
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013

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 ^{M1};

“the 1993 Act” means the Pension Schemes Act 1993 ^{M2};

“the 1995 Act” means the Pensions Act 1995 ^{M3};

“the 1995 Section” means the part of the scheme, the rules of which are set out in the 2011 Regulations;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997 ^{M4};

“the 1999 Act” means the Welfare Reform and Pensions Act 1999 ^{M5};

“the 2004 Act” means the Finance Act 2004 ^{M6};

^{F1} ...

“the 2006 Act” means the National Health Service Act 2006 ^{M7};

“the 2008 Act” means the Pensions Act 2008 ^{M8};

“the 2008 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2008 ^{M9};

“2008 Section Optant” has the meaning given in regulation 3.K.1 (application of Chapter 3.K);

“the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ^{M10};

“the 2011 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 2011 ^{M11};

[^{F2}“the 2013 Act” means the Public Service Pensions Act 2013;

[^{F3}“the 2014 Act” means the Public Service Pensions Act (Northern Ireland) 2014.]

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“the 2015 Scheme” means the scheme set out in the National Health Service Pension Scheme (Scotland) Regulations 2015;]

“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 this Section of the scheme (but see regulation 3.D.5(8) (partial retirement: members aged at least 55));

“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 (option to pay additional periodical contributions), 3.C.8 (option to pay lump sum contribution) and 3.C.9 (additional lump sum contributions by employing authority);

“additional services”—

- (a) with regard to a GMS practice, has the meaning given in Schedule 1 (additional services) of [F4the GMS Contracts 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 additional services within the meaning given in Schedule 1 to [F4the GMS Contracts Regulations];

“assistant practitioner” means—

- (a) in the case of a registered medical practitioner ^{M12}, a GP performer (other than a GP provider) who is—
 - (i) employed (under a contract of employment or a contract for services) by a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board; and
 - (ii) in that employment is engaged wholly or mainly in assisting that practitioner's 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; and
- (b) in the case of a dentist, an assistant as defined in regulation 2(1) of the National Health Service (General Dental Services) (Scotland) Regulations 2010 ^{M13};

“automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations ^{M14});

“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 ^{M15};

“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 ^{M16} 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 ^{M17}[^{F5}and satisfies any requirement of Her Majesty’s Revenue and Customs] and “buy-out” is to be construed accordingly;

“capped increase to pensionable earnings” is to be construed in accordance with regulation 3.F.12;

“cash equivalent” is to be construed in accordance with [^{F6}Chapter 1 (transfer rights: general) of Part 4ZA] of the 1993 Act;

“CCT” means a certificate of completion of training awarded under section 34L(1) of the Medical Act 1983 ^{M18}, including any such certificate awarded in pursuance of the competent authority functions of the General Medical Council specified in section 49B of, and Schedule 4A to, that Act ^{M19};

“certification services” means services related to the provision of the medical certificates listed in [^{F7}schedule 4 (list of prescribed medical certificates) of][^{F4}the GMS Contracts Regulations];

[^{F2}“civil partner” and “civil partnership” are to be construed in accordance with regulation 3.A.1A;]

“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) (supply of goods and services to local authorities, etc.) of the 1978 Act ^{M20}, 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) 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 is—
 - (aa) a GMS practice (under a GMS contract);
 - (bb) a section 17C agreement provider (under a section 17C agreement); or
 - (cc) an HBPMS contractor (under an HBPMS contract);
 - (ii) a shareholder in a company limited by shares that is—
 - (aa) a GMS practice (under a GMS contract);

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- (bb) a section 17C agreement provider (under a section 17C agreement); or
- (cc) an HBPMS contractor (under an HBPMS contract);
- (iii) an individual who is—
 - (aa) a GMS practice (under a GMS contract);
 - (bb) a section 17C agreement provider (under a section 17C agreement); or
 - (cc) an HBPMS contractor (under an HBPMS contract),

the Health Board with which the partnership, company or (in the case of subparagraph (iii)) practice, provider or contractor entered into the contract or agreement referred to;

- (b) in the case of a principal practitioner, the Health Board on whose medical performers list the practitioner's name appears; and
- (c) in the case of an assistant practitioner or a locum practitioner, the Health Board engaging the practitioner under a contract of employment or a contract for services and on whose medical performers list the practitioner's name appears;

“contracting-out requirements” means the requirements mentioned in section 9(2) (requirements for certification of schemes: general) of the 1993 Act ^{M21};

“contribution option period” has the meaning given in regulation 3.C.6(8) (member's option to pay additional periodical contributions to purchase additional pension);

