
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 512

The National Health Service (Superannuation Scheme,
Injury Benefits and Compensation for Premature
Retirement) (Scotland) Amendment Regulations 2005

PART II

AMENDMENT OF THE NATIONAL HEALTH SERVICE
SUPERANNUATION SCHEME (SCOTLAND) REGULATIONS 1995

Interpretation

5. In regulation A2(4)–

- (a) omit the definitions of “associate general practitioner”, “medical list”, “medical pilot scheme employee” and “personal medical services”;
- (b) insert the following definitions in alphabetical order in the appropriate places:–

““additional services”

- (a) with regard to a GMS practice, the meaning given in Schedule 1 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(1); and
- (b) with regard to any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be additional services within the meaning given in Schedule 1 to those Regulations;”;

““CCT”

A Certificate of Completion of Training awarded under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(2) including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board

(1) S.S.I. 2004/115.
(2) S.I.2003/1250.

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	specified in article 20(3)(a) of that Order;”;
““certification services”	Services related to the provision of the medical certificates listed in Schedule 3 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;”;
““collaborative services”	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) the Scottish Ministers or a Health Board; and (b) a local authority, under section 15 of the 1978 Act ⁽³⁾ , under which the Scottish Ministers or the Health Board is responsible for providing services for purposes related to the provision of health care;”;
““commissioned services”	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) the Scottish Ministers or a Health Board under section 16(1) of the 1978 Act, which is for the purposes of the health service;”;
““Contracting Health Board”	(a) in the case of a non GP provider who is— (i) a partner in a partnership that— (aa) is a GMS practice; or

(3) 1978 c. 29. Section 15 was amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule 1.

- (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; or
- (ii) a shareholder in a company limited by shares that is–
- (aa) a GMS practice; or
 - (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 their 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 their name appears;”;

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““core hours”	The period beginning at 0800 hours and ending at 1830 hours on any day apart from Saturday, Sunday, Christmas Day, New Year’s Day and any other public or local holiday which has been agreed in writing by the Health Board when entering into a GMS contract;”;
““dispensing services”	The provision of drugs, medicines and such appliances which are included in the list prepared by the Scottish Ministers under section 27(1) of the 1978 Act;”;
““enhanced services”	<p>(a) with regard to a GMS practice, the meaning given in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004; and</p> <p>(b) with regard to any other performer or provider of primary medical services, services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;”;</p>
““essential services”	Services required to be provided in accordance with regulation 15 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;”;
““GMS contract”	A contract under section 17J of the 1978 Act ⁽⁴⁾ or under article 13 of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 ⁽⁵⁾ ;”;
““GMS practice”	(a) a registered medical practitioner; or

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

(5) [S.S.I. 2004/163](#).

- (b) two or more individuals practising in a partnership; or
- (c) a company limited by shares, with whom a Health Board has entered into a GMS contract;”;

““GP performer”

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 thereof–

- (a) under a GMS contract, section 17C agreement or an HBPMS contract; or
- (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 by which it is to provide services under section 2C of the 1978 Act(6);”;

““GP provider”

A GP performer who is–

- (a) a GMS practice, a section 17C agreement provider, an HBPMS contractor; or
- (b) a partner in a partnership that is a GMS practice, a section 17C agreement provider or an HBPMS contractor; or
- (c) a shareholder in a company limited by shares that is a GMS practice, section 17C agreement provider or an HBPMS contractor,

and who performs medical services as or on behalf of that practice, provider or contractor;”;

““HBPMS contract”

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”

A person with whom a Health Board has made arrangements under section 2C(2) of the 1978 Act, but only if that person

(6) Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1.

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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;”;

““local authority”	A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)(7);”;
““medical performers list”	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(8);”;
““non GP provider”	<p>(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; or</p> <p>(b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services, provided that the partner is not a GP provider and that the partner demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership; or</p> <p>(c) a partner in a partnership that is an HBPMS contractor which has entered into an HBPMS contract for the provision of primary medical services, provided that the partner is not a GP provider and that the partner demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that HBPMS contractor; or</p>

(7) 1994 c. 39.

