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NATIONAL HEALTH SERVICE, ENGLAND AND WALES

# National Health Service (Injury Benefits) Regulations 1995

Informal Consolidation of amendments including 1 July 2021 SI

SI 1995 No 866

Coming into force - 13th April 1995

Key: **Red = 1 July 2021 S.I. amendments (S.I. 2021 No. 631)**

## Part I Preliminary

### 1 Citation and commencement

These Regulations may be cited as the National Health Service (Injury Benefits) Regulations 1995 and shall come into force on 13th April 1995.

### 2 Interpretation

(1) In these Regulations--

"the 1993 Act" means the Pension Schemes Act 1993;

"the 1997 Act" means the National Health Service (Primary Care) Act 1997;

"the 2006 Act" means the National Health Service Act 2006;

"2006 (Wales) Act" means the National Health Service (Wales) Act 2006;

"the 1961 regulations" means the National Health Service (Superannuation) Regulations 1961;

"the 1980 regulations" means the National Health Service (Superannuation) Regulations 1980;

"the 1995 Regulations" means the National Health Service Pension Scheme Regulations 1995;

"the 2008 Regulations" means the National Health Service Pension Scheme Regulations 2008;

"the 2015 Regulations" means the National Health Service Pension Scheme Regulations 2015;

"the previous regulations" means the National Health Service (Injury Benefits) Regulations 1974;

"APMS contract" means arrangements under section 83(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 (Wales) Act (primary medical services) between the National Health Service Commissioning Board or Local Health Board and an APMS contractor;

"APMS contractor" means a person--

(a) with whom the National Health Service Commissioning Board or Local Health Board has made arrangements under section 83(2) of the 2006 Act or section 41(2)(b) of the 2006 (Wales) Act, and

(b) who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;

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...

“civil partner” and “civil partnership” are to be construed in accordance with regulation 2B;

...

"dentist performer" has the same meaning as it has in Part 3 of the 2008 Regulations;

"emoluments" means all salary, wages, fees and other payments paid or made to a person as such for his own use, and also the money value of any accommodation or other allowances in kind appertaining to his employment, but does not include payments for overtime which are not a usual incident of his employment, or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other money to be spent, or to cover expenses incurred, by him for the purposes of his employment; and where fees or other variable payments were made to a person as part of his emoluments during any period immediately preceding a reduction of emoluments, the amount in respect of fees or other variable payments to be included in the emoluments shall be the average of the fees or other payments paid to him during the period of 3 years immediately preceding the reduction of the emoluments, or such other period as the Secretary of State may think reasonable in the circumstances;

"employing authority" means--

(za) .....

(a) ...

(aa) a Special Health Authority established under, in the case of England, section 28 of the 2006 Act or, in the case of Wales, section 22 of the 2006 (Wales) Act,

(b) ...

(bb) .....

(bbb) a Local Health Board established under section 11 of the 2006 (Wales) Act,

(c) a National Health Service trust established under, in the case of England, section 25 of the 2006 Act or, in the case of Wales, section 18 of the 2006 (Wales) Act,

(cc) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act,

(d) ...

(e) any such other body that is constituted under an Act relating to health services and which the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

(f) any body which was listed as an employing authority under these Regulations or the previous regulations at the date of cessation of employment or reduction in emoluments of a person seeking to apply under these Regulations;

(g) as regards a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and subject to such modifications to these Regulations as the Secretary of State may in any particular case direct, any employer of such a person that the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

(h) as regards officers of a hospital of such classes as may be provided in an agreement to participate in benefits under these Regulations pursuant to section 235 of the 2006 Act (superannuation of officers of certain hospitals), and subject to such modifications to these Regulations as the Secretary of State may in any particular case direct, any employer of such a person that the Secretary of State agrees to treat as an employing authority for the purposes of these Regulations;

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- (i) the National Health Service Commissioning Board established under section 9 of the Health and Social Care Act 2012;
- (j) a Clinical Commissioning Group established under section 10 of the Health and Social Care Act 2012;

"GDS contract" means a general dental services contract under, in the case of England, section 100 of the 2006 Act or, in the case of Wales, section 57 of the 2006 (Wales) Act;

"GMS contract" means--

- (a) in relation to England, a contract under section 84 of the 2006 Act or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004 (entitlement to a contract under section 176(3) of the 2003 Act);
- (b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004);

"GMS practice" means--

- (a) a registered medical practitioner who is a type 1 medical practitioner; or
- (b) two or more such individuals practising in partnership; or
- (c) a company limited by shares,

with whom the National Health Service Commissioning Board or Local Health Board has entered into a GMS contract;

"GP performer" has the meaning given in regulation A2 of the 1995 Regulations or, as the case may be, regulation 3.A.1 of the 2008 Regulations;

"GP provider" has the meaning given in regulation A2 of the 1995 Regulations or, as the case may be, regulation 3.A.1 of the 2008 Regulations;

"the health service" has the meaning given in section 275 of the 2006 Act;

"marriage" and "married" do not include a reference to marriage of a same sex couple unless otherwise provided;

"medical performers list" means a list of registered medical practitioners prepared and published--

- (a) by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004 (performers lists), or
- (b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004 (performers lists);

...

...

"NHS employment" has the same meaning as in the 1995 Regulations, the 2008 Regulations and the 2015 Regulations as the case may be;

"non-GP provider" means--

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership--

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- (i) all of whose members have entered into a PMS agreement for the provision of primary medical services; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services--
- (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that the non-GP provider assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is--
- (i) a GMS practice; or
  - (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services,
- but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that company;
- (e) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he participates in the provision of NHS services;

"OOH provider" shall be construed in accordance with regulation 3.A.16 of the 2008 Regulations;

"ophthalmic provider" has the same meaning as in whichever of the 1995 Regulations or 2008 Regulations apply to that provider;

"PDS agreement" means arrangements under, in the case of England, section 107 of the 2006 Act or, in the case of Wales, section 64 of the 2006 (Wales) Act under which primary dental services are provided;

"PMS agreement" means an agreement made under, in the case of England, section 92 of the 2006 Act or, in the case of Wales, section 50 of the 2006 (Wales) Act

...

"PMS practice" means--

- (a) an individual;
- (b) two or more individuals practising in partnership, or
- (c) a company limited by shares,

with whom, or with whose members, the National Health Service Commissioning Board or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the National Health Service Commissioning Board or Local Health Board);

...

"quarter" means a 3 month period ending on the last day of March, June, September or December;

"registered medical practitioner" has the meaning given in section 55 of the Medical Act 1983;

"relevant pension scheme" means any form of arrangement, whether subsisting by virtue of an Act of Parliament, trust, contract or otherwise for the provision of pension benefits in connection with employment mentioned in regulation 3(1), including a personal pension scheme as defined in section 1 of the Pension Schemes Act 1993, or

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an additional pension referred to in section 44(3)(b) of the Social Security Contributions and Benefits Act 1992, but excluding--

- (a) any arrangements for the provision of benefits under legislation related to social security, other than the said additional pension;
- (b) any arrangement for the provision of benefits paid for by additional voluntary contributions under which the rate or amount of benefit payable is calculated by reference to the proceeds of the investment of those contributions;

"the Scheme" means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in the 1995 Regulations, the 2008 Regulations and the 2015 Regulations, as the case may be;

"scheme partner" has the meaning given in regulation 2D;

"service" has the meaning given in regulation 5.