“core hours” means the period beginning at 8.00 a.m. and ending at 6.30 p.m. on any day from Monday to Friday except Good Friday, Christmas Day and a bank holiday;

“corresponding health service scheme” means—

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 ^{M22} and having effect in England and Wales;
- (b) a superannuation scheme provided under article 12 of the Superannuation (Northern Ireland) Order 1972 ^{M23};
- (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) ^{M24}, in the case of a member who entered NHS employment on or before 31st March 2012; or
- (d) any other occupational pension scheme approved for this purpose by the Scottish Ministers;

“corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the 1995 Section;

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of this Section of the scheme;

“deferred member” has the meaning given in section 124(1) (interpretation of Part 1) of the 1995 Act and, except where the context requires otherwise, refers to membership of this Section 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));

“dentist” means a dental practitioner registered in the register of dentists kept under section 14 of the Dentists Act 1984 ^{M25};

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

“dispensing services” means the provision of drugs, medicines and such appliances which are included in the list determined by Scottish Ministers under section 27(1)(cc) (arrangements for provision of pharmaceutical services) of the 1978 Act ^{M26};

“employing authority” means—

- (a) a Health Board, a Special Health Board, the Common Services Agency for the Scottish Health Service (constituted by section 10 of the 1978 Act)^{M27} or Healthcare Improvement Scotland (established by section 10A of the 1978 Act^{M28});
- (b) the Mental Welfare Commission for Scotland (established under section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003^{M29});
- (c) an OOH provider;
- (d) an HBPMS contractor;
- (e) a GMS practice;
- (f) a section 17C agreement provider;
- (g) 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 this Section of the scheme; or
- (h) 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^{M30} and subject to such modifications to these Regulations as the Scottish Ministers may in any particular case direct, any employer of such a person whom the Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations;

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

“enhanced services” with regard to—

- (a) a GMS practice, has the same meaning given in regulation [F83(1)] (interpretation) of [F4the GMS Contracts 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 [F83(1)] of [F4the GMS Contracts Regulations];

“essential services” means services required to be provided in accordance with regulation [F918] (essential services) of [F4the GMS Contracts Regulations];

“GMS contract” means a contract under section 17J (health boards' power to enter into general medical services contract) of the 1978 Act^{M31} 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^{M32};

[F10“the GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018;]

“GMS practice” means—

- (a) a registered medical practitioner^{M33} who is a principal practitioner;
- (b) two or more such 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,

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commissioned services, OOH services or certification services (or any combination of those services)—

- (a) under a GMS contract, section 17C agreement or HBPMS contract;
- (b) on behalf of an OOH provider; or
- (c) under a contract of employment or a contract for services with a Health Board which relates to arrangements by which it provides services under section 2C (functions of Health Boards: primary medical services) of the 1978 Act ^{M34};

“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 medical practitioner who is being trained in general practice by a GP trainer, whether as part of training leading to a CCT or otherwise;

“GP trainer” means a medical practitioner, other than a GP registrar, who is approved by the General Medical Council for the purposes of providing training to a GP registrar;

“guarantee date” has the meaning given in regulation 3.F.2(2) (applications 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: general);

“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 a contractual arrangement for the provision of services in accordance with section 2C(2) (functions of health boards: primary medical services) of the 1978 Act between a Health Board and a HBPMS contractor;

“HBPMS contractor” means a person with whom a Health Board has made arrangements under section 2C(2) (functions of health boards: primary medical services) 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 and that person has not entered into such a GMS contract or section 17C agreement;

“Health Board” means a Health Board constituted under section 2(1)(a) of the 1978 Act;

“the health service” has the meaning given in section 108(1) (interpretation and construction) of the 1978 Act;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 (individual's lifetime allowance and standard lifetime allowance) of the 2004 Act ^{M35};

“lifetime allowance charge” has the meaning given in section 214(1) of the 2004 Act;

“local authority” means a council constituted under section 2 (constitution of councils) of the Local Government etc. (Scotland) Act 1994 ^{M36};

“locum practitioner” means a registered medical practitioner ^{M37} (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,

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 earnings limit” is to be construed in accordance with section 5 (earnings limits and thresholds for Class 1 contributions) of the Social Security Contributions and Benefits Act 1992 ^{M38};

“lower tier ill health pension” is to be construed in accordance with regulation 3.D.7 (early retirement on ill health: active members and non-contributing members);

“lump sum rule” has the meaning given in section 166 (lump sum rule) of the 2004 Act ^{M39};

