
STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.A

INTRODUCTION

General interpretation

2.A.1 Interpretation: general

(1) In this Part—

“the 1993 Act” means the Pension Schemes Act 1993⁽¹⁾;

“the 1995 Act” means the Pensions Act 1995⁽²⁾;

“the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995⁽³⁾;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997⁽⁴⁾;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999⁽⁵⁾;

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003⁽⁶⁾;

“the 2004 Act” means the Finance Act 2004⁽⁷⁾;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽⁸⁾;

“the 2004 Order” means the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004⁽⁹⁾;

“the 2006 Act” means the National Health Service Act 2006⁽¹⁰⁾;

“the 2006 (Wales) Act” means the National Health Service (Wales) Act 2006⁽¹¹⁾;

(1) 1993 c. 48.

(2) 1995 c. 26.

(3) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919 and 2007/2054, 3280 and 2008/653, and modified by S.I. 1996/971.

(4) 1997 c. 46.

(5) 1999 c. 30.

(6) 2003 c. 43.

(7) 2004 c. 12.

(8) S.I. 2003/1250.

(9) S.I. 2004/865.

(10) 2006 c. 41.

(11) 2006 c. 42.

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 2.D.5(9));

“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 2.C.8, 2.C.10 and 2.C.11;

“additional services” has the meaning given in regulation 3.A.1;

“APMS contract” means arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act (primary medical services) between a Primary Care Trust or Local Health Board and an APMS contractor;

“APMS contractor” means a person—

- (a) with whom a Primary Care Trust or Local Health Board has made arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act, and
- (b) who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971⁽¹²⁾;

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

- (c) 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
- (d) where an order under section 19 of the Bank of England Act 1998⁽¹³⁾ is in force, any equivalent rate determined by the Treasury under that section;

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

“capped transferred-in service”, must be read in accordance with regulation 2.F.12;

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

“CCT” means a Certificate of Completion of Training awarded under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽¹⁴⁾, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;

“certification services” means services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts Regulations;

“collaborative services” means primary medical services provided by a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider under or as a result of an arrangement between—

- (a) the Secretary of State, the National Assembly for Wales, a Primary Care Trust or a Local Health Board; and
- (b) a local authority,

under, in the case of England, section 80(6) of the 2006 Act or in the case of Wales, section 38(6) of the 2006 (Wales) Act, under which the Secretary of State, the National Assembly for Wales, the Primary Care Trust or the Local Health Board is responsible for providing services for purposes related to the provision of health care;

⁽¹²⁾ 1971 c. 80.

⁽¹³⁾ 1998 c. 11.

⁽¹⁴⁾ S.I. 2008/250.

“commissioned services” means medical services provided under a contract between—

- (a) a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider; and
- (b) one of the following bodies—
 - (i) a Strategic Health Authority or a Special Health Authority, which relates to the provision of health care; or
 - (ii) the Secretary of State, the National Assembly for Wales, a Primary Care Trust or a Local Health Board under, in the case of England, section 12 of the 2006 Act or in the case of Wales, section 10 of the 2006 (Wales) Act; or
 - (iii) a National Health Service trust under paragraph 18 of Schedule 4 to the 2006 Act or paragraph 18 of Schedule 3 to the 2006 (Wales) Act; or
 - (iv) a National Health Service foundation trust under section 47(2)(b) of the 2006 Act, which is for the purposes of the health service;

(2) “contracting-out requirements” means the requirements mentioned in section 9(2) of the 1993 Act;

“the contribution option period” has the meaning given in regulation 2.C.8(8);

“corresponding health service scheme” has the meaning given in regulation 2.F.11(7);

“deferred member” has the meaning given in section 124(1) of the 1995 Act, except where the context requires otherwise, refers to membership of the Scheme (but see paragraph (3) and regulation 2.D.5(9));

“dentist performer” means a dental practitioner—

- (a) whose name is included in a dental performers list or who is a vocational trainee in the first two months of vocational training, and
- (b) who performs primary dental services under—
 - (i) a GDS contract,
 - (ii) a PDS agreement to which a PDS contractor is a party, or
 - (iii) a contract for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary dental services under section 99(2) of the 2006 Act or section 56(2) of the 2006 (Wales) Act (primary dental services) or a PDS agreement to which a PDS contractor is not a party;

“dependent child” is to be construed in accordance with regulation 2.E.9;

“dispensing services” means the provision of drugs, medicines or appliances that may be provided as pharmaceutical services by a registered medical practitioner in accordance with arrangements made under regulation 20 of the National Health Service (Pharmaceutical Services) Regulations 1992(15);

