
STATUTORY INSTRUMENTS

1995 No. 365

**The National Health Service Superannuation
Scheme (Scotland) Regulations 1995**

PART T

GENERAL RULES ABOUT BENEFITS

Claims for benefits

T1. A person claiming to be entitled to benefits under these Regulations shall make a claim in writing to the Secretary of State and shall provide such evidence of entitlement as the Secretary of State may require.

Deduction of tax

T2. The Secretary of State shall be entitled to deduct from any payment under the scheme any tax for which he may be liable in respect of it.

Benefits not assignable

T3.—(1) Any assignment of, or charge on or security over, or any agreement to assign or charge or grant a security over, any right to benefit under the scheme is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under the scheme, no part of the benefit shall be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy or sequestration of any person entitled to a benefit under the scheme, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985(1) or under section 310 of the Insolvency Act 1986(2) (income payments orders) that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy, the Secretary of State shall comply with that order.

Beneficiary who is incapable

T4.—(1) If the Secretary of State considers that a beneficiary is unable to look after his affairs (by reason of illness, mental disorder, minority or otherwise), he may use any amounts due to the beneficiary for his benefit or may pay them to some other person to do so.

(2) Payment under paragraph (1) to a person other than the beneficiary will discharge the Secretary of State from any obligation in respect of the amount concerned.

(1) 1985 c. 66.
(2) 1986 c. 45.

Offset for crime, fraud or negligence

T5.—(1) If he is satisfied that a loss to public funds has occurred as a result of a member's criminal, fraudulent or negligent act or omission, the Secretary of State may reduce any benefits or other amounts payable to, or in respect of, the member (other than guaranteed minimum pensions and benefits arising out of a transfer payment) by an amount equal to the loss.

(2) If the loss to public funds is greater than the value of the benefits or other amounts payable to or in respect of the member a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Secretary of State shall give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the member's obligation to make good the loss has become enforceable under the order of a court or arbiter.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

Loss of rights to benefits

T6.—(1) Subject to paragraph (2), the Secretary of State may direct that all or part of any benefit payable to, or in respect of, a member be forfeited if the member is convicted of any of the following offences, committed before the benefit becomes payable:—

- (a) an offence in connection with employment to which the scheme applies which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Acts 1911 to 1989⁽³⁾ for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(2) A guaranteed minimum pension may be forfeited only if (b) or (c) applies.

Commutation of trivial pensions

T7.—(1) Where a person has become entitled to a pension of a trivial amount, the Secretary of State may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person's death.

(2) Any lump sum payable under this regulation will be calculated by the Secretary of State, after consulting the Government Actuary.

(3) A pension may be treated as trivial only if all benefits payable in respect of the person concerned under the scheme and any freestanding AVC schemes as defined in section 591(2)(h) of the Taxes Act relating to the same employment are less in value than a pension of £260 a year or such higher amount prescribed by the contracting-out and preservation requirements.

(4) A member's pension that includes a guaranteed minimum pension cannot be treated as trivial until the member reaches state pension age.

(5) A payment made under paragraph (1) shall discharge the Secretary of State's liability in respect of that pension and of any benefits that might otherwise have become payable on that person's death.

(3) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

Reduction in benefits to take account of benefits under the National Insurance Acts

T8.—(1) This regulation applies to members—

- (a) who had ceased to be in pensionable employment before the coming into force of these Regulations unless after that date they return to pensionable employment; or
- (b) who became entitled to receive a pension under the 1980 Regulations and who, before the coming into force of these Regulations, returned to pensionable employment, in which case the pension under the 1980 Regulations will be subject to this regulation unless their benefits fall to be calculated by reference to combined pensionable service before and after the coming into force of these Regulations.

(2) Where this regulation applies, pensions payable under the scheme to women who have reached age 60 and men who have reached age 65 will be reduced in accordance with paragraph (3) to take account of benefits payable under the National Insurance Act 1946(4) and the National Insurance Act 1965(5).

(3) The reduction referred to in paragraph (2) will be £1.70 for each year of pensionable service after 4th July 1948 and before 1st April 1980, or such lesser reduction as would have applied under regulation 56 of the previous Regulations.

(4) Benefits for members who paid contributions under section 1(1)(b) of the National Insurance Act 1959(6), section 4 of the National Insurance Act 1965(7) or the corresponding provisions of the National Insurance Act (Northern Ireland) 1959(8) or the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald) will be reduced to take account of benefits payable under those Acts (provided that no such reduction shall be of a greater amount than that which would have applied under Schedule 10 of the 1980 Regulations).

(5) Any amount by which a member's pension is reduced under this regulation will be ignored for the purposes of calculating—

- (a) the member's retirement lump sum, and
- (b) the lump sum, any widow or widower's pension and any child allowance, payable on the member's death in pensionable employment or, subject to paragraph (6), after becoming entitled to receive a pension.

(6) For the purpose of calculating any higher rate spouse's pension or child allowance that becomes payable on a member's death after becoming entitled to receive a pension, if the member dies after reaching age 60 (if a woman) or 65 (if a man), the references to the member's pension in regulations G3(2) and H4(2)(b) and (7) (member dies after pension becomes payable) are to the member's pension as reduced by virtue of this regulation.

(4) 1946 c. 67; this Act was repealed by the Social Security Act 1973 (c. 38), Schedule 28 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

(5) 1965 c. 51.

(6) 1959 c. 47; this Act was repealed by S.L.R. 1965 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

(7) 1965 c. 51; section 4 was amended by the National Insurance Act 1966 (c. 6), section 1, by the National Insurance Act 1969 (c. 44), section 1, and by the National Insurance Act 1971 (c. 50), section 1.

(8) 1959 c. 21 (N.I.).