“lump sum death benefit rule” has the meaning given in section 168 (lump sum death benefit rule) of the 2004 Act ^{M40};

[^{F2}“marriage” and “married” do not include a reference to marriage of a same sex couple unless otherwise provided;]

“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 ^{M41};

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

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

“non-contributing member” means a member who—

- (a) is under age 75 and in NHS employment;
- (b) is no longer required to make contributions to this Section of the scheme in accordance with regulation 3.C.1(1); and
- (c) will be entitled to a pension under these Regulations—
 - (i) on ceasing to be employed in NHS employment and making a claim for the pension; or
 - (ii) upon reaching age 75;

“non-GP provider” applies as if the non-GP provider were a whole-time officer and means—

- (a) a partner in a partnership that is a GMS practice—
 - (i) who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that the partner 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) who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that the partner assists in the provision of NHS services provided by that partnership;

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- (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) who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that the partner assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is a GMS practice, is a section 17C agreement provider, or is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services—
 - (i) who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that the shareholder assists in the provision of NHS services provided by that company; or
- (e) an individual who is a section 17C agreement provider, or is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services—
 - (i) who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Scottish Ministers that the individual 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) of the 1993 Act ^{M42} 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 (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 1 (retirement benefit schemes) of Part 14 of the Income and Corporation Taxes Act 1988 ^{M43} or whose application for approval under that Chapter was under consideration;
 - (ii) a statutory scheme as defined in section 612(1) (interpretation) of the Income and Corporation Taxes Act 1988 ^{M44}; or
 - (iii) a scheme to which section 608 (superannuation funds approved before 6th April 1980) of the Income and Corporation Taxes Act 1988 ^{M45} applied,
 and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“officer” means a person (other than a GP performer) employed by an employing authority;

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

“OOH provider” has the meaning given in regulation 3.A.14 (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, a section 17C Agreement provider or a HBPMS Contractor to patients to whom the practice or contractor is required by its GMS contract, section 17C agreement or HBPMS 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.6 (opting out of this Section of the scheme);

“out of hours period” means—

- (a) the period beginning at 6.30 p.m. on any day from Monday to Thursday and ending at 8.00 a.m. the following day;

- (b) the period between 6.30 p.m. on Friday and 8.00 a.m. 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);

[^{F11}“parental bereavement leave” has the meaning given in regulation 3 of the Parental Bereavement Leave Regulations 2020;]

“pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;

“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 member” has the meaning given in section 124(1) (interpretation of Part 1) of the 1995 Act;

“pension credit rights” has the meaning given in section 101B (interpretation) of the 1993 Act;

“pension debit member” means a member of this Section of the scheme whose benefits, or future benefits, under this scheme have been reduced under section 31 (reduction under pension sharing order following divorce or nullity of marriage) of the 1999 Act, whether before or after the person became a member of this Section of the scheme;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1) (activation of pension sharing) of the 1999 Act ^{M46};

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

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

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

“pensioner 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 this Section 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));

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

- (a) in the case of 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 (transfers); 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 4 (personal pension schemes) of Part 14 of the Income and Corporation Taxes Act 1988 ^{M47}; and
 - (ii) on 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, a principal practitioner, a GP registrar or a 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;

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“practitioner” means—

- (a) a registered medical practitioner ^{M48} (other than a GP registrar) who is a GP provider, a GP performer or a locum practitioner; or
- (b) a dentist,

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

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

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

“principal practitioner” means—

- (a) in the case of a registered medical practitioner, a GP provider; and
- (b) in the case of a dentist, a registered dentist who is included in the first part of a dental list prepared by a Health Board in accordance with regulation 4 of the National Health Service (General Dental Services) (Scotland) Regulations 2010 ^{M49};

“public sector transfer arrangements” means arrangements approved by the Scottish Ministers as providing reciprocal arrangements for the payment and receipt of transfer values between this Section of 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 three 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) (amount of surviving adult's pension: recent leavers);

“registered”, in relation to a pension scheme, means registered under Chapter 2 (registration of pension schemes) of Part 4 of the 2004 Act;

[^{F2}“registered medical practitioner” means a fully registered medical practitioner within the meaning given in section 55 of the Medical Act 1983;]

“retail prices index” has the meaning given in section 989 (the definitions) of the Income Tax Act 2007 ^{M50};

^{F12} ...