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

- (d) a shareholder in a company limited by shares that is—
 - (i) a GMS practice; or
 - (ii) a section 17C agreement provider; or
 - (iii) an HBPMS contractor, provided that shareholder is not a GP provider, and that the shareholder demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice, provider or contractor; or
- (e) an individual who is a section 17C agreement provider or an HBPMS contractor, provided that the individual is not a GP provider, and that the individual demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice or contractor;”;

““OOH provider”

Shall be construed in accordance with regulation A3;”;

““OOH services”

Services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice to patients to whom the practice is required by its GMS contract to provide essential services, would be or would be similar to essential services;”;

““out of hours period”

- (a) the period beginning at 1830 hours on any day from Monday to Thursday and ending at 0800 hours the following day;
- (b) the period between 1830 hours on Friday and 0800 hours the following Monday; and
- (c) Christmas Day, New Year’s Day and any other public or local holiday which has been agreed in writing by the Health

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Board when entering into a
GMS contract,
and part of an out of hours period means
any part of any one or more of the periods
described in sub paragraphs (a) to (c);”;

““primary medical services”	Shall be construed in accordance with section 2C(5) of the 1978 Act(9)
““section 17C agreement”	An agreement made under section 17C of the 1978 Act(10);”; and
““section 17C agreement provider”	Any person or body who is providing primary medical services in accordance with a section 17C agreement;”;

(c) for the definitions of “employing authority”, “GP registrar”, “locum practitioner”, “NHS dental employee” and “practice staff” substitute the relevant following definitions:–

““employing authority”	<ul style="list-style-type: none"> (a) a Health Board, Special Health Board or NHS National Services Scotland (established under section 2 and section 10 of the 1978 Act); or (b) a person who is providing piloted services; or (c) the Mental Welfare Commission established under section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003(11); or (d) an OOH provider; or (e) an HBPMS contractor; or (f) a GMS practice; or (g) a section 17C agreement provider; or (h) 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;”;
““GP registrar”	(a) until the coming into force of article 5 of the

(9) 1978 c. 29. Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).

(10) Section 17C was inserted by the [National Health Service \(Primary Care\) Act 1997 \(c. 46\)](#), section 21(2).

(11) [2003 asp 13](#).

General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, a medical practitioner who is being trained in general practice by a medical practitioner who—

- (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(12); 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 being trained in general practice by a medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) of that Order, whether as part of training leading to the award of a CCT or otherwise;”;

“locum practitioner”

A registered medical practitioner (other than a GP registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by—

- (a) a GMS practice; or
 - (b) a section 17C agreement provider; or
 - (c) an HBPMS contractor; or
 - (d) an OOH provider; or
 - (e) a Health Board,
- to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification

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services or collaborative services (or any combination of those services);”;

““NHS dental employee”

An individual who, in the connection with the provision of dental health services in the health service, is employed by—
 (a) a Health Board; or
 (b) a registered dentist, including one who is providing personal dental services in accordance with a pilot scheme;”;

““practice staff”

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;”;

- (d) in the definition of “officer” after “person” insert “(other than a GP performer)”; and
 (e) in the definition of “practitioner”(13)—
 (i) for sub-paragraph (a) substitute—
 “(a) a registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer;”;
 (ii) omit “(other than an associate general practitioner)”; and
 (iii) omit “National Health Service Trust, a Primary Care NHS Trust or a”.

Approved Out of Hours providers

6. After regulation A2 (interpretation), insert—

“Approved Out of Hours providers

A3.—(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, 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;

(13) The definition of “practitioner” was substituted by [S.S.I. 2003/55](#), regulation 3(b).

- (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; and
- (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 of the general public;
 - (ii) operates on a not for profit basis;
 - (iii) is not an associated company in relation to another person;
 - (iv) has a 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 be otherwise 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; or
 - (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 shall 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) shall have effect (“the nominated date”).

(5) Where, before 21st February 2006–

- (a) a company limited by guarantee or other body corporate makes an application which contains a nominated date earlier than the date on which approval is subsequently given (“the approval date”); and
- (b) the appointed Board is satisfied that, throughout the period beginning with the nominated date and ending with the approval date, the company or other body corporate has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(6) Where before 21st February 2006–

- (a) a company limited by guarantee or other body corporate makes an application which contains a nominated date later than the approval date; and
- (b) the appointed Board is satisfied that the company or other body corporate will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(7) Where, on or after 21st February 2006, 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 approval date; and
- (b) it approves that application,

that approval shall take effect on the later of the nominated date and approval date.

(8) Where–

- (a) paragraph (5) or (6) applies, the NHS employment shall be treated as commencing on the nominated date;
- (b) paragraph (7) applies, it shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(9) 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.

