
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

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

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.A

INTRODUCTION

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

Status: This is the original version (as it was originally made).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

- (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.