
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

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

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.A

INTRODUCTION

Preliminary

Interpretation of Part 3: general

3.A.1.—(1) In this Part—

“the 1978 Act” means the National Health Service (Scotland) Act 1978⁽¹⁾;

“the 1993 Act” means the Pension Schemes Act 1993⁽²⁾;

“the 1995 Act” means the Pensions Act 1995⁽³⁾;

“the 1995 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995⁽⁴⁾;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997⁽⁵⁾;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999⁽⁶⁾;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications Order 2003⁽⁷⁾;

“the 2004 Act” means the Finance Act 2004⁽⁸⁾;

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004⁽⁹⁾;

“active member” has the meaning given in section 124(1) (interpretation of Part 1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see regulation 3.D.5(9)) (partial retirement (members aged at least 55));

(1) 1978 c. 20.

(2) 1993 c. 48.

(3) 1995 c. 26.

(4) S.I. 1995/365, amended by S.I. 1997/1434 and 1916, 1998/1593, 1999/443, 2001/3649 and 2005/2011 and S.S.I. 2001/437 and 465, 2003/55, 270 and 517, 2005/512 and 554, 2006/307 and 561 and 2008/92.

(5) 1997 c. 46.

(6) 1999 c. 30.

(7) S.I. 2003/1250, as amended by S.I. 2007/3101.

(8) 2004 c. 12.

(9) S.S.I. 2004/115 as amended by S.S.I. 2004/215.

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 3.C.6 (member’s option to pay additional periodical contributions to purchase additional pension), 3.C.8 (member’s option to pay lump sum contribution to purchase additional pension) and 3.C.9 (payment of additional lump sum contributions by employing authority);

“additional services”–

- (a) with regard to a GMS practice, the meaning given in Schedule 1 of the 2004 Regulations (additional services); 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;

“appropriate proportion” means–

$$\frac{70}{198}$$

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(10);

“base rate” means the Bank of England base rate–

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 (reserve powers) of the Bank of England Act 1998(11) is in force, any equivalent rate determined by the Treasury under that section;

“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, if 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 in itself the performance of primary medical services, and payment for which is made by that authority directly to the person carrying out that work;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) of the 1993 Act(12) and “buy out” must be read accordingly;

“capped transferred-in service” must be read in accordance with regulation 3.F.12 (meaning of “capped transferred-in service”);

“cash equivalent” is to be construed in accordance with Chapter 4 of Part 4 of the 1993 Act;

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3) (a) of that Order;

(10) 1971 c. 80. There are amendments to section 1 not relevant to these Regulations.

(11) 1998 c. 11.

(12) Section 19 was amended by S.I. 2007/3014, regulation 2(a).

“certification services” means services related to the provision of the medical certificates listed in Schedule 3 (list of prescribed medical certificates) to the 2004 Regulations;

“collaborative services” means 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) Scottish Ministers or a Health Board; and
- (b) a local authority,

under section 15(2)(**13**) of the 1978 Act (supply of goods and services to local authorities, etc.), under which Scottish Ministers or the Health Board is responsible for providing services for purposes related to the provision of health care;

“commissioned services” means 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) Scottish Ministers or a Health Board under section 16(1) (assistance to voluntary organisations)(**14**) of the 1978 Act, which is for the purposes of the health service;

“contracting Health Board” means—

- (a) in the case of a non GP provider who is—
 - (i) a partner in a partnership that—
 - (aa) is a GMS practice; or
 - (bb) is an HBPMS contractor and has entered into a contract for the provision of primary medical services; or
 - (ii) 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 his or her 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 his or her name appears;

“contracting-out requirements” means the requirements mentioned in section 9(2) (requirements for certification of schemes: general) of the 1993 Act;

“contribution option period” has the meaning given in regulation 3.C.6(8) (restriction on further participation in the scheme);

“corresponding health service scheme” has the meaning given in regulation 3.F.11(7) (calculation of transferred-in pensionable service);

“core hours” means the period beginning at 8am and ending at 6:30pm on any day from Monday to Friday except Good Friday, Christmas Day and a bank holiday;

(13) Section 15 was relevantly amended by the 1997 Act, Schedule 2, paragraph 35 and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule 1.

