
STATUTORY INSTRUMENTS

2008 No. 653

The National Health Service Pension Scheme Regulations 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 3.A

INTRODUCTION

Pensionable earnings

3.A.7 Meaning of “pensionable earnings”

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

- (a) in the case of a type 1 medical practitioner, practitioner income less any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 3.C.5(5) or (6) are neither practitioner income nor practice expenses); and
- (b) in the case of a type 1 dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).

(2) Subject to paragraph (3), for the purposes of this regulation, the practitioner income of a type 1 medical practitioner means—

- (a) income that accrues to the type 1 medical practitioner which is derived from—
 - (i) a GMS contract;
 - (ii) a PMS agreement;
 - (iii) an APMS contract;
 - (iv) 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;
 - (v) his engagement by a Primary Care Trust or a Local Health Board to assist in the provision of primary medical services under—
 - (aa) in the case of England, section 83(2)(a) of the 2006 Act; or
 - (bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act;
 - (vi) in the case of a type 1 medical practitioner, the provision of locum services;
 - (vii) payments made to a type 1 medical practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services, collaborative services and certification services;

- (viii) payments made to a type 1 medical practitioner by an employing authority in respect of primary dental services, general ophthalmic services or pharmaceutical services provided by the practitioner;
- (ix) practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners.
- (b) any charges collected from patients in respect of the services mentioned in subparagraph (a) which the type 1 medical practitioner is authorised by or under any enactment to retain, other than charges authorised by regulations made under—
 - (i) in the case of England, section 185(1) of the 2006 Act; or
 - (ii) in the case of Wales, section 133(1) of the 2006 (Wales) Act; and
- (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital;
- (d) in the case of a type 1 medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.
- (3) Subject to paragraphs (4), (6) and (8), for the purposes of this paragraph, the practitioner income of a type 1 dental practitioner means income that accrues to the practitioner which is derived from a GDS contract or a PDS agreement and—
 - (a) includes charges collected from patients which are required, by virtue of directions given under, in the case of England, sections 94, 103 or 109 of the 2006 Act or in the case of Wales, sections 52, 60 or 66 of the 2006 (Wales) Act, to be set off against payments under the contract or agreement;
 - (b) but does not include charges collected from patients which are not required, by virtue of such directions, to be so set off.
- (4) For each GDS contract or PDS agreement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from that contract in any financial year is, subject to paragraph (5), the value of that contract in that financial year less the value of following payments (if payable in that financial year by the Primary Care Trust or Local Health Board that is a party to the contract or agreement)—
 - (a) monthly seniority payments;
 - (b) maternity leave, paternity leave, parental leave or adoption leave payments;
 - (c) sickness leave payments;
 - (d) reimbursement of the salary of a vocational trainee;
 - (e) reimbursement of the national insurance contributions of a vocational trainee;
 - (f) reimbursement of non-domestic rates;
 then multiplied by a percentage to be determined by the Secretary of State, which produces the amount referred to in this Part as the pensionable earnings ceiling.
- (5) Income which accrues to a type 1 dental practitioner that is derived from the following payments under a GDS contract or PDS agreement is practitioner income for the purposes of this regulation (that is, it is pensionable earnings, notwithstanding that it is not included in the calculation of the pensionable earnings ceiling for a particular GDS contract or PDS agreement)—
 - (a) monthly seniority payments;
 - (b) maternity leave, paternity leave, parental leave or adoption leave payments;
 - (c) sickness leave payments.
- (6) The following payments under a GDS contract or PDS agreement are not to be considered practitioner income for the purposes of this regulation—

- (a) reimbursement of the salary of a vocational trainee;
- (b) reimbursement of the national insurance contributions of a vocational trainee, and
- (c) reimbursement of non-domestic rates.

(7) For the avoidance of doubt, income which accrues to a type 1 dental practitioner while engaged as a type 2 practitioner is practitioner income of that type 1 dental practitioner, but unaffected by any pensionable earnings ceiling.

(8) 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 Secretary of State 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.

(9) In paragraph (2)(a), locum services shall have the meaning given by regulation 3.A.13(4).

3.A.8 Pensionable earnings—breaks in service

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

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

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

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

(3) In the case of a member who—

- (a) is one of a number of practitioners or non-GP providers who have elected as described in regulation 3.A.9(2), each practitioner's or non-GP provider's pensionable earnings will be calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased, and
- (b) (except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (a)), that member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.

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

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

contributions or other benefit will be payable until the member actually leaves pensionable employment.

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

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

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

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

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

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

3.A.9 Calculating pensionable earnings of medical practitioners in partnership

(1) In the case of type 1 medical practitioners practising in partnership (with or without a non-GP provider who is a partner in a partnership), the pensionable earnings of each type 1 medical practitioner and non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the Scheme) and, subject to paragraph (2), dividing the total equally by reference to the number of such partners.

