
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

**The National Health Service Pension
Scheme (Scotland) Regulations 2008**

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.A

INTRODUCTION

General interpretation

Interpretation: general

2.A.1.—(1) In this Part—

“the 1978 Act” means the National Health Service (Scotland) Act 1978⁽¹⁾;

“the 1993 Act” means the Pension Schemes Act 1993⁽²⁾;

“the 1995 Act” means the Pensions Act 1995⁽³⁾;

“the 1995 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997⁽⁴⁾;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999⁽⁵⁾;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽⁶⁾;

“the 2004 Act” means the Finance Act 2004⁽⁷⁾;

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004⁽⁸⁾;

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see regulation 2.D.5(9) (partial retirement (members aged at least 55)));

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions

(1) 1978 c. 29.

(2) 1993 c. 48.

(3) 1995 c. 26.

(4) 1997 c. 46.

(5) 1999 c. 30.

(6) S.I.2003/1250. Article 8 was amended by S.I. 2007/3101, regulation 40(b).

(7) 2004 c. 12.

(8) S.S.I. 2004/115 as amended by S.S.I. 2004/215.

made under regulations 2.C.8 (member’s option to pay additional periodical contributions to purchase additional pension), 2.C.10 (member’s option to pay lump sum contribution to purchase additional pension) and 2.C.11 (payment of additional lump sum contributions by employing authority);

“additional services” has the meaning given in regulation 3.A.1 (interpretation of part 3: general);

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971⁽⁹⁾;

“base rate” means the Bank of England base rate—

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998⁽¹⁰⁾ is in force, any equivalent rate determined by the Treasury under that section;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act⁽¹¹⁾ (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and “buy out” must be read accordingly;

“capped transferred-in service” must be read in accordance with regulation 2.F.12 (meaning of “capped transferred-in service”);

“cash equivalent” is to be construed in accordance with Chapter 4 of Part 4 of the 1993 Act;

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3) (a) of that Order;

“certification services” means services related to the provision of the medical certificates listed in Schedule 3 (list of prescribed medical certificates) to the 2004 Regulations;

“collaborative services” means primary medical services provided by a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider under or as a result of an arrangement between—

- (a) Scottish Ministers or a Health Board; and
- (b) a local authority, under section 15(2)⁽¹²⁾ of the 1978 Act (supply of goods and services to local authorities, etc.), under which Scottish Ministers are or the Health Board is responsible for providing services for purposes related to the provision of health care;

“commissioned services” means services provided under a contract between—

- (a) a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider; and
- (b) either—
 - (i) a Special Health Board, which relates to the provision of health care; or
 - (ii) Scottish Ministers or a Health Board under section 16(1)(3) of the 1978 Act (assistance to voluntary organisations)⁽¹³⁾,

which is for the purposes of the health service;

⁽⁹⁾ 1971 c. 80. There are amendments to section 1 not relevant to these Regulations.

⁽¹⁰⁾ 1998 c. 11.

⁽¹¹⁾ Section 19 was amended by S.I. 2007/3014, regulation 2(a).

⁽¹²⁾ Section 15 was relevantly amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).

⁽¹³⁾ To which there are amendments not relevant to these Regulations.

“contracting Health Board” means–

- (a) in the case of a non GP provider who is–
 - (i) a partner in a partnership that–
 - (aa) is a GMS practice;
 - (bb) has entered into a section 17C agreement; or
 - (cc) is an HBPMS contractor and has entered into a contract for the provision of primary medical services;
 - (ii) a shareholder in a company limited by shares that is–
 - (aa) a GMS practice;
 - (bb) a section 17C agreement provider; or
 - (cc) an HBPMS contractor and has entered into a section 17C agreement for the provision of primary medical services; or
 - (iii) an individual who is a GMS practice, section 17C agreement provider or an HBPMS contractor,
the Health Board with which that partnership, company, practice, provider or contractor has entered into a contract or agreement referred to in those provisions;
- (b) in the case of a principal practitioner, the Health Board on whose medical performers list his or her name appears; and
- (c) in the case of an assistant practitioner or locum practitioner, the Health Board engaging the practitioner under a contract of services or for services and on whose medical performers list his or her name appears;

“contracting-out requirements” means the requirements mentioned in section 9(2) (requirements for certification of schemes)(**14**) of the 1993 Act;

“the contribution option period” has the meaning given in regulation 2.C.8(8) (member option to purchase additional pension);

“corresponding health service scheme” has the meaning given in regulation 2.F.11(7) (calculation of transferred-in pensionable service);

“deferred member” has the meaning given in section 124(1)(**15**) (interpretation of Part I) of the 1995 Act and except where the context requires otherwise, refers to membership of the scheme (but see paragraph (3) and regulation 2.D.5(9) (partial retirement (member aged at least 55)));

“dental list” means a list prepared in accordance with regulations made under section 25(2)(a) (arrangements for provision of general dental services) of the 1978 Act;

“dentist” means a registered dental practitioner;

“dependent child” is to be construed in accordance with regulation 2.E.9 (meaning of “dependent child”);

“dispensing services” means the provision of drugs, medicines and such appliances which are included in the list prepared by Scottish Ministers under section 27(1) (arrangements for provision of pharmaceutical services)(**16**) of the 1978 Act;

“employing authority” means–

(14) There are amendments to section 9 not relevant to these Regulations.

(15) There are amendments to section 124 not relevant to these Regulations.