"surviving partner" means a widow, widower, surviving civil partner or surviving scheme partner;

"surviving scheme partner" has the meaning given in regulation 2E;

"widow" and "widower" do not include a reference to marriage of a same sex couple;

(2) Where any pension or child's allowance or child's pension which is or would have been payable under a relevant pension scheme is taken into account for the purpose of any calculation under these Regulations, such pension or allowance shall exclude any amount by which it is or would have been increased under the Pensions (Increase) Act 1974.

## **2A Meaning of "practitioner"**

(1) In these Regulations "practitioner" means, in relation to a person who is or is eligible to be a member of the scheme set out in the 1995 Regulations, a person, other than a locum practitioner--

(a) to whom regulation R1(1) or (2) of the 1995 Regulations applies (or would apply if he had been a member of the Scheme at the date he sustains an injury, or contracts a disease, to which these Regulations apply); and

(b) who is performing services--

(i) in the case of a registered medical practitioner who is a GP provider or a GP performer, under a GMS contract, a PMS agreement, an APMS contract or arrangements to provide services under--

(aa) in the case of England, section 83(2)(a) of the 2006 Act; or

(bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act, or

(ii) in the case of a dentist performer, under a GDS contract, a PDS agreement or arrangements to provide services under--

(aa) in the case of England, section 99(2) of the 2006 Act; or

(bb) in the case of Wales, section 56(2) of the 2006 (Wales) Act.

or

(c) an ophthalmic provider.

(2) In these Regulations "practitioner" means, in relation to a person who is or is eligible to be a member of the scheme set out in the 2008 Regulations, a person, other than a locum practitioner, who is (or was if he had been a member of that Scheme at the date he sustains an injury, or contracts a disease, to which these Regulations apply)--

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- (a) a registered medical practitioner and--
    - (i) a GP provider; or
    - (ii) a GP performer, or
  - (b) a dentist performer,  
who is performing services--
    - (i) in the case of a registered medical practitioner who is a GP provider or a GP performer, under a GMS contract, a PMS agreement, an APMS contract or arrangements to provide services under--
      - (aa) in the case of England, section 83(2)(a) of the 2006 Act; or
      - (bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act, or
    - (ii) in the case of a dentist performer, under a GDS contract, a PDS agreement or arrangements to provide services under--
      - (aa) in the case of England, section 99(2) of the 2006 Act; or
      - (bb) in the case of Wales, section 56(2) of the 2006 (Wales) Act.
- or
- (c) an ophthalmic provider.

(3) In these Regulations, in relation to a person who is eligible to be a member of the Scheme set out in the 2015 Regulations, “practitioner” means those persons referred to in Parts 2 and 3 (medical contractors, dental contractors and independent providers and medical practitioners and dental practitioners) of Schedule 5 (membership gateways) to the 2015 Regulations except—

- (a) a locum practitioner;
- (b) a non-GP provider;
- (c) an independent provider.

### **Civil partnerships and marriage of same sex couples**

**2B.**—(1) In these Regulations, except as provided in paragraph (5), a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2) it does not matter how a reference is expressed.

(4) The application of the Marriage (Same Sex Couples) Act 2013 in relation to these Regulations is modified so that—

- (a) section 11(1) and (2) has effect subject to paragraphs (1) to (3); and
- (b) Schedule 3 does not apply to the interpretation of these Regulations.

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(5) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.

### **Meaning of “average remuneration”**

**2C.—**(1) In these Regulations, “average remuneration” means—

- (a) in relation to a practitioner to whom the 1995 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner’s uprated earnings in accordance with paragraph 11(2) of Schedule 2 to those Regulations;
- (b) in relation to a practitioner to whom the 2008 Regulations apply, the yearly average of such amount as would be, or would have been, that practitioner’s uprated earnings in accordance with regulation 3.D.1(4)(b) of those Regulations;
- (c) in relation to a practitioner to whom the 2015 Regulations apply, such amount as would be, or would have been, that person’s yearly average earnings;
- (d) in relation to a person other than a practitioner to whom the 1995 Regulations apply, such amount as would be or would have been that person’s final year’s pensionable pay under regulation C1(6) of those Regulations, (assuming, in the case of a person to whom regulation 3(1)(c) applies, that the person was in receipt of the pensionable pay which would, in the opinion of the Secretary of State, have been payable if the person were employed whole-time by an employing authority on similar duties);
- (e) in relation to a person other than a practitioner to whom the 2008 Regulations apply, such amount as would be or would have been that person’s reckonable pay under regulation 2.A.10 of those Regulations;
- (f) in relation to a person other than a practitioner to whom the 2015 Regulations apply, such amount as would be, or would have been, that person’s yearly average earnings.

(2) The yearly average, final year’s pensionable pay and reckonable pay referred to in paragraph (1) are to be calculated as if the person to whom regulation 3(1) applies had retired—

- (a) in the case of a person eligible for an allowance under regulation 4(3A) or (3D), on the date on which that person ceased to be employed as a person to whom regulation 3(1) applies;
- (b) in the case of a person eligible for an allowance under regulation 4(4), (4B), (5) or (5C), on the date on which that person’s emoluments were reduced;
- (c) in the case of any other person, on the date on which by reason of the injury or disease that person’s employment ceased.

This is subject to paragraphs (3) and (4).

(3) This paragraph applies to a person to whom regulation 3(1)(a) applies who was employed as a senior registrar, registrar, specialist registrar, senior house officer or house officer immediately before—

- (a) ceasing to be employed by reason of the injury or disease or as a person to whom that regulation applies; or
- (b) the date on which that person’s emoluments were reduced.

(4) In the case of a person to whom paragraph (3) applies, average remuneration shall be increased to the amount which in the opinion of the Secretary of State represents the average remuneration of a general medical practitioner or, as the case may be, a general dental practitioner.

(5) In the case of a person to whom the 2015 Regulations apply and who is not a practitioner, that person’s yearly average earnings are the greater of—

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(a) the optimum re-valued pensionable earnings in that person's NHS employment; and

(b) the annual rate of pay for that employment at the time it ceased.

(6) In the case of a person to whom the 2015 Regulations apply and who is a practitioner, that person's yearly average earnings are the average of the annual amounts that would be, or would have been, the person's re-valued pensionable earnings in respect of practitioner service or service which is treated as practitioner service.

(7) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the person has the greatest amount of re-valued pensionable earnings.

(8) The annual rate of pay is the sum of—

(a) the annual rate of so much of what was or would have been the person's pensionable earnings immediately before any pension became or would have become payable as consisted of salary, wages, or other regular payments of a fixed nature, and

(b) so much of any fees and other regular payments not of a fixed nature as—

(i) was payable to the person during the period of 12 months ending with the day the employment ceased, and

(ii) formed, or would have formed, part of the person's pensionable earnings.

### **Meaning of scheme partner**

**2D.** A person (person B) is the "scheme partner" of a person to whom these regulations apply (person A) if—

(a) person A and person B are living together as if they were husband and wife or civil partners,

(b) person A and person B are not prevented from marrying or entering into a civil partnership,

(c) person A and person B are financially interdependent or person B is financially dependent on person A, and

(d) neither person A nor person B is living with a third person as if they were husband and wife or civil partners.

### **Meaning of surviving scheme partner**

**2E.** A person (person B) is a "surviving scheme partner" of a person to whom these regulations apply (person A) if the Secretary of State is satisfied that for a continuous period of at least two years, ending with person A's death, person B was the scheme partner of person A.

