

2013 No.

NATIONAL HEALTH SERVICE

**The National Health Service (Scotland) (Injury Benefits)
Amendment Regulations 2013**

<i>Made</i>	- - - -	2013
<i>Laid before the Scottish Parliament</i>		2013
<i>Coming into force</i>	- -	31st March 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972(a) and all other powers enabling them to do so.

In accordance with section 10(1) of that Act, these Regulations are made with the consent of the Treasury.

In accordance with section 10(4) of that Act, the Scottish Ministers have consulted with such representatives of persons likely to be affected by these Regulations as appear to them to be appropriate.

Citation and commencement

1. These Regulations may be cited as the National Health Service (Scotland) (Injury Benefits) Amendment Regulations 2013 and come into force on 31st March 2013.

Amendment of the National Health Service (Scotland) (Injury Benefits) Regulations 1998

2. The National Health Service (Scotland) (Injury Benefits) Regulations 1998(b) are amended in accordance with these Regulations.

Amendment of regulation 3

3. In regulation 3(1) (persons to whom the Regulations apply)(a), for “sustains an injury, or contracts a disease” substitute “sustains an injury before 31st March 2013, or contracts a disease before that date”.

(a) 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649. The function of the Minister to consent in section 10(1) was transferred to the Treasury by S.I. 1981/1670. Section 12 was amended by section 10 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). The functions conferred on the Secretary of State by sections 10 and 12, so far as exercisable in or as regards Scotland and subject to the requirement in section 10(1) for consent of the Treasury, were transferred to Scottish Ministers by article 2 of S.I. 1999/1750. By virtue of article 6 of S.I. 1999/1750 and paragraph 2 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10), regulations made by the Scottish Ministers under sections 10 and 12 are subject to the negative procedure.

(b) S.I. 1998/1594.

Amendment of regulation 4

4.—a) Regulation 4 (scale of benefits)(b) is amended in accordance with paragraphs (2) to (12).

(1) In paragraph (1), after “disease” insert “and who makes a claim in accordance with regulation 18A”.

(2) In paragraph (2)—

(a) after “ceases to be employed” insert “before 31st March 2018”;

(b) after “paragraph (5)” insert “or (5A)”; and

(c) for “that date” substitute “the date that person ceases that employment”.

(3) After paragraph (2) insert—

“(2A) This paragraph applies to a person to whom regulation 3(1) applies who—

(a) ceases employment on or after 31st March 2018 but before 31st March 2038 by reason of the injury or disease; and

(b) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease.

(2B) Where paragraph (2A) applies the Scottish Ministers may, where the person has produced compelling evidence, pay from the date of the person’s cessation of employment an annual allowance of the amount referred to in paragraph (2C).

(2C) That amount is an amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of the person’s average remuneration shown in whichever column of the table in paragraph (2) is appropriate to that person’s service in relation to the degree by which that person’s earning ability is reduced at the date that person ceases that employment.

(2D) Evidence is compelling if—

(a) it is reliable;

(b) it is substantial; and

(c) in the context of the person’s claim for benefit, it appears highly probative of that person’s case, due regard being had in particular to—

(i) the severity of the injury or disease;

(ii) the treatments that are, or may reasonably be expected to be, available for that injury or disease; and

(iii) the prognosis for the injury or disease.”.

(4) For paragraph (3) substitute—

“(3) This paragraph applies to a person to whom paragraph 3(1) applies who—

(a) ceases to be employed before 31st March 2018 other than by reason of the injury or disease;

(b) at the date of ceasing that employment has not attained normal benefit age;

(c) suffers a reduction in earnings ability by reason of that injury or disease; and

(d) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease.

(3A) Where paragraph (3) applies the Scottish Ministers may pay from the date that the person attains normal benefit age or, as the Scottish Ministers may in any particular case allow, from the date that person suffers the reduction in earning ability referred to in paragraph (3)(c), an annual allowance of the amount referred to in paragraph (3B).

(a) There are amendments to regulation 3(1) which are not relevant to these Regulations.

(b) Regulation 4 was amended by S.S.I. 2008/92 and 225, 2009/19 and 208, 2011/364 and 2012/163.

(3B) That amount is an amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of the person's average remuneration shown in whichever column of the table in paragraph (2) is appropriate to that person's service in relation to the degree by which that person's earning ability is reduced at the date referred to in paragraph (3A).

(3C) This paragraph applies to a person to whom paragraph 3(1) applies who—

- (a) ceases employment on or after 31st March 2018 but before 31st March 2038 other than by reason of the injury or disease;
- (b) at the date of ceasing employment has not attained normal benefit age;
- (c) suffers a reduction in earnings ability by reason of that injury or disease; and
- (d) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease.

(3D) Where paragraph (3C) applies the Scottish Ministers may, where the person has produced compelling evidence, pay from the date that the person attains normal benefit age or, as the Scottish Ministers may in any particular case allow, from the date that person suffers the reduction of earning ability referred to in paragraph (3C)(c), an annual allowance of the amount referred to in paragraph (3E).

