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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 2011**

**PART C**

**PENSIONABLE PAY, PENSIONABLE SERVICE AND QUALIFYING SERVICE**

**Meaning of “pensionable pay”**

**C1.**—(1) In these Regulations, “pensionable pay” means, subject to the provisions of this regulation—

- (a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, [<sup>F1</sup>pay awards and pay increases that are expressed by the Scottish Ministers to be non-consolidated,] payments made to cover expenses or payments for overtime; and
- (b) in respect of a non GP provider who, by virtue of regulation R1(3) of these Regulations is treated as an officer, pensionable earnings calculated in accordance with—
  - (i) paragraph 5 of Schedule 1; or
  - (ii) where the non GP provider is a practitioner in partnership, paragraph 6 of Schedule 1.

(2) Paragraphs (3) to (14) apply in respect of pensionable employment before 1st April 2008.

(3) Subject to paragraphs (4) and (7), any amount by which a member's pensionable pay exceeds the permitted maximum will be ignored when calculating the amount of any contributions or benefits payable under these Regulations.

(4) Subject to paragraph (5), in the case of a member who joined this Section of the scheme before 1st June 1989 pensionable pay in excess of the permitted maximum will not be ignored.

(5) In the case of a member who joined this Section of the scheme before 1st June 1989 and has a break in pensionable employment on or after that date—

- (i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;
- (ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored.

(6) Where a member who was eligible to be a member before 1st June 1989 becomes a member on or after that date by virtue of being a person to whom regulation B6 applies, any amount by which that member's pensionable pay exceeds the permitted maximum will not be ignored when calculating the amount of any contributions or benefits payable under these Regulations except in relation to a period following a break in pensionable employment on or after that date.

(7) For the purposes of paragraphs (4) and (6) no account shall be taken of a break in pensionable employment if—

- (a) the member returns to pensionable employment within 12 months after leaving;

- (b) the break is due to the member's secondment or posting to another employer and, at the time of the secondment or posting, the member has a definite expectation of returning to pensionable employment when the period of secondment or posting ends;
  - (c) the break is due to the member being engaged in other employment which is approved for this purpose by the Scottish Ministers;
  - (d) the break is due to the member's unpaid absence from work and the member returns to pensionable employment within one month after returning to work;
  - (e) the break corresponds to the member's absence from work wholly or partly because of pregnancy or confinement and the member returns to work after the break in exercise of her right under section 39(1)(a) of the Employment Protection (Consolidation) Act 1978<sup>M1</sup> and returns to pensionable employment no later than one month after returning to work; or
  - (f) the break is due to the member opting out of this Section of the scheme as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986<sup>M2</sup>.
- (8) Paragraphs (9) to (14) apply in respect of pensionable employment on, or after, 1st April 2008.
- (9) Subject to paragraph (10), pensionable pay in excess of the permitted maximum will not be ignored.
- (10) Pensionable pay in excess of the permitted maximum will be ignored in respect of additional service being bought under regulation Q1 (right to buy additional service) and an unreduced lump sum being bought under regulation Q2 (right to buy an unreduced retirement lump sum) if—
- (a) the member elected to make such a purchase under regulation Q6(3) (electing to buy additional service or unreduced retirement lump sum) from a birthday falling before 1st April 2008;
  - (b) the member's pensionable pay was restricted under paragraph (3) before that date; or
  - (c) the member's pensionable pay would have been restricted under that paragraph if it had exceeded the permitted maximum.
- (11) This regulation applies to a member in respect of whom a transfer payment has been accepted from a health service scheme in the same way as if the period of employment that qualified the member for benefits under the health service scheme had been pensionable employment.
- (12) Subject to paragraph (13), in these Regulations “final year's pensionable pay” means pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment, or dies, whichever occurs first, except—
- (a) if the member was in pensionable employment for less than 12 months, “final year's pensionable pay” means—

$$\frac{\text{Pensionable pay}}{\text{Number of days pensionable employment}} \times 365$$

- (b) if pensionable pay was greater in either or both of the two consecutive years immediately preceding the last year, “final year's pensionable pay” means pensionable pay in respect of the year immediately preceding the last year or, if greater, pensionable pay in respect of the first of those two consecutive years.
- (13) If the pensionable pay of a member credited with any period of pensionable service under regulation N3 (transfers made under the public sector transfer arrangements) or N6 (special terms for transfers in (bulk transfers etc.)) has exceeded the permitted maximum and either—
- (a) paragraph 20 of Schedule 6 to the Finance Act 1989<sup>M3</sup> applied to the member without the modification made by regulation 5 of the Retirement Benefits Schemes (Continuation

of Rights of Members of Approved Schemes) Regulations 1990<sup>M4</sup> in respect of benefits derived from all or part of that service under the transferring scheme; or

- (b) any equivalent scheme provision applied to the member in respect of all or part of that service when that person was a member of the transferring scheme from which the transfer was accepted,

that excess shall be ignored for the purposes of calculating the final year's pensionable pay under paragraph (12) in respect of the corresponding period of pensionable service credited under regulation N3 or N6.