“employing authority” means—

- (a) a Strategic Health Authority established under section 13 of the 2006 Act,
- (b) a Special Health Authority established under section 28 of the 2006 Act or section 22 of the 2006 (Wales) Act 2006,
- (c) a Primary Care Trust established under section 18 of the 2006 Act,
- (d) a Local Health Board established under section 11 of the 2006 (Wales) Act,
- (e) a National Health Service trust established under section 25 of the 2006 Act or section 18 of the 2006 (Wales) Act,

- (f) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act,
- (g) any other body which—
 - (i) is constituted under an Act relating to health services, and
 - (ii) the Secretary of State agrees to treat as an employing authority for the purposes of the Scheme,
- (h) an OOH provider,
- (i) an APMS contractor,
- (j) a GMS practice,
- (k) a PMS practice,
- (l) in relation to a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967⁽¹⁶⁾, and subject to such modifications to this Part as the Secretary of State may in any particular case direct, any employer of such a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;
- (m) in relation to officers of a hospital of such classes as may be provided in an agreement to participate in benefits under this Part pursuant to section 235 of the 2006 Act (superannuation of officers of certain hospitals), and subject to such modifications to this Part as the Secretary of State may in any particular case direct, any employer of such a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;
- (n) host Trust or Board;

“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 meaning given in regulation 2(1) of the GMS Contracts Regulations; or
- (b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of those Regulations;

“essential services” means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations, whether provided by a GMS practice, a PMS practice or an APMS contractor;

“GMS Contracts Regulations” means—

- (a) in relation to England, the National Health Service (General Medical Services Contracts) Regulations 2004⁽¹⁷⁾;
- (b) in relation to Wales, the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004⁽¹⁸⁾;

“GDS contract” means a general dental services contract under section 100 of the 2006 Act or section 57 of the 2006 (Wales) Act (general dental services contracts: introductory);

“GDS contractor” means a person who is a party to a GDS contract, other than a Primary Care Trust or a Local Health Board;

“GMS contract” means—

⁽¹⁶⁾ 1967 c. 28.
⁽¹⁷⁾ S.I. 2004/291.
⁽¹⁸⁾ S.I. 2004/478.

- (a) in relation to England, a contract under section 84 of the 2006 Act or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004(19);
- (b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004(20);

“GMS practice” means—

- (a) a registered medical practitioner,
 - (b) two or more individuals practising in partnership, or
 - (c) a company limited by shares,
- with whom a Primary Care Trust or Local Health Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a GP Registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services or certification services (or a combination of those services)—

- (a) under a GMS contract, PMS agreement or APMS contract,
- (b) on behalf of an OOH provider, or
- (c) under a contract of service or for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary medical services—
 - (i) under section 83(2)(a) of the 2006 Act or 41(2)(a) of the 2006 (Wales) Act (primary medical services), or
 - (ii) under an agreement pursuant to section 50 arrangements or section 92 arrangements made between a Primary Care Trust or a Local Health Board and a Strategic Health Authority;

“GP Registrar” means a medical practitioner who is being trained in general practice—

- (a) in England by a general medical practitioner who is approved under article 4(5)(d) for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise, or
- (b) in Wales by a medical practitioner who is being trained in general practice by a GP trainer whether as part of training leading to the award of a CCT or otherwise;

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

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

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 2.F.3(3);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 of the 1993 Act;

“host Trust or Board”—

- (a) in respect of a non-GP provider who is—
 - (i) a partner in a partnership—

(19) S.I 2004/433.

(20) S.I 2004/477.

- (aa) that is a GMS practice; or
- (bb) that has entered into a PMS agreement or is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (ii) a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services;
- (iii) an individual who is a PMS practice or an APMS contractor,

means the Primary Care Trust or Local Health Board with which that partnership (in the case of (i)), company (in the case of (ii)) or practice or contractor (in the case of (iii)) has entered into an agreement or contract referred to in those provisions;

- (b) in respect of a registered medical practitioner, means the Primary Care Trust or Local Health Board on whose medical performers' list his name appears and such a person shall be deemed to be employed by the appropriate Trust or Board of the purposes of this Part;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the 2004 Act⁽²¹⁾;

“locum practitioner” means a registered medical practitioner (other than a GP Registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by—

- (a) a GMS practice;
- (b) a PMS practice;
- (c) an APMS contractor;
- (d) an OOH provider; or
- (e) a Primary Care Trust or Local 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 thereof);

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992⁽²²⁾;

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

“lump sum death benefit rule” has the meaning given in section 168 of the Finance Act 2004;

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

“medical performers' list” means a list of registered medical practitioners prepared and published—

- (a) by a Primary Care Trust pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004⁽²³⁾ (performers lists), or
- (b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004⁽²⁴⁾ (performers lists);

“NHS employment” means employment with an employing authority;

⁽²¹⁾ 2004 c. 12.