(14) To which there are amendments not relevant to these Regulations.

“deferred member” has the meaning given in section 124(1) (interpretation of part 1)(15) of the 1995 Act and, except where the context requires otherwise, refers to membership of the scheme (but see paragraph (3) and regulation 3.D.5(8));

“dental list” means a list prepared in accordance with regulations made under section 25(2)(a) (arrangements for provision of general dental services) of the 1978 Act;

“dental pilot scheme employee” means an individual who, in connection with the provision of personal dental services in accordance with a pilot scheme, is employed by an individual or body providing those services;

“dental therapist” means a person whose name is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 (the dental care professionals register) under the title of dental therapist;

“dentist” means a registered dental practitioner;

“dependent child” is to be construed in accordance with regulation 3.E.9 (meaning of “dependent child”);

“dispensing services” means the provision of drugs, medicines and such appliances which are included in the list prepared by Scottish Ministers under section 27(1)(16) (arrangements for provision of pharmaceutical services) of the 1978 Act;

“doctors' retainer scheme” has the same meaning as given at section 17 of the Statement published in accordance with regulation 22 of the 2004 Regulations;

“employment” includes an office or appointment (other than an honorary office or appointment) and related expressions are to be read accordingly;

“employing authority” means—

- (a) a Health Board, Special Health Board or NHS National Services Scotland (established under sections 2(17) and 10(18) of the 1978 Act);
- (b) a person who is providing piloted services;
- (c) the Mental Welfare Commission established under section 4 (the Mental Welfare Commission for Scotland) of the Mental Health (Care and Treatment) (Scotland) Act 2003(19);
- (d) an OOH provider;
- (e) an HBPMS contractor;
- (f) a GMS practice;
- (g) a section 17C agreement provider;
- (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; or
- (i) in relation to a person who is subject to a direction made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967(20) and subject to such modifications to these Regulations as Scottish Ministers may in any particular case direct, any employer of

(15) To which there are amendments not relevant to these Regulations.

(16) Section 27(1) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66 and Schedule 9, paragraph 19.

(17) Section 2 was amended by the National Health Service and Community Care Act 1990, sections 28, 66 and Schedules 9 and 10; the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 2 and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) schedule 2.

(18) Section 10 was amended by the Health Act 1999 (c. 8), section 65 and Schedule 4; the National Health Service Reform (Scotland) Act 2004 (asp 7), schedule 2; and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), schedule 2.

(19) asp 13.

(20) 1967 c. 28. To which there are amendments not relevant to these Regulations.

such a person whom Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations;

“enhanced services” with regard to—

- (a) a GMS practice, has the same meaning given in regulation 2(1) (interpretation) of the 2004 Regulations; 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 enhanced services within the meaning given in regulation 2(1) of the 2004 Regulations;

“essential services” means services required to be provided in accordance with regulation 15 (essential services) of the 2004 Regulations;

“GMS contract” means a contract under section 17J of the 1978 Act⁽²¹⁾ (health boards' power to enter into general medical services contract) or under article 13 (provision of immediately necessary treatment) of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004⁽²²⁾;

“GMS practice” means—

- (a) a registered medical practitioner;
- (b) 2 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” means 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 any combination of those services)—

- (a) under a GMS contract, section 17C agreement or an HBPMS contract;
- (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⁽²³⁾ (functions of Health Boards: primary medical services);

“GP provider” means a GP performer who is—

- (a) a GMS practice, a section 17C agreement provider or an HBPMS contractor;
- (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;

“GP registrar” means a practitioner who is being trained in medical practice by—

- (a) until the coming into force for all purposes of article 4(5)(d) (education and training leading to the award of a certificate of completion of training) of the 2003 Order, a general medical practitioner who—

⁽²¹⁾ Section 17J was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.

⁽²²⁾ S.S.I. 2004/163.

⁽²³⁾ Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1; and was amended by the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), schedule 1, paragraph 1.