(2) If the type 1 medical 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 shall correspond to each partner's share of the partnership profits.

(3) If a registered medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner (under Part 2), the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their respective shares of the partnership profits.

(4) The calculations described in paragraphs (2) and (3) will be made by the Local Health Board or Primary Care Trust to which the partners are required to give notice of their election in accordance with regulation 3.A.10(1).

3.A.10 Elections relating to calculation of pensionable earnings in medical partnerships

(1) Type 1 medical practitioners who are partners in any partnership must exercise the elections described in regulation 3.A.9(2) and (3) by giving notice in writing to their host Trust or Board in accordance with this regulation.

(2) The notice must be signed by all the type 1 medical 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 Primary Care Trust or Local Health Board on whose list the name of any practitioner in the partnership is included.

(4) A notice given under this regulation—

(a) will take effect—

(i) from the date agreed between the practitioners and any non-GP providers 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;

(b) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the practitioners and any non-GP providers in the partnership;

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

3.A.11 Restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service

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

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

(3) In this regulation "permitted maximum" means—

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

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

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

(a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index, and

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

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

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

3.A.12 Distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor

(1) After the end of each financial year, each GDS or PDS contractor must, by a date to be decided by the Secretary of State, send to the employing authority with which he is party to a GDS contract or PDS agreement a notice, in a format approved by the Secretary of State, specifying, in respect of that financial year—

(a) the pensionable earnings ceiling for that contract or agreement; and

⁽¹⁾ For the meaning of capped transferred-in service, see regulation 3.F.12.

- (b) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under that contract or agreement,

and how much of the practitioner income that relates to the contract or agreement each type 1 dental practitioner that performed services under that contract or agreement is to be treated as having earned during that financial year (and those who are partners in, or directors of, the contractor must be identified as such).

(2) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, extend the date decided by the Secretary of State in accordance with paragraph (1) by which notices are to be submitted.

(3) The notice from the GDS or PDS contractor is invalid if—

- (a) it contains information that is inaccurate or misleading in a material particular;
- (b) it is not received by the due date (although the employing authority may accept replacement notices in appropriate circumstances);
- (c) the total of the amounts specified in the notice in respect of each type 1 dental practitioner that performed services under that contract or agreement is greater than the total of the amounts referred to in paragraph (1)(a) and (b).

(4) If an employing authority has received a valid notice under this regulation, the amounts notified to it in respect of each type 1 dental practitioner mentioned in the notice are, for the financial year to which the notice relates, the pensionable earnings for that practitioner under the contract or agreement to which the notice relates.

(5) Despite paragraph (4), the employing authority may revise the amounts notified to it in appropriate circumstances (such as where it receives a valid replacement notice signed by all the type 1 dental practitioners who performed services under the contract or agreement).

(6) If an employing authority does not receive a valid notice under this paragraph from a GDS or PDS contractor with which it is party to a GDS contract or PDS agreement, the pensionable earnings of each type 1 dental practitioner under that contract or agreement for the financial year in respect of which the valid notice was required but not received are to be an equal share of the maximum amount of practitioner income that could be derived from that contract or agreement in that financial year (that is, the total of the amounts referred to in paragraph (1)(a) and (b)), less the difference between—

- (a) that maximum amount; and
- (b) the total of monthly amounts in respect of which estimated member contributions were paid on account during the financial year to which the earnings relate,

but if the total mentioned in sub-paragraph (b) is greater than the maximum amount referred to in sub-paragraph (a), then no amount is to be deducted pursuant to this paragraph.

3.A.13 Meaning of pensionable earnings in relation to other practitioners

(1) In the case of a type 2 medical 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;
- (c) earnings from practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners,

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

(2) In the case of a type 2 dental practitioner, pensionable earnings means all salary, wages, fees and other regular payments paid to the practitioner—

- (a) in the case of a vocational trainee, under his contract of employment with a GDS or PDS contractor; or
- (b) in all other cases, by an employing authority in respect of the performance of primary dental services,

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

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

(4) 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.

3.A.14 Exclusions and deductions from pensionable earnings—all practitioners

3.A.14 Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) Regulations 1992⁽²⁾ will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Secretary of State may approve.

3.A.15 Limit on pensionable earnings—dentist performers carrying on deceased person's business

3.A.15 In the case of a dentist performer employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those persons, plus any amounts paid to him by a Primary Care Trust, Local Health Board or the Dental Practice Division of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)⁽³⁾ that those persons allow him to retain.

3.A.16 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

(2) [S.I. 1992/664](#).

(3) The Authority was established by [S.I. 2005/2414](#).

- 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 Welsh Ministers 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 3.C.4;

(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⁽⁴⁾ ("the 1986 Act"); or

(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⁽⁵⁾; 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⁽⁶⁾.

(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;

⁽⁴⁾ 1988 c. 45.

⁽⁵⁾ 1965 c. 12.

⁽⁶⁾ 1985 c. 6.

- (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.