⁽²²⁾ 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and amended by section 7(1) to (3) of the Pensions Act 2007 (c. 22).

⁽²³⁾ S.I. 2004/585.

⁽²⁴⁾ S.I. 2004/1020.

“the NHS Pension Scheme 1995” means the scheme set out in the National Health Service Pension Scheme Regulations 1995⁽²⁵⁾;

“non-GP provider” means—

- (c) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that practice;
- (d) a partner in a partnership all of whose members have entered into a PMS agreement for the provision of primary medical services—
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (e) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services—
 - (i) but who is not a GP provider; and
 - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (f) a shareholder in a company limited by shares that is—
 - (i) a GMS practice; or
 - (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services,
but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that company;
- (g) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider participates in the provision of NHS services and these Regulations shall apply as if that non-GP provider were a whole time officer;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the 1993 Act which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of Chapter 2.F;
- (b) in the case of such a scheme established before that date, was—
 - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988⁽²⁶⁾ (retirement benefits schemes) or whose application for approval under that Chapter was under consideration,
 - (ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or
 - (iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980),
and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

⁽²⁵⁾ S.I. 1995/300.

⁽²⁶⁾ 1988 c.1.

“officer” means a person (other than a GP performer or dentist performer) employed by an employing authority and includes a GP Registrar and a non-GP provider;

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

“OOH provider” has the meaning given by regulation 2.A.15;

“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 or PMS practice to patients to whom the practice is required by its GMS contract or PMS agreement 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 2.B.5;

“pay period” means—

(a) in relation to a member who receives regular payments for his service under a contract for services or contract of employment, means the period in respect of which each payment of salary, wages or fees is made in accordance with that contract;

(b) in all other cases, any period of three months ending on the last day of March, June, September or December;

“PDS agreement” means an agreement for the provision of primary dental services pursuant to section 64 arrangements or section 107 arrangements;

“PDS contractor” means a person who—

(a) is a party to a PDS agreement, and

(b) is neither a Primary Care Trust, nor a Strategic Health Authority, nor a Local Health Board;

“pensioner member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme (but see paragraphs (3) and (4) and regulation 2.D.5(9));

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

“pensionable employment” means employment as an officer which is pensionable under this Part;

“pensionable pay” has the meaning given in regulation 2.A.8 (read with regulation 2.A.9);

“pensionable service” has the meaning given by regulations 2.A.2 and 2.A.3 (read with regulation 2.A.4);

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

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

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

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

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

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

(a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of Chapter 2.F;

(b) in the case of a scheme established before that date, was—

- (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes); and
- (ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“PMS agreement” means an agreement for the provision of primary medical services pursuant to —

- (a) section 50 arrangements,
- (b) section 92 arrangements, or
- (c) a transitional agreement under Part 4 of the 2004 Order;

“PMS practice” means—

- (a) an individual,
- (b) two or more individuals practising in partnership, or
- (c) a company limited by shares,

with whom, or with whose members, a Primary Care Trust or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the Primary Care Trust or Local Health Board);

“practice staff” means a person who—

- (a) is not a registered medical practitioner, a GP Registrar or a non-GP provider, and
- (b) is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides;

“practitioner” means—

- (a) a registered medical practitioner who—
 - (i) is not a GP Registrar, and
 - (ii) is a locum practitioner, a GP provider or a GP performer, or
- (b) a dentist performer;

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

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

“qualifying service” has the meaning given in regulation 2.A.5 (read with regulation 2.A.6);

“recent leaver” has the meaning given in regulation 2.E.6(3);

“reckonable pay” has the meaning given in regulation 2.A.10 (read with 2.A.11 to 2.A.14);

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

“retail prices index” has the meaning given in section 989 of the Income Tax Act 2007(27);

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

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

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

“the Scheme actuary” means the actuary appointed by the Secretary of State for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