- (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 (approval of trainers) of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998⁽²⁴⁾; and
 - (ii) performs primary medical services; and
- (b) from the coming into force for all purposes of that article, a general medical practitioner (minimum requirements for general practice training) who is approved under that article for the purpose of providing training under article 5(1)(c)(i) (minimum requirements for general practice training) of the 2003 Order, whether as part of training leading to the award of CCT or otherwise.

“GP trainer” means a registered medical practitioner who is approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“the guarantee date” has the meaning given in regulation 3.F.2(2) (application for statements of entitlement);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 3.F.3(3) (applications for transfer value payments);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 (earner’s guaranteed minimum) or 17 (minimum pensions for widows and widowers) of the 1993 Act as the case may be;

“HBPMS contract” means an arrangements for the provision of services in accordance with section 2C(2) (functions of health boards: primary medical services)⁽²⁵⁾ of the 1978 Act between a Health Board and a HBPMS contractor;

“HBPMS contractor” means a person with whom a Health Board has made arrangement under section 2C(2) of the 1978 Act, but only if that person 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 but has not entered into such a GMS contract or section 17C agreement;

“the health service” has the meaning given in section 108 (interpretation and construction) of the 1978 Act;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 (individuals lifetime allowance and standard lifetime allowance) of the 2004 Act⁽²⁶⁾;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽²⁷⁾;

“locum practitioner” means 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;
- (b) a section 17C agreement provider;
- (c) an HBPMS contractor;
- (d) an OOH provider; or
- (e) a Health Board,

⁽²⁴⁾ S.I. 1998/5.

⁽²⁵⁾ Section 2C was added by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1 and amended by the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), Schedule 1, paragraph 1(3).

⁽²⁶⁾ 2004 c. 12.

⁽²⁷⁾ 1994 c. 39. There are amendments to section 2 not relevant to these Regulations.

to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services or collaborative services (or any combination of those services);

“lower tier ill health pension” must be read in accordance with regulation 3.D.7 (early retirement on ill health (active members));

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for class 1 contributions)(**28**);

“lump sum rule” has the meaning given in section 166 (lump sum rule) of the 2004 Act(**29**);

“lump sum death benefit rule” has the meaning given in section 168 (lump sum death benefit rule) of the 2004 Act(**30**);

“member”, except where the context otherwise requires, means an active member, a deferred member, a pensioner member or a pension credit member;

“medical performers list” means 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(**31**);

“NHS employment” means employment with an employing authority (otherwise than under a contract for services);

“the NHS superannuation scheme for Scotland 1995” means the scheme set out in the National Health Service Superannuation Scheme (Scotland) Regulations 1995(e)(**49**);

“non-GP provider” in these Regulations applies as if he or she were a whole time officer and means—

- (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;
- (b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services—
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services—
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is—
 - (i) a GMS practice; or
 - (ii) a section 17C provider or an HBPMS contractor that has entered into a section 17C agreement or an HBPMS contract for the provision of primary medical services,

(28) 1992 c. 4. Section 5 was amended by the Pensions Act 2007 (c. 22) section 7(2).

(29) Section 166 was amended by the Finance Act 2007 (c. 11) Schedule 20 paragraph 9.

(30) Section 168 was amended by the Finance Act 2007 (c. 11) Schedule 20 paragraph 9.

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

(49) S.I.1995/365.

but 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 company; and

- (e) an individual who is a section 17C provider or an HBPMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she participates in the provision of NHS services;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 (categories of pension schemes)(**32**) of the 1993 Act which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 3.F (transfers); and
- (b) in the case of such a scheme established before that date, was—
- (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration;
- (ii) a statutory scheme as defined in section 612(1)(**33**) of the Income and Corporation Taxes Act 1988 (interpretation); or
- (iii) a scheme to which section 608(**34**) of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980);

“officer” means a person other than a non-GP provider employed by an employing authority;

“officer service” means pensionable service as an officer under Part 2;

“OOH provider” has the meaning given by regulation 3.A.15 (out of hours providers);

“OOH services” means 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;

“opting-out” and related expressions are to be construed in accordance with regulation 3.B.5 (opting out of the scheme);

“out of hours period” means—

- (a) the period beginning at 6:30pm on any day from Monday to Thursday and ending at 8am the following day;
- (b) the period between 6:30pm on Friday and 8am the following Monday; or
- (c) Christmas Day, New Year’s Day and any other local or public holiday which has been agreed in writing by the Health 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);

“pay period” means—

- (a) in relation to a practitioner who receives regular payments for his or her services under a contract of employment, the period in respect of which each payment of salary, wages or fees is made in accordance with that contract; and
- (b) in all other cases any period of 3 months ending on the last day of March, June, September or December;

(32) Section 1 was amended by S.I. 2007/3014, regulation 2(6).