(16) Section 27(1) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66 and Schedule 9, paragraph 19.

- (a) a Health Board, Special Health Board or NHS National Services Scotland (established under sections 2(17) and 10(18) of the 1978 Act);
- (b) the Mental Welfare Commission for Scotland established under section 4 (the Mental Welfare Commission for Scotland) of the Mental Health (Care and Treatment) (Scotland) Act 2003(19);
- (c) an OOH provider;
- (d) an HBPMS contractor;
- (e) a GMS practice;
- (f) a section 17C agreement provider;
- (g) any other body constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme; or
- (h) in relation to a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(20) and subject to such modifications to these Regulations as the Scottish Ministers may in any particular case direct, any employer of such a person whom the Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations;

“employment” includes an office or appointment (other than an honorary office or appointment), and related expressions are to be read accordingly;

“enhanced services” with regard to—

- (a) a GMS practice, has the same meaning given in regulation 2(1) (interpretation) of the 2004 Regulations; and
- (b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of the 2004 Regulations;

“essential services” means services required to be provided in accordance with regulation 15 (essential services) of the 2004 Regulations;

“GMS contract” means a contract under section 17J of the 1978 Act(21) (health boards' power to enter into general medical services contract);

“GMS practice” means—

- (a) a registered medical practitioner;
- (b) 2 or more individuals practising in partnership; or
- (c) a company limited by shares,

with whom a Health Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a GP registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services or certification services (or a combination of those services)—

- (a) under a GMS contract, section 17C agreement or HB PMS contract;

(17) Section 2 was amended by the National Health Service and Community Care Act 1990, sections 28, 66 and Schedules 9 and 10, the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), schedule 2 and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), schedule 2.

(18) Section 10 was amended by the Health Act 1999 (c. 8), section 65 and Schedule 4, the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), schedule 2, and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), schedule 2.

(19) asp 13.

(20) 1967 c. 28. There are amendments to section 7 not relevant to these Regulations.

(21) Section 17J is prospectively inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.

- (b) on behalf of an OOH provider; or
- (c) under a contract of service or for services with a Health Board which relates to arrangements under which it provides services under section 2C of the 1978 Act (functions of Health Boards: primary medical services)(22)–

“GP registrar” means a practitioner who is being trained in medical practice by–

- (a) until the coming into force for all purposes of article 4(5)(d) (education and training to the award of a Certificate of Completion of Training) of the 2003 Order, a general medical practitioner who–
 - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 (approval of trainers) of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(23); and
 - (ii) performs primary medical services; and
- (b) from the coming into force for all purposes of that article, a general medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) (minimum requirements for general practice training) of the 2003 Order, whether as part of training leading to the award of CCT or otherwise”.

“GP trainer” means a registered medical practitioner who is approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“the guarantee date” has the meaning given in regulation 2.F.2(2) (applications for statement of entitlement);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 2.F.3 (application for transfer value payments: general);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 (earner’s guaranteed minimum) or 17 (minimum pensions for widows and widowers) of the 1993 Act as the case may be;

“HBPMS contract” means arrangements for the provision of services in accordance with section 2C(2) of the 1978 Act between a Health Board and a HBPMS contractor;

“HBPMS contractor” means a person with whom a Health Board has made arrangements under section 2C(2) (functions of health boards: primary medical services) of the 1978 Act, but only if that person is also a person who would be eligible to enter into a GMS contract or a section 17C agreement for the provision of primary medical services and has not entered into such a GMS contract or section 17C agreement;

“the health service” has the meaning given in section 108 (interpretation and construction) of the 1978 Act(24);

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the 2004 Act(25);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)(26);

(22) Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#) section 1, and amended by the National Health Service Reform (Scotland) Act 2004, schedule 1, paragraph 1.

(23) S.I. 1998/5. Regulation 7 was amended by S.I. 1998/669.

(24) To which there are amendments not relevant to these Regulations.

(25) 2004 c. 12.

(26) 1994 c. 39, amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22 and S.I. 1996/186, article 2.

“locum practitioner” has the meaning given in regulation 3.A.1(1) (interpretation of Part 3: general);

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992(27);

“lower tier ill health pension” must be read in accordance with regulation 2.D.8 (early retirement on ill health: active members);

“lump sum rule” has the meaning given in section 166 (lump sum rule) of the 2004 Act(28);

“lump sum death benefit rule” has the meaning given in section 168 (lump sum death benefit rule) of the 2004 Act(29);

“medical performers list” means a list prepared by a Health Board pursuant to regulation 4(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004(30);

“member”, except where the context otherwise requires, means an active member, a deferred member, a pensioner member or a pension credit member;

“NHS dental employee” means an individual who is not a practitioner and who, in connection with the provision of dental health services in the health service, is employed under a contract of service by a Health Board;

“non GP provider” in these regulations applies as if he or she were a whole time officer and 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 Scottish Ministers that he or she assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services–
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an HBPMS contractor that has entered into an HBPMS 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 Scottish Ministers that he or she 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 section 17C provider or an HBPMS contractor that has entered into a section 17C agreement or an HBPMS contract for the provision of primary medical services, but who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that company; and

(27) 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and amended by section 7(1) to (3) of the Pensions Act 2007 (c. 22).

(28) Section 166 was amended by the Finance Act 2007 (c. 11), Schedule 20, paragraph 9.

(29) Section 168 was amended by the Finance Act (c.11), Schedule 20, paragraph 9.