(10) 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 D2(8); or
- (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 I of the Insolvency Act 1986⁽¹⁴⁾ (“the 1986 Act”); or
 - (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; or
 - (iii) a receiver, manager or administrative receiver has been appointed under Part III of the 1986 Act; or
 - (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 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⁽¹⁵⁾; 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 of the Companies Act 1985⁽¹⁶⁾.
- (11) An OOH provider–
- (a) shall give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (10)(c) and shall give such notice on the same day as that event;
 - (b) that wishes to cease to participate in the scheme shall 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.
- (12) An OOH provider shall cease to participate in the scheme on–
- (a) such date as the appointed Board may specify in notice under paragraph (10); or
 - (b) the day upon which the period referred to in paragraph (11)(b) expires where a notice under that sub-paragraph (b) has been given.”.

Age limits and restrictions on membership

7. In regulation B2(e)⁽¹⁷⁾, for “National Health Service Trust or a Primary Care NHS Trust” substitute “Health Board”.

Opting out of the scheme

8. In regulation B4 (opting out of the scheme)–

(a) after paragraph (1) insert–

“(1A) Where, following an application under regulation A3(4) an OOH provider is approved as an employing authority, an employee of such a provider who does not wish to, or who no longer wishes to, participate in the scheme–

- (a) may opt out of it from any day falling within the period specified in paragraph (1B) by giving notice in writing to that provider; and
- (b) will be treated as having left pensionable employment on the date on which that notice takes effect.

(1B) For the purposes of paragraph (1A), that period–

⁽¹⁴⁾ 1986 c. 45.

⁽¹⁵⁾ 1965 c. 12.

⁽¹⁶⁾ 1985 c. 6.

⁽¹⁷⁾ Regulation B2(e) was inserted by S.I. 1999/443 and amended by S.I. 2001/437.

- (a) starts on the date on which NHS employment is treated as commencing under regulation A3(7); and
 - (b) ends on the date on which the notice is received by the OOH provider.
- (1C) A notice referred to in paragraph (1A) must be given no later than one month from the end of the pay period in which the date on which approval of an application under regulation A3 falls.”;
- (b) for paragraph (2), substitute–
 - “(2) A notice–
 - (a) referred to in paragraph (1) shall take effect–
 - (i) from the first day of the pay period immediately following its receipt by the employing authority; or
 - (ii) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls;
 - (b) referred to in paragraph (1A) shall take effect–
 - (i) from the first day of the pay period immediately following receipt by the OOH provider; or
 - (ii) where a date not earlier than the date on which the NHS employment is treated as commencing under regulation A3(7) is specified in the notice, from that date.”;
 - (c) for paragraph (4), substitute–
 - “(4) A person–
 - (a) who opts out of the scheme under paragraph (1) before the end of the pay period during which the employing authority included that person in the scheme; or
 - (b) whose opt out under paragraph (1A) takes effect in respect of that period, shall be treated as never having been included in the scheme.”; and
 - (d) in paragraph (5), insert “or paragraph (1A)” after “paragraph (1)”.

Rejoining the scheme

9. In regulation B5 (rejoining the scheme)–
- (a) in paragraph (1), for “terms of regulation B4” substitute “accordance with regulation B4(1)”.
 - (b) after paragraph (1), insert–
 - “(1A) Subject to paragraph (2), a person who has previously opted out of the scheme in accordance with regulation B4(1A) may, if eligible to do so, join or rejoin the scheme by giving notice in writing to the OOH provider and on doing so shall be included in the scheme on–
 - (a) the first day of the first pay period after the notice to join or rejoin the scheme is received; or
 - (b) such other date being–
 - (i) the first day of a pay period; and
 - (ii) no earlier than the first day of the pay period immediately following the pay period in which the notice to opt out of the scheme referred to in regulation B4(1A) (or the latest of them) took effect in accordance with regulation B4(2),

as is specified in that notice.”.

Meaning of “pensionable pay”

10. For regulation C1(1), substitute–

“(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, 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 3 of Schedule 1; or
 - (ii) where the non GP provider is a practitioner in partnership, paragraph 4 of Schedule 1.”.

Meaning of “pensionable service”

11. For regulation C2(2)(f), substitute–

“(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.”.

Contributions by members

12. After regulation D1(5), insert–

“(6) Without prejudice to any other method of recovery, where an employing authority has failed to deduct contributions in accordance with paragraph (5), the Scottish Ministers may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them where–

- (a) the member agrees to such a deduction; and
- (b) the deduction is to the member’s advantage.”.