(33) Section 612 was repealed by the 2004 Act, Schedule 42, paragraph 1.

(34) Section 608 was repealed by the 2004 Act, Schedule 42, paragraph 1.

“pensionable earnings” has the meaning given in regulation 3.A.7 (meaning of “pensionable earnings”) (read with regulation 3.A.8);

“pensionable employment” means employment as a practitioner which is pensionable under this Part;

“pensionable service” has the meaning given by regulations 3.A.3 (meaning of “pensionable service”) and 3.A.4 (pensionable service: breaks in service) (read with regulation 3.A.5);

“pensioner member” has the meaning given in section 124(1) (interpretation of part 1)(35) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see regulation 3.A.2 (interpretation: further provisions) and regulation 3.D.5(8) (partial retirement: members aged at least 55));

“pension credit” means a credit under section 29(1)(b) (creation of pension debits and credits) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B (interpretation) of the 1993 Act(36);

“pension credit member” has the meaning given by section 124(1) (interpretation of part 1) of the 1995 Act;

“pension credit rights” has the meaning given by section 101B of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1) (activation of pension sharing)(37) of the 1999 Act;

“personal pension scheme” means a personal pension scheme which—

- (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 3.F; and
- (b) in the case of a scheme established before that date, was—
 - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes); and
 - (ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“practice staff” means a person (other than an assistant practitioner, principal practitioner, a 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;

“practitioner” means—

- (a) a registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer; or
- (b) a registered dentist,

but excluding a person who is paid wholly by way of salary by a Health Board;

“practitioner income” has the meaning given in regulation 3.A.7(2) to (8);

“practitioner service” means service as a practitioner which is pensionable under this Part;

“preservation requirements” means the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

(35) To which there are amendments not relevant to these Regulations.

(36) There are amendments to section 101B not relevant to these Regulations.

(37) Section 28 was amended by the Civil Partners Act 2004 (c. 33) Schedule 27, paragraph 159.

“public sector transfer arrangements” means arrangements approved by the Scottish Ministers as providing reciprocal arrangements for the payment and receipt of transfer values between the scheme and other occupational pension schemes;

“qualifying service” has the meaning given in regulation 3.A.5 (meaning of “qualifying service”) (read with regulation 3.A.6 (qualifying service: disregard of breaks in service));

“quarter” means a 3 month period ending on the last day of March, June, September or December;

“recent leaver” has the meaning given in regulation 3.E.6(3) (recent leavers);

“registered” means registered under Chapter 2 of Part 4 of the 2004 Act;

“retail prices index” has the meaning given in section 989 (the definitions) of the Income Tax Act 2007(38);

“safeguarded percentage” has the meaning given by section 68A(3) (safeguarded rights) of the 1993 Act(39);

“safeguarded rights” has the meaning given by section 68A(1) of the 1993 Act;

“salaried dentist” means a dentist employed by a Health Board who undertakes to provide general dental services at a health centre, hospital or from any vehicle or moveable facility;

“the scheme” means the scheme the rules of which are set out in this Part;

“the scheme actuary” means the actuary appointed by the Scottish Ministers for the time being to provide a consulting service on actuarial matters relevant to the scheme;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March;

“section 17C agreement” means an agreement made under section 17C(40) of the 1978 Act;

“section 17C agreement provider” means any person or body who is providing primary medical services in accordance with a section 17C agreement;

“State pension age” means pensionable age, as defined in section 181(1) of the 1993 Act;

“tax year” means a year of assessment for income tax purposes;

“trade dispute” has the meaning given in section 35(1) (interpretation) of the Jobseekers Act 1995(41);

“trainee practitioner” means a GP Registrar;

“uprated earnings” is to be construed in accordance with regulation 3.D.1.(4)(b) (normal retirement pension); and

“upper tier ill health pension” must be read in accordance with regulation 3.D.7 (early retirement on ill health (active members)).