- “scheme year” means a period of one year beginning with 1st April and ending with 31st March;
- “section 50 arrangements” has the meaning given by the 2006 (Wales) Act;
- “section 64 arrangements” has the meaning given by the 2006 (Wales) Act;
- “section 92 arrangements” has the meaning given by the 2006 Act;
- “section 107 arrangements” has the meaning given by the 2006 Act;
- “specialist” means a consultant, other than a nurse consultant, a senior hospital medical officer or senior hospital dental officer;
- “State pension age” means pensionable age, as defined in section 181(1) of the 1993 Act;
- “tax year” means a year of assessment for income tax purposes;
- “temporary additional session” has the meaning given in regulation 2.A.8(5);
- “tier 1 ill-health pension” must be read in accordance with regulation 2.D.8;
- “tier 2 ill-health pension” must be read in accordance with regulation 2.D.8;
- “trade dispute” has the meaning given in section 35(1) of the Jobseekers Act 1995(28);
- “type 1 medical practitioner” has the meaning given in regulation 3.A.1;
- “whole-time”, in relation to an employment that is comparable to one or more part-time employments, has the meaning given by paragraph (4).
- (3) In determining whether a person who is an active member or a pensioner member of the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.
- (4) In determining whether a person is a pensioner member of the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 2.H (abatement) is to be disregarded.
- (5) For the purposes of this Part—
- (a) an employment that is comparable to a part-time employment that is not held concurrently by a person with any other such employment is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Secretary of State amounts to whole-time employment in the case of an employment for services of the kind performed in the part-time employment, and
 - (b) an employment that is comparable to two or more part-time employments that are held concurrently by a person is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Secretary of State amounts to whole-time employment in the case of an employment for services of the kind performed in the two or more part-time employments.

Pensionable service

2.A.2 Meaning of “pensionable service”

- (1) In this Part, references to a member’s pensionable service, are references to the aggregate of the following periods—
- (a) any period of service in respect of which the member contributes to the scheme under regulation 2.C.1 (contributions by members),
 - (b) any period of absence from service which counts as pensionable service under regulation 2.A.4, and

- (c) any period of service credited to the member as pensionable service under Chapter 2.F (transfers from other pension arrangements).

This is subject to paragraph (2).

- (2) A member's pensionable service does not include—
 - (a) any period of service 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 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 2.D.5 (partial retirement) subject to paragraph (6),
 - (c) any period of service in respect of which the Secretary of State's liability to provide benefits is discharged—
 - (i) by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act,
 - (ii) under regulation 2.C.18 (repayment of contributions), or
 - (iii) by the payment of a transfer value payment on transfer out under Chapter 2.F (transfers), or
 - (d) 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 Secretary of State 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 Secretary of State 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 shall be calculated by reference to a maximum of 45 years of pensionable service, and
 - (b) the Secretary of State shall select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—
 - (a) the member's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made, and
 - (b) the payment is treated as the member's pensionable pay for that period.
- (6) In the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 2.D.5(8)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (7) Regulation 2.A.3 makes further provision where service is in part-time employment.

2.A.3 Meaning of “pensionable service”: part-time service

(1) The number of days of a member’s pensionable service in part-time employment for a period is calculated by multiplying the total hours of employment during the period by 7, and dividing by the number of hours of employment per week for a comparable whole-time employment.

This is subject to paragraphs (2) to (6).

(2) If the part-time employment is for a specified number of sessions per week—

- (a) paragraph (1) does not apply, and
- (b) the number of days of the member’s pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.

This is subject to paragraphs (3) to (6).

(3) If during the period for which a part-time employment is held there is an alteration—

- (a) in the case of an employment to which paragraph (1) applies, in the number of hours of employment per week for a comparable whole-time employment, or
- (b) in the case of an employment to which paragraph (2) applies, in the number of specified sessions per week or the length of those sessions for a comparable whole-time employment,

separate calculations must be made under paragraph (1) or, as the case may be, paragraph (2) for the periods before and after the alteration.

(4) If, apart from this paragraph, a member’s pensionable service in respect of the part-time employments held for a period, calculated in accordance with paragraph (1) or (2), would exceed that period, the excess is ignored.

(5) Paragraphs (1) and (2) do not apply for the purposes of regulation 2.A.2(3) (45 year limit), and for those purposes part-time employments held concurrently are treated as a single employment.

(6) Temporary additional sessions are ignored in calculating a member’s pensionable service in a part-time employment.

2.A.4 Pensionable service: breaks in service

(1) Paragraph (2) applies if a member is absent from work because of—

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

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

(3) If—

- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e), and
- (b) the member contributes to the scheme under regulation 2.C.1 by contributions made at the same intervals as those made by the member before the absence,

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

- (4) This paragraph applies if a person—
- (a) ceased to be an active member because of—
 - (i) ceasing to be employed in an employment in which the person is eligible to be such a member, or
 - (ii) exercising the option under regulation 2.B.5 (opting out of the Scheme), and
 - (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.
- (5) If paragraph (4) applies, the person’s pensionable service before the person ceased to be an active member and after the person became such a member again is treated as a single continuous period of pensionable service, unless paragraph (6) applies.
- (6) This paragraph applies if—
- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member,
 - (b) the person has received a repayment of contributions under regulation 2.C.18 in respect of that service (but see paragraph (8)), or
 - (c) the person’s rights under the Scheme in respect of that service have been extinguished under regulation 2.F.7 because a transfer value payment has been made in respect of them.
- (7) In the case of a member who leaves pensionable service whilst the person is absent from work because of—
- (a) illness or injury,
 - (b) maternity leave,
 - (c) adoption leave,
 - (d) paternity leave, or
 - (e) parental leave,

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

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

(9) For the regulations where paragraph (5) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 2.G (re-employment and rejoining the Scheme).