(30) S.S.I. 2004/114.

- (e) an individual who is a section 17C provider or an HBPMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she participates in the provision of NHS services,

and these Regulations will apply as if that non GP provider were a whole time officer;

“NHS employment” means employment with an employing authority;

“the NHS superannuation scheme for Scotland 1995” means the scheme set out in the 1995 Regulations;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 (categories of pension schemes)(31) of the Pension Schemes Act 1993 which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 2.F (transfers); and

- (b) in the case of such a scheme established before that date, was—

(i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration;

(ii) a statutory scheme as defined in section 612(1)(32) of the Income and Corporation Taxes Act 1988 (interpretation); or

(iii) a scheme to which section 608(33) of the Income and Corporation Tax Act 1988 applied (superannuation funds approved before 6th April 1980),

and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“officer” means a person (other than a GP performer or dentist employed by an employing authority) and includes a GP Registrar and a non GP Provider;

“OOH provider” has the meaning given in regulation 2.A.15 (out of hours providers);

“OOH services” has the meaning given in regulation 3.A.1 (interpretation of part 3: general);

“opting-out” and related expressions are to be construed in accordance with regulation 2.B.5 (opting out of the scheme);

“pay period” means—

- (a) in relation to a member who receives regular payments for his or her service under a contract for services or contract of employment means the period in respect of which each payment of salary wages or fees is made in accordance with that contract; and

- (b) in all other cases any period of 3 months ending on the last day of March, June, September or December;

“pensioner member” has the meaning given in section 124(1) (interpretation of part 1)(34) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see paragraphs (3) and (4) and regulation 2.D.5(9) (partial retirement (members aged at least 55)));

“pensionable earnings” has the meaning given in regulation 3.A.7 (meaning of “pensionable earnings”) (read with regulation 3.A.8 (pensionable earnings: breaks in service));

(31) Section 1 was amended by S.I. 2007/3014, regulation 2(b).

(32) Section 612 was repealed by the 2004 Act Schedule 42, paragraph 1.

(33) Section 608 was repealed by the 2004 Act, Schedule 42, paragraph 1.

(34) To which there are amendments not relevant to these Regulations.

“pensionable employment” means employment as an officer which is pensionable under this part;

“pensionable pay” has the meaning given in regulation 2.A.8 (meaning of “pensionable pay”) (read with regulation 2.A.9 (pensionable pay: breaks in service));

“pensionable service” has the meaning given by regulations 2.A.2 (meaning of “pensionable service”) and 2.A.3 (meaning of “pensionable service”: part-time service) (read with regulation 2.A.4 (pensionable service: breaks in service));

“pension credit” means a credit under section 29(1)(b) (creation of pension debits and credits) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B of the 1993 Act;

“pension credit member” has the meaning given by section 124(1) of the 1995 Act;

“pension credit rights” has the meaning given by section 101B (interpretation)(35) of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1)(36) (activation of pension sharing) of the 1999 Act;

“personal pension scheme” means a personal pension scheme which—

- (a) in the case of such a scheme established on, or after 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 2.F; and
- (b) in the case of such a scheme established before that date, was—
 - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes); and
 - (ii) on 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;

“practice staff” means a person (other than an assistant practitioner, principal practitioner, GP registrar or non GP provider) employed by a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider to assist in the provision of the services they provide;

“practitioner” means—

- (a) a registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer; or
- (b) a registered dentist,

but excludes a person who is paid wholly by way of salary by a Health Board;

“preservation requirements” means the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

“public sector transfer arrangements” means arrangements approved by the Scottish Ministers as providing reciprocal arrangements for the payment and receipt of transfer values between the scheme and other occupational pension schemes;

“qualifying service” has the meaning given in regulation 2.A.5 (meaning of “qualifying service”) (read with regulation 2.A.6 (qualifying service: disregard of breaks in service));

“recent leaver” has the meaning given in regulation 2.E.6(3) (recent leavers);

(35) To which there are amendments not relevant to these Regulations.

(36) Section 28 was amended by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraph 159.

“reckonable pay” has the meaning given in regulation 2.A.10 (meaning of “reckonable pay”: general) (read with 2.A.11 (adjustments for inflation in determining reckonable pay under regulation 2.A.10) to 2.A.14 (meaning of “reckonable pay”: concurrent part time employments));

“registered” means registered under Chapter 2 of Part 4 of the 2004 Act;

“retail prices index” has the meaning given in section 989 (the definitions) of the Income Tax Act 2007(37);

“safeguarded percentage” has the meaning given by section 68A(3) (safeguarded rights) of the 1993 Act(38);

“safeguarded rights” has the meaning given by section 68A(1) of the 1993 Act;

“salaried dentist” means a dentist employed by a Health Board who undertakes to provide general dental services at a health centre, hospital or from any vehicle or moveable facility;

“the scheme” means the scheme the rules of which are set out in this Part;

“the scheme actuary” means the actuary appointed by the Scottish Ministers for the time being to provide a consulting service on actuarial matters relevant to these Regulations;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March;

“section 17C agreement” means an agreement made under section 17C(39) of the 1978 Act;

“section 17C agreement provider” means any person or body who is providing primary medical services in accordance with a section 17C agreement;

“State pension age” means pensionable age, as defined in section 181(1) (general interpretation)(40) of the 1993 Act;

“tax year” means a year of assessment for income tax purposes;

“temporary additional session” has the meaning given in regulation 2.A.8(5);

“trade dispute” has the meaning given in section 35(1) (interpretation) of the Jobseekers Act 1995(41);

“upper tier ill health pension” must be read in accordance with regulation 2.D.8 (early retirement on ill health: active members); and

“whole-time”, in relation to an employment that is comparable to one or more part time employments, has the meaning given by paragraph (4).