Contributions and other payments by employing authorities

13. In regulation D2 (contributions and other payments by employing authorities)–

(a) for paragraph (3)(c) substitute–

“(c) the cost of providing compensation under regulations 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003(18);”;

(b) after paragraph (7) insert–

“(8) Where an employing authority which is–

- (a) a GMS practice; or

- (b) a section 17C agreement provider; or
- (c) and HBPMS contractor; or
- (d) an OOH provider,

fails to pay or remit contributions in accordance with the provisions of this regulation, the Scottish Ministers may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount, and provided by a person approved by the Scottish Ministers, which provides for payment to the Scottish Ministers of all future liabilities of the employing authority under these Regulations or under the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998⁽¹⁹⁾ should that authority fail to meet them.”.

Early retirement pension (redundancy etc.)

14. In regulation E3(4)(d)⁽²⁰⁾, for “National Health Service Trust or a Primary Care NHS Trust”, substitute “Health Board”.

Early retirement pension (employer’s consent)

15. In regulation E4(3)(d)⁽²¹⁾, for “National Health Service Trust or a Primary Care NHS Trust” substitute “Health Board”.

Preserved Pension

16. In regulation E6(8) omit “(a)” and “or, if lower, (b) twice the member’s final year’s pensionable pay less the member’s lump sum on retirement payable under this regulation (which shall not be subject to any reduction under regulation E8);”.

Payment of lump sum

17. In regulation F5 (payment of lump sum)–

- (a) after paragraph (3)(a) insert–

“(aa) the widow or widower has been convicted of an offence specified in regulation T6(1A) and the Scottish Ministers have directed, as a consequence of that conviction, that the widow’s or widower’s right to a payment in respect of the member’s death shall be forfeited; or”;

- (b) after paragraph (3A)(a) insert–

“(aa) that person has been convicted of an offence specified in regulation T6(1A) and the Scottish Ministers have directed, as a consequence of that conviction, that that person’s right to a payment in respect of the member’s death shall be forfeited; or”.

Medical and dental practitioners and trainee practitioners

18. In regulation R1 (medical and dental practitioners and trainee practitioners)–

- (a) omit “or Primary Care NHS Trust”⁽²²⁾ where it occurs in both paragraphs (1) and (2); and

⁽¹⁹⁾ S.I. 1998/1451, amended by S.S.I. 2001/465, S.I. 2001/3649 and S.S.I. 2004/62.

⁽²⁰⁾ Regulation E3(4)(d) was inserted by S.I. 1997/1916 and amended by S.I. 1998/1593 and 443 and S.S.I. 2001/437.

⁽²¹⁾ Regulation E4(3)(d) was inserted by S.I. 1997/1916 and amended by S.I. 1998/1593 and 443 and S.S.I. 2001/437.

⁽²²⁾ These words were inserted by S.S.I. 2001/437, regulation 12.

(b) after paragraph (2) insert–

“(3) These Regulations apply from 1st April 2004 to non GP providers as if they were whole-time officers employed by the relevant Health Board.”.

Participators in pilot schemes

19. In regulation R13(23) (participators in pilot schemes)–

- (a) in paragraphs (1)(a) to (d) and (2), omit “or Primary Care NHS Trust” in each place where it occurs;
- (b) in paragraph (1)(a) and (b), omit “a registered medical practitioner or” in both places where it occurs;
- (c) in paragraph (1)(a)(ii), omit “, a medical pilot scheme employee”;
- (d) in paragraph (1)(b)(ii), omit “a medical pilot scheme employee or”;
- (e) at the end of paragraph (1)(d)(i), insert “or”;
- (f) omit paragraph (1)(d)(ii);
- (g) omit paragraph (1)(e);
- (h) in paragraph (1)(f)(i), for “National Health Service Trust or Primary Care NHS Trust” substitute “Health Board”;
- (i) in paragraph (1)(f)(ii), omit “by a National Health Service Trust, by a Primary Care NHS Trust or”;
- (j) in paragraph (1)(h), omit “a medical pilot scheme employee or as”; and
- (k) in paragraph (2), omit and “or, as the case may be, the Primary Care NHS Trust”.