Qualifying service

2.A.5 Meaning of “qualifying service”

- (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 2.A.2(1)(c) (transferred-in service),
 - (b) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement has been accepted under Chapter 2.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) in the case of a person who—
 - (i) became an active member on the transfer of the person’s employment to a new employer as the result of a transfer of an undertaking to that employer, and
 - (ii) has rights under another occupational pension scheme to which the person was eligible to belong in the person’s employment with the former employer, in respect of which no transfer payment has been accepted under regulation 2.F.10,
 - the period of employment that qualified the member for those rights,
- (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 2.A.6, and
- (e) where the member ceased to be an active member under Part 3 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 3.
- (2) Paragraph (3) applies if a member who is employed on a casual basis—
 - (a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding three months, and
 - (b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.
- (3) For the purposes of this Part the member is treated—
 - (a) as continuing to be in qualifying service during the break, and
 - (b) as not being required to rejoin the scheme on re-entering the employment.
- (4) For the other rules applying where there is a short break in service, see regulation 2.A.6.
- (5) If—
 - (a) a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in a case where regulation 2.D.13(5) applies, and
 - (b) the member has elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member,

the pensionable service in respect of which that pension is calculated is treated as qualifying service in relation to any employment in respect of which rights to benefits continue to accrue.

(6) In determining the service that is pensionable service for the purposes of this regulation, regulation 2.A.3 (meaning of “pensionable service”: part-time service) does not apply, but for those purposes part-time employments held concurrently are treated as a single employment.

2.A.6 Qualifying service: disregard of breaks in service

(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 2.A.5(2) applies).

- (2) If the interval—
 - (a) does not exceed one month, or
 - (b) is due to a trade dispute,

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

This is subject to paragraph (6).

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

(4) If—

(a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to the Scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment, and

(b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

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

This is subject to paragraph (6).

(5) If—

(a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service, and

(b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

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

This is subject to paragraph (6).

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

(a) the person has received a repayment of contributions under regulation 2.C.18 in respect of the earlier period (but see paragraph (7)), or

(b) the person's rights under the Scheme in respect of that period have been extinguished under regulation 2.F.7 because a transfer value payment has been made.

(7) Paragraph (6)(a) does not apply if the person repays to the Secretary of State 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 2.A.4(5) or regulation 2.G.3(2)(a),

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

Calculating service

2.A.7 Calculation of periods of membership or service

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

(2) For the purposes of the Scheme, and except where provided otherwise in this Part, periods of service are to be expressed in the first instance in complete days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

(3) If, when all periods of service that require to be aggregated have been aggregated, there is any excess part day over the number of whole days, that excess is rounded up to a full day.

(4) If service is referred to as service in years and days—

- (a) the days referred to in paragraph (2), and
- (b) the full days referred to in paragraph (3),

are converted into years and days on the assumption that a year contains 365 days.

(5) If service is referred to as service in years—

- (a) the days referred to in paragraph (2), and
- (b) the full days referred to in paragraph (3),

are converted into years by dividing the number of days by 365, and using the result to four decimal places.

Pensionable pay

2.A.8 Meaning of “pensionable pay”

(1) In this Part, subject to the following provisions of this regulation, “pensionable pay” means all salary, wages, fees and other regular payments made to a person in respect of employment in which the person is an active member of the Scheme.

(2) In the case of a member who, in addition to one or more such employments, holds an honorary office or appointment, any distinction award payable to the member as a consequence of holding the honorary office or appointment, is treated—

- (a) in the case of a member in one such employment, as pensionable pay of that employment, and
- (b) in the case of a member in two or more such employments, as pensionable pay of such of those employments as the Secretary of State considers appropriate.

(3) “Pensionable pay” does not include—

- (a) bonuses,
- (b) payments made to cover expenses, or
- (c) payments for overtime.

(4) If—

- (a) a person is an active member in respect of two or more part-time employments, and
- (b) in the opinion of the Secretary of State, the total pensionable pay for the employments (apart from this paragraph) exceeds the amount that would be the pensionable pay for a comparable whole-time employment, not held concurrently with any other employment under which services of the kinds performed in the two or more part-time employments are performed,

the excess pensionable pay is ignored for the purposes of this Part.

(5) In the case of a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less any sum on account of practice

expenses (for these purposes, contributions payable under regulation 2.C.1(5) or (6) are neither practitioner income nor practice expenses).