(2) In determining whether a person who is an active member or a pensioner member of the scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.

(3) In determining whether a person is a pensioner member of the scheme, the fact that the person is not entitled to payment of pension because of Chapter 2.H (abatement) is to be disregarded.

(4) For the purposes of this Part—

(a) an employment that is comparable to a part-time employment that is not held concurrently by a person with any other such employment is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the part-time employment; and

(37) 2007 c. 3.

(38) Section 68A was inserted by the 1999 Act. There have been amendments not relevant to these Regulations.

(39) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2).

(40) To which there are amendments not relevant to these Regulations.

(41) 1995 c. 18. There are amendments to section 35 not relevant to these Regulations.

- (b) an employment that is comparable to 2 or more part-time employments that are held concurrently by a person is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the 2 or more part time employments.

Pensionable service

Meaning of “pensionable service”

2.A.2.—(1) In this Part, references to a member’s pensionable service, are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to the scheme under regulation 2.C.1 (contributions by members);
- (b) any period of absence from service which counts as pensionable service under regulation 2.A.4; and
- (c) any period of service credited to the member as pensionable service under Chapter 2.F (transfers).

(2) A member’s pensionable service does not include—

- (a) any period of service in respect of which the Scottish Ministers have paid contributions to another occupational pension scheme in respect of the member;
- (b) in the case of a pensioner member or deferred member, any period taken into account—
 - (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the deferred pension; or
 - (ii) in calculating the amount of that pension,

but, in the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement (members aged at least 55)) subject to paragraph (6);

- (c) any period of service in respect of which the Scottish Ministers' liability to provide benefits is discharged—
 - (i) by the payment of a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act;
 - (ii) under regulation 2.C.18 (repayment of contributions); or
 - (iii) by the payment of a transfer value payment on transfer out under Chapter 2.F (transfers); or
- (d) any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.

(3) A member’s pensionable service must not exceed 45 years unless—

- (a) the member gives notice in writing to the Scottish Ministers and the member’s employing authority of an intention to remain in pensionable service beyond 45 years; and
- (b) that notice is received by the Scottish Ministers and the member’s employing authority—
 - (i) not earlier than 3 months before the member reaches 45 years pensionable service; and
 - (ii) by the end of the pay period during which the member reaches the 45 year limit.

(4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—

- (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service; and
 - (b) the Scottish Ministers must select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—
- (a) the member’s pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made; and
 - (b) the payment is treated as the member’s pensionable pay for that period.
- (6) In the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement (members aged at least 55)), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation 2.D.5(6)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (7) Regulation 2.A.3 makes further provision where service is in part-time employment.

Meaning of “pensionable service”: part-time service

- 2.A.3.—**(1) Subject to paragraphs (2) to (6) the number of days of a member’s pensionable service in part-time employment for a period is calculated by multiplying the total hours of employment during the period by 7, and dividing by the number of hours of employment per week for a comparable whole-time employment.
- (2) If the part-time employment is for a specified number of sessions per week, subject to paragraphs (3) to (6)—
- (a) paragraph (1) does not apply; and
 - (b) the number of days of the member’s pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.
- (3) If during the period for which a part-time employment is held there is an alteration—
- (a) in the case of an employment to which paragraph (1) applies, in the number of hours of employment per week for a comparable whole-time employment; or
 - (b) in the case of an employment to which paragraph (2) applies, in the number of specified sessions per week or the length of those sessions for a comparable whole time employment,
- separate calculations must be made under paragraph (1) or, as the case may be, paragraph (2) for the periods before and after the alteration.
- (4) If, apart from this paragraph, a member’s pensionable service in respect of the part time employments held for a period, calculated in accordance with paragraph (1) or (2), would exceed that period, the excess is ignored.
- (5) Paragraphs (1) and (2) do not apply for the purposes of regulation 2.A.2(3) (meaning of “pensionable service”), and for those purposes part-time employments held concurrently are treated as a single employment.
- (6) Temporary additional sessions are ignored in calculating a member’s pensionable service in a part time employment.

Pensionable service: breaks in service

- 2.A.4.—**(1) Paragraph (2) applies if a member is absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave.

(2) The period of absence counts as pensionable service if the member contributes to the scheme under regulation 2.C.1 (contributions by members) in respect of the period of absence.

(3) If–

- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e); and
- (b) the member contributes to the scheme under regulation 2.C.1 by contributions made at the same intervals as those made by the member before the absence,

so much of the period of absence beginning with the first day of absence as is a period in respect of which the conditions in sub-paragraphs (a) and (b) are met counts as pensionable service.

(4) This paragraph applies if a person–

- (a) ceased to be an active member because of–
 - (i) ceasing to be employed in an employment in which the person is eligible to be such a member; or
 - (ii) exercising the option under regulation 2.B.5 (opting out of the scheme); and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

(5) If paragraph (4) applies, the person’s pensionable service before the person ceased to be an active member and after the person became such a member again is treated as a single continuous period of pensionable service, unless paragraph (6) applies.