(3E) That amount is an amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of the person's average remuneration shown in whichever column of the table in paragraph (2) is appropriate to that person's service in relation to the degree by which that person's earning ability is reduced at the date referred to in paragraph (3D).

(3F) Evidence is compelling if—

- (a) it is reliable;
- (b) it is substantial; and
- (c) in the context of the person's claim for benefit, it appears highly probative of that person's claim, due regard being had in particular to—
 - (i) the severity of the injury or disease;
 - (ii) the treatments that were or are, or may reasonably be expected to be, available for that injury or disease; and
 - (iii) the prognosis for the injury or disease.”.

(5) In paragraph (4), after “in that regulation” insert “before 31st March 2018”.

(6) After paragraph (4) insert—

“(4A) This paragraph applies to a person to whom paragraph 3(1) applies who suffers a reduction in the emoluments of an employment mentioned in that regulation on or after 31st March 2018 but before 31st March 2038.

(4B) Where paragraph (4A) applies the Scottish Ministers may, where the person has produced compelling evidence, pay from the date of that reduction an annual allowance of the amount referred to in, and calculated in accordance with, paragraph (4).

(4C) Evidence is compelling if—

- (a) it is reliable;
- (b) it is substantial; and
- (c) in the context of the person's claim for benefit, it appears highly probative of that person's case, due regard being had in particular to—
 - (i) the severity of the injury or disease;
 - (ii) the treatments that are, or may reasonably be expected to be, available for that injury or disease; and

(iii) the prognosis for the injury or disease.”.

(7) In paragraph (5)—

- (a) after “Where” insert “before 31st March 2018”; and
- (b) in sub-paragraph (b), after “paragraph (6)” insert “(including the value of any equivalent benefits payable under the enactments consolidated by the Social Security Contributions and Benefits Act 1992(a))”.

(8) After paragraph (5) insert—

“(5A) This paragraph applies to a person to whom regulation 3(1) applies who, on or after 31st March 2018 but before 31st March 2038, is on leave of absence with reduced emoluments by reason of the injury or disease.

(5B) Where paragraph (5A) applies the Scottish Ministers may, where the person has produced compelling evidence, pay from the date of commencement of the person’s leave of absence an annual allowance of the amount referred to in paragraph (5C): the annual allowance is without regard to any reduction in the person’s earning ability.

(5C) That amount is an amount, if any, which when added to the value, expressed as an annual amount, of Amount A will provide an income of 85 per cent of the person’s average remuneration.

(5D) Amount A is the aggregate of—

- (a) the emoluments payable to the person during that person’s leave of absence; and
- (b) the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) (including the value of any equivalent benefits payable under the enactments consolidated by the Social Security Contributions and Benefits Act 1992).

(5E) Evidence is compelling if—

- (a) it is reliable;
- (b) it is substantial; and
- (c) in the context of the person’s claim for benefit, it appears highly probative of that person’s case, due regard being had in particular to—
 - (i) the severity of the injury or disease;
 - (ii) the treatments that are, or may reasonably be expected to be, available for that injury or disease; and
 - (iii) the prognosis for the injury or disease.”.

(9) After paragraph (6)(b)(vi) add—

“(vii) an injury allowance payable on or after 31st March 2013 in accordance with the terms and conditions of the person’s employment with an employing authority.”.

(10) After paragraph (6) insert—

“(6A) For the purposes of paragraph (6) any pension referred to in paragraph (a) and any benefit referred to in paragraph (b) shall be treated as payable to a person where that person is entitled to that pension or benefit but has surrendered it or disclaimed any right to it.”.

(11) After paragraph (10) insert—

“(11) In paragraph (6) of this regulation “injury allowance” means the allowance by that name referred to in the NHS Terms and Conditions of Service Handbook.”.

Amendment of regulation 4A

5. In regulation 4A(2) (recovery of costs), for “paragraph (2), (3), (4)” substitute “paragraphs (2), (2B), (3A), (3D), (4), (4B)”.

(a) 1992 c.4.

Amendment of regulation 13

6. In regulation 13(1)(b) (review and adjustment of allowance), after “cessation” insert “or reduction in the amount”.

Amendment of regulation 18A

7. For regulation 18A (requirement to provide evidence of entitlement)(a) substitute—

“**18A.**—(1) A person claiming to be entitled to benefits under these Regulations and that person's employing authority including any previous employing authority of that person shall provide such—

- (a) evidence of entitlement; and
- (b) authority or permission as may be necessary for the release by third parties of information in their possession relating to that person or that entitlement,

as the Scottish Ministers may from time to time require for the purposes of these Regulations.

(2) This regulation applies to claims for benefits made before 31st March 2038 and no entitlement to benefit arises if the date of the claim is on or after that date.

(3) This regulation is subject to regulation 18B.”

New regulation 18B

8. After regulation 18A (claims for benefits) insert—

“Claims: additional matters

18B.—(1) A claim for benefit shall be made to the Scottish Ministers in such form as the Scottish Ministers may prescribe.

(2) A claim shall be accompanied by all the medical evidence necessary to determine whether conditions of entitlement for the benefit are satisfied.

