by [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), [regs. 1\(2\)](#), **24(8)**

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, Section S5.