(6) This paragraph applies if–

- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member;
- (b) the person has received a repayment of contributions under regulation 2.C.18 (repayment of contributions) in respect of that service (but see paragraph (8)); or
- (c) the person’s rights under the scheme in respect of that service have been extinguished under regulation 2.F.7 (effect of transfers out) because a transfer value payment has been made in respect of them.

(7) In the case of a member who leaves pensionable service whilst the person is absent from work because of–

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave,

this regulation applies as if the reference to 12 months in paragraph (4)(b) were a reference to 3 years.

(8) Paragraph (6)(b) does not apply if the person repays to the Scottish Ministers any contributions repaid to the person as mentioned in that paragraph, together with any interest paid to the person on those contributions, before the expiry of the period of 6 months beginning with the date on which the person becomes an active member again.

(9) Where paragraph (5) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 2.G (re-employment and rejoining the scheme).

Qualifying service

Meaning of “qualifying service”

2.A.5.—(1) In this Part, references to a member’s qualifying service, are references to the aggregate of the following periods—

- (a) the member’s pensionable service under this Part other than such pensionable service as is referred to in regulation 2.A.2(1)(c) (transferred-in service);
- (b) in the case of a person in respect of whom a transfer value in respect of his or her rights under another pension arrangement has been accepted under Chapter 2.F (transfers), a period equal to the person’s period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) in the case of a person who—
 - (i) became an active member on the transfer of the person’s employment to a new employer as the result of a transfer of an undertaking to that employer; and
 - (ii) has rights under another occupational pension scheme to which the person was eligible to belong in the person’s employment with the former employer, in respect of which no transfer payment has been accepted under regulation 2.F.10 (acceptance of transfer value payments),
the period of employment that qualified the member for those rights;
- (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 2.A.6; and
- (e) where the member ceased to be an active member under Part 3 less than 12 months before becoming a member under this Part, any period of qualifying service under Part 3.

(2) Paragraph (3) applies if a member who is employed on a casual basis—

- (a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding 3 months; and
- (b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.

(3) For the purposes of this Part the member—

- (a) is treated as continuing to be in qualifying service during the break; and
- (b) as not being required to rejoin the scheme on re-entering the employment.

(4) For the other rules applying where there is a short break in service, see regulation 2.A.6.

(5) If—

- (a) a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in a case where regulation 2.D.13(5) (exceptions to requirement that NHS employment must have ceased) applies; and
- (b) the member has elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member,

the pensionable service in respect of which that pension is calculated is treated as qualifying service in relation to any employment in respect of which rights to benefits continue to accrue.

(6) In determining the service that is pensionable service for the purposes of this regulation, regulation 2.A.3 (meaning of “pensionable service”: part-time service) does not apply, but for those purposes part-time employments held concurrently are treated as a single employment.

Qualifying service: disregard of breaks in service

2.A.6.—(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 2.A.5(2) applies).

(2) Subject to paragraph (6), if the interval—

- (a) does not exceed one month; or
- (b) is due to a trade dispute,

the member’s qualifying service before and after the interval is treated as continuous for the purpose of calculating the member’s qualifying service after the interval (but the period of the interval is ignored).

(3) For the purposes of paragraph (2) it does not matter if the member’s pensionable service before the interval is treated separately from that after the interval for the purpose of calculating the member’s benefits.

(4) Subject to paragraph (6) if—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to the scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment; and
- (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

qualifying service in the earlier employment is treated as a single continuous period of qualifying service with that in the later employment.

(5) Subject to paragraph (6) if—

- (a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service; and
- (b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

qualifying service in the earlier period of active membership is treated as a single period of qualifying service with that in the later period of such membership.

(6) Paragraphs (2), (4) and (5) do not apply if—

- (a) the person has received a repayment of contributions under regulation 2.C.18 (repayment of contributions) in respect of the earlier period (but see paragraph (7)); or
- (b) the person’s rights under the scheme in respect of that period have been extinguished under regulation 2.F.7 (effect of transfer out) because a transfer value payment has been made.

(7) Paragraph (6)(a) does not apply if the person repays to the Scottish Ministers any contributions repaid to the person as mentioned in that paragraph together with any interest on those contributions, before the expiry of the period of 6 months beginning with the date on which the member becomes a member again.

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval; and

(b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 2.A.4(5) or regulation 2.G.3(2)(a) (exception to general rule in regulation 2.G.2), the period of pensionable service in respect of which the member is a deferred member or a pensioner member is treated as qualifying service in relation to the period after the interval.

Calculating service

Calculation of periods of membership or service

2.A.7.—(1) References in this Part to any period expressed in days are references to the period in question, ignoring 29th February, expressed in days.

(2) For the purposes of the scheme, and except where provided otherwise in this Part, periods of service are to be expressed in the first instance in complete days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

(3) If, when all periods of service that require to be aggregated have been aggregated, there is any excess part day over the number of whole days, that excess is rounded up to a full day.

(4) If service is referred to as service in years and days—

- (a) the days referred to in paragraph (2); and
- (b) the full days referred to in paragraph (3),

are converted into years and days on the assumption that a year contains 365 days.

(5) If service is referred to as service in years—

- (a) the days referred to in paragraph (2); and
- (b) the full days referred to in paragraph (3),

are converted into years by dividing the number of days by 365, and using the result to 4 decimal places.

Pensionable pay

Meaning of “pensionable pay”

2.A.8.—(1) In this Part, subject to the following provisions of this regulation, “pensionable pay” means all salary, wages, fees and other regular payments made to a person in respect of employment in which the person is an active member of the scheme.

