

Rules of The NHS Scotland and Social Care Coronavirus Life Assurance Scheme 2020

A Scheme to promote health improvement, providing financial assistance to the next of kin of NHS Scotland and social care workers who die or have died in service as a consequence or suspected consequence of contracting Covid-19 at work

The Scottish Ministers make the following scheme in exercise of the powers conferred by section 1A of the National Health Service (Scotland) Act 1978, section 26 of the Public Service Pensions Act 2013 and all other powers enabling them to do so.

Commencement

1.— This scheme comes into force on 17 March 2020 and shall continue until revoked by Scottish Ministers.

Interpretation

2. —In these Rules:

“the 1972 Act” means the Superannuation Act 1972;

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“the 1995 Act” means the Pensions Act 1995;

“the 2013 Act” means the Public Service Pensions Act 2013;

“the new NHS Scotland scheme” means the scheme established by the National Health Service Pension Scheme (Scotland) Regulations 2015 made under section 1(1) and (2)(e) of the 2013 Act for the payment of retirement pensions to or in respect of health service workers for Scotland;

“the old NHS Scotland scheme” means the National Health Service Pension Scheme (Scotland), as constituted by the National Health Service Superannuation Scheme (Scotland) Regulations 2011 and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 made under section 10 of the 1972 Act for the payment of retirement pensions to or in respect of health service workers for Scotland;

“the NHS Scotland Schemes” means the new NHS Scotland scheme and the old NHS Scotland scheme;

“active member”, in relation to the NHS Scotland Schemes, means a person who is in pensionable service under a scheme and includes a person who has not completed two years of qualifying service;

“care service” includes the care services listed in section 47(1) of the Public Services Reform (Scotland) Act 2010;

“Common Services Agency” means the Common Services Agency for the Scottish Health Service constituted under the 1978 Act ;

“deferred member”, in relation to , means a person (other than an active or pensioner member) who has accrued rights under a scheme;

“dependent child” in relation to a deceased person, means—(a) a natural or adopted child of the deceased who meets any of conditions A to C and who was born before, on, or in the case of a natural child, within 12 months of the deceased’s death; or (b) a step-child or child accepted by the deceased as a member of the family (excluding a child sponsored by the deceased through a registered charity) who— (i) meets any of conditions A to C; and (ii) was dependent on the deceased at the date of the deceased’s death.

Condition A is that the person is aged under 18.

Condition B is that the person is in full-time education or vocational training and has not reached the age of 23 (but the Scheme manager may continue to treat a person as fulfilling Condition B notwithstanding any break in a course of education or vocational training, although the person does not fulfil Condition B during such a break).

Condition C is that the person is unable to engage in gainful employment because of physical or mental impairment and either— (a) has not reached the age of 23; or (b) the impairment is likely to be permanent and the person was dependent on the deceased at the date of the deceased’s death because of that physical or mental impairment;

“eligible relevant person” has the meaning in rule 3.

“gross income” means all salary, wages, fees, allowances and other regular payments paid to the eligible relevant person but not including bonuses or payments made to cover expenses;
“locum practitioner” has the meaning in schedule 13 of the National Health Service Pension Scheme (Scotland) Regulations 2015;

“NHS bank staff” means persons belonging to pools of workers who can be called on to perform NHS duties and be paid by the NHS whatever their employment status;

“pensioner member”, in relation to the NHS Scotland Schemes, means a person who in respect of his pensionable service under a scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits;

“pensionable service”, in relation to a member of either of the NHS Scotland Schemes, means service in any description or category of employment to which a scheme relates which qualifies

the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“relevant annual salary” means the average weekly gross income of the eligible relevant person as and while being paid by the NHS during the covid-19 outbreak annualised as an annual salary;

“the Scheme” means the NHS Scotland and Social Care Coronavirus Life Assurance Scheme 2020;

“Scheme application form” means the form referred to in rule 10;

“the Scheme manager” means the Scottish Ministers;

“social care workers” means anyone providing a “care service”;

“surviving adult dependent” means , in relation to a deceased relevant person—

(a) the surviving spouse;

(b) the surviving civil partner; or

(c) a surviving nominated partner, but, in the case of a surviving nominated partner the Scottish Ministers must be satisfied that for a continuous period of at least two years ending with the deceased's death— (i) the deceased and the nominated partner were living together as if they were husband and wife or civil partners; (ii) the deceased and the nominated partner were not prevented from marrying or entering into a civil partnership; (iii) the deceased and the nominated partner were financially interdependent or the nominated partner was financially dependent on the deceased; and (iv) neither the deceased nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners.

“transition member” means a person who is a member of both the NHS Scotland Schemes as defined in regulation 2 of SSI 2015/95.

Eligible Relevant Persons

3.—(1) Eligible relevant persons are deceased persons, who have been employed by or providing services on behalf of NHS Scotland during the period of the Covid-19 outbreak, in respect of whom the Scottish Ministers may pay a lump sum death in service benefit and other survivor benefits under this Scheme.