Interpretation: further provisions

3.A.2.—(1) In determining whether a person who is an active member or a pensioner member of the scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.

(2) In determining whether a person is a pensioner member of the scheme, the fact that the person is not entitled to payment of pension because of Chapter 3.H (abatement) is to be disregarded.

(38) 2007 c. 3.

(39) Section 68A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 36 and there have been amendments not relevant to these Regulations.

(40) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2).

(41) 1995 c. 18. There are amendments to section 35 not relevant to these Regulations.

Meaning of “pensionable service”

3.A.3.—(1) Subject to paragraph (2), in this Part, references to a member’s pensionable service, are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to the scheme under regulation 3.C.1 (contributions by members);
- (b) any period of absence from service which counts as pensionable service under regulation 3.A.4; and
- (c) any period of service credited to the member as pensionable service under Chapter 3.F (transfers).

(2) A member’s pensionable service does not include—

- (a) any period of service 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 pensioner member or deferred member, any period taken into account—
 - (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the deferred pension; or
 - (ii) in calculating the amount of that pension,

but, in the case of a pensioner member or deferred member entitled to a pension under regulation 3.D.5 (partial retirement) subject to paragraph (7) of this regulation;

- (c) any period of service in respect of which the Scottish Ministers' liability to provide benefits is discharged—
 - (i) by the payment of a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act;
 - (ii) under regulation 3.C.16 (repayment of contributions); or
 - (iii) by the payment of a transfer value payment on transfer out under Chapter 3.F (transfers); or
- (d) subject to paragraph (3) any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.

(3) A member’s pensionable service must not exceed 45 years unless—

- (a) the member gives notice in writing to the Scottish Ministers and the member’s employing authority of an intention to remain in pensionable service beyond 45 years; and
- (b) that notice is received by the Scottish Ministers and the member’s employing authority—
 - (i) not earlier than 3 months before the member reaches 45 years pensionable service; and
 - (ii) by the end of the pay period during which the member reaches the 45 year limit.

(4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—

- (a) benefits under this Part are calculated by reference to a maximum of 45 years of pensionable service; and
- (b) the Scottish Ministers must select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.

(5) For the purposes of paragraph (4)(b), in order to calculate the length of a member’s pensionable service, all periods of pensionable service will be added together and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) will be treated as one year.

(6) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—

- (a) the member’s pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made; and
- (b) the payment is treated as the member’s pensionable earnings for that period.

(7) In the case of a pensioner member or deferred member entitled to a pension under regulation 3.D.5 (partial retirement), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation 3.D.5(8)(a) (partial retirement (members aged at least 55)).

(8) References in this Part to any period expressed in days are references to the period in question ignoring 29th February, expressed in days.

(9) References in this Part to any period expressed in days are references to the period in question ignoring 29th February, expressed in days.

Pensionable service: breaks in service

3.A.4.—(1) This regulation applies to members who are absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave.

(2) Subject to paragraph (5), a period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the scheme.

(3) If—

- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e); and
- (b) the member contributes to the scheme under regulation 3.C.1 (contributions by members) by contributions made at the same intervals as those made by the member before the absence;

so much of the period of absence beginning with the first day of absence as is a period in respect of which the conditions in sub-paragraphs (a) and (b) are met counts as pensionable service.

(4) This paragraph applies if a person—

- (a) ceased to be an active member because of—
 - (i) ceasing to be employed in an employment in which the person is eligible to be such a member; or
 - (ii) exercising the option under regulation 3.B.5 (opting out of the scheme); and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

(5) If paragraph (4) applies, the person’s pensionable service before the person ceased to be an active member and after the person became such a member again is treated as a single continuous period of pensionable service, unless paragraph (6) applies.

(6) This paragraph applies if—

- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member;

- (b) the person has received a repayment of contributions under regulation 3.C.16 (repayment of contributions) in respect of that service (but see paragraph (8)); or
- (c) the person's rights under the scheme in respect of that service have been extinguished under regulation 3.F.7 (effect of transfers-out) because a transfer value payment has been made in respect of them.