Loss of rights to benefits

20. In regulation T6 (loss of rights to benefits)–

(a) after paragraph (1), insert–

“(1A) Subject to paragraph (2), the Scottish Ministers may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is–

- (a) the member’s widow or widower; or
- (b) a dependant of the member; or
- (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice given under regulation F5(3A); or
- (d) a person to whom such benefits or amounts are payable under the member’s will or on their intestacy,

and that person is convicted of the offence of murder or culpable homicide of that member or of any other offence of which the unlawful killing of that member is an element.”; and

(b) in paragraph (2), for “only if (b) or (c)” substitute “only if paragraph (1)(b) or (c)”.

Accounts and actuarial reports

21. In regulation U3 (accounts and actuarial reports)–

(a) in paragraph (3)–

- (i) for “31st March 1999” substitute “31st March 2003”; and
- (ii) for “5 years” substitute “4 years”;
- (b) for paragraph (5) substitute–
 - “(5) Employing authorities shall keep records of all–
 - (a) contributions deducted from salaries and wages; and
 - (b) contributions to the scheme made under D2(1),
 in a manner approved by the Scottish Ministers and, except where the Scottish Ministers waive such requirements, provide a statement in respect of such matters, covering all scheme members except principal practitioners and non GP providers, to the Scottish Ministers within 2 calendar months of the end of each financial year.”; and
- (c) after paragraph (5), insert–
 - “(6) In respect of each financial year, employing authorities shall also provide the Scottish Ministers, where appropriate, with the best estimate in writing that can reasonably be made of the total contributions due to the scheme under regulations D1 and D2(1) within 2 months of the end of each such year.”.

Additional definitions

- 22.** In paragraph 1 of Schedule 1 (medical and dental Practitioners)–
- (a) omit the definitions of “associate general practitioner” and “locum practitioner”;
 - (b) for the definition of “assistant practitioner” substitute–
 - ““assistant practitioner” means–
 - (a) in the case of a registered medical practitioner–
 - (i) a GP performer who is not a GP provider but who is–
 - (aa) employed (whether under a contract of service or for services) by a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board; and
 - (bb) in that employment engaged wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board; or
 - (ii) a registered medical practitioner who is participating in a Doctors’ Retainer Scheme; and
 - (b) in the case of a dental practitioner, a practitioner on a supplementary list employed by a principal practitioner, who in that employment is wholly or mainly engaged assisting his employer in the discharge of the employer’s duties as a registered dentist;”;
 - (c) for the definition of “principal practitioner” substitute–
 - ““principal practitioner” means–
 - (a) in the case of a registered medical practitioner, a GP provider; and
 - (b) in the case of a dental practitioner, a registered dentist who is included in a list prepared in accordance with the National Health Service (General Dental Services) (Scotland) Regulations 1996(24);”;

- (d) insert the following definition in the appropriate place—
- ““Board and advisory work” means—
- (a) work undertaken as a member of the board of an employing authority which is not a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider; or
 - (b) advisory work commissioned by, and undertaken on behalf of, such an authority, where it is connected to the authority’s role in performing or securing the delivery of primary medical services or associated management activities or similar duties,
- but which is not itself the performance of primary medical services and payment for which is made by the employing authority directly to the person carrying out that work;”.

Application of Regulations with modifications

- 23.** In paragraph 2 of Schedule 1—
- (a) in sub-paragraph (1) omit—
 - (i) “or Primary Care NHS Trust”(25); and
 - (ii) “or the appropriate contracting party”,in both places where each of them occurs; and
 - (b) in sub-paragraph (1A)—
 - (i) in the definition of “the listing Authority” omit “or Trust”;
 - (ii) for paragraph (a) in the definition of “the listing Authority”, substitute—
 - “(a) the medical performers list; or”; and
 - (iii) omit the definition of “the appropriate contracting party”.

Meaning of “pensionable earnings”

- 24.** In paragraph 3 of Schedule 1—
- (a) in sub-paragraph (1), after “principal practitioner”, insert “and a non GP provider who is not in receipt of a salary, wages or fees or any regular payments in respect of their employment as an officer”;
 - (b) for sub-paragraph (1)(a), substitute—
 - “(a) any sum on account of practice expenses; and”;
 - (c) for sub-paragraph (2)(a), substitute—
 - “(a) income which accrues to the practitioner or the non GP provider which is derived from—
 - (i) a GMS contract; or
 - (ii) a section 17C agreement; or
 - (iii) an HBPMS contract; or
 - (iv) payments from, or to, a practitioner who is a GMS practice, a section 17C agreement provider or an HBPMS contractor in respect of the performance of certification services, commissioned services or collaborative services; or

(25) These words were inserted by [S.S.I. 2001/437](#), regulation 18.