“the scheme”, except where the context otherwise requires, means the National Health Service superannuation scheme for Scotland, the rules of which are set out in these Regulations and the 2011 Regulations;

“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 this Section of the scheme;

“scheme administrator” means the scheme administrator under regulation 3.J.1;

“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 (personal medical or dental services) of the 1978 Act ^{M51};

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

[^{F13}“shared parental leave” has the meaning given in regulation 3 of the Shared Parental Leave Regulations 2014;]

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“Special Health Board” means a Special Health Board constituted under section 2(1)(b) of the 1978 Act;

“State pension age” means pensionable age, as defined in section 181(1) (general interpretation) of the 1993 Act ^{M52};

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

“this Section of the scheme” means the part of the scheme, the rules of which are set out in these Regulations;

“trade dispute” has the meaning given in section 35(1) (interpretation) of the Jobseekers Act 1995 ^{M53};

“upper tier ill health pension” is to be construed in accordance with regulation 3.D.7 (early retirement on ill health: active members and non-contributing members);

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

“Waiting Period Joiner” has the meaning given in regulation 3.L.1.

[^{F2}“widow” and “widower” do not include a reference to marriage of a same sex couple;]

- F1** Words in reg. 3.A.1 omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(a)** (with reg. 2)
- F2** Words in reg. 3.A.1 inserted (retrospective and with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1, **36**
- F3** Words in reg. 3.A.1 inserted (31.1.2018) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **14** (with reg. 19)
- F4** Words in reg. 3.A.1 substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(c)** (with reg. 2)
- F5** Words in reg. 3.A.1 inserted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **32(a)** (with reg. 53)
- F6** Words in reg. 3.A.1 substituted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **32(b)** (with reg. 53)
- F7** Words in reg. 3.A.1 substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(d)** (with reg. 2)
- F8** Word in reg. 3.A.1 substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(e)** (with reg. 2)
- F9** Word in reg. 3.A.1 substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(f)** (with reg. 2)
- F10** Words in reg. 3.A.1 inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 8(3)(b)** (with reg. 2)
- F11** Words in reg. 3.A.1(1) inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, **32(7)**
- F12** Words in reg. 3.A.1 omitted (13.3.2017) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **32(c)** (with reg. 53)
- F13** Words in reg. 3.A.1 inserted (with effect in accordance with reg. 1(2)(b) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **32(d)** (with reg. 53)

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Marginal Citations

- M1** 1978 c.29.
- M2** 1993 c.48.
- M3** 1995 c.26.
- M4** 1997 c.46.
- M5** 1999 c.30.
- M6** 2004 c.12.
- M7** 2006 c.41.
- M8** 2008 c.30.
- M9** S.S.I. 2008/224, amended by S.S.I. 2009/19 and 208, 2010/22 and 369, 2011/53 and 364, 2012/69 and 163 and S.I. 2010/234.
- M10** S.I. 2010/772.
- M11** S.S.I. 2011/117, amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.
- M12** “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.
- M13** S.S.I. 2010/208, to which there are amendments not relevant to these Regulations.
- M14** Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.
- M15** 1971 c.80. There is an amendment to section 1(5) which is not relevant to these Regulations.
- M16** 1998 c.11.
- M17** Section 19 was amended by S.I. 2001/3649, 2005/2050 and 2007/3014.
- M18** 1983 c.54. Section 34L was inserted by S.I. 2010/234.
- M19** Section 49B and Schedule 4A were inserted by S.I. 2007/3101 and amended by S.I. 2008/1174 and 2010/234.
- M20** Section 15 was relevantly amended by paragraph 1(2) of schedule 1 to the Primary Medical Services (Scotland) Act 2004 (asp 1) and by paragraph 17 of schedule 17 of the Public Services Reform (Scotland) Act 2010 (asp 8).
- M21** Section 9 was relevantly amended by section 136(3) of the Pensions Act 1995 (c.26), **section 14(4)** of, and Part 6 of Schedule 7 to, the Pensions Act 2007 (c.22) and paragraph 35(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).
- M22** 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), **Schedule 7** to the National Health Service (Scotland) Act 1972 (c.58), **sections 4(2)** and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), **paragraph 7** of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649.
- M23** S.I. 1972/1073 (N.I. 10).
- M24** 1984 c.8 (Tynwald).
- M25** 1984 c.24.
- M26** Section 27(1)(cc) was inserted by section 3 of the Medical Products: Prescription by Nurses etc. Act 1992 (c.28) and amended by section 44(2) of the Health and Social Care Act 2001 (c.15).
- M27** The Common Services Agency for the Scottish Health Service is also known as the NHS National Services Scotland. Section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53), **section 66(2)** to, and Schedule 10 to, the National Health Services and Community Care Act 1990 (c.19), **paragraph 44** of Schedule 4 to the Health Act 1999 (c.8), **paragraph 2(4)** of schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) and section 17(1) of the Patient Rights (Scotland) Act 2011 (asp 5).
- M28** Section 10A was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).
- M29** 2003 asp 13. Section 4 was amended by section 111(2) of the Public Services Reform (Scotland) Act 2010 (asp 8).
- M30** 1967 c.28. Section 7 was amended by S.I. 1968/1699, **section 10(5)** of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), **Schedule 5** to the National Health Service Reorganisation Act 1973 (c.32), **paragraph 24** of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