## **Part II Injury Benefits**

### **3 Persons to whom the regulations apply**

(1) Subject to paragraph (3), these Regulations apply to any person who, while he--

(a) is in the paid employment of an employing authority;

(b) is a practitioner;



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- (c) holds an appointment with an employing authority the terms of which declare it to be honorary; . . .
  - (d) holds an appointment as a member of such body constituted under the 2006 Act or the 2006 (Wales) Act as the Secretary of State may approve;
  - (e) . . .
  - (f) . . .
  - (g) . . .
  - (h) . . .
  - (i) . . .
  - (j) . . .
  - (k) is a practitioner or is in NHS employment, and was, prior to 31st March 2013, --
    - (i) a member of a Primary Care Trust by virtue of regulation 2(4)(b) or (c) of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 (officer members), or
    - (ii) a member of the Executive Committee of a Primary Care Trust by virtue of article 2(3)(c) of the Primary Care Trust Executive Committee Directions 2000 given by the Secretary of State on 10th February 2000;
  - (g) a non-GP provider;
- (hereinafter referred to in this regulation as "his employment"), sustains an injury before 31st March 2013, or contracts a disease before that date, to which paragraph (2) applies.
- (1A) . . .
- (2) This paragraph applies to an injury which is sustained and to a disease which is contracted in the course of the person's employment and which is wholly or mainly attributable to his employment and also to any other injury sustained and, similarly, to any other disease contracted, if--
- (a) it is wholly or mainly attributable to the duties of his employment;
  - (b) it is sustained while, as a volunteer at an accident or emergency, he is providing health services which his professional training and code of conduct would require him to volunteer; or
  - (c) it is sustained while he is travelling as a passenger in a vehicle to or from his place of employment with the permission of the employing authority and if in addition--
    - (i) he was under no obligation to the employing authority to travel in the vehicle but, if he had been, the injury would have been sustained in the course of, and have been wholly or mainly attributable to, his employment, and
    - (ii) at the time of the injury the vehicle was being operated, otherwise than in the ordinary course of a public transport service, by or on behalf of the employing authority or by some other person by whom it was provided in pursuance of arrangements made with the authority.
- (3) These Regulations shall not apply to a person--
- (a) in relation to any injury or disease wholly or mainly due to, or seriously aggravated by, his own culpable negligence or misconduct;
  - (b) eligible to participate in a superannuation scheme established under section 1 of the Superannuation Act 1972.

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**4 Scale of benefits**

(1) Benefits in accordance with this regulation shall be payable by the Secretary of State to any person to whom regulation 3(1) applies whose earning ability is permanently reduced by more than 10 per cent by reason of the injury or disease and who makes a claim in accordance with regulation 18A.

(2) Where a person to whom regulation 3(1) applies ceases to be employed before 31st March 2018 as such a person by reason of the injury or disease and no allowance or lump sum, other than an allowance under paragraph (5) or (5A), has been paid under these Regulations in consequence of the injury or disease, there shall be payable, from the date of cessation of employment, an annual allowance of the 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 his average remuneration shown in whichever column of the table hereunder is appropriate to his service in relation to the degree by which his earning ability is permanently reduced at the date that person ceases that employment.

TABLE

Degree of reduction of earning ability	Service			
	Less than 5 years	5 years and over but less than 15 years	15 years and over but less than 25 years	25 years and over
(1)	(2)	(3)	(4)	(5)
More than 10% but not more than 25%	15%	30%	45%	60%
More than 25% but not more than 50%	40%	50%	60%	70%
More than 50% but not more than 75%	65%	70%	75%	80%
More than 75%	85%	85%	85%	85%

- (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, other than under paragraph (5) or (5A), any allowance or lump sum under these Regulations in consequence of that injury or disease.

(2B) Where paragraph (2A) applies the Secretary of State may, if satisfied that the evidence produced by the person is compelling, 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 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 permanently reduced at the date that person ceases that employment: for these purposes the value of any such pensions and benefits is to be expressed as an annual amount.

- (2D) Evidence is compelling if—
- (a) it is reliable,

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- (b) its value for understanding and determining the person's claim for benefit is substantial, and
- (c) it is highly probative of that claim.

(3) This paragraph applies to a person to whom regulation 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) having ceased that employment, suffers a permanent reduction in earning ability by reason of that injury or disease, and
- (d) has not been paid, other than under paragraph (5) or (5A), any allowance or lump sum under these Regulations in consequence of that injury or disease.

(3A) Where paragraph (3) applies the Secretary of State may pay from the date that the person attains normal benefit age or, as the Secretary of State 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).

(3B) That amount is an amount, if any, which when added to the value 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 permanently reduced at the date referred to in paragraph (3A): for these purposes the value of any such pensions and benefits is to be expressed as an annual amount.

(3C) 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 other than by reason of the injury or disease,
- (b) at the date of ceasing employment has not attained normal benefit age,
- (c) having ceased that employment, suffers a permanent reduction in earning ability by reason of that injury or disease, and
- (d) has not been paid, other than under paragraph (5) or (5A), any allowance or lump sum under these Regulations in consequence of that injury or disease.

(3D) Where paragraph (3C) applies the Secretary of State may, if satisfied that the evidence produced by the person is compelling, pay from the date that the person attains normal benefit age or, as the Secretary of State may in any particular case allow, from the date that person suffers the reduction of earning ability referred to in paragraph (3C), 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 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 permanently reduced at the date referred to in paragraph (3D): for these purposes the value of any such pensions and benefits is to be expressed as an annual amount.

(3F) Evidence is compelling if—

- (a) it is reliable,
- (b) its value for understanding and determining the person's claim for benefit is substantial, and

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(c) it is highly probative of that claim.

(4) Where a person to whom regulation 3(1) applies suffers a reduction in the emoluments of an employment mentioned in that regulation before 31st March 2018 by reason of the injury or disease, there shall be payable, from the date of that reduction, an annual allowance--

(a) of the 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 his average remuneration shown in whichever column of the table in paragraph (2) is appropriate to his service in relation to the degree by which his earning ability is reduced at the date that his emoluments were reduced; or

(b) of the amount, if any, which, when added to the value, expressed as an annual amount, of any pension specified in paragraph (6)(a), will provide an income at the annual rate at which a pension would have been payable to the person under his relevant pension scheme if, on the day before such reduction, he had ceased to be employed and was incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body;

whichever is the greater:

Provided that regulation 13(4) shall apply to that allowance as if the person had ceased to be employed on the day before his emoluments were reduced and had been re-employed on the following day with the reduced emoluments.

(4A) This paragraph applies to a person to whom regulation 3(1) applies who suffers a permanent 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 Secretary of State may, if satisfied that the evidence produced by the person is compelling, 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) its value for understanding and determining the person's claim for benefit is substantial, and

(c) it is highly probative of that claim.

(5) Where, on or after 1st April 1991 but before 31st March 2018, a person to whom regulation 3(1) of these Regulations applies or to whom regulation 3(1) of the previous Regulations applied is or was on leave of absence from an employment mentioned in those regulations with reduced emoluments by reason of the injury or disease, there shall be payable by that person's employing authority on behalf of the Secretary of State, during or in respect of the period of such leave and without regard to any reduction in the person's earning ability, an annual allowance of the amount, if any, which when added to the aggregate of--

(a) the emoluments payable to the person during his 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), will provide an income of 85 per cent of his average remuneration.