(2) The Scottish Ministers may by a written direction amend this Scheme, using their powers under section 1A of the National Health Service (Scotland) Act 1978, to designate as eligible relevant persons other groups of workers who have been employed by or providing services on behalf of parties other than NHS Scotland.

(3) For the purposes of paragraph (1) persons are employed by or providing services on behalf of NHS Scotland if they are engaged by:

(a) a Health Board;

- (b) a Special Health Board;
- (c) the Common Services Agency;
- (d) Healthcare Improvement Scotland (established by section 10A of the 1978 Act);
- (e) GP Practices (including GP partners, their staff and locum practitioners); or
- (f) Staff covered by the NHS Scotland Two Tier Agreement.

- (4) Subject to paragraph (5) in the case of all eligible relevant persons, they must:
- (a) have been working in environments where it may reasonably be concluded that they contracted the disease in the course of performing their duties; and
 - (b) have Covid-19 as a factor in their death documented on their death certificate.

(5) Paragraph (4)(b) does not apply to any eligible relevant person who had provided patient care or support services in an NHS setting, who subsequently dies and whose cause of death is known or suspected (but not documented on a death certificate) to be at least partly attributable to Covid-19 infection, and who had been working in, or adjacent to, areas in which there had been patients with a confirmed COVID-19 diagnosis receiving treatment.

(6) Scottish Ministers may make payments under this Scheme, in circumstances where, notwithstanding the location(s) in which the deceased had been working, they reasonably conclude that a deceased relevant person's death was wholly or partly attributable to Covid-19 infection caught employed by or providing services on behalf of NHS Scotland.

Eligible relevant persons and the NHS Scotland Schemes

4.—(1) Eligible relevant persons includes active, deferred and pensioner members of the NHS Scotland Schemes (including transition members) as well as persons not members of NHS Scotland Schemes.

(2) “Active member” for the purposes of paragraph (1) includes members who have not completed two years of qualifying service.

Benefits/Death in service lump sum

5.—(1) Scottish Ministers may pay in respect of a deceased eligible relevant person a death in service lump sum of:

- a) £60,000, plus
- b) an amount equal to two times the annual relevant salary of the deceased eligible relevant person

to a surviving adult dependent.

(2) The amount of the sum payable under paragraph (1) shall be reduced by the amount of any death in service lump sum received by a surviving adult dependent from the NHS Scotland Schemes.

Benefits/Short term pension

6.—(1) The Scottish Ministers shall pay monthly for six months in respect of a deceased eligible relevant person a short term pension to a surviving adult equal to one twelfth of the relevant annual salary of the deceased eligible relevant person.

(2) The amount of the sum payable under paragraph (1) shall be reduced by the amount of any short term pension received by a surviving adult dependent from the NHS Scotland Schemes.

Benefits/Long term pension

7.—(1) The Scottish Ministers shall pay in respect of a deceased eligible relevant person a long term pension to a surviving adult dependent.

(2) The amount of the long term pension payable to a surviving adult dependent shall be equal to one half of the pension to which the relevant eligible person would have been entitled to under regulation G2(6) of the National Health Service Superannuation Scheme (Scotland) Regulations 2011 provided that the relevant eligible person had accrued at least two years' reckonable service in the Scheme.

(3) The amount of the sum payable under paragraph (1) shall be reduced by the amount of any long term pension received by a surviving adult dependent from the NHS Scotland Schemes.

Benefits/Child dependent pension

8.—(1) The Scottish Ministers shall pay in respect of a deceased eligible relevant person a pension to a dependent child meeting the criteria set out in regulation H1 of the National Health Service Superannuation Scheme (Scotland) Regulations 2011 and calculated in the same way as provided for in regulation H3(3) of those Regulations.

(2) The amount of the sum payable under paragraph (1) shall be reduced by the amount of any long term pension received by a surviving adult dependent from the NHS Scotland Schemes.

Commutation of small pensions

9.—(1) On application by a child dependent or a surviving adult dependent, the Scottish Ministers may commute a pension payable to a child dependent or a long term pension payable to a surviving adult dependent into a lump sum payable to the child dependent or surviving adult dependent on condition that the Scheme is discharged from any future liability to pay these pensions.

(2) The amount payable under paragraph (1) shall be the capital value of the pension benefits payable under that paragraph arrived at by Scottish Ministers in consultation with the Scottish Government Actuary but must not exceed £30,000.

Eligible relevant persons/social care workers

10.—(1) Deceased social care workers, as designated by Scottish Ministers by written direction dated 29 June, are also eligible relevant persons, provided that they have been providing social

care services in the course of their employment during the period of the Covid-19 outbreak, in respect of whom the Scottish Ministers may pay a lump sum death in service benefit.

- (2) Subject to paragraph (3) in the case of all eligible relevant persons, they must:
- (a) have been working in environments where it may reasonably be concluded that they contracted the disease in the course of performing their duties; and
 - (b) have Covid-19 as a factor in their death documented on their death certificate.

