
STATUTORY INSTRUMENTS

1995 No. 365

**The National Health Service Superannuation
Scheme (Scotland) Regulations 1995**

PART C

PENSIONABLE PAY, PENSIONABLE SERVICE AND QUALIFYING SERVICE

Meaning of “pensionable pay”

C1.—(1) In these Regulations “pensionable pay” means, subject to the provisions of this regulation, all salary, wages, fees and other regular payments payable to a member, in respect of pensionable employment as an officer, but does not include bonuses or payments made to cover expenses or for overtime.

(2) Subject to paragraphs (3) and (4), any amount by which a member’s pensionable pay exceeds the permitted maximum will be ignored when calculating the amount of any contributions or benefits payable under these Regulations.

(3) Pensionable pay in excess of the permitted maximum will not be ignored in the case of a member who joined the scheme before 1st June 1989 except in relation to a period following a break in pensionable employment on or after that date.

(4) For the purposes of paragraph (3) no account shall be taken of a break in pensionable employment if—

- (a) the member returns to pensionable employment within 12 months after leaving;
- (b) the break is due to the member’s secondment or posting to another employer and, at the time of the secondment or posting, the member has a definite expectation of returning to pensionable employment when the period of secondment or posting ends;
- (c) the break is due to the member being engaged in other employment which is approved for this purpose by the Secretary of State;
- (d) the break is due to the member’s unpaid absence from work and the member returns to pensionable employment within one month after returning to work; or
- (e) the break corresponds to the member’s absence from work wholly or partly because of pregnancy or confinement and the member returns to work after the break in exercise of her right under section 39(1)(a) of the Employment Protection (Consolidation) Act 1978(1) and returns to pensionable employment no later than one month after returning to work.

(5) This regulation applies to a member in respect of whom a transfer payment has been accepted from a health service scheme in the same way as if the period of employment that qualified the member for benefits under the health service scheme had been pensionable employment.

(6) In this regulation, “the permitted maximum” means the same as in section 590C of the Taxes Act (earnings cap)(2).

Meaning of “pensionable service”

C2.—(1) In these Regulations, for the purpose of calculating the amount of any benefit payable to or in respect of a member, “pensionable service” means, subject to paragraphs (2) and (3)—

- (a) any period of pensionable employment in respect of which the member contributes to the scheme under regulation D1 (contributions by members);
- (b) any period of contributing service that was so reckonable under the 1980 Regulations;
- (c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service, etc.) (Scotland) Regulations 1977(3) (reckoning war service as contributing service under the principal regulations);
- (d) any period of additional service which the member has purchased under regulation Q1 or under regulations 27 or 28 of the 1980 regulations; and
- (e) any period of pensionable service credited to the member under regulation N1(4) (transfer from other pension arrangements) or as a result of transfer payment to the scheme under the 1980 Regulations or regulation R7(2) (transfer from other health service schemes).

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

- (a) any period of employment in respect of which the Secretary of State has paid contributions to another occupational pension scheme in respect of the member;
- (b) in the case of a member who has become entitled to a pension (including a preserved pension) under the scheme, any period that was taken into account for the purpose of determining whether he was entitled to that pension, or for the purpose of calculating the amount of that pension;
- (c) any period of employment in respect of a temporary additional session;
- (d) any period of employment where contributions under regulation D1 have ceased;
- (e) any period in respect of which the Secretary of State has discharged his liability to provide benefits under regulation E9 (refund of contributions), Part M (transfer-out arrangements and buy-outs) and regulation K7 (state scheme premiums).

(3) Pensionable service in respect of part-time employment will be calculated as described in regulation C4 (pensionable service in respect of part-time employment).

(4) The benefits described in these Regulations will be calculated by reference to a maximum of 45 years’ pensionable service of which only 40 years may relate to the period before the member reaches age 60 (age 55 if the member is a special class officer). If the member’s service exceeds these limits, the amount of the excess will be ignored.

(5) Where the member has pensionable service in excess of the limits described in paragraph (3), the Secretary of State shall select those years, by reference to which the benefits are to be calculated, which produce the most favourable result to the member.