(5A) Where, in the case of a person referred to in paragraph (1)(k) of regulation 3, paragraph (2) of that regulation applies with respect to any employment of that person before 31 March 2013 (within the meaning of that regulation) as a member of a Primary Care Trust or of its Executive Committee, paragraph (5) of this regulation shall apply to that person as if he were an officer employed by that Primary Care Trust.

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(5B) 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 or was on leave of absence with reduced emoluments by reason of the injury or disease.

(5C) Where paragraph (5B) applies the Secretary of State may, if satisfied that the evidence produced by the person is compelling, pay from the date of the reduction of the person's emoluments, an annual allowance of the amount referred to in paragraph (5D): the annual allowance is without regard to any reduction in the person's earning ability.

(5D) That amount is an amount, if any, which when added to the value of Amount A will provide an income of 85 per cent of the person's average remuneration: for these purposes Amount A is to be expressed as an annual amount.

(5E) 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).

(5F) Evidence is compelling if—

- (a) it is reliable,
- (b) its value for understanding and determining the person's claim for benefit is substantial, and
- (c) it is highly probative of that claim.

(6) The pensions and benefits specified in this paragraph are--

- (a) any pension payable to the person under a relevant pension scheme, disregarding any--
  - (i) reduction in the amount of that pension under regulation T5 or T6 of the 1995 Regulations, regulation 2.J.6, 2.J.7, 3.J.6 or 3.J.7 of the 2008 Regulations or paragraphs 11 or 12 of Schedule 3 to the 2015 Regulations (all of which deal with offset and loss of rights to benefits);
  - (ii) reduction in the amount of that pension under regulation E2A(7), E7 or L1(5) of the 1995 Regulations, regulation 2.D.14, 2.D.15, 3.D.10 or 3.D.11 of the 2008 Regulations or regulation 77 or 109 of the 2015 Regulations (all of which deal with exchanging a pension for a lump sum including in cases of serious ill health);
  - (iii) increase in the amount of that pension, under the Pensions (Increase) Act 1971, after the date at which the average remuneration used in the calculation of the allowance was calculated; and
  - (iv) reduction in the amount of that pension under paragraph (14)(b) of regulation T2A of the 1995 Regulations, paragraph (10)(b) of regulations 2.J.8 or 3.J.8 of the 2008 Regulations or paragraph 16 of Schedule 3 to the 2015 Regulations (all of which deal with the deduction of tax);
- (b) any of the following benefits, at the rates in operation at the date on which the employment ceased or the emoluments were reduced, as the case may be, which are payable to the person--
  - (i) disablement pension or gratuity payable under section 103 of the Social Security Contributions and Benefits Act 1992 or so much of any such pension or gratuity as

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relates to the injury or disease (hereinafter referred to as "the relevant part"), together with--

(a) any increase in such pension payable by way of unemployability supplement under paragraph 2 of Part I of Schedule 7 to that Act (or so much of any such increase as is proportionate to the relevant part of the said pension) but excluding any increase in that supplement under paragraph 3 of Part I of Schedule 7 to that Act; and

(b) any increase in such pension payable under paragraphs 4 or 6 of Part I of Schedule 7 to that Act in respect of a dependant or so much of any such increase as is proportionate to the relevant part of the said pension;

but excluding any increase under sections 104 (increase where constant attendance is needed) or 105 (increase for exceptionally severe disablement) of that Act;

(ii) incapacity benefit payable under section 30A of the Social Security Contributions and Benefits Act 1992 in respect of the injury or disease together with any increase in such benefit payable under sections 80 (dependent children), 86A (increase for adult dependants) and 87 (rate of increase where associated retirement pension is attributable to reduced contributions) of that Act;

(iii) severe disablement allowance payable under section 68 of the Social Security Contributions and Benefits Act 1992 in respect of the injury or disease together with any increase in such allowance payable under section 90(1) (dependants) of that Act;

(iv) reduced earnings allowance payable under paragraph 11 of Part IV of Schedule 7 to the Social Security Contributions and Benefits Act 1992 in respect of the injury or disease;

(v) retirement allowance payable under paragraph 13 of Part V of Schedule 7 to that Act in respect of the injury or disease.

(vi) employment and support allowance payable under section 1(2) (~~a of the Welfare and Reform Act 2007~~) and section 1B of the Welfare Reform Act 2007, in respect of the injury or disease, during the 'assessment phase' referred to in section 2 of that Act, or as the case may be, after that phase has ended: this is subject to paragraph (6A);

(vii) an injury allowance payable on or after 31st March 2013 in accordance with the Terms and Conditions of the person's employment.

(6A) Paragraph (6B) applies where, immediately prior to receiving employment and support allowance referred to in paragraph (vi) of sub-paragraph (b) of paragraph (6) of this regulation (the "replacement benefit"), a person was in receipt of a benefit referred to in paragraph (ii) or (iii) of that sub-paragraph (the "superseded benefit").

(6B) In the circumstances referred to in paragraph (6A), the rate of replacement benefit taken into account for the purpose of calculating a benefit in accordance with this regulation shall be the rate of the superseded benefit that was taken into account for that purpose immediately before that person received the replacement benefit.

This is subject to paragraph (6C).

(6C) Paragraph (6B) only applies where the rate of the replacement benefit is greater than the rate of the superseded benefit.

(7) Where the relevant pension scheme is the Federated Superannuation System for Universities, the Federated Superannuation Scheme for Nurses and Hospital Officers or any other scheme under which the benefits may be paid otherwise than as an annual pension, and all or part of the contributions to the scheme on behalf of the person have been paid from public funds, the pension payable thereunder shall, for the purposes of paragraph (6)(a), be deemed to include three-quarters of such sum that, in the opinion of

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the Secretary of State, represents the value, expressed as an annual amount, of the benefits of the policies or accumulated investments held under the scheme on behalf of the person.

(8) Where a practitioner has received payments under regulation 75 of the 1961 regulations or under regulation 79 of the 1980 regulations, there shall, for the purposes of paragraph (6)(a), be deemed to be payable to him a pension of such amount, if any, as the Secretary of State thinks fit, but not exceeding the amount of the pension to which the practitioner would, if he had not been entitled to such payments, have become entitled under those regulations, in respect of the period or periods for which such payments were made to him, if he had attained age 60 and had served the minimum period of qualifying service.

(9) A person mentioned in paragraph (2) or (3), or a person mentioned in paragraph (4) who subsequently ceases to be employed as such a person by reason of the injury or disease, shall be entitled to receive a lump sum of the proportion of average remuneration shown in column (2) of the table hereunder in relation to the degree by which his earning ability is reduced.

TABLE

<b>Degree of reduction of earning ability</b>	<b>Proportion of average remuneration</b>
<b>(1)</b>	<b>(2)</b>
More than 10% but not more than 25%	One-eighth
More than 25% but not more than 50%	One-quarter
More than 50% but not more than 75%	Three-eighths
More than 75%	One-half

(10) In this regulation, "normal benefit age" means--

- (a) in respect of a person who is or is eligible to be a member of the scheme set out in the 1995 Regulations, 60;
- (b) in respect of a person who is or is eligible to be a member of the scheme set out in the 2008 Regulations, 65.
- (c) in respect of a person who is or is eligible to be a member of the scheme set out in the 2015 Regulations,—
  - (i) the person's state pension age, or
  - (ii) 65, if that is higher.

(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.