(6) For the purposes of this regulation, the practitioner income of a non-GP provider means income that accrues to the non-GP provider which is derived from—

- (a) a GMS contract;
- (b) a PMS agreement;
- (c) an APMS contract;
- (d) payments from, or to, a practitioner who is a GMS practice, a PMS practice or an APMS contractor in respect of the performance of certification services, commissioned services or collaborative services.

(7) In the case of a non-GP provider who is in partnership with a type 1 medical practitioner practising in partnership, the pensionable earnings of each non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each partner (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the scheme) and, subject to paragraph (8), dividing the total equally by reference to the number of such partners.

(8) If the non-GP providers and any type 1 medical practitioners who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(9) The calculations described in paragraph (8) will be made by the Local Health Board or Primary Care Trust to which the partners are required to give notice of their election in accordance with paragraph (10).

(10) Non-GP providers and any type 1 medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their host Trust or Board in accordance with paragraph (11).

(11) A notice given under this regulation—

- (a) must be signed by all the non-GP providers and type 1 medical practitioners in the partnership and must state as a fraction each non-GP provider's and practitioner's share in the partnership profits;
- (b) will take effect—
 - (i) from the date agreed between the partners and the Primary Care Trust or Local Health Board concerned; or
 - (ii) if no agreement is reached, a date decided by the Secretary of State;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership;
- (d) will be automatically cancelled upon a change in the members of the partnership.

2.A.9 Pensionable pay: breaks in service

(1) Paragraph (2) applies if a member is absent from work because of—

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

and the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced or cease.

(2) For the purposes of this Part (apart from regulations 2.C.1 and 2.C.2), and subject to paragraph (3), amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are treated as having been paid to the member.

(3) Paragraph (2) does not apply to a member falling within paragraph (1)(a) as respects any period after the earnings used to calculate the member's pensionable pay under regulation 2.A.8 have ceased to be paid to the member.

(4) For the purposes of regulations 2.C.1 and 2.C.2, if for any period whilst the member falls within—

- (a) paragraph (1) the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, amounts equal to the reduced earnings are treated as pensionable pay, and
- (b) paragraph (1)(b) to (e) the earnings used to calculate the member's pensionable pay under regulation 2.A.8 are reduced, during any period following that period whilst the member continues to fall within that paragraph and no such earnings are paid, amounts equal to the reduced earnings are treated as pensionable pay.

(5) For the purposes of paragraph (4)(b), any pay received by a woman on maternity leave in respect of any days during which the member returns to work for the purposes of keeping in touch with the workplace is to be ignored.

(6) For the purposes of this Part, during any period of absence which counts as pensionable service under regulation 2.A.4(3) (up to 6 months' leave of absence with full contributions) amounts equal to the rate of the member's pensionable pay immediately before the absence are treated as pensionable pay.

(7) In the case of a non-GP provider who—

- (a) is one of a number of non-GP providers or practitioners who have elected as described in regulation 2.A.8(9), each non-GP provider's or practitioner's pensionable earnings will be calculated as if the partnership's aggregate pensionable pay were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased;
- (b) except where the non-GP provider's pensionable pay falls to be calculated as described in sub-paragraph (a), the non-GP provider will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.

(8) If the earnings used to calculate a non-GP provider's pensionable pay cease during a period of absence to which this regulation applies, a non-GP provider falling within paragraph 1(b) to (e) of this regulation who paid contributions on the basis of reduced earnings in accordance with paragraph (7)(a) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the non-GP provider actually leaves pensionable employment.

(9) For the purposes of paragraph (8), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (4)(a) had the non-GP provider's reduced earnings excluded any earnings for a day during which the non-GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(10) If a non-GP provider fails to pay any contributions which are required to be paid to the Scheme in respect of a period of absence to which this regulation applies, the non-GP provider will be treated as having left pensionable employment except that no refund of contributions or other benefit shall be payable unless the non-GP provider actually leaves pensionable employment.

(11) If a non-GP provider to whom paragraph (7) of this regulation applies leaves pensionable employment or, by virtue of paragraph (7)(a) or (8), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the non-GP provider later returns to pensionable employment regulation 2.A.4(4) will apply as if the reference to 12 months were a reference to 3 years.

(12) The benefits payable on the death of a non-GP provider whose earnings ceased during a period of absence to which paragraph (7) applies will be calculated as if the non-GP provider had died in pensionable employment on the day before the non-GP provider's earnings ceased.

Reckonable pay

2.A.10 Meaning of “reckonable pay”: general

(1) This regulation applies for the purpose of determining the meaning of “reckonable pay” in relation to—

- (a) a member whose active membership ceases, or
- (b) a member becoming entitled to the immediate payment of a pension during the member's active membership period—
 - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55), or
 - (ii) under regulation 2.D.1(1)(b)(ii).