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- M31** Section 17J was inserted by section 4 of the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).
- M32** [S.S.I. 2004/636](#). There are amendments to the Order which are not relevant for the purposes of these Regulations.
- M33** “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).
- M34** Section 2C was inserted by section 1(2) of the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#) and amended by the paragraph 1(3) of Schedule 1 to the National Health Service Reform (Scotland) Act 2004, section 37 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#) and [S.I. 2010/283](#).
- M35** Section 218 was amended by paragraph 2(2) and (3) of Schedule 18 to the [Finance Act 2011 \(c.11\)](#).
- M36** [1994 c.39](#). Section 2 was amended by paragraph 232(1) of Schedule 22 to the [Environment Act 1995 \(c.25\)](#).
- M37** “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).
- M38** [1992 c.4](#). Section 5 was substituted by paragraph 1 of Schedule 9 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by Part 4 of Schedule 7 to the [Pensions Act 2007 \(c.22\)](#) and Schedule 2 of the [National Insurance Contributions Act 2008 \(c.16\)](#).
- M39** Section 166 was amended by paragraph 9 of Schedule 20 to the [Finance Act 2007 \(c.11\)](#).
- M40** Section 168 was amended by Part 3 of Schedule 27 to the [Finance Act 2007 \(c.11\)](#) and paragraph 65 of Schedule 16 to the [Finance Act 2011 \(c.11\)](#).
- M41** [S.S.I. 2004/114](#).
- M42** The definition of “occupation pension scheme” in section 1 was amended by [S.I. 2007/3014](#).
- M43** [1988 c.1](#). Chapter 1 of Part 14 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the [Finance Act 2004 \(c.12\)](#).
- M44** Section 612 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the Finance Act 2004.
- M45** Section 608 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the Finance Act 2004.
- M46** Section 28 was relevantly amended by paragraph 159 of Schedule 27 to the [Civil Partnership Act 2004 \(c.33\)](#).
- M47** Chapter 4 of Part 14 was repealed by Part 3 of Schedule 42 to the [Finance Act 2004 \(c.12\)](#).
- M48** “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).
- M49** [S.S.I. 2010/208](#), to which there are amendments not relevant to these Regulations.
- M50** [2007 c.3](#). The definition of “retail prices index” was amended by paragraph 16 of Schedule 3 to the [Statistics and Registration Service Act 2007 \(c.18\)](#).
- M51** Section 17C was inserted by section 21(2) of the [National Health Service \(Primary Care\) Act 1997 \(c.46\)](#) and amended by section 2(2) of the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).
- M52** The definition of “pensionable age” in section 181(1) was inserted by paragraph 17 of Schedule 4 to the [Pensions Act 1995 \(c.26\)](#).
- M53** [1995 c.18](#). There are amendments to section 35(1) which are not relevant to these Regulations.

[^{F14}Civil partnerships and marriage of same sex couples

3.A.1A.—(1) In this Part, a reference to—

- (a) civil partnership is to be read as including a reference to marriage of a same sex couple and a reference to civil partners and a person who is in a civil partnership is to be construed accordingly;
- (b) a person who is living with another person as if they were in a civil partnership is to be read as including a reference to a person who is living with another person of the same sex as if they were married.

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(2) Where paragraph (1) requires a reference to be read in a particular way, any related reference (such as a reference to a civil partnership that has ended, a reference to a person whose civil partnership has ended, or a reference to persons formerly living together as civil partners) is to be read accordingly.

(3) For the purposes of paragraphs (1) and (2), it does not matter how a reference is expressed.

(4) In this regulation, “civil partnership” and “civil partners” have the meanings given by section 1 of the Civil Partnership Act 2004.]

F14 [Reg. 3.A.1A](#) inserted (retrospective and with effect in accordance with reg. 1(3) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1, **37**

Interpretation: further provisions

3.A.2.—(1) In determining whether a person who is an active member or a pensioner member of this Section 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 this Section 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.