(2) In the case of a member who, in addition to one or more such employments, holds an honorary office or appointment, any distinction award payable to the member as a consequence of holding the honorary office or appointment, is treated—

- (a) in the case of a member in one such employment, as pensionable pay of that employment; and
- (b) in the case of a member in 2 or more such employments, as pensionable pay of such of those employments as the Scottish Ministers consider appropriate.

(3) “Pensionable pay” does not include—

- (a) bonuses;
- (b) payments made to cover expenses; or
- (c) payments for overtime.

(4) If–

- (a) a person is an active member in respect of 2 or more part-time employments; and
- (b) in the opinion of the Scottish Ministers, the total pensionable pay for the employments (apart from this paragraph) exceeds the amount that would be the pensionable pay for a comparable whole time employment, not held concurrently with any other employment under which services of the kinds performed in the 2 or more part-time employments are performed,

the excess pensionable pay is ignored for the purposes of this Part.

(5) In the case of a non GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less any sum on account of practice expenses (for these purposes, contributions payable under regulation 2.C.1(5) or (6) (contributions of members) are neither practitioner income nor practice expenses).

(6) For the purposes of this regulation, the practitioner income of a non GP provider means income that accrues to the non GP provider which is derived from–

- (a) a GMS contract;
- (b) a section 17C agreement;
- (c) an HBPMS contract;
- (d) payments from, or to, a practitioner who is a GMS practice, a section 17C agreement practice or an HBPMS contractor in respect of the performance of certification services, commissioned services or collaborative services.

(7) In the case of a non GP provider who is in partnership with a principal medical practitioner practising in partnership, the pensionable earnings of each non GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each partner (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the scheme) and, subject to paragraph (8), dividing the total equally by reference to the number of such partners.

(8) If the non GP providers and any principal medical practitioners who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(9) The calculations described in paragraph (8) will be made by the Health Board or someone appointed on its behalf to which the partners are required to give notice of their election in accordance with paragraph (10).

(10) Non GP providers and any principal medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their contracting Health Board or someone appointed on its behalf, in accordance with paragraph (11).

(11) A notice given under this regulation–

- (a) must be signed by all the non GP providers and principal medical practitioners in the partnership and must state as a fraction each non GP provider's and practitioner's share in the partnership profits;
- (b) will take effect–
 - (i) from the date agreed between the partners and the Health Board concerned; or
 - (ii) if no agreement is reached, a date decided by the Scottish Ministers;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership; and
- (d) will be automatically cancelled upon a change in the members of the partnership.

Pensionable pay: breaks in service

2.A.9.—(1) Paragraph (2) applies if a member is absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave,

and the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced or cease.

(2) For the purposes of this Part (apart from regulations 2.C.1 (contributions of members) and 2.C.2 (members' contribution rate), and subject to paragraph (3), amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are treated as having been paid to the member.

(3) Paragraph (2) does not apply to a member falling within paragraph (1)(a) as respects any period after the earnings used to calculate the member's pensionable pay under regulation 2.A.8 have ceased to be paid to the member.

(4) For the purposes of regulations 2.C.1 and 2.C.2, if for any period whilst the member falls within—

- (a) paragraph (1), the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, amounts equal to the reduced earnings are treated as pensionable pay; and
- (b) paragraph (1)(b) to (e), the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, during any period following that period whilst the member continues to fall within that paragraph and no such earnings are paid, amounts equal to the reduced earnings are treated as pensionable pay.

(5) For the purposes of paragraph (4)(b), any pay received by a woman on maternity leave in respect of any days during which the member returns to work for the purposes of keeping in touch with the workplace is to be ignored.

(6) For the purposes of this Part, during any period of absence which counts as pensionable service under regulation 2.A.4(3) (up to 6 months' leave of absence with full contributions) amounts equal to the rate of the member's pensionable pay immediately before the absence are treated as pensionable pay.

(7) In the case of a non GP provider—

- (a) who is one of a number of non GP providers or practitioners who have elected as described in regulation 2.A.8(9), each non GP provider's or practitioner's pensionable earnings will be calculated as if the partnership's aggregate pensionable pay were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased; and
- (b) except where the non GP provider's pensionable pay falls to be calculated as described in sub paragraph (a), the non GP provider will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his or her earnings were reduced or ceased.

(8) If the earnings used to calculate a non GP provider's pensionable pay cease during a period of absence to which this regulation applies, a non GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (7)(a) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the non GP provider actually leaves pensionable employment.

(9) For the purposes of paragraph (8), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (4)(a) had the non GP provider's reduced earnings excluded any earnings for a day during which the non GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(10) If a non GP provider fails to pay any contributions which are required to be paid to the scheme in respect of a period of absence to which this regulation applies, the non GP provider will be treated as having left pensionable employment except that no refund of contributions or other benefit is payable unless the non GP provider actually leaves pensionable employment.

(11) If a non GP provider to whom paragraph (7) applies—

- (a) leaves pensionable employment; or
- (b) by virtue of paragraph (7)(a) or (8), is treated as having left pensionable employment, without becoming entitled to a preserved pension,

then if the non GP provider later returns to pensionable employment regulation 2.A.4(4) (pensionable service: breaks in service) will apply as if the reference to 12 months was a reference to 3 years.

(12) The benefits payable on the death of a non GP provider whose earnings ceased during a period of absence to which paragraph (7) applies will be calculated as if the non GP provider had died in pensionable employment on the day before the non GP provider's earnings ceased.