(3) Paragraph (2)(b) does not apply to any eligible relevant person who had provided social care services in a social care setting, who subsequently dies and whose cause of death is known or suspected (but not documented on a death certificate) to be at least partly attributable to Covid-19 infection, and who had been working in, or adjacent to, areas in which there had been persons with a confirmed Covid-19 diagnosis being cared for.

(4) Scottish Ministers may make payments under this Scheme, in circumstances where, notwithstanding the location(s) in which the deceased had been working, they reasonably conclude that a deceased social care worker eligible relevant person's death was wholly or partly attributable to Covid-19 infection caught providing social care services.

Benefits/Death in service lump sum

11.—(1) Scottish Ministers may pay in respect of a deceased social care worker eligible relevant person a death in service lump sum of £60,000.

(2) The Scottish Ministers may, in their absolute discretion, pay the death in service lump sum to or for the benefit of the deceased social care worker's nominee, failing which to the personal representatives of the deceased social care worker or any person appearing to the Scottish Ministers to have been a relative or dependent of the deceased social care worker.

(3) The amount of the sum payable under paragraph (1) shall not be reduced by the amount of any death in service lump sum received by the recipient of the death in service lump sum from any other source.

Administration of the Scheme

12.—(1) The Scheme manager shall administer the Scheme insofar as it applies to eligible relevant persons, who have been employed by or providing services on behalf of NHS Scotland during the period of the Covid-19 outbreak, through the Scottish Public Pensions Agency ("SPPA") who shall publish on their website a Scheme application form to be used by applicants to SPPA for benefits payable under the Scheme.

(2) All applications to SPPA in respect of benefits payable under the Scheme shall be made by the NHS body employing or engaging the deceased eligible relevant person during the period it is thought that the deceased eligible relevant person contracted Covid-19.

(3) A Scheme application form must cover:

- (a) as much detail as possible of the circumstances surrounding the deceased eligible relevant person's death including any documentation of causes of death;

- (b) the personal details of the deceased eligible relevant person, including full name, age, address and length of service;
- (c) earnings of deceased eligible relevant person while employed or engaged by the NHS body;
- (d) known surviving adult dependent and child dependent/s of the deceased eligible relevant person.

(4) If the NHS body employing or engaging the deceased eligible relevant person during the period it is thought that the deceased eligible relevant person contracted Covid-19 refuses to bring an application for benefits to SPPA, an aggrieved surviving adult dependent and child dependent can raise the matter with SPPA who shall investigate the case.

Amendment of the Scheme

13.—Scottish Ministers reserve the right to amend the Scheme if deemed necessary, provided any amendment will not have any significant adverse effect on any person then benefitting from the Scheme.

Appeals

14.—(1) The Scottish Ministers shall set up a panel to hear appeals against any decision by SPPA in respect of an application for benefits.

(2) The panel referred to in paragraph (1) shall consist of three persons to be appointed by Scottish Ministers.

(3) The panel referred to in paragraph (1) shall consist of an official of SPPA, who was not involved in decision being appealed against, and a representative respectively of NHS employers and employees.

(4) An appeal may be brought by:

- (a) the NHS body employing or engaging the deceased eligible relevant person during the period it is thought that the deceased eligible relevant person contracted Covid-19; and
- (b) an aggrieved surviving adult dependent and child dependent/s.

(5) The decision of the panel is final.

Administration of the Scheme/Social care workers

15.—(1) A death in service lump sum payable in respect of a deceased social care worker eligible relevant person to a person in terms of rule 11(1) shall be claimed by the prospective beneficiary making an application to the person who employed the deceased social care worker at the date the deceased social care worker is thought to have contracted Covid-19.

(2) Any claim by a person in terms of paragraph (1) must cover:

- (a) as much detail as possible of the circumstances surrounding the deceased eligible relevant person's death including any documentation of causes of death;

- (b) the personal details of the deceased eligible relevant person, including full name, age and address, and payment details and preferred method of payment;
- (c) the personal details of the prospective beneficiary, including full name, age and address (and of any person claiming on behalf of the prospective beneficiary including his or her relationship to the prospective beneficiary);
- (d) details of the prospective beneficiary's relationship with deceased including whether a nominee, a relative or dependent of the deceased or whether a person who was likely to succeed to any estate of the deceased .

(3) The employer referred to in paragraph (1) must pass the application to the Scottish Ministers for determination as soon as reasonably practicable after receipt of the application.

(4) If the person who employed the deceased eligible relevant person during the period it is claimed that the deceased eligible relevant person contracted Covid-19 does not pass the application referred to in paragraph (1) to the Scottish Ministers within a reasonable time from receipt of the application, an aggrieved claimant can raise the matter with the Scottish Ministers who shall determine whether a death in service lump sum is payable to a prospective beneficiary and pay any sum payable to the prospective beneficiary or person claiming on behalf of the prospective beneficiary.

(5) A determination by Scottish Ministers under paragraphs (3) or (4) is final.