(7) In the case of a member who leaves pensionable service whilst the person is absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave,

this regulation applies as if the reference to 12 months in paragraph (4)(b) were a reference to 3 years.

(8) Paragraph (6)(b) does not apply if the person repays to the Scottish Ministers any contributions repaid to the person as mentioned in that paragraph, together with any interest paid to the person on those contributions, before the expiry of the period of 6 months beginning with the date on which the person becomes an active member again.

(9) Where paragraph (5) applies because the person has become a deferred member in respect of the service in which the person was an active member and becomes an active member again, see Chapter 3.G (re-employment and rejoining the scheme).

Qualifying service

Meaning of “qualifying service”

3.A.5.—(1) In this Part, references to a member's qualifying service, are references to the aggregate of the following periods—

- (a) the member's pensionable service under this Part other than such pensionable service as is referred to in regulation 3.A.3(1)(c);
 - (b) in the case of a person in respect of whom a transfer value in respect of his or her rights under another pension arrangement has been accepted under Chapter 3.F (transfers), a period equal to the person's period as an active member in any occupational pension scheme in respect of which the rights accrued;
 - (c) any period treated as qualifying service under paragraph (3) or under regulation 3.A.6; and
 - (d) where the member ceased to be an active member under Part 2 not less than 12 months before becoming a member under this Part, any period of qualifying service under Part 2.
- (2) Paragraph (3) applies if the member is a locum practitioner who—
- (a) ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable service; and
 - (b) is re-engaged as a locum practitioner before the expiry of a period not exceeding 3 months from the date of such cessation.
- (3) Where this paragraph applies—
- (a) a locum practitioner is treated as continuing to be in qualifying service during the period of non-engagement as such a practitioner and is not required to re-join the scheme on being re-engaged as a locum practitioner; and
 - (b) that period does not count as practitioner service.

Qualifying service: disregard of breaks in service

3.A.6.—(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 3.A.5(3) applies).

(2) If the interval—

- (a) does not exceed one month; or
- (b) is due to a trade dispute,

the member's qualifying service before and after the interval is treated as continuous for the purpose of calculating the member's qualifying service after the interval (but the period of the interval is ignored).

(3) For the purposes of paragraph (2) it does not matter if the member's pensionable service before the interval is treated separately from that after the interval for the purpose of calculating the member's benefits.

(4) If—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to the scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment; and
- (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

qualifying service in the earlier employment is treated as a single continuous period of qualifying service with that in the later employment.

(5) If—

- (a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service; and
- (b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

qualifying service in the earlier period of active membership is treated as a single period of qualifying service with that in the later period of such membership.

(6) Paragraphs (2), (4) and (5) do not apply if—

- (a) the person has received a repayment of contributions under regulation 3.C.16 (repayment of contributions) in respect of the earlier period (but see paragraph (7)); or
- (b) the person's rights under the scheme in respect of that period have been extinguished under regulation 3.F.7 (effect of transfers out) because a transfer value payment has been made.

(7) Paragraph (6)(b) does not apply if the person repays to the Scottish Ministers any contributions repaid to the person as mentioned in that paragraph together with any interest on those contributions, before the expiry of the period of 6 months beginning with the date on which the member becomes a member again.

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval; and
- (b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 3.A.4(5) or regulation 3.G.3(2)(a) (exception to general rule in regulation 3.G.2),

the period of pensionable service in respect of which the member is a deferred member or a pensioner member is treated as qualifying service in relation to the period after the interval.

Pensionable earnings

Meaning of “pensionable earnings”

3.A.7.—(1) In the case of a principal practitioner who is not in receipt of any salary, wages, fees or any other regular payment in respect of his or her employment by virtue of the application of these Regulations to him or her as if he or she were such an officer under Part 2, pensionable earnings means—

- (a) in the case of a principal medical practitioner, practitioner income less any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 3.C.5(5) or (6) are neither practitioner income nor practice expenses); and
- (b) in the case of a dental practitioner, the pensionable earnings, to the extent allowed by the Scottish Ministers, of any assistant practitioner in the practitioner’s employment or in the case of an assisted practitioner who is not in pensionable employment under the scheme, the amount that would have been taken to be his or her pensionable earnings if he or she were in such pensionable employment.