(6) If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken—

- (a) the member’s pensionable employment will be treated, subject to paragraph (4), as continuing for a period equal to the period of leave for which payment is made; and
- (b) the payment will be treated as the member’s pensionable pay for that period.

(2) Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, Part I and amended by the Finance Act 1993 (c. 34), section 107.

(3) S.I. 1977/2138; amended by S.I. 1981/1018.

(7) In order to calculate the length of a member’s pensionable service, all periods of pensionable service will be added and each resulting period of 365 days (without regard to pensionable service on 29th February in a leap year) will be treated as one year.

Meaning of “qualifying service”

C3.—(1) Where a member’s entitlement to benefit is conditional on having a length of “qualifying service” specified in a regulation, “qualifying service” means the aggregate of the following:—

- (a) pensionable service under these Regulations, except for any period of additional service referred to in regulation Q1 (right to buy additional service);
- (b) where a transfer payment has been accepted under Part N (transfers-in from other pension arrangements) in respect of the member’s rights under another occupational pension scheme, a personal pension scheme, a buy-out policy or self-employed pension arrangement, the period of employment that qualified the member for those rights;
- (c) any period reckonable as “service” under the 1980 Regulations; and
- (d) any period of part-time pensionable service in accordance with regulation C4(10).

(2) If a member leaves and subsequently returns to pensionable employment paragraphs (3) and (4) will apply for the purpose of calculating the member’s qualifying service.

(3) If the break between leaving and rejoining does not exceed one month or is due to a trade dispute, the member’s pensionable service before and after the break will be treated as continuous (but excluding the break) for the purpose of calculating the member’s qualifying service after the break, even if the member’s pensionable service before and after the break is otherwise treated separately for the purpose of calculating the member’s benefits.

(4) If the member is entitled to a preserved pension under regulation E6 in respect of an earlier period of employment (whether or not the pension has become payable), and the periods of pensionable service before and after the break are not treated as continuous under regulation L1, the period of employment to which that pension relates will be treated as qualifying service.

(5) If a pension becomes payable to a member under regulation E3 and the member has elected under regulation R4(4) to take a benefit only in respect of the employment that has ended, the pensionable service in respect of which that benefit is calculated will be treated as qualifying service in relation to the employment in respect of which benefits continue to accrue.

Pensionable service in respect of part-time employment

C4.—(1) Subject to paragraphs (6) and (10), a member’s pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.

(2) If the member’s part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member’s pensionable service in respect of that employment will be calculated by the following fraction:—

$$\frac{\text{Number of half days or sessions}}{\text{comparable whole-time service}} \times 365.$$

(3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member’s pensionable service in respect of part-time employment will be calculated by multiplying the full length of that pensionable service by the following fraction:—

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*member's hours of employment each week
hours constituting comparable whole-time employment.*

(4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.

(5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—

- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after becoming entitled to receive a pension); or
- (b) sub-paragraph (b) of the definition of previous pay in regulation S2(11) (reduction of pension for members who return to pensionable employment after becoming entitled to a pension).

(6) If a member with pensionable service in part-time employment becomes entitled to an ill-health pension under regulation E2 (early retirement pension (ill-health))—

- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating whether, and (if so) to what extent, the pensionable service upon which the pension is based should be increased under regulation E2;
- (b) the pension will be based on the whole-time equivalent of the member's pensionable service in respect of part-time employment and the increase under regulation E2 will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole time equivalent bears to comparable whole-time employment.

(7) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 2 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction:—

*part-time pensionable employment
comparable whole-time pensionable employment*

where—

“part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under his contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 2 or regular additional contributions were paid in accordance with regulation Q5 (paying by regular additional contributions); and

“comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

(8) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 2 (whichever is applicable) will be reduced as described in paragraph (7) above.

(9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(10) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the

purposes of regulations C3(1) (qualifying service), C2(4) (limit on service that counts for benefits) and R3(5) (extra service credited to long-serving mental health officers), R6(6) (members entitled to fees for domiciliary consultations) and T8 (reduction for benefits under the National Insurance Acts).