

---

STATUTORY INSTRUMENTS

---

**2008 No. 653**

**The National Health Service Pension Scheme Regulations 2008**

**PART 2**

**BENEFITS FOR OFFICERS**

**CHAPTER 2.A**

**INTRODUCTION**

*Pensionable pay*

**2.A.8 Meaning of “pensionable pay”**

(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 two or more such employments, as pensionable pay of such of those employments as the Secretary of State considers 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 two or more part-time employments, and
  - (b) in the opinion of the Secretary of State, 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 two 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) 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 PMS agreement;
- (c) an APMS contract;
- (d) payments from, or to, a practitioner who is a GMS practice, a PMS practice or an APMS 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 type 1 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 type 1 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 Local Health Board or Primary Care Trust to which the partners are required to give notice of their election in accordance with paragraph (10).

(10) Non-GP providers and any type 1 medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their host Trust or Board in accordance with paragraph (11).

(11) A notice given under this regulation—

- (a) must be signed by all the non-GP providers and type 1 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 Primary Care Trust or Local Health Board concerned; or
  - (ii) if no agreement is reached, a date decided by the Secretary of State;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership;
- (d) will be automatically cancelled upon a change in the members of the partnership.

#### **2.A.9 Pensionable pay: breaks in service**

(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 and 2.C.2), 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 who—

(a) 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;

(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 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) of this regulation 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 shall be 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 shall be payable unless the non-GP provider actually leaves pensionable employment.

(11) If a non-GP provider to whom paragraph (7) of this regulation applies leaves pensionable employment or, by virtue of paragraph (7)(a) or (8), is treated as having left pensionable employment,

---

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

without becoming entitled to a preserved pension, then if the non-GP provider later returns to pensionable employment regulation 2.A.4(4) will apply as if the reference to 12 months were 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.