Pensionable service

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 this Section of 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 (pensionable service: breaks in service);
- (c) any period of service credited to the member as pensionable service under Chapter 3.F (transfers);
- (d) any period of pensionable service which the member is entitled to count under Chapter 3.K (2008 Section Optants); and
- (e) any period of service which the member was entitled to count as pensionable service under regulation 3.A.3 (meaning of “pensionable service”) of the 2008 Regulations immediately before these Regulations came into force.

(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: members aged at least 55), this is subject to paragraph (7);
- (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^{M54};
 - (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 three 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 must be 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 for 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 are to be added together and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) is to 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 purposes of this Part—
- (a) the member's pensionable service is to be treated as continuing for a period equal to the period of leave in respect of which payment is made; and
 - (b) the payment is to be 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: members aged at least 55), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 3.D.5(8)(a).
- (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) Where a member is also a member of the 1995 Section, any reference in this Part to “45 years” must be taken to be a reference to a shorter period determined by the formula—

$$SP = \text{years} - LPS$$

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where—

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the 2011 Regulations), measured in years and days, giving rise to membership of the 1995 Section and, in the case of a member of that Section who has become entitled to a pension (including a preserved pension) under that Section, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.

Marginal Citations

M54 Section 55 was amended by section 141(1) of, and Part 3 of Schedule 7 to, the [Pensions Act 1995 \(c.26\)](#), [paragraph 7\(1\)\(a\)](#) of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c.30), [S.I. 2005/2050](#) and Part 6 of Schedule 7 to the [Pensions Act 2007 \(c.22\)](#).

Pensionable service: breaks in service

3.A.4.—(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; ^{F15}...
- (e) parental leave [^{F16}or shared parental leave][^{F17}, or
- (f) parental bereavement leave].

(2) The period of absence counts as pensionable service if the member contributes to this Section of the scheme under regulation 3.C.1 (contributions by members) in respect of the period of absence.

(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to this Section of the scheme under regulation 3.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member's leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.

(4) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to this Section of the scheme both member contributions under regulation 3.C.1 and employer contributions under regulation 3.C.3 (contributions by employing authorities: general) by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.

(5) This paragraph applies if a person—

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- (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.6 (opting out of this Section 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.
- (6) If paragraph (5) 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 to be treated as a single continuous period of pensionable service, unless paragraph (7) applies ^{M55}.
- (7) 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 (9)); or
 - (c) the person's rights under this Section of 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.
- (8) In the case of a member who leaves pensionable service whilst absent from work because of—
- (a) illness or injury;
 - (b) maternity leave;
 - (c) adoption leave;
 - (d) paternity leave; ^{F18}...
 - (e) parental leave [^{F19}or shared parental leave]^{F20}, or
 - (f) parental bereavement leave]
- this regulation applies as if the reference to 12 months in paragraph (5)(b) were a reference to three years.
- (9) Paragraph (7)(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.

F15 Word in [reg. 3.A.4\(1\)\(d\)](#) omitted (6.4.2020) by virtue of [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [32\(8\)\(a\)](#)

F16 Words in [reg. 3.A.4\(1\)\(e\)](#) inserted (with effect in accordance with [reg. 1\(2\)\(b\)](#) of the amending [S.S.I.](#)) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), [33\(a\)](#) (with [reg. 53](#))

F17 [Reg. 3.A.4\(1\)\(f\)](#) and word inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [32\(8\)\(a\)](#)

F18 Word in [reg. 3.A.4\(8\)\(d\)](#) omitted (6.4.2020) by virtue of [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [32\(8\)\(b\)](#)

F19 Words in [reg. 3.A.4\(8\)\(e\)](#) inserted (with effect in accordance with [reg. 1\(2\)\(b\)](#) of the amending [S.S.I.](#)) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), [33\(b\)](#) (with [reg. 53](#))

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F20 [Reg. 3.A.4\(8\)\(f\)](#) and word inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, 32(8)(b)

