

2013 No. 52

NATIONAL HEALTH SERVICE

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

Made - - - - - *12th February 2013*

Laid before the Scottish Parliament *18th February 2013*

Coming into force - - - *31st March 2013*

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

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

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

Citation and commencement

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

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

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

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

(b) S.I. 1998/1594.

Amendment of regulation 3

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

Amendment of regulation 4

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

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

(3) In paragraph (2)—

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

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

(4) After paragraph (2) insert—

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

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

(b) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease, other than an allowance under paragraph (5) or (5B).

(2B) Where paragraph (2A) applies the Scottish Ministers 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, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of the person’s average remuneration shown in whichever column of the table in paragraph (2) is appropriate to that person’s service in relation to the degree by which that person’s earning ability is reduced at the date that person ceases that employment.”.

(5) For paragraph (3) substitute—

“(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) after ceasing that employment suffers a permanent reduction in earnings ability by reason of that injury or disease; and

(d) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease, other than an allowance under paragraph (5).

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

(3B) That amount is an amount, if any, which when added to the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6) will provide an income of the percentage of the person’s average remuneration shown in whichever column of the table in paragraph (2) is appropriate to that person’s service in relation to the

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

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

degree by which that person's earning ability is permanently reduced at the date from which the allowance is payable under paragraph (3A).

(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) after ceasing that employment suffers a permanent reduction in earnings ability by reason of that injury or disease; and
- (d) has not been paid any allowance or lump sum under these Regulations in consequence of that injury or disease, other than an allowance under paragraph (5) or (5B).

(3D) Where paragraph (3C) applies the Scottish Ministers 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 Scottish Ministers may in any particular case allow, from the date that person suffers the reduction of earning ability referred to in paragraph (3C)(c), an annual allowance of the amount referred to in paragraph (3E).

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

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

(7) After paragraph (4) insert—

“(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 Scottish Ministers 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).”.

(8) In paragraph (5), after “Where” insert “before 31st March 2018”.

(9) After paragraph (5) insert—

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

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

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

(5D) Amount A is the aggregate of—

- (a) the emoluments payable to the person during that person's leave of absence; and
- (b) the value, expressed as an annual amount, of any of the pensions and benefits specified in paragraph (6).”.

(10) After paragraph (6)(b)(vi) add—

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

(11) After paragraph (6) insert—

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

(12) After paragraph (10) insert—

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

(12) For the purposes of paragraphs (2B), (3D), (4B) and (5B), 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.”.

Amendment of regulation 4A

5. In regulation 4A (recovery of costs)—

- (a) in paragraph (1), after “4(5)” insert “or (5B)”; and
- (b) in paragraph (2), for “paragraph (2), (3), (4)” substitute “paragraph (2), (2B), (3A), (3D), (4), (4B)”.

Substitution of regulation 18A

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

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

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

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

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

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

New regulation 18B

7. After regulation 18A (requirement to provide evidence of entitlement) insert—

“Claims: additional matters

18B.—(1) A claim for benefit shall be made to the Scottish Ministers in such form, and within such period, as the Scottish Ministers may specify.

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

(3) In the case of a claim for a benefit which is to be made to the Scottish Ministers, if the Scottish Ministers notify that person in writing that the Scottish Ministers so require, that

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

person is to provide any specified relevant information including medical evidence that is in that person's possession or which that person can reasonably be expected to obtain.

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

New regulation 21A

8. After paragraph 21 (payment to personal representatives) insert—

“Notification requirements

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

- (a) notify the Scottish Ministers within 14 days, and in writing, of any change in the person's earnings or employment which affects that person's entitlement to, or the amount of, that benefit;
- (b) within 14 days of a request by the Scottish Ministers, provide the Scottish Ministers with information relating to any change relating to the commencement, cessation or reduction in the amount of a benefit referred to in regulation 4(6)(b); and
- (c) where he recovers any damages or compensation mentioned in regulation 17, provide, within 14 days of a right to and the amount of such damages or compensation finally being determined, written notice to the Scottish Ministers containing—
 - (i) the person's full name;
 - (ii) the person's national insurance number; and
 - (iii) the total amount of damages or compensation recovered.

(2) Where a person fails to comply with sub-paragraph (a), (b) or (c) of paragraph (1), no benefits shall be payable under these Regulations in respect of the period from the expiry of the 14th day referred to in that sub-paragraph until the date on which the Scottish Ministers receive the information required under that sub-paragraph, and where benefits have been paid to the person by the Scottish Ministers in respect of that period, the Scottish Ministers may withhold all or part of any further benefits payable to the person under these Regulations until an amount equal to the amount of the benefits paid in respect of that period has been recovered.”.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh
7th February 2013

We consent

DAVID EVENNETT

STEPHEN CRABB

Two of the Lords Commissioners of Her Majesty's Treasury

12th February 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

- regulation 3 amends regulation 3(1) so that the 1998 Regulations will apply only to a person who, while in relevant employment, sustains a relevant injury or contracts a relevant disease before 31st March 2013;
- regulation 4(2) amends regulation 4(1) to make it clear that all injury benefit claims must be made in accordance with regulation 18A;
- regulation 4(3), (5), (6) and (8) amends regulation 4(2), (3), (4) and (5) so that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits in relation to an injury sustained or a disease contracted before 31st March 2013 continue to apply from 31st March 2013 to 30th March 2018;
- regulation 4(4), (5), (7) and (9) insert paragraphs (2A) to (2C), (3A) to (3E), (4A), (4B) and (5A) to (5D) into regulation 4 so that the provisions for temporary injury allowance, partial and full permanent injury benefits and permanent injury benefits in relation to an injury sustained or a disease contracted before 31st March 2013 continue to apply from 31st March 2018 to 30th March 2038. However, during this period, the claimant must provide compelling evidence: evidence is compelling if it is reliable, its value is substantial and it is highly probative of the claim (regulation 4(12));
- regulation 4(10) amends regulation 4(6)(b) to add an injury allowance payable after 30th March 2013 in accordance with a person’s terms and conditions of employment, and regulation 4(12) inserts a definition of “injury allowance”;
- regulation 4(11) inserts regulation 4(6A) to make it clear that a benefit to which a claimant is entitled and which would normally be taken into account when calculating the amount of injury benefit payable, will not be ignored for that purpose solely because the claimant decides not to claim it;
- regulation 5(a) amends regulation 4A(1) so that it also applies where an allowance is paid or becomes payable under paragraph (5B) of regulation 4; and regulation 5(b) amends regulation 4A(2) so that it also applies where an allowance or lump sum is paid or becomes payable under paragraph (2B), (3A), (3D) or (4B) of regulation 4;
- regulations 6 substitutes a new provision for regulation 18A to make it clear that no entitlement to benefit arises in relation to claims made after 30th March 2038;
- regulation 7 inserts regulation 18B to set out the requirements for making a claim; and
- regulation 8 inserts regulation 21A to set out the periods within which certain information must be notified to the Scottish Ministers in relation to a claim, and the sanctions that apply in default.