- (v) the practitioner’s or the non GP provider’s engagement by a Health Board to assist in the provision of primary medical services under section 2C(2) of the 1978 Act(26); or
 - (vi) in the case of a practitioner, the provision of locum services; or
 - (vii) payments made to a principal practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services, collaborative services and certification services; or
 - (viii) payments made to a principal practitioner by an employing authority in respect of general dental services, general ophthalmic services or pharmaceutical services provided by the practitioner; or
 - (ix) practice based work carried out in educating or training, or organising the education or training, of medical students or practitioners;” and
- (d) for sub-paragraph (2)(d), substitute–
- “(d) in the case of a practitioner, allowances and any other sums (but excluding payment made to cover expenses) paid in respect of Board and advisory work.”.

Calculating “pensionable earnings” of practitioners in partnership

25. For paragraph 4 of Schedule 1 substitute–

“4.—(1) In the case of practitioners practising in partnership (with or without a non GP provider who is a partner in the partnership), the pensionable earnings of each principal practitioner and non GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (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 sub-paragraph (2), dividing the total equally by reference to the number of such partners.

(2) Where the principal practitioners and any non GP providers 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.

(3) Where a registered medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner, the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with sub paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their shares in the partnership profits.

(4) The calculations described in sub-paragraphs (2) and (3) will be made by the Health Board to which the partners are required to give notice of their election in accordance with paragraph 5.”.

Election relating to calculation of “pensionable earnings” in partnerships

26. In paragraph 5 of Schedule 1–

- (a) omit “or Primary Care NHS Trust” and “or Trust” in each place where they occur;
- (b) in sub-paragraph (1)–
 - (i) after “Practitioners”, insert “and any non GP providers who are partners in partnership”; and

(26) Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1(2).

- (ii) after “writing” insert “to their Contracting Health Board”;
- (c) omit sub paragraph (3);
- (d) in sub-paragraph (4), after–
 - (i) “principal practitioners” insert “and non GP providers”; and
 - (ii) “each practitioner’s”, insert “and non GP provider’s”; and
- (e) in sub-paragraph (5), for–
 - (i) “each quarter” substitute “each financial year”; and
 - (ii) “that quarter” substitute “that year”.

Meaning of “pensionable earnings” in relation to other practitioners

27. In paragraph 6 of Schedule 1–

- (a) for sub-paragraph (1), substitute–
 - “(1) In the case of an assistant practitioner, “pensionable earnings” means–
 - (a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, collaborative services, general dental services or pharmaceutical services but does not include bonuses or payments made to cover expenses or for overtime;
 - (b) allowances and any other sums (but excluding payment made to cover expenses) paid by an employing authority in respect of Board and advisory work; and
 - (c) practice based work carried out in educating or training, or organising the education or training of, medical students or practitioners.”;
- (b) in sub-paragraph (3)(a) before “practitioner”, in both places where it occurs, insert “dental”;
- (c) in sub-paragraph (3)(b) omit “medical or”; and
- (d) for sub-paragraph (5), substitute–
 - “(5) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to primary medical services, commissioned services, collaborative services or pharmaceutical services performed by a practitioner engaged by an employing authority under a contract for services to deputise for a registered medical practitioner or to temporarily assist in the provision of such services.”.

Members away from work and maternity absence

28. In paragraph 18 of Schedule 1–

- (a) in sub-paragraphs (6)(a) and (6)(b), omit “medical or” in both places where it occurs; and
- (b) in sub-paragraph (6)(b) omit the words from “whether or not” to the end of the sub paragraph.

Accounts and actuarial reports

29. After paragraph 22 of Schedule 1, insert–

“PART XII ACCOUNTS

Accounts and actuarial reports

23.—(1) In the case of members who are practitioners or non GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each financial year, a principal practitioner and a non GP provider shall provide the Contracting Health Board, or someone appointed to act on their behalf, with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which he or she is a member; and
- (b) the return that he or she has made to the Commissioners for Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than one month from the date on which that return was required to be submitted to the Commissioners.

(3) In respect of each financial year, a Contracting Health Board, or someone appointed to act on their behalf, shall forward a record of—

- (a) all contributions to the scheme made under paragraph 10 in respect of principal practitioners and non GP providers; and
- (b) their pensionable earnings,

to the Scottish Ministers within one month of the end of the financial year immediately following the financial year to which that return relates.”.