Marginal Citations

M55 Where paragraph (6) applies 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) (meaning of “pensionable service”);
 - (b) in the case of a person in respect of whom a transfer value in respect of the person's rights under another pension arrangement (including the 1995 Section) 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 (qualifying service: disregard of breaks in service);
 - (d) where the member ceased to be an active member under Part 2 less than 12 months before becoming a member under this Part, any period of qualifying service under Part 2;
 - (e) in the case of a person—
 - (i) who is eligible to join this Section of the scheme by virtue of regulation 3.B.1(5)(c) (eligibility: general); and
 - (ii) for whom the interval between leaving the 1995 Section and joining this Section of the scheme is less than one month,

a period equal to the period of qualifying service (within the meaning of the 2011 Regulations), measured in years and days, that the member was entitled to count under regulation C3 (meaning of “qualifying service”) of the 2011 Regulations when the member left the 1995 Section;
 - (f) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 3.K (2008 Section Optants);
 - (g) in the case of a Waiting Period Joiner (as defined in regulation 3.L.1(2)), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section;
 - (h) in the case of a person who is eligible to join this Section of the scheme by virtue of regulation 3.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
 - (i) any period of service which the member was entitled to count as qualifying service under section 3.A.5 (meaning of “qualifying service”) of the 2008 Regulations immediately before these Regulations came into force.
- (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 three months from the date of such cessation.
- (3) Where this paragraph applies—
 - (a) a locum practitioner is to be 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 this Section of the scheme on being re-engaged as a locum practitioner; and
 - (b) that period does not count as practitioner service ^{M56}.

Marginal Citations

M56 For the other rules applying where there is a short break in service, see [regulation 3.A.6](#) (qualifying service: disregard of breaks in 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) (meaning of “qualifying service”) applies).

(2) Subject to paragraph (6), 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 to be 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) Subject to paragraph (6), if—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to this Section of 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 to be treated as a single continuous period of qualifying service with that in the later employment.

(5) Subject to paragraph (6), 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 to be treated as a single period of qualifying service with that in the later period of such membership.

(6) Where—

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- (a) the person has received a repayment of contributions under regulation 3.C.16 (repayment of contributions) in respect of the earlier period, paragraphs (4) and (5) do not apply (but see paragraph (7)); or
- (b) the person's rights under this Section of 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, paragraphs (2), (4) and (5) do not apply.

(7) Paragraph (6)(a) 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(6) (pensionable service: breaks in service) or regulation 3.G.3(2)(a) (exception to general rule),

the period of pensionable service in respect of which the member is a deferred member or a pensioner member is to be 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 a salary, wages, fees or any regular payments in respect of that person's employment as an officer, “pensionable earnings” means practitioner income less—

- (a) any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 3.C.5(5) or (6) (payment of contributions) are neither practitioner income or 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 assistant practitioner who is not in pensionable employment under this Section of the scheme, the amount that would have been taken to be that practitioner's pensionable earnings if the practitioner was in such pensionable employment.

(2) Subject to paragraph (3), in 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) (functions of health boards: primary medical services) of the 1978 Act ^{M57};

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- (vi) in the case of a principal practitioner, the provision of locum services;
 - (vii) payments made to a principal practitioner by an OOH provider or other employing authority providing OOH services 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 subparagraph (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 ^{M58} (charges for more expensive supplies of dental appliances);
 - (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 in regulation 3.A.11(3) (meaning of pensionable earnings in relation to other practitioners).
- (5) The pensionable earnings of a principal practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants).

Marginal Citations

M57 Section 2C(1) was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), [section 1\(2\)](#).

M58 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](#).

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; ^{F21}...
- (e) parental leave [^{F22}or shared parental leave]^{F23}, or
- (f) parental bereavement 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 this Section of the scheme under regulations 3.C.1 (contributions by members) and 3.C.2 (members' contribution

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rate), pensionable earnings for the period of absence are to 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 are to 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) (calculating pensionable earnings of medical practitioners in partnership), each practitioner's or non-GP provider's pensionable earnings are to 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; and
- (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 the member's 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) is, subject to sub-paragraph (b), to 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 is to 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) who paid contributions on the basis of reduced earnings in accordance with paragraph 3(a) must, 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 are to be calculated as described in paragraph (3)(a) or (b) (whichever is applicable); 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 is to 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 this Section of the scheme in respect of a period of absence to which this regulation applies, the member is to 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 (5)(b) or (7), 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) (qualifying service: disregard of breaks in service) applies as if the reference to 12 months was a reference to three years.

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

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(10) For the purposes of making contributions to this Section of the scheme under regulations 3.C.1 and 3.C.3 (contributions by employing authorities: general), during any period of absence which counts as pensionable service under regulation 3.A.4(3) or (4) (pensionable service: breaks in service), amounts equal to the rate of the member's pensionable earnings calculated as described in paragraph (3)(a) or (b) are treated as pensionable earnings.

(11) Before a calculation of a member's pensionable earnings can be made in accordance with paragraph (3), written notice of the length of the period of absence to which this regulation applies must be given to the Scottish Ministers by—

- (a) the member, where the member is a principal practitioner or a non-GP provider; or
- (b) in all other cases, the relevant Health Board or someone appointed to act on their behalf.