#### **4A Recovery of costs**

(1) Where, during the period commencing 1st April 1991 and ending 31st March 1997, a lump sum under regulation 4(9) or 11 of these Regulations or regulation 4(9) or 11 of the previous Regulations was paid to or in respect of a person to whom regulation 3(1) of these Regulations applies or, as the case may be, to or in respect of a person to whom regulation 3(1) of the previous Regulations applied, that person's employing authority shall be liable to pay a contribution to the Secretary of State in accordance with paragraph (4) representing the total amount of that lump sum together with the cost of providing increases to it under Part I of the Pensions (Increase) Act 1971.

(2) Subject to paragraph (3), where, on or after 1st April 1997, a person is entitled to an allowance or lump sum under paragraphs (2), (2B), (3A), (3D), (4), (4B) or (9) of regulation 4, or regulation 7, 8, 9 or 11 by or in respect of a person to whom regulation 3(1) of these Regulations applies, that person's employing authority shall, on the payment by the

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Secretary of State . . . of the allowance or any part of it, or, as the case may be, of the lump sum, be liable to pay a contribution to the Secretary of State in accordance with paragraph (5) representing--

- (a) the total amount of such allowance or such part, or,
- (b) the total amount of such lump sum,

together with the cost of providing increases to it under Part I of the Pensions (Increase) Act 1971.

(3) Paragraph (2) shall not apply to any claim made on or after 1st April 1997 where that claim is made in respect of a person who dies on or after that date but who was, before that date, in receipt of an allowance or lump sum under paragraph (2), (3), (4) or (9) of regulation 4 or who would, before that date, have received such an allowance or lump sum under any of those paragraphs but for--

- (a) the fact that his earning ability was not permanently reduced by more than 10 per cent in accordance with the requirements of paragraph (1) of regulation 4; or
- (b) the application of paragraph (4) or (6) of regulation 4 to the calculation of his benefits under that regulation.

(4) Contributions payable to the Secretary of State under paragraph (1) shall be paid not later than one month from the end of the quarter in which the lump sum referred to in that paragraph was paid, or, in any case where that period has expired, within such longer period as the Secretary of State may allow.

(5) Contributions payable to the Secretary of State under paragraph (2) shall be paid not later than one month from the end of the quarter in which the allowance or any part of it, or, as the case may be, the lump sum, referred to in that paragraph was paid.

(6) This regulation and regulation 4(5) shall apply to a practitioner or non-GP provider who is not an officer of a Local Health Board or the National Health Service Commissioning Board as if that person were an officer of the National Health Service Commissioning Board or Local Health Board in whose area he is providing services.

(7) Where, in the case of a person referred to in paragraph (1)(k) of regulation 3, paragraph (2) of that regulation applies with respect to any employment of his (within the meaning of that regulation) as a member of a Primary Care Trust or of its Executive Committee before 31st March 2013, this regulation shall apply to that person as if he were an officer employed by that Primary Care Trust before that date and, on or after that date, as if that person were an officer employed by the National Health Service Commissioning Board.

(8) In any particular case the Secretary of State may direct that, for the purposes of this regulation, "employing authority" includes one or more of--

- (a) the transferee under a transfer of staff order pursuant to--
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;
  - (ii) in the case of Wales, section 22(4)(a) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
- (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority's business or functions; and
- (c) the last employing authority of a person to whom regulation 3(1) applies.

(9) Where a person has more than one employing authority, the Secretary of State may direct what proportion, if any, of the contribution due under this regulation shall be payable by each of those employing authorities.



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## **5 Meaning of service**

A person's service shall comprise all of the periods which at the date on which he ceased to hold an employment or appointment mentioned in regulation 3(1), or on which the emoluments of such employment or appointment were reduced, as the case may be, fell within any of the following descriptions, but no period shall be taken into account under more than one description--

- (a) any period during which he held such employment or appointment;
  - (b) any period of employment that would be taken into account for any purpose of a relevant pension scheme;
- and
- (c) any other period that the Secretary of State may approve in any particular case.

## **Part III**

### **Benefits on Death of Injured Person**

#### **6 Grounds of entitlement**

If a person to whom these Regulations apply dies as a result of, or his death was, in the opinion of the Secretary of State, substantially hastened by, the injury or disease, the Secretary of State shall pay in respect of that person (hereinafter referred to as "the deceased") the benefits described in this part of these Regulations, except that such benefits shall not be payable in respect of an injury or disease wholly or mainly due to, or seriously aggravated by, the culpable negligence or misconduct of the deceased.

#### **7 Surviving partner allowances**

(1) Subject to the provisions of this regulation and to regulation 10, there shall be payable to the surviving partner of a person mentioned in regulation 6 an annual allowance of the amount, if any, which when added to the amount of any pension payable under a relevant pension scheme in respect of the deceased, to or for the benefit of the surviving partner, will provide an income of 45 per cent of the deceased's average remuneration.

(2) Subject to paragraph (3), for the first 6 months immediately following the death of a person who, at the date of his or her death was entitled to an allowance under these Regulations, there shall be payable to the surviving partner an annual allowance of the amount, if any, which when added to the aggregate mentioned in paragraph (1) will provide an income of the percentage of average remuneration by reference to which the deceased's annual allowance was calculated:

Provided that this paragraph shall not apply where the aggregate of annual allowances otherwise payable under paragraph (1) and regulations 8(1) and 9(1) would exceed an allowance payable under this paragraph.

(3) Except if paragraph (3A) applies, a surviving partner is not entitled to receive an allowance—

- (a) if the marriage took place or the civil partnership was formed after the later of the date on which—
  - (i) the deceased last ceased to be employed as person to whom these Regulations apply; or
  - (ii) the earning ability of the deceased was permanently reduced as a result of the injury or disease; ~~or~~

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(b) if the Secretary of State is not satisfied that the deceased's partner was the deceased's scheme partner for a continuous period of at least two years ending with the later of the dates referred to in (a).

(ba) if at the date of the deceased's death such surviving partner is not married or in a civil partnership but is living with another person as if married or in a civil partnership; or

(bb) in respect of any period after such surviving partner—

(i) remarries or forms a civil partnership; or

(ii) during which she or he lives together with another person as if married to or in a civil partnership with that other person,

but where such relationship has terminated, the Secretary of State may restore an allowance to a surviving partner if the Secretary of State is satisfied that such surviving partner is suffering hardship.

(3A) This paragraph applies where--

(a) the deceased referred to in paragraph (3) died before 5th December 2005, and

(b) his widow, or as the case may be, her widower forms a civil partnership with a person of the same sex or lives with another person of the same sex as if they were civil partners.

(4) Where the deceased died before 6th April 1988, a widower shall not be entitled to receive an allowance unless, at the date of the deceased's death, he was incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living and was wholly or mainly dependent upon the deceased.

## **8 Child's allowance**

(1) Subject to the provisions of this regulation and to regulation 10, on the death of a person mentioned in regulation 6 or, where an allowance is payable under regulation 7(2), on the termination of payment of that allowance, there shall be payable to any dependent child or children an annual allowance of the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to, or for the benefit of, such child or children will provide an income of 10 per cent of the deceased's average remuneration multiplied by the number of children not exceeding four, or of twice that sum where there is no surviving parent:

Provided that where the Secretary of State is satisfied that a surviving parent is not maintaining such child or children, she may pay the allowance as if there were no surviving parent.

