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STATUTORY INSTRUMENTS

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**2015 No. 94**

The National Health Service Pension Scheme Regulations 2015

**PART 4**

Contributions

CHAPTER 1

Determination and payment

**Pensionable earnings: break in service**

28.—(1) Paragraph (3) applies to a member (M) if—

- (a) the absence condition is satisfied; and
- (b) the earnings used to calculate M's pensionable earnings under regulation 27 are reduced or cease.

(2) The absence condition is that M is absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave [<sup>F1</sup>shared parental leave or parental bereavement leave].

(3) Amounts equal to the pensionable earnings that M would have received but for the absence are treated as having been paid to M.

(4) Paragraph (3) does not apply to M as respects any period after the earnings used to calculate M's pensionable earnings under regulation 27 have ceased to be paid to M if—

- (a) M is neither a practitioner nor a non-GP provider; and
- (b) M is within paragraph (2)(a).

(5) For the purposes of regulations 27 to 31, amounts equal to reduced earnings to which paragraph (6) applies are treated as pensionable earnings.

(6) The reduced earnings are the amount to which the earnings used to calculate M's pensionable earnings under regulation 27 are reduced—

- (a) for any period while M is within paragraph (2);
- (b) for any period (period A) while M is within paragraph (2)(b) to (e) and during a period following that period (period B) whilst M continues to be within that paragraph and M's earnings are reduced to zero.

(7) For the purposes of paragraph (6)(b)—

- (a) pay received by a woman on maternity leave in respect of days during which she returns to work for the purpose of keeping in touch with the workplace must be ignored;

- (b) earnings reduced to zero in period B are treated as if they were reduced to the amount applicable to period A.
- (8) During any period of absence which counts as pensionable service under regulation 21(4) or (6) (up to 24 months leave of absence with full contributions), amounts equal to the rate of M's pensionable earnings immediately before the absence are treated as pensionable earnings.
- (9) This paragraph applies if M belongs to group D in regulation 27(1) and M's earnings have been reduced or ceased—
- (a) if M is one of a number of practitioners or non-GP providers who have elected under paragraph 4(4) of Schedule 10, each practitioner's or non-GP provider's pensionable earnings are calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings for the period of 12 months ending immediately before M's earnings were reduced or ceased;
  - (b) in any other case, M is treated as having continued to receive the same average rate of pensionable earnings as during that period.
- (10) If the earnings used to calculate M's pensionable earnings cease during a period of absence specified in paragraph (2)—
- (a) a practitioner or non-GP provider within paragraph (2)(a) is treated as having continued in pensionable employment for a period of 12 months starting on the date on which M's earnings ceased and M is not treated as having left pensionable employment until the end of that period;
  - (b) a practitioner or non-GP provider falling within paragraph (2)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraphs (5) and (6) (b) must continue to pay contributions at that rate, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment;
  - (c) a member other than a practitioner or non-GP provider is treated (subject to paragraph (7)) as having left pensionable employment, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment.
- (11) For the purposes of paragraph (10)(a)—
- (a) during the 12 month period, the practitioner's or non-GP provider's pensionable earnings are to be calculated in accordance with paragraph (9)(a) or (b);
  - (b) at the end of the 12 month period, when M is regarded as having left pensionable employment, no refund of contributions or other benefit is payable until M leaves pensionable employment.
- (12) For the purposes of paragraph (10)(b), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (5) and (6)(a) if the practitioner's or non-GP provider's reduced earnings had excluded earnings for a day during which the practitioner or non-GP provider, whilst on maternity leave, returned to work for the purpose of keeping in touch with the workplace.
- (13) If M fails to pay contributions which are required to be paid in respect of a period of absence to which this regulation applies—
- (a) M is treated as having left pensionable employment; but
  - (b) no refund of contributions or other benefit is payable until M actually leaves pensionable employment.
- (14) Benefits payable on the death of a member whose earnings ceased during a period of absence to which paragraph (2) applies are calculated as if the member had died in pensionable employment the day before the earnings ceased.

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***Status:** Point in time view as at 06/04/2020. This version of this provision has been superseded.*

***Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, Section 28. (See end of Document for details)*

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**Textual Amendments**

- F1** Words in [reg. 28\(2\)\(e\)](#) substituted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [37\(3\)](#)

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