(12) The notice referred to in paragraph (11) must be provided to the Scottish Ministers in such form and manner as the Scottish Ministers may stipulate from time to time.

- F21** Word in [reg. 3.A.8\(1\)\(d\)](#) omitted (6.4.2020) by virtue of [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [32\(9\)](#)
- F22** Words in [reg. 3.A.8\(1\)\(e\)](#) inserted (with effect in accordance with [reg. 1\(2\)\(b\)](#) of the amending [S.S.I.](#)) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), [34](#) (with [reg. 53](#))
- F23** [Reg. 3.A.8\(1\)\(f\)](#) and word inserted (6.4.2020) by [The Parental Bereavement Leave and Pay \(Consequential Amendments to Subordinate Legislation\) Regulations 2020 \(S.I. 2020/354\)](#), regs. 1, [32\(9\)](#)

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 this Section of 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^{M59} 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), must 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) are to be made by the Health Board or someone appointed on its behalf to whom 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).

Marginal Citations

M59 “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).

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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) (calculation of pensionable earnings of medical practitioners in partnership) by giving notice in writing to the practitioner's 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) takes 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) continues in effect until cancelled, or amended by a subsequent notice in writing signed by all the practitioners in partnership; and

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

Meaning of pensionable earnings in relation to other practitioners

3.A.11.—(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

(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 ^{F24}....

(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 ^{F24}...), 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.

(4) The pensionable earnings of an assistant practitioner or a locum practitioner, include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K (2008 Section Optants).

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F24 Words in reg. 3.A.11(1)(2) omitted (31.1.2018) by virtue of [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) \(No. 2\) Regulations 2017 \(S.S.I. 2017/434\)](#), regs. 1(1), **15** (with reg. 19)

Exclusions and deductions from pensionable earnings: all practitioners

3.A.12. Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 ^{M60} is to be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Scottish Ministers may approve.

Marginal Citations

M60 [S.I. 1992/434](#). The Regulations were revoked by [S.S.I. 2006/330](#).

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

3.A.13. 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 the dental practitioner by those persons, plus any amounts paid to the practitioner by a Health Board that those persons allow the practitioner to retain.

Out of hours providers

3.A.14.—(1) In this Part, an “OOH provider” means—

- (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 ^{M61}, 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 an 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;
 - (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—

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- (i) operates in the interests of those who are the recipients of the primary medical services it provides or 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, a GMS practice or a section 17C agreement provider;
 - (bb) a partner in a partnership which is an HBPMS contractor, a GMS practice or a section 17C agreement provider; or
 - (cc) a shareholder in a company limited by shares that is an HBPMS contractor, a GMS practice or a section 17C agreement provider;
- (vi) 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
- (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 to 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 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) is to have 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 date on which approval is actually given (the "approval date"); and
- (b) it approves that application,

that approval takes effect on the later of the nominated date (if any) and the approval date.

(6) NHS employment is to be treated as commencing on the later of the nominated date (if any) and the approval date.

(7) For the purposes of this regulation—

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- (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 this Section of 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;
 - (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of the OOH provider—
 - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 (company voluntary arrangements) of the Insolvency Act 1986 ^{M62} (“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 (administration) to the 1986 Act ^{M63};
 - (iii) a receiver, manager or administrative receiver has been appointed under Part 3 (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 4 (winding up of companies registered under the Companies Acts) or Part 5 (winding up of unregistered companies) of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 (instrument of dissolution) of the Industrial and Provident Societies Act 1965 ^{M64}; or
 - (v) notice has been received by the OOH provider that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 (dissolution and restoration to the register) of the Companies Act 2006 ^{M65}.
- (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 this Section of the scheme must give the appointed Board and its employees not less than three months' notice in writing (to commence with the date of the notice) of that fact.
- (10) An OOH provider ceases to participate in this Section of 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.

Marginal Citations

M61 “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).

M62 [1986 c.45](#).

M63 Schedule B1 was inserted by Schedule 16 of the [Enterprise Act 2002 \(c.40\)](#).

M64 [1965 c.12](#). Section 58 was amended by [S.I. 2001/2617](#) and 3649 and 2011/2687.

M65 [2006 c.46](#).

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 2.B.3(A3) inserted by [S.S.I. 2023/246 sch. para. 2\(2\)](#)
- reg. 3.B.3(A3) inserted by [S.S.I. 2023/246 sch. para. 2\(3\)](#)