Reckonable pay

Meaning of “reckonable pay”: general

2.A.10.—(1) This regulation applies for the purpose of determining the meaning of “reckonable pay”, in relation to—

- (a) a member whose active membership ceases; or
 - (b) a member becoming entitled to the immediate payment of a pension during the member's active membership period—
 - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55); or
 - (ii) under regulation 2.D.1(1)(b)(ii) (normal retirement pensions).
- (2) This regulation is subject to regulations 2.A.11 to 2.A.14.
- (3) A member's “reckonable pay” is determined by the formula—

$$IRP \times \frac{RP_a}{RP_i}$$

where—

IRP is the interim reckonable pay determined in paragraph (6) or (7), as appropriate;

RP_a is the annual rate of retirement pension that the member would be entitled to if the interim reckonable pay included the adjustment for inflation described in regulation 2.A.11; and

RP_i is the annual rate of retirement pension the member would be entitled to if the interim reckonable pay did not include the adjustment for inflation described in regulation 2.A.11 but instead had been increased by the amount that it would have been increased if it had been the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971.

(4) If the period of the member's pensionable service ending with the relevant day equals 365 days, “interim reckonable pay” means the member's pensionable pay for that period.

(5) In this regulation—

(a) “the relevant day” means—

- (i) in a case within paragraph (1)(a), the day on which the member’s active membership ceases; and
- (ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension; and

(b) “the best consecutive 1095 day period” shall be determined by comparing—

- (i) the period of 1095 days immediately preceding the relevant day (period 1);
 - (ii) the period of 1095 days which overlaps period 1 by 730 days (period 2); and
 - (iii) the period of 1095 days which overlaps period 2 by 730 days,
- and so on.

(6) Except where paragraph (4) or (7) applies, in this regulation “interim reckonable pay” means one third of the member’s pensionable pay for the period of 1095 days—

(a) that begins—

- (i) during the member’s pensionable service; and
- (ii) within the period of 10 years ending with the relevant day; and

(b) for which the member’s pensionable pay was the highest (“the best consecutive 1095 day period”).

(7) If the member’s pensionable service within the period of 10 years ending with the relevant day—

- (a) is less than 365 days; or
- (b) exceeds 365 days but is less than 1095 days,

“interim reckonable pay” means the member’s pensionable pay for the period of the member’s pensionable service, divided by the number of days in that period and multiplied by 365.

(8) Paragraph (9) applies if 2 or more periods of pensionable service are treated as a single continuous period of pensionable service under—

- (a) regulation 2.A.4(5); or
- (b) regulation 2.G.3(2) (exception to general rule in regulation 2.G.2).

(9) The reference in—

- (a) paragraph (4) to a period of pensionable service equalling 365 days;
- (b) paragraph (5) to a period of 1095 days; and
- (c) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,

are references to periods together amounting to periods of that length, disregarding any breaks during the single period.

(10) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) despite being entitled to a pension under regulation 2.D.11 (early retirement on termination of employment by employing authority).

(11) If—

- (a) a person’s reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person’s pensionable pay for any period in respect of an employment; and

- (b) the person held that employment concurrently during that period with another employment in which the person was an active member,

the member's pensionable pay for that period in the other employment must be taken into account in that determination.

Adjustments for inflation in determining reckonable pay under regulation 2.A.10

2.A.11.—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 2.A.10(4);
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.10(6); or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.10(7),

the amount of pensionable pay is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting the amount of pensionable pay for inflation, is a reference to increasing the member's pensionable pay (for a specified period or periods) by an amount equal to the amount by which, at the relevant day, an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971 first qualifying for an increase under that Act on the same day as the specified period, or periods, ended, would have been increased (if at all).

(3) In this regulation—

- (a) “specified period” means any single scheme year falling in the period, or periods, referred to in regulation 2.A.10(4), (6) or (7); and
- (b) “the relevant day” has the meaning given in regulation 2.A.10(5).

Restriction on pensionable pay used for calculating benefits in respect of capped transferred in service

2.A.12.—(1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under the scheme as falls to be calculated by reference to capped transferred in service.

(2) If a member's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any calculation mentioned in paragraph (1).

(3) In this regulation “permitted maximum” means—

- (a) in relation to the tax year 2008–09, £117,600; and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2009 10 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at in the following way—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(5) If the retail prices index for the month of September preceding the tax year 2009 10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation—

- (a) “capped transferred-in service” has the meaning given by regulation 2.F.12 (meaning of capped transferred-in service); and
- (b) “pensionable pay” has the meaning given by regulation 2.A.8.

Meaning of “reckonable pay”: non-concurrent part-time employment

2.A.13.—(1) This regulation applies if a member’s reckonable pay falls to be determined under regulation 2.A.10 by reference to the member’s pensionable pay for any period for a part time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) Subject to paragraph (4), the member’s reckonable pay for that period in respect of the part time employment is the amount that would have been paid in respect of that employment for that period if it had been a whole time employment not held concurrently with any other employment.

(3) For the purposes of paragraph (2) it is assumed that the same rate of pay per hour or session (or part of an hour or session) is paid for the whole-time employment as is paid per hour or session (or part of an hour or session) for the part-time employment.