(2) This regulation is subject to regulations 2.A.11 to 2.A.14.

(3) A member's “reckonable pay” is determined by the formula—

$$IRP \times \frac{RP_a}{RP_i}$$

where—

IRP is the interim reckonable pay determined in paragraph (6) or (7), as appropriate,

RP_a is the annual rate of retirement pension that the member would be entitled to if the interim reckonable pay included the adjustment for inflation described in regulation 2.A.11, and

RP_i is the annual rate of retirement pension the member would be entitled to if the interim reckonable pay did not include the adjustment for inflation described in regulation 2.A.11 but instead had been increased by the amount that it would have been increased if it had been the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971(29).

(4) If the period of the member's pensionable service ending with the relevant day equals 365 days, “interim reckonable pay” means the member's pensionable pay for that period.

(5) In this regulation—

- (a) “the relevant day” means—
 - (i) in a case within paragraph (1)(a), the day on which the member's active membership ceases, and
 - (ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension;
- (b) “the best consecutive 1095 day period” shall be determined by comparing—
 - (i) the period of 1095 days immediately preceding the relevant day (Period 1);

- (ii) the period of 1095 days which overlaps Period 1 by 730 days (Period 2);
 - (iii) the period of 1095 days which overlaps Period 2 by 730 days,
- and so on.

(6) Except where paragraph (4) or (7) applies, in this regulation “interim reckonable pay” means one-third of the member’s pensionable pay for the period of 1095 days—

- (a) that begins—
 - (i) during the member’s pensionable service, and
 - (ii) within the period of 10 years ending with the relevant day, and
- (b) for which the member’s pensionable pay was the highest (“the best consecutive 1095 day period”).

(7) If the member’s pensionable service within the period of 10 years ending with the relevant day—

- (a) is less than 365 days, or
- (b) exceeds 365 days but is less than 1095 days,

“interim reckonable pay” means the member’s pensionable pay for the period of the member’s pensionable service, divided by the number of days in that period and multiplied by 365.

(8) If two or more periods of pensionable service are treated as a single continuous period of pensionable service under—

- (a) regulation 2.A.4(5) (pensionable service: breaks in service), or
- (b) regulation 2.G.3(2) (exception to general rule in regulation 2.G.2),

the references in—

- (i) paragraph (4) to a period of pensionable service equalling 365 days,
- (ii) paragraph (5) to a period of 1095 days,
- (iii) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,

are references to periods together amounting to periods of that length, disregarding any breaks during the single period.

(9) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 2.D.13 despite being entitled to a pension under regulation 2.D.11.

(10) If—

- (a) a person’s reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person’s pensionable pay for any period in respect of an employment, and
- (b) the person held that employment concurrently during that period with another employment in which the person was an active member,

the member’s pensionable pay for that period in the other employment must be taken into account in that determination.

2.A.11 Adjustments for inflation in determining reckonable pay under 2.A.10

(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in 2.A.10(4),

- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.10(6), or
 - (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.10(7),
- the amount of pensionable pay is adjusted for inflation.

(2) The reference in paragraph (1) to adjusting the amount of pensionable pay for inflation, is a reference to increasing the member's pensionable pay (for a specified period or periods) by an amount equal to the amount by which, at the relevant day, an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971 first qualifying for an increase under that Act on the same day as the specified period, or periods, ended, would have been increased (if at all).

(3) In this regulation—

- (a) “specified period” means any single scheme year falling in the period, or periods, referred to in 2.A.10(4), (6) or (7), and
- (b) “the relevant day” has the meaning given in regulation 2.A.10(5).

2.A.12 Restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service

(1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under the Scheme as falls to be calculated by reference to capped transferred-in service.

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

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

- (a) in relation to the tax year 2008-09, £117,600, and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (5) and (6).

(4) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index, and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

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

(6) In this regulation—

- (a) “capped transferred-in service” has the meaning given by regulation 2.F.12; and
- (b) “pensionable pay” has the meaning given by regulation 2.A.8.

2.A.13 Meaning of “reckonable pay”: non-concurrent part-time employment

(1) This regulation applies if a member's reckonable pay falls to be determined under regulation 2.A.10 by reference to the member's pensionable pay for any period for a part-time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) The member's reckonable pay for that period in respect of the part-time employment is the amount that would have been paid in respect of that employment for that period if it had been a whole-time employment not held concurrently with any other employment.

This is subject to paragraph (4).

(3) For the purposes of paragraph (2) it is assumed that the same rate of pay per hour or session (or part of an hour or session) is paid for the whole-time employment as is paid per hour or session (or part of an hour or session) for the part-time employment.