(14) In this regulation, “permitted maximum” means—

- (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C<sup>M5</sup> of the Taxes Act; or
- (b) subject to paragraphs (15) and (16), the figure for any later year is £108,600.

(15) If the retail prices index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (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.

(16) If the retail prices index for the month of September preceding the tax year 2007-08 or the month of September preceding any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.

[<sup>F2</sup>(17) Where, having regard to the matters referred to in paragraph (18), the Scottish Ministers consider that the amount which would, but for their determination under this paragraph, constitute the member's final year's pensionable pay is inordinate, they may for the purposes of this regulation determine—

- (a) what the amount of that pensionable pay is to be; and
- (b) the date from which any change in the amount of that pay as a result of that determination is to take effect

(18) Those matters are—

- (a) any variations in the level of the member's pay during a period not exceeding ten years and ending with the later of the date the member ceases to be in pensionable employment or the date the member dies;
- (b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of sub-paragraph (a);
- (c) promotion and re-grading prospects pertaining in NHS employment for members of the same or an equivalent grade or post;
- (d) any other matters the Scottish Ministers consider relevant.

(19) Where the Scottish Ministers determine the amount of a member's pensionable pay pursuant to paragraph (17)—

- (a) the difference between the amount which would, but for the determination pursuant to paragraph (17), be the member's pensionable pay and the amount so determined pursuant to that paragraph, is to be ignored for the purposes of this regulation (“the ignored amount”);

- (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation D1 or Q6, or paragraph 14 or 31 of Schedule 1 are, net of any tax payable, to be refunded to that member;
- (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation D2 or paragraph 14 or 31 of Schedule 1, are to be refunded to that employing authority;
- (d) the amount so determined is not be regarded as an “excessive pay increase” for the purposes of regulation D3.]

#### Textual Amendments

- F1** Words in reg. C1(1)(a) inserted (with effect in accordance with reg. 1(4) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), 5
- F2** Reg. C1(17)-(19) inserted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), 5

#### Marginal Citations

- M1** [1978 c.44](#); section 39 was substituted by the [Trade Union Reform and Employment Rights Act 1993 \(c.19\)](#), Schedule 2.
- M2** [1986 c.60](#).
- M3** [1989 c. 26](#). Paragraph 20 of Schedule 6 was repealed by the 2004 Act, Schedule 42, paragraph 1.
- M4** [S.I. 1990/2101](#). Regulation 5 was repealed by implication on the repeal of the enabling provision subject to transitional provisions and savings by the 2004 Act, Schedule 42, paragraph 1.
- M5** Section 590C was repealed by the 2004 Act, Schedule 42, paragraph 1.

#### Meaning of “pensionable service”

**C2.**—(1) In these Regulations, for the purpose of calculating the amount of any benefit payable to or in respect of a member, “pensionable service” means, subject to paragraphs (2) and (3)—

- (a) any period of pensionable employment in respect of which the member contributes to this Section of the scheme under regulation D1 (contributions by members);
  - (b) any period of contributing service that was so reckonable under the 1995 Regulations;
  - (c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service, etc.) (Scotland) Regulations 1977 <sup>M6</sup> (reckoning war service as contributing service under the principal regulations);
  - (d) any period of additional service which the member has purchased under regulation Q1; and
  - (e) any period of pensionable service credited to the member under regulation N1(5) (member's right to transfer accrued rights to benefits to this Section of the scheme) or as a result of transfer payment to this Section of the scheme under regulation R7(2) (former members of health service schemes).
- (2) A member's pensionable service does not include—
- (a) any period of employment 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 member who has become entitled to a pension (including a preserved pension) under this Section of the scheme, any period that was taken into account for the purpose of determining whether that member was entitled to that pension, or for the purpose of calculating the amount of that pension;

- (c) any period of employment in respect of a temporary additional session;
- (d) any period of employment where contributions under regulation D1 have ceased;
- (e) any period in respect of which the Scottish Ministers have discharged their liability to provide benefits under regulation E15 (early leavers' entitlement to refund of contributions), Part M (transfer-out arrangements and buy-outs) and regulation K7 (state scheme premiums); and
- (f) in the case of practice staff any employment or portion of their employment which does not relate to the provision of services under a GMS contract, a section 17C agreement, an HBPMS contract or to the provision of OOH services.
- (g) in the case of a member who is not a special class officer, any period of pensionable service in excess of 40 years that relates to a period before—
  - (i) the member's 60th birthday; and
  - (ii) 1st April 2008.

(3) Pensionable service in respect of part-time employment will be calculated as described in regulation C4 (pensionable service in respect of part-time employment).

(4) Subject to paragraph (2), the benefits described in these Regulations will be calculated by reference to a maximum of—

- (a) 45 years' pensionable service in the case of a member who is not a special class officer; and
- (b) 45 years' pensionable service (of which only 40 years may relate to the period before the member reaches age 55) in the case of a member who is a special class officer,

and if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.

(5) Where the member has pensionable service in excess of the limits described in paragraph [F<sup>3</sup>(4)], the Scottish Ministers are to select those years, by reference to which the benefits are to be calculated, which produce the most favourable result to the member.