(2) Subject to paragraph (3), for the purposes of this regulation, the practitioner income of a principal medical practitioner means—

- (a) income that accrues to the principal medical practitioner which is derived from—
 - (i) a GMS contract;
 - (ii) a section 17C agreement;
 - (iii) an HBPMS contract;
 - (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;
 - (v) the practitioner’s engagement by a Health Board to assist in the provision of primary medical services under section 2C(2) of the 1978 Act⁽⁴²⁾;
 - (vi) in the case of a principal practitioner, the provision of locum services;
 - (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;
 - (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 GP Registrar or practitioners;
- (b) any charges collected from patients in respect of the services mentioned in sub paragraph (a) which the principal medical practitioner is authorised by or under any enactment to retain, other than charges authorised by regulations made under section 73(b) of the 1978 Act⁽⁴³⁾ (charges for more expensive supplies of dental appliances);

⁽⁴²⁾ Section 2C(1) was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1(2).

⁽⁴³⁾ Section 73(b) was amended by the [Health and Social Security Act 1984 \(c. 48\)](#), Schedule 8 and by the [National Health Service \(Primary Care\) Act 1997 \(c. 46\)](#), Schedule 2.

(c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital; and

(d) in the case of a principal medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.

(3) If a practitioner is in concurrent employment as an officer, or with a local authority or university, or as a civil servant, or in any other employment that the Scottish Ministers may in any particular case allow, practitioner income does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

(4) In paragraph (2)(a), locum services has the meaning given by regulation 3.A.12(3).

Pensionable earnings: breaks in service

3.A.8.—(1) This regulation applies to members who are absent from work because of—

- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave.

(2) If the earnings used to calculate a member's pensionable earnings are reduced during a period of absence to which this regulation applies—

- (a) for the purpose of calculating the member's contributions to the scheme under regulation 3.C.1 (contributions by members), pensionable earnings for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable earnings for the period of absence will be calculated in accordance with paragraph (3)(a) or (b).

(3) In the case of a member who—

- (a) is one of a number of practitioners who have elected as described in regulation 3.A.9(2), each practitioner's or non GP provider's pensionable earnings will be calculated as if the partnership's aggregate pensionable earnings 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 member's pensionable earnings fall to be calculated as described in sub-paragraph (a), the member 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.

(4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—

- (a) a practitioner falling within paragraph 1(a) will, subject to sub-paragraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period; and
- (b) a member falling within paragraph 1(b) to (e) of this regulation who paid contributions on the basis of reduced earnings in accordance with paragraph 3(a) will, subject to paragraph (6), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.

(5) For the purposes of paragraph (4)(a)—

- (a) during the 12 month period, the member's pensionable earnings will be calculated as described in paragraph (3)(a) or (b); and
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.

(6) For the purposes of paragraph (4)(b), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (2)(a) had the member's reduced earnings excluded any earnings for a day during which the member, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(7) If a member 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 member will be treated as having left pensionable employment except that no refund of contributions or other benefit is payable unless the member actually leaves pensionable employment.

(8) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (3)(a) or (4), is treated as having left pensionable employment, without becoming entitled to a preserved pension, if the member later returns to pensionable employment, regulation 3.A.6(4) will apply as if the reference to 12 months was a reference to 3 years.

(9) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his or her earnings ceased.

Calculating pensionable earnings of medical practitioners in partnership

3.A.9.—(1) In the case of principal practitioners practising in partnership (with or without a non GP provider who is a partner in a partnership), the pensionable earnings of each principal practitioner and non-GP provider who is a partner in a partnership is 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 paragraph (2), dividing the total equally by reference to the number of such partners.

(2) If 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 correspond to each partner's share of the partnership profits.

(3) If a registered medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner (under Part 2), the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with 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 respective shares of the partnership profits.

(4) The calculations described in paragraphs (2) and (3) 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 regulation 3.A.10(1).