(4) If, in a case where, apart from this paragraph, paragraph (2) would apply, it appears to the Scottish Ministers that, by reason of exceptional circumstances, the application of the assumptions in paragraph (3) for the purposes of paragraph (2) would result in an excessive amount being paid under paragraph (2), that amount must be reduced by such amount as is in the opinion of the Scottish Ministers appropriate having regard to what would have been paid for that period in respect of a comparable whole-time employment.

(5) This regulation does not apply to the calculation of the reckonable pay of an active member or a pensioner member for the purposes of regulation 2.E.17(1) or (2) (lump sum payable on death of active or pensioner member).

Meaning of “reckonable pay”: concurrent part-time employments

2.A.14.—(1) This regulation applies if under regulation 2.A.10(11) a member’s reckonable pay falls to be determined by reference to the member’s pensionable pay for any period for 2 or more part time employments held concurrently during that period.

(2) The member’s reckonable pay for that period is calculated as follows—

Step 1—

calculate the reckonable pay for each of the employments under regulation 2.A.13 as if it were not held concurrently with any other such employment;

Step 2—

find the appropriate fraction for each of the employments (see paragraph (3)); and

Step 3—

add together the appropriate fraction of the reckonable pay for each of the employments as calculated at Step 1.

(3) Except where paragraph (4) applies, the appropriate fraction for an employment is—

$$\frac{HPW}{THPW}$$

where—

HPW is the number of hours per week of the employment; and

THPW is the total hours per week of both or all the employments.

(4) The appropriate fraction for an employment for a specified number of sessions per week is—

$$\frac{SPW}{TSPW}$$

where—

SPW is the number of sessions per week of the employment; and

TSPW is the total sessions per week of both or all the employments.

(5) If—

(a) one or more of the employments is an employment for a specified number of sessions per week; and

(b) one or more of the employments is not such an employment,

the denominator for the fractions given in paragraph (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Scottish Ministers may in any particular case determine.

Out of hours providers

2.A.15.—(1) For the purposes of these Regulations, an “OOH provider” is—

(a) a company limited by guarantee (which is not otherwise an employing authority)—

(i) in which all the members of the company are registered medical practitioners, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are—

(aa) HBPMS contractors, GMS practices or section 17C agreement providers whose HBPMS contracts, GMS contracts or section 17C agreements require them to provide OOH services; or

(bb) registered medical practitioners who are partners or shareholders in a HBPMS contractor, a GMS practice or section 17C agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or section 17C agreement;

(ii) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a section 17C agreement provider for the provision of OOH services; or

(iii) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf—

(aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;

(bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and

(cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or

(b) some other body corporate (which is not otherwise an employing authority) which—

(i) operates in the interests of, those who are the recipients of the primary medical services it provides, or the general public;

(ii) operates on a not for profit basis;

(iii) is not an associated company in relation to another person;

(iv) has memorandum or articles or rules which—

- (aa) prohibit the payment of dividends to its members;
 - (bb) require its profits (if any) or other income to be applied in promoting its objects; and
 - (cc) require all assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
- (v) has at least one member who is–
- (aa) an HBPMS contractor, GMS practice or a section 17C agreement provider;
 - (bb) a partner in a partnership which is an HBPMS contractor, GMS practice or a section 17C agreement provider; or
 - (cc) a shareholder in a company limited by shares that is a HBPMS contractor, GMS practice or a section 17C agreement provider;
- (vi) has a contract with a Health Board, an HBPMS contractor, GMS practice or section 17C agreement provider, for the provision of OOH services; and
- (vii) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf–
- (aa) pursuant to a written application made by the body to it for that purpose; and
 - (bb) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.

(2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person’s “associated company” if that person has control of it, except where that person is an employing authority, and for these purposes a person shall be taken to have control of a body corporate if they exercise, or are able to exercise, or are entitled to acquire direct or indirect control over its affairs.

(3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”).

(4) An application referred to in paragraph (3) may specify a date from which approval by the appointed Board (if given) has effect (“the nominated date”).

- (5) Where a company limited by guarantee or other body corporate makes an application and–
- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the date on which approval is actually given (“the approval date”); and
 - (b) it approves that application,

that approval takes effect on the later of the nominated date and approval date.

(6) NHS employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.

- (7) For the purposes of this regulation–
- (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
 - (b) the nominated date cannot be earlier than 1st April 2004.

(8) The appointed Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider–

- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation 3.C.4(2) (guarantees, indemnities and bonds);
 - (b) has ceased to satisfy the conditions for approval; or
 - (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of it–
 - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 (company voluntary arrangements) of the Insolvency Act 1986⁽⁴²⁾ (“the 1986 Act”);
 - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act;
 - (iii) a receiver, manager or administrative receiver has been appointed under Part III (receivership) of the 1986 Act;
 - (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part IV (winding up of companies registered under the Companies Acts) or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965⁽⁴³⁾; or
 - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX (winding up of companies registered under this Act or the former Companies Acts) of the Companies Act 1985⁽⁴⁴⁾.
- (9) An OOH provider–
- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event; and
 - (b) that wishes to cease to participate in the scheme must give the appointed Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (10) An OOH provider ceases to participate in the scheme on–
- (a) such date as the appointed Board may specify in notice under paragraph (8); or
 - (b) the day upon which the period referred to in paragraph (9)(b) expires where a notice under that paragraph has been given.

⁽⁴²⁾ 1986 c. 45.

⁽⁴³⁾ 1965 c. 12, section 58 was amended by S.I. 2000/3649, article 180.

⁽⁴⁴⁾ 1985 c. 6.