(2) Subject to the provisions of this regulation, "dependent child" means any child who is--

(a) a child or grandchild of the deceased;

(b) a step-child of the deceased by a marriage or civil partnership entered into before the date on which the deceased ceased to be in employment mentioned in regulation 3(1) or a child legally adopted by the deceased before that date;

(c) a brother or sister, or a child of a brother or sister, of the deceased or the deceased's spouse, civil partner or surviving scheme partner (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose); or

(d) a child who, immediately before the deceased ceased to be in employment mentioned in regulation 3(1), the deceased had intended to adopt or a child who, at that time, had been dependent on the deceased for 2 years or (if less) half the child's life;

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and who satisfies the requirements of paragraph (3).

(3) The requirements of this paragraph are satisfied by any child described in paragraph (2) who was--

(a) born before the deceased ceased to be in employment mentioned in regulation 3(1) and who was dependent on the deceased when the deceased died and, if the deceased died after ceasing to be in employment mentioned in regulation 3(1), was also dependent on the deceased when the deceased ceased to be in such employment; or

(b) born one year or less after the deceased ceased to be in employment mentioned in regulation 3(1) (being a date on or after 26 November 1990) and who either was dependent on the deceased both immediately after being born and when the deceased died, or would have become dependent on the deceased if the deceased had not died before the child was born.

(4) A child is a dependent child for so long as he is--

(a) under age 17; or

(b) aged 17 or over and continuing in full-time education; or

(c) aged 17 or over and participating in full-time training for a trade, profession or vocation, for which he is not receiving remuneration in excess of the allowable maximum; or

(d) aged 17 or over and taking a break in such full-time education or training providing the Secretary of State is satisfied that the child intends to return to some such education or training.

(5) A child who is aged 17 or over and who has ceased to be a dependent child will be treated as a dependent child if he returns to full-time education, or to full-time training for a trade, profession or vocation for which he is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.

(6) In this regulation, the "allowable maximum" means the amount to which a pension under the 1995 Regulations, the 2008 Regulations or the 2015 Regulations (as the case may be) of £2404 a year beginning on 9th April 2007 would have been increased under Part I of the Pensions (Increase) Act 1971 at the date in question, plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.

(7) An allowance payable under this regulation shall be paid to the child, or, in such proportion as the Secretary of State thinks fit, to the children, entitled thereto:

Provided that the Secretary of State may, if she thinks fit, pay the allowance to such other person or persons as she may specify and such person or persons shall apply such allowance, in accordance with any directions given by the Secretary of State, for the benefit of the child or children entitled thereto.

## **9 Dependent relative's allowance**

(1) Subject to paragraph (4) and to regulation 10, on the death of a person mentioned in regulation 6 or, where an allowance is payable under regulation 7(2), on the termination of payment of that allowance, an annual allowance calculated in accordance with paragraph (2) or (3), as the case may be, shall be payable to--

(a) a parent who is either the deceased's mother or his father or his spouse's, civil partner's or surviving scheme partner's mother or father, and who was wholly or mainly dependent on the deceased at the date of his death; and

(b) each child who has attained the age of 17 years and is not receiving full-time education or undergoing full-time training for a trade, profession or vocation, but who, if he or she had not attained the age of 17 years, would be entitled to an allowance under

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regulation 8, and who was incapable by reason of permanent ill-health or infirmity of mind or body of earning his or her own living at the date of the death of the deceased or at the date he or she ceased to be entitled to an allowance under regulation 8, whichever is the later, and has at all times since then been so incapable,

(hereinafter referred to as "a dependent relative").

(2) The annual allowance payable to a dependent relative referred to in paragraph (1)(a) shall be payable to the first dependent relative therein mentioned who is eligible at any one time and shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent of the deceased's average remuneration, or of 45 per cent of that amount, during any period in which there is no surviving partner of the deceased to whom an allowance is or might be payable under regulation 7:

Provided that where the Secretary of State is satisfied that during any period that dependent relative is not being maintained by a surviving partner of the deceased, she may pay the allowance during such period as if there were no surviving partner.

(3) The annual allowance payable to a dependent relative referred to in paragraph (1)(b) shall be the amount, if any, which when added to the annual amount of any pension payable under a relevant pension scheme in respect of the deceased to that dependent relative will provide an income of 20 per cent of the deceased's average remuneration, or of 45 per cent of that amount, where the dependent relative has no surviving parent:

Provided that where the Secretary of State is satisfied that during any period that dependent relative is not being maintained by a surviving parent, she may pay the allowance during such period as if there were no surviving parent.

(4) A dependent relative shall not be entitled to receive an allowance--

(a) if he or she subsequently marries or is living together with another person as husband and wife; or

(aa) if he or she subsequently forms a civil partnership or lives together with another person as if they were civil partners of each other; or

(b) in respect of any period exceeding one month during which he or she is maintained out of money provided by Parliament in a hospital or other institution so maintained.

(4A) Paragraph (4)(aa) shall not apply where the member dies before 5th December 2005.

(5) An allowance payable to a dependent relative may be paid to such other person as the Secretary of State may specify and that person shall apply the allowance, in accordance with any directions given by the Secretary of State, for the benefit of that dependent relative.

(6) In paragraph (1)(a), a reference to a parent includes a reference to a step-parent and an adoptive parent.

## **10 Restriction of allowances**

Where, apart from this regulation, the aggregate of the annual rates of allowances payable under regulations 7 to 9 and of any pensions or benefits taken into account in calculating the allowances would exceed the rate of the deceased's average remuneration, the individual allowances shall be reduced by such amounts as the Secretary of State may from time to time think fit so that such aggregate does not exceed the rate of the deceased's average remuneration.

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## **11 Lump sum payment on death**

- (1) On the death of a person mentioned in regulation 6 a lump sum of one-half of his average remuneration--
- (a) shall be payable to the surviving partner to whom an allowance in respect of the deceased is payable under regulation 7;
  - (b) if not payable under (a) above, shall be payable to the child or among the children of the deceased or of his spouse, civil partner or surviving scheme partner, to whom an allowance in respect of the deceased is payable under regulation 8 or 9(1)(b) and (3);
  - (c) if not payable under (a) or (b) above, shall be payable to a dependent relative to whom an allowance in respect of the deceased is payable under regulation 9(1)(a) and (2); or
  - (d) if not payable under (a), (b) or (c) above, shall be payable to any other child or among any other children to whom an allowance in respect of the deceased is payable under regulation 8 or 9(1)(b) and (3);

Provided that a lump sum shall not be paid under this regulation if a lump sum has been paid to the deceased under regulation 4(9) in respect of the same injury or disease.

- (2) The provisions of regulation 8(7) or 9(5), as the case may be, shall apply in respect of a payment under paragraph (1)(b), (c) or (d).

## **12 Incidental provisions**

- (1) For the purposes of this Part of these Regulations, the amount of a pension payable under a relevant pension scheme shall be deemed not to include any amount by which that pension is increased under the Pensions (Increase) Act 1971 after the date at which the average remuneration used in the calculation of the allowance was calculated.
- (2) Where the relevant pension scheme is a scheme mentioned in regulation 4(7), the pension payable under such a scheme shall, for the purposes of this Part of these Regulations, be deemed to include such sum, if any, which, in the opinion of the Secretary of State, represents the value, expressed as an annual amount, of the benefits payable under that scheme in respect of the deceased to the person entitled to the allowance.
- (3) Where the deceased was a practitioner who received payments under regulation 75 of the 1961 regulations or regulation 79 of the 1980 regulations, there shall, for the purposes of regulations 7 to 9, be deemed to be payable under the relevant pension scheme a pension of such amount, if any, as the Secretary of State thinks fit, but not exceeding the amount of the surviving partner's pension or the child's allowance, as the case may be, which would, if the deceased had not been entitled to such payments, have been payable under the pension scheme regulations in respect of the period or periods for which such payments were made to him or her.
- (4) Any child who becomes, or children who become, entitled to benefits in respect of more than one deceased shall be entitled to receive only those benefits in respect of that deceased which, in the opinion of the Secretary of State, provide the more favourable result.