Elections relating to calculation of pensionable earnings in medical partnerships

3.A.10.—(1) Principal practitioners who are partners in partnership must exercise the election described in paragraph 3.A.9(2) and (3) by giving notice in writing to their contracting Health Board or someone appointed on its behalf in accordance with this regulation.

(2) The notice must be signed by all the principal practitioners and any non GP providers in the partnership and must state as a fraction each practitioner's and non GP provider's share in the partnership profits.

(3) In the case of medical practitioners, the notice must state the name of every Health Board on whose list the name of any practitioner in the partnership is included.

(4) A notice given under this regulation—

(a) will take effect—

(i) from the date agreed between the practitioners and the Health Board concerned or someone appointed on its behalf; or

(ii) if no agreement is reached, a date decided by the Scottish Ministers;

(b) will continue in effect until cancelled, or amended by a subsequent notice in writing signed by all the practitioners in partnership; and

(c) will be automatically cancelled upon a change in the members of the partnership.

Restriction on pensionable earnings used for calculating benefits in respect of capped transferred in service

3.A.11.—(1) This regulation applies for determining the amount of a member’s pensionable earnings for the purposes of calculating so much of any benefit under the scheme as falls to be calculated by reference to capped transferred-in service⁽⁴⁴⁾.

(2) If a member’s pensionable earnings exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

(3) In this regulation “permitted maximum” means—

(a) in relation to the tax year 2008 09, £117,600; and

(b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2009 10 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.

(5) If the retail prices index for the month of September preceding the tax year 2009 10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation, “pensionable earnings” has the meaning given in regulation 3.A.7.

Meaning of pensionable earnings in relation to other practitioners

3.A.12.—(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;

(b) allowances and other sums (but excluding payments made to cover expenses) paid by an employing authority in respect of Board and advisory work; and

(44) For the meaning of capped transferred-in service, see regulation 3.F.12.

- (c) practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners,

but does not include bonuses or payments made to cover expenses or for overtime.

(2) In the case of a locum practitioner, pensionable earnings means all fees and other payments made to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Scottish Ministers.

(3) In this regulation, 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.

Exclusions and deductions from pensionable earnings: all practitioners

3.A.13 Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992⁽⁴⁵⁾ will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Scottish Ministers may approve.

Limit on pensionable earnings: dental practitioners carrying on deceased person's business

3.A.14 In the case of a dental practitioner employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him or her by those persons, plus any amounts paid to him or her by a Health Board that those persons allow him or her to retain.

Out of hours providers

3.A.15.—(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, a 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;
 - (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;

⁽⁴⁵⁾ S.I. 1992/434, as amended by S.I. 1994/3038, 1996/938 and 2002/3135, S.S.I. 1999/53, 2005/118 and 334 and 2006/139.

- (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 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 otherwise be 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;
 - (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 is 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 must 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) has effect ("the nominated date").

- (5) Where 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 has effect on the later of the nominated date and approval date.
- (6) The NHS employment shall be treated as commencing on the nominated date.
- (7) 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.
- (8) 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 3.C.4(2) (guarantees, indemnities and bonds); 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 1 (company voluntary arrangements) of the Insolvency Act 1986⁽⁴⁶⁾ (“the 1986 Act”);
 - (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;
 - (iii) a receiver, manager or administrative receiver has been appointed under Part III (receivership) of the 1986 Act;
 - (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 (winding up of companies registered under the Companies Acts) 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⁽⁴⁷⁾; 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 (winding up of companies registered under this Act or the former Companies Acts) of the Companies Act 1985⁽⁴⁸⁾.
- (9) An OOH provider—
- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event; and
 - (b) that wishes to cease to participate in the scheme must 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.
- (10) An OOH provider ceases to participate in the scheme on—
- (a) such date as the appointed Board may specify in notice under paragraph (8); or
 - (b) the day upon which the period referred to in paragraph (9)(b) expires where a notice under that paragraph has been given.

⁽⁴⁶⁾ 1986 c. 45.

⁽⁴⁷⁾ 1965 c. 12, section 58 was amended by S.I. 2000/3649, article 180.

⁽⁴⁸⁾ 1985 c. 6.