(3) In the case of a claim for a benefit which is to be made to the Scottish Ministers, if the Scottish Ministers notify that person in writing that the Scottish Ministers so requires, that person is to provide any specified relevant information including medical evidence that is in that person's possession or which that person can reasonably be expected to obtain.

(4) In the case of a claim which is to be made to the Scottish Ministers, the date of the claim is to be the date on which the application form is received by the Scottish Ministers.”.

New regulation 21A

9. After paragraph 21 (payment to personal representative) insert—

“Notification requirements

21A.—(1) A person who is in receipt of a benefit under Part II (injury benefits) shall—

- (a) notify the Scottish Ministers within 14 days, and in writing, of any change in the person's earnings or employment;
- (b) within 14 days of a request by the Scottish Ministers, provide the Scottish Ministers with information relating to any change relating to the commencement, cessation or reduction in the amount of a benefit referred to in regulation 4(6)(b); and
- (c) where a person recovers any damages or compensation mentioned in regulation 17, that person shall, within 14 days of a right to and the amount of such damages or

(a) Regulation 18A was inserted by regulation 3(5) of S.S.I. 2008/92.

compensation finally being determined, provide written notice to the Scottish Ministers containing—

- (i) the person's full name;
- (ii) the person's national insurance number; and
- (iii) the total amount of damages or compensation recovered.

(2) Where a person fails to provide the notice required by paragraph (1), no benefits shall be payable under these Regulations in respect of the period from the expiry of the 14th day until the date on which the notice is received by the Scottish Ministers, and where benefits have been paid to the person before the failure to give notice has been determined by the Scottish Ministers, the Scottish Ministers shall withhold all or part of any further benefits payable to the person under these Regulations until the amount of the payments made by the Scottish Ministers in respect of that period has been recovered.”.

Option to persons detrimentally affected by these Regulations

10.—b) This regulation applies in relation to any benefit which is being paid, or may become payable, under the regulations amended by these Regulations (“the amended regulations”) to or in respect of a person who having served in an employment or office which qualified the person to participate in the benefits provided under the amended regulations, ceased to serve in that office or employment before these Regulations came into force.

(1) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision is not to apply by giving notice in accordance with paragraph (3).

(2) A notice given pursuant to paragraph (2) must be in writing and must be delivered to the Scottish Ministers within 6 months of the coming into force of these Regulations or such longer period as the Scottish Ministers may allow.

(3) An election pursuant to paragraph (2) has effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person must be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Consequential revocation

11. In the National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2008^(a), omit regulation 3(5).

St Andrew's House,
Edinburgh

2013

A member of the Scottish Government

We consent

2013

Two of the Lord's Commissioners of Her Majesty's Treasury

^(a) S.S.I. 2008/92.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Scotland) (Injury Benefits) Regulations 1998 (“the 1998 Regulations”) as follows:

- regulation 3 amends regulation 3(1) so that from 31st March 2013, the 1998 Regulations will apply only to a person who, while in relevant employment, sustains a relevant injury or contracts a relevant disease before 31st March 2013;
- regulation 4(2) amends regulation 4(1) to make it clear that all injury benefit claims must be made in accordance with regulation 18A;
- regulation 4(3), (5), (6) and (8) amends regulation 4(2), (3), (4) and (5) so that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits in relation to an injury or disease occurring before 31st March 2013 (and discovered after cessation of NHS employment) continue to apply from 31st March 2013 to 30th March 2018;
- regulation 4(4), (5), (7) and (9) insert regulations 4(2A) to (2D), (3A) to (3F), (4A) to (4C) and (5A) to (5E) so that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits in relation to an injury or disease occurring before 31st March 2013 (and discovered after cessation of NHS employment) continue to apply from 31st March 2018 to 30th March 2038. However, during this period, the claimant must provide evidence of a pre-31st March 2013 injury or disease which is reliable, substantial and highly supportive of the claim, having regard to the severity, available treatments and prognosis for the injury or disease;
- regulation 4(10) amends regulation 4(6)(b) to add an injury allowance payable after 30th March 2013 in accordance with a person’s terms and conditions of employment with an employing authority, and regulation 4(12) defines “injury allowance”;
- regulation 4(11) inserts regulation 4(6A) to make it clear that a benefit to which a claimant is entitled and would normally be taken into account when calculating the amount of injury benefit payable, will not be ignored for that purpose solely because the claimant decides not to claim it;
- regulation 5 amends regulation 4A(2) so that it also applies where an allowance or lump sum is paid or becomes payable under paragraphs (2A), (3A), (3D) or (4B);
- regulation 6 amends regulation 13(1)(b) so that the amount of an injury benefit can be reviewed if the amount of a benefit listed in regulation 4(6)(b) reduces;
- regulations 7 amends regulation 18A to make it clear that no entitlement to benefit arises in relation to claims made after 30th March 2038;
- regulation 8 inserts regulation 18B to set out the requirements for making a claim;
- regulation 9 inserts regulation 21A to set out the periods within which certain information must notified to the Scottish Ministers in relation to a claim, and the sanctions that apply in default;
- regulation 10 makes provision in relation to any person detrimentally affected; and
- regulation 11 revokes an amendment that no longer applies by virtue of regulation 7.