
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 124

**The National Health Service Pension Scheme (Scotland)
(Additional Voluntary Contributions) Regulations 2018**

Retirement and dependant's benefits

12.—(1) A participator may apply some or all of the proceeds of an investment made under regulation 8(1), 9(2) or 10(4) to arrange with an insurer—

- (a) payment of a lifetime annuity;
- (b) payment of a lifetime annuity and a pension commencement lump sum;
- (c) a lump sum commutation payment that—
 - (i) reflects the value of the benefits referred to in sub-paragraph (a) or (b); and
 - (ii) meets the requirements of regulations 11 and 12 of the 2009 Regulations;
- (d) as from 6th April 2015, any payment to the participator or a dependant of the participator that complies with the requirements of the 2014 Act; and
- (e) a lifetime allowance excess lump sum referred to in section 166(g) of the 2004 Act.

(2) Paragraph (1) is subject to paragraphs (11) to (14) and regulations 15(6) to (8).

(3) Subject to paragraphs (4) and (5), an authorised provider selected by the Scottish Ministers must provide a participator with an option to receive benefits under paragraph (1)(a) to (c).

(4) Any annuity payable in accordance with paragraph (1)(a) or (b) must—

- (a) be incapable, in whole or in part, of surrender, assignation or commutation;
- (b) commence not earlier than the participator's date of retirement for the purposes of, as the case may be, the 2011 Regulations, the 2013 Regulations or the 2015 Regulations; and
- (c) be payable to the participator for life.

(5) Any dependant's pension which is payable in respect of a participator is payable only on the death of the participator after the participator's retirement and is, subject to paragraph (7), payable to the dependant for life.

(6) A lump sum commutation payment referred to in paragraph (1)(c) may be paid in respect of benefits payable under paragraph (1)(a), (b) or (d).

(7) In the case of a person who is a child to whom—

- (a) Part H of the 2011 Regulations (child allowance) applies;
- (b) regulation 2.E.9 or 3.E.9 of the 2013 Regulations (meaning of dependent child) applies; or
- (c) regulation 121 of the 2015 Regulations (eligible child) applies,

a pension referred to in paragraph (5) ceases to be payable when that person ceases to be a dependent child within the meaning of whichever of the Regulations referred to in sub-paragraphs (a) – (c) applies.

(8) An authorised provider selected by the Scottish Ministers, in addition to providing a participator with benefits options under paragraph (1), may from 6th April 2015 provide a participator or a participator's dependant with alternative benefits options under paragraph (1)(d).

(9) A participator must, not earlier than 3 months before the date from which the participator wishes benefits under these Regulations to be provided, make a benefits election to the Scottish Ministers specifying—

- (a) whether and which benefits are to be provided under paragraph (3) or paragraph (8);
- (b) the authorised provider who is to provide each benefit;
- (c) for whom, if anyone, a dependant's benefit is to be provided;
- (d) if more than one benefit is to be provided, either—
 - (i) the proportion of the amount secured by the total investments made under regulation 8(1), 9(2) or 10(4) that is to be applied to the purchase or arrangement of each of them; or
 - (ii) the dependants' benefits to be provided expressed as a percentage of the participator's benefits;
- (e) in respect of every annuity to be provided—
 - (i) the annual rate of the annuity;
 - (ii) whether it is to be payable for life or for a fixed period;
 - (iii) whether its rate is to be fixed or vary in accordance with the Index or increase yearly by a specified percentage or (if lower) increase by the increase in the Index for the year in question; and
 - (iv) as from 6th April 2015, whether the rate may reduce; and
- (f) in the case of a participator who chooses a life-time annuity referred to in paragraph (1) (a) or (b) and who dies within the period of 5 years beginning with the date on which the annuity commences, whether, if the annuity had continued at the rate in force at the time of the participator's death, a lump sum is to be paid in accordance with regulation 16(3): the lump sum referred to in this sub-paragraph is a lump sum equal to the balance that would have been payable during the remainder of that period.

(10) More than one benefits election may be made under paragraph (9) and must—

- (a) be in writing; and
- (b) contain such information as the Scottish Ministers request.

(11) Upon receipt of a notice of election under paragraph (9), the Scottish Ministers must, as soon as reasonably practicable, realise investments made under regulations 8(1), 9(2) or 10(4) and apply the proceeds in the manner specified in the applicable regulation.

(12) Where a participator dies before retirement or after retirement but before the benefits under this regulation are paid, investments made under regulations 8(1), 9(2) or 10(4) must be realised and are payable as a lump sum in accordance with regulation 15(3).

(13) The Scottish Ministers may realise investments made under regulations 8(1), 9(2) or 10(4) and apply the proceeds to the purchase of benefits under these Regulations from an insurer in such form as appears to the Scottish Ministers to be suitable where the conditions in paragraph (14) are satisfied.

(14) Those conditions are—

- (a) the participator's retirement date falls on or after 1st December 1999; and
- (b) the participator has attained the age of 75 and has not given a notice of election under paragraph (9) before doing so.

(15) Paragraph (13) applies notwithstanding that benefits are payable to the participator under—

- (a) Part E of the 2011 Regulations (benefits for members);

- (b) regulation 2.D.1, 2.D.4, 2.D.5, 2.D.8, 2.D.10, 2.D.11, 3.D.1, 3.D.4, 3.D.5, 3.D.7 or 3.D.9 of the 2013 Regulations (normal retirement pensions, actuarially reduced pensions, ill health pensions and early retirement pensions); or
- (c) regulation 72, 78, 80, 81, 83, 89 or 93 of the 2015 Regulations (age retirement, early retirement, premature retirement, partial retirement and ill-health pensions).