
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

Pensionable earnings

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.