## **Part IV**

### **Review of Allowance and Miscellaneous**

## **13 Review and adjustment of allowance**

- (1) The Secretary of State shall review the amount of an allowance payable under Part II of these Regulations in the light of--

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- (a) a further reduction of the person's earning ability by reason of the injury or disease;
- (b) the commencement or cessation of payment to the person of a benefit mentioned in regulation 4(6)(b), by reason of the injury or disease; or
- (c) the commencement of a pension payable to the person under a relevant pension scheme or an increase in such a pension not being an increase under the Pensions (Increase) Act 1971; and for this purpose such pension shall be deemed to be reduced proportionately by the amount by which an official pension, that began on the date at which the average remuneration used in the calculation of the allowance was calculated, would have been increased under the Pensions (Increase) Act 1971 by the date of the increase or commencement of the first mentioned pension.

(1A) For the purposes of paragraph (1)(b) –

- (a) employment and support allowance payable during the assessment phase for that benefit and employment and support allowance after that phase has ended shall be treated as separate benefits, and
- (b) where employment and support allowance was awarded to a person prior to 1<sup>st</sup> April 2009 and that person continues to be entitled to that allowance on that day, payment of that allowance shall be deemed to have commenced on that day.

(2) A person not entitled to benefits under these Regulations by reason only that his earning ability was not permanently reduced by more than 10 per cent shall be entitled to receive such benefits if, in consequence of a further reduction by reason of the injury or disease, his earning ability is permanently reduced in aggregate by more than 10 per cent, except that such benefits shall not be payable in respect of any period before such further reduction or for a period of more than 13 weeks before the Secretary of State is notified in writing of such further reduction, whichever is the later.

(3) The Secretary of State shall review the amount of an allowance payable under Part III of these Regulations in the light of any reduction in, or the cessation of, a pension under a relevant pension scheme in respect of the deceased payable to the person entitled to such allowance.

(4) Where a person who is entitled to an allowance under Part II again becomes employed in an employment mentioned in regulation 3(1) or becomes employed in an employment mentioned in any corresponding provision in force in Scotland, Northern Ireland or the Isle of Man, then, whilst he continues in such employment, the allowance under Part II shall be abated by any amount by which it would, when aggregated with his relevant income, exceed the amount of his former earnings.

For the purposes of this paragraph--

- (a) "relevant income" means the amount of any emoluments payable to the person in question in respect of the further employment plus the amount of any pension payable to him under a relevant pension scheme;
  - (b) "former earnings" means, in relation to that person, the average remuneration by reference to which the allowance was determined or the annual rate of his emoluments at the date on which the allowance became payable, whichever is higher;
  - (c) where the further employment is employment of the type mentioned in regulation 3(1)(c), that person shall be deemed to be in receipt of emoluments equal in amount to those which would have been payable, in the opinion of the Secretary of State, to a person employed whole-time by an employing authority on similar duties.
- (5) Where, on a review of an allowance under the previous regulations, regulation 4(6)(b)(vi) of those Regulations did not apply by reason that the person to whom the allowance was payable was not in the employment of an employing authority on or after

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the 1st April 1991 then, on any further review of the allowance payable to that person under these Regulations, no account shall be taken of any amount mentioned in regulation 4(6)(b)(iv) or (v).

#### **14 Loss of rights to benefit**

The Secretary of State may direct that all or part of any benefit under these Regulations payable to or in respect of a person to whom these Regulations apply be forfeited if that person is convicted of any of the following offences committed before the benefit becomes payable--

- (a) an offence in connection with employment mentioned in regulation 3(1), which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to a 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 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least 10 years.

#### **15 Offset for crime, negligence or fraud**

- (1) If a loss to public funds occurs as a result of the criminal, negligent or fraudulent act or omission of a person to whom these Regulations apply, the Secretary of State may reduce any benefit under these Regulations payable to, or in respect of, that person by an amount equal to the loss.
- (2) If the loss to public funds is equal to or greater than the value of the benefit under these Regulations payable to or in respect of the person, a reduction under paragraph (1) may result in the benefits ceasing to be payable.
- (3) The Secretary of State shall give the person 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 person's obligation to make good the loss has become enforceable under the order of a court or arbitrator.
- (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.

#### **16 Officers transferred in consequence of reorganisation**

- (1) This regulation shall apply to or in respect of any person who was transferred to the employment of an employing authority under the National Health Service Reorganisation Act 1973 and who, having remained in the employment of that authority without a break of one day or more, suffers an injury or contracts a disease in respect of which, had he remained in his previous employment, he would have been eligible to receive benefits by virtue of any enactment, scheme or arrangement associated with that employment.
- (2) Where the Secretary of State is of the opinion that, in relation to any person to whom or in respect of whom this regulation applies, any benefits specified in paragraph (1)--
  - (a) would, when taken as a whole, have been more favourable than any benefits payable under these Regulations, or
  - (b) would have been payable where no benefits would have been payable under these Regulations,

the Secretary of State, having regard to the provisions of such enactment, scheme or arrangement, may make such payments, to or in respect of such person, supplementary to any benefits which otherwise might be payable under these Regulations, as the Secretary

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of State considers equitable so that the benefits, taken as a whole, are not less favourable than those which might have been payable under such provisions.

## **17 Damages**

(1) The Secretary of State shall take into account against the benefits provided in these Regulations any damages or compensation recovered by any person in respect of the injury or disease or in respect of the death of a person to whom these Regulations apply, and such benefits may be withheld or reduced accordingly.

(2) For the purposes of paragraph (1), a person shall be deemed to have recovered damages--

(a) whether they are paid in pursuance of a judgement or order of a court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce the claim; or

(b) if they are recovered for his benefit in respect of a claim under the Fatal Accidents Act 1976.

(3) Where any payments in respect of a benefit under these Regulations are made before the right to, or the amount of, such damages or compensation is finally determined, then if and when a right to and the amount of such damages or compensation is finally determined the Secretary of State shall have the right to recover from the beneficiary an amount not exceeding--

(a) where the amount of the payments made by the Secretary of State is less than the net amount of the damages or compensation, the amount of those payments;

(b) where the amount of those payments is not less than the net amount of the damages or compensation, such part of those payments as is equal to the net amount of the damages or compensation.

(4) So far as any amount recoverable under this regulation represents a payment made by the Secretary of State from which income tax has been deducted before the payment, the proper allowance shall be made in respect of the amount so deducted, and in this regulation the expression "the net amount of the damages or compensation" means the amount of the damages or compensation after deducting any tax payable in the United Kingdom or elsewhere to which the damages or compensation are subject.

(5) No proceedings shall be brought to recover any amount under this regulation--

(a) after the death of the recipient of the payments; or

(b) after the expiration of 2 years from the date on which a right to, and the amount of, the damages or compensation is finally determined or from the date on which the final determination first came to the knowledge of the Secretary of State, if later.