(4) If, in a case where, apart from this paragraph, paragraph (2) would apply, it appears to the Secretary of State that, by reason of exceptional circumstances, the application of the assumptions in paragraph (3) for the purposes of paragraph (2) would result in an excessive amount being given by paragraph (2), that amount must be reduced by such amount as is in the opinion of the Secretary of State appropriate having regard to what would have been paid for that period in respect of a comparable whole-time employment.

(5) This regulation does not apply to the calculation of the reckonable pay of an active member or a pensioner member for the purposes of regulation 2.E.17(1) or (2) (lump sum payable on death of active or pensioner member).

2.A.14 Meaning of "reckonable pay": concurrent part-time employments

(1) This regulation applies if under regulation 2.A.10(10) a member's reckonable pay falls to be determined by reference to the member's pensionable pay for any period for two or more part-time employments held concurrently during that period.

(2) The member's reckonable pay for that period is calculated as follows—

Step 1

Calculate the reckonable pay for each of the employments under regulation 2.A.13 as if it were not held concurrently with any other such employment.

Step 2

Find the appropriate fraction for each of the employments (see paragraph (3)).

Step 3

Add together the appropriate fraction of the reckonable pay for each of the employments as calculated at Step 1.

(3) Except where paragraph (4) applies, the appropriate fraction for an employment is—

$$\frac{HPW}{THPW}$$

where—

HPW is the number of hours per week of the employment, and

THPW is the total hours per week of both or all the employments.

(4) The appropriate fraction for an employment for a specified number of sessions per week is—

$$\frac{SPW}{TSPW}$$

where—

SPW is the number of sessions per week of the employment, and

TSPW is the total sessions per week of both or all the employments.

(5) If—

(a) one or more of the employments is an employment for a specified number of sessions per week, and

(b) one or more of the employments is not such an employment,

the denominator for the fractions given in paragraph (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Secretary of State may in any particular case determine.

2.A.15 Out of hours providers

(1) For the purposes of these Regulations, an OOH provider is—

(a) a company limited by guarantee (which is not otherwise an employing authority)—

(i) in which all the members of the company are registered medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are—

(aa) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services; or

(bb) registered medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract,

(ii) which has a contract with a Primary Care Trust, a Local Health Board, an APMS contractor or a GMS or PMS practice for the provision of OOH services, and

(iii) in respect of which a Primary Care Trust or Local Health Board appointed by the Secretary of State or the National Assembly of Wales to act on his or its 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—

(i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;

(ii) operates on a not-for-profit basis;

(iii) is not an associated company in relation to another person;

(iv) has memorandum or articles or rules that—

(aa) prohibit the payment of dividends to its members; and

(bb) require its profits (if any) or other income to be applied to promoting its objects, and

(cc) require all the 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 APMS contractor, a GMS practice or a PMS practice; or
 - (bb) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice; or
 - (cc) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice,
 - (vi) has a contract with a Primary Care Trust or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
 - (vii) is approved as an employing authority by a Primary Care Trust or Local Health Board appointed by the Secretary of State to act on his behalf—
 - (aa) pursuant to a written application made by the body to it for that purpose; and
 - (bb) that Trust or 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) a body corporate is to be treated as another person’s associated company if that person has control of it, except if that person is an employing authority; and
 - (b) a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is 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 Primary Care Trust or Local Health Board appointed by the Secretary of State to act on the Secretary of State’s behalf (“the appointed Trust or Board”).
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Trust or Board (if given) shall have effect (“the nominated date”).
- (5) If a company limited by guarantee or other body corporate makes an application and—
- (a) the appointed Trust or Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
 - (b) it approves that application,
- that approval shall take effect on the later of the nominated date and the approval date.
- (6) If paragraph (5) applies, NHS employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.
- (7) For the purposes of this regulation the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be.
- (8) The appointed Trust or Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider—
- (a) does not have in force a guarantee, indemnity or bond as required by the Secretary of State in accordance with regulation 2.C.7;
 - (b) has ceased to satisfy the conditions for approval;
 - (c) has notified the Trust or Board that any one of the following events has occurred in respect of it—
 - (i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986⁽³⁰⁾ (“the 1986 Act”); or

(30) 1986 c. 45.

- (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act; or
 - (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act; or
 - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965⁽³¹⁾; or
 - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX of the Companies Act 1985⁽³²⁾.
- (9) An OOH provider—
- (a) must give the appointed Trust or 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;
 - (b) that wishes to cease to participate in the scheme must give the appointed Trust or Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (10) An OOH provider must cease to participate in the scheme on—
- (a) such date as the appointed Trust or Board may specify in a notice under paragraph (8);
 - (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

⁽³¹⁾ 1965 c. 12.

⁽³²⁾ 1985 c. 6.