(6) If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken—

- (a) the member's pensionable employment will be treated, subject to paragraph (4), as continuing for a period equal to the period of leave for which payment is made; and
- (b) the payment will be treated as the member's pensionable pay for that period.

(7) In order to calculate the length of a member's pensionable service, all periods of pensionable service will be added and each resulting period of 365 days (without regard to pensionable service on 29th February in a leap year) will be treated as one year.

#### Textual Amendments

- F3** Word in reg. C2(5) substituted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 4](#)

#### Marginal Citations

- M6** [S.I. 1977/2138](#); amended by [S.I. 1981/1018](#).

### Meaning of “qualifying service”

**C3.**—(1) Where a member's entitlement to benefit is conditional on having a length of “qualifying service” specified in a regulation, “qualifying service” means the aggregate of the following:—

- (a) pensionable service under these Regulations, except for any period of additional service referred to in regulation Q1 (right to buy additional service);
  - (b) where a transfer payment has been accepted under Part N (transfers-in from other pension arrangements) in respect of the member's rights under another occupational pension scheme, a personal pension scheme or a buy-out policy, the period of employment that qualified the member for those rights;
  - (c) in the case of a person who—
    - (i) has become a member on the transfer of that person's employment to a new employer as a result of a transfer of an undertaking to that employer, and
    - (ii) has rights under another occupational pension scheme to which that person was eligible to belong in that person's former employment in respect of which no transfer payment has been accepted under regulations N1(4) or N6,
 the period of employment that qualified the member for those rights,
  - (d) any period reckonable as “service” under the 1995 Regulations; and
  - (e) any period of part-time pensionable service in accordance with regulation C4(11).
- (2) If a member leaves and subsequently returns to pensionable employment paragraphs (3) and (4) will apply for the purpose of calculating the member's qualifying service.
- (3) If the break between leaving and rejoining does not exceed one month or is due to a trade dispute, the member's pensionable service before and after the break will be treated as continuous (but excluding the break) for the purpose of calculating the member's qualifying service after the break, even if the member's pensionable service before and after the break is otherwise treated separately for the purpose of calculating the member's benefits.
- (4) If the member is entitled to a preserved pension under regulation E12 in respect of an earlier period of employment (whether or not the pension has become payable), and the periods of pensionable service before and after the break are not treated as continuous under regulation L1, the period of employment to which that pension relates will be treated as qualifying service.
- (5) Where a member who is employed on a casual basis—
- (a) ceases to pay contributions because of a break in the member's pensionable-employment of a period not exceeding three months, and
  - (b) re-enters pensionable employment on the same basis after the break,
- for the purposes of these Regulations the member is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin this Section of the scheme when the member re-enters pensionable employment.
- (6) If a pension becomes payable to a member under regulation E6 or E7 and the member has elected under regulation R4(4) to take a benefit only in respect of the employment that has ended, the pensionable service in respect of which that benefit is calculated will be treated as qualifying service in relation to the employment in respect of which benefits continue to accrue.

### **Pensionable service in respect of part-time employment**

**C4.**—(1) Subject to paragraphs (7) and (11), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.

(2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by the following fraction:—

$$\frac{\text{Number of half days or sessions}}{\text{comparable whole } \diamond?? \text{ time service}} \times 365.$$

(3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that pensionable service by the following fraction:—

$$\frac{\text{member ' s hours of employment each week}}{\text{hours constituting comparable whole } \diamond?? \text{ time employment .}}$$

(4) Subject to paragraph (6), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment and any amount by which the member's actual final year's pensionable pay in respect of part time employment exceeds the amount determined will be ignored.

(5) For the purposes of paragraph (4) “a single comparable whole-time employment” means the number of hours, half days or session which the Scottish Ministers determine would constitute comparable whole-time employment.

(6) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—

- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after becoming entitled to receive a pension); or
- (b) sub-paragraph (b) of the definition of previous pay in regulation S2(16) (reduction of pension for members who return to pensionable employment after becoming entitled to a pension).

(7) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2 (early retirement pension (ill health)), E3 (ill health pension on early retirement), E6 (early retirement pension (redundancy etc.)) or E7 (early retirement pension (redundancy etc., new starters and post-transition))—

- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating—
  - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 or E3 is based should be increased under either of those regulations; or
  - (ii) the qualifying service for the purposes of regulation E6(2)(a) or regulation E7(2)(a); and
- (b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2 or E3, the increase under either of those regulations will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole-time equivalent bears to comparable whole-time employment.

(8) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 3 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction:—

*part-time pensionable employment*

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*comparable whole-time pensionable employment*

where—

“part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under the member's contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 3 or regular additional contributions were paid in accordance with regulation Q5 (paying by regular additional contributions); and

“comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

(9) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 3 (whichever is applicable) will be reduced as described in paragraph (8) above.

(10) Paragraphs (8) and (9) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(11) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C3(1) (qualifying service), C2(4) (limit on service that counts for benefits) and R3(5) (extra service credited to long-serving mental health officers), R6(6) (members entitled to fees for domiciliary consultations) and T9 (reduction in benefits to take account of benefits under the National Insurance Acts).



**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, PART C.