(6) A certificate issued by the Secretary of State and stating the date on which the final determination of a right to, and of the amount of, any damages or compensation first came to her knowledge shall be admissible in any proceedings as sufficient evidence of that date.

## **18 Avoidance of duplicate benefits**

If the Secretary of State is of the opinion that an injury or disease has been, or will be, taken into account for the purpose of any corresponding scheme the benefits of which or contributions towards which are payable out of public funds, she may make such deduction from the benefits under these Regulations as may appear to her to be equitable in order to secure that there may not be payable in respect of the same injury or disease benefits under these Regulations as well as benefits under a corresponding scheme.



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### **18A Claims for benefits**

(1) No person shall be entitled to any benefit under these Regulations unless, in addition to any other conditions relating to that benefit being satisfied, that person makes a claim for it--

- (a) in writing (or in such manner as the Secretary of State may from time to time accept), and
- (b) within--
  - (i) 6 months commencing with the day on which the other conditions relating to the benefit in question are satisfied, or
  - (ii) such other longer period as the Secretary of State may from time to time accept.

This is subject to paragraph (1A).

(1A) No person shall be entitled to a benefit under regulation 4(2B), (3D), (4B) or (5C) unless that person—

- (a) makes a claim for it; and
  - (b) the claim is made within a period of 6 months, or such longer period as the Secretary of State decides is reasonable, commencing with the date on which the person became aware, or in the view of the Secretary of State the date on which it is reasonable to expect them to have become aware, that they may be a person to whom regulation 3(1) applies.
- (2) If during the whole or part of the period mentioned in paragraph (1)(b) the person--
- (a) lacks capacity (within the meaning of the Mental Capacity Act 2005), or
  - (b) is prevented by fraud or concealment from discovering the facts entitling that person to apply for a benefit,

a claim may be made at any time before the end of the period of 6 months from the date on which that person no longer lacks capacity or, as the case may be, could with reasonable diligence have discovered those facts.

(3) A person claiming to be entitled to benefits under these Regulations and his employing authority, including any previous employing authority of his, 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 Secretary of State may from time to time require for the purposes of these Regulations.

(4) 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.

(5) This regulation is subject to regulation 18B.

### **18B Claims: Additional matters**

(1) Other than a claim in respect of a benefit referred to in regulation 4(5) or (5A), a claim for benefit under Part II or Part III of these Regulations is to be made to the Secretary of State in such form as the Secretary of State is willing to accept.

(2) A claim in respect of a benefit referred to in regulation 4(5) or (5A) is to be made to the person's employing authority in such form and in such a manner as that authority may accept.

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

(4) In the case of a claim for a benefit which is to be made to the Secretary of State, if the Secretary of State notifies that person in writing that the Secretary of State 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.

(5) In the case of a claim for a benefit which is to be made to a person's employing authority, if that authority notifies that person in writing that it 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.

(6) In the case of a claim which is to be made to the Secretary of State, the date of the claim is to be the date on which the form the Secretary of State is willing to accept is received by the Secretary of State.

(7) In the case of a claim which is to be made to the person's employing authority, the date of the claim is to be the date on which that authority receives that claim in the form and manner it accepts.

## **19 Medical examination**

The Secretary of State may require any person entitled, or claiming to be entitled, to an allowance under Part II of these Regulations, or under Part III of these Regulations on the grounds that he is incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living, to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event, the Secretary of State shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.

## **20 Benefits not assignable**

Subject to the provisions of any enactment in that behalf, any benefit to which a person becomes entitled under these Regulations shall be payable to, or in trust for, that person and shall not be assignable.

## **21 Payment to personal representatives**

Where, on the death of any person, any sum not exceeding £5,000 or such higher amount as would for the time being be applicable in relation to the death if these Regulations were an enactment to which section 1 of the Administration of Estates (Small Payments) Act 1965 (maximum amount disposable on death without representation) applied, is due to or in respect of that person under these Regulations, the Secretary of State may dispense with proof of the title of the personal representatives of that person and pay that sum to the personal representatives or to the person, or to or among any one or more of any persons, appearing to the Secretary of State on such evidence as she deems satisfactory to be entitled by law to a beneficial interest therein and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

## **21A Decisions by medical practitioners and other persons**

(1) The Secretary of State may make arrangements for his functions under these Regulations in relation to—

- (a) a decision whether a person has sustained an injury or contracted a disease to which regulation 3(2) applies and, if so, by what degree his earning ability has been

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permanently reduced for the purpose of the payment of an allowance referred to in regulation 4(2), (2B), (3A), (3D), (4) or (4B);

(b) a decision whether a person has sustained an injury or contracted a disease to which regulation 3(2) applies for the purpose of the payment of an allowance referred to in regulation 4(5) or (5C),

(c) a decision whether a person who has sustained an injury or contracted a disease to which regulation 3(2) applies has died as a result of, or his death was substantially hastened by, the injury or disease, for the purpose of the payment of an allowance referred to in regulations 7, 8 or 9,

to be discharged by the person or authority specified in paragraph (2).

(2) In the case of--

(a) a decision specified in paragraph (1)(a) or (c), the function may be discharged by--

(i) a registered medical practitioner (whether practising on his own or as part of a group); or

(ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State to act on his behalf.

(b) a decision specified in paragraph (1)(b), the function may be discharged by the employing authority of that person or by--

(i) a registered medical practitioner (whether practising on his own or as part of a group); or

(ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State.

(3) A person or authority referred to in paragraph (2) must record in writing the date on which that person or authority considers the injury or disease in question was sustained or contracted.

## **21B Notification requirements**

(1) Where an employing authority makes a payment of a benefit pursuant to regulation 4(5), that employing authority shall--

(a) within 14 days of making the first such payment, provide the Secretary of State with--

(i) the full name and national insurance number of the person in respect of whom the payment is being made; and

(ii) the date on which that individual first became entitled to the benefit;

(b) within 14 days of making the last such payment, provide the Secretary of State with--

(i) the full name and national insurance number of the person in respect of whom the payment has been made;

(ii) the date on which that individual ceased to be entitled to the benefit; and

(iii) a statement of the total amount paid to the person pursuant to regulation 4(5) during that period of absence from employment.

(2) 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

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compensation finally being determined, provide written notice to the Secretary of State containing--

- (a) the person's full name;
- (b) the person's national insurance number; and
- (c) the total amount of damages or compensation recovered.

(3) Where a person fails to provide the notice required by paragraph (2), no benefits shall be payable under these Regulations in respect of the period from the expiry of the 14th day mentioned in paragraph (2) until the date on which the notice is received by the Secretary of State, and where benefits have been paid to the person before the failure to give notice has been determined by the Secretary of State, the Secretary of State 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 Secretary of State in respect of that period has been recovered.

(4) A person who is in receipt of a benefit under Part II of these Regulations must notify the Secretary of State within 14 days, and in writing, of any change in the person's earnings or employment.

## **22 Determination of questions**

Any question arising under these Regulations as to the rights or liabilities of a person to whom these Regulations apply, or of a person claiming to be treated as such, or of the widow or widower or surviving civil partner or any dependant of such a person, shall be determined by the Secretary of State and any dispute shall be resolved by the Secretary of State in accordance with the dispute resolution procedure issued from time to time by her in conformity with section 50 of the Pensions Act 1995.