

---

STATUTORY INSTRUMENTS

---

**2008 No. 653**

The National Health Service Pension Scheme Regulations 2008

PART 4

BENEFITS IN CASES OF MIXED SERVICE

CHAPTER 4.A

INTRODUCTION

*Application of Part 4*

**4.A.1 Application of Part 4**

(1) This Part applies where a member has pensionable service under both Part 2 and Part 3 of these Regulations.

(2) Where this Part applies, Part 2 and Part 3 are subject to the modifications provided in this Part.

(3) As regards a person to whom the general rule in regulation 2.G.2 (general rule: separate treatment of service etc.) or regulation 3.G.2 (general rule: separate treatment of service etc.) applies, this Part shall apply separately to benefits in respect of the earlier service and the later service (as defined in regulation 2.G.1 or 3.G.1, as appropriate).

*Preliminary*

**4.A.2 Interpretation: general**

**4.A.2** In this Part—

“the base amount” means the aggregate of the benefits that would be payable separately under Part 2 and Part 3 but for the operation of this Part;

“calculation method A” means the calculation method provided for in regulation 4.B.8;

“calculation method B” means the calculation method provided for in regulation 4.B.9;

“calculation method C” means the calculation method provided for in regulation 4.B.10;

“officer” has the same meaning as in Part 2;

“practitioner” has the same meaning as in Part 3;

“type 1 practitioner” means a type 1 practitioner (as defined in Part 3) excluding a type 1 dental practitioner (as defined in Part 3) who is employed by a GDS or PDS contractor (as defined in Part 3) but who is neither a partner in, nor a director of, the contractor;

“uprated earnings” has the same meaning as in Part 3.

CHAPTER 4.B  
COMPARISON OF ENTITLEMENTS

*Application of Chapter 4.B*

**4.B.1 Application of Chapter 4.B**

(1) This Chapter identifies the calculation method under which the benefits payable in respect of discrete periods of pensionable service as an officer are to be compared against the benefits that would have been payable had that service been service as a practitioner.

(2) The discrete periods of pensionable service as an officer that are subject to comparison are any periods of—

- (a) up to 10 years of pensionable service as an officer before first becoming a type 1 practitioner,
- (b) more than 10 years of pensionable service as an officer before first becoming a type 1 practitioner,
- (c) up to 1 year of employment as an officer after last ceasing to be a practitioner,
- (d) more than 1 year of employment as an officer after ceasing to be a practitioner,
- (e) less than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner, and
- (f) more than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner.

*Officer service before practitioner service*

**4.B.2 Cases with up to 10 years of officer service**

(1) Where a member has not more than 10 years of pensionable service before first becoming a type 1 practitioner, the reference amount shall be the best of—

- (a) the amount determined by calculation method A,
- (b) the amount determined by calculation method B, and
- (c) where—
  - (i) the benefit is payable on retirement or death of the member, and
  - (ii) the condition is met,the base amount.

(2) The condition mentioned in paragraph (1)(c)(ii) is that—

- (a) the amount of pension payable under Part 2 would be greater than the amount of pension payable under Part 3, where—
  - (i) any enhancement for the purposes of regulation 2.D.8 or 3.D.7 (enhancement of ill-health pensions), as appropriate, are ignored,
  - (ii) any additional pension is disregarded, and
  - (iii) any increase under the Pensions (Increase) Act 1971(1) is applied, and
- (b) the amount determined by calculation method B is less than the base amount.

#### **4.B.3 Cases with more than 10 years of officer service**

**4.B.3** Where a member has more than 10 years of pensionable service before first becoming a type 1 practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method A, and
- (b) the base amount.

#### *Officer service after practitioner service*

#### **4.B.4 Cases with less than 1 year of officer service**

**4.B.4** Where a member has been employed as an officer for less than 1 year after last ceasing to be a practitioner, the reference amount shall be the amount determined by calculation method A.

#### **4.B.5 Cases with 1 year or more of officer service**

**4.B.5** Where a member has been employed as an officer for 1 year or more after last ceasing to be a practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method C, and
- (b) the base amount.

#### *Concurrent officer and practitioner service*

#### **4.B.6 Cases with less than 1 year of concurrent officer service**

**4.B.6** Where a member has less than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount shall be the amount determined by calculation method A.

#### **4.B.7 Cases with 1 year or more of concurrent officer service**

**4.B.7** Where a member has 1 year or more of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method A, and
- (b) the base amount.

#### *Calculation methods*

#### **4.B.8 Calculation method A**

**4.B.8** Calculation method A is the aggregate of—

- (a) the amount that would be payable under Part 3 of these Regulations if—
  - (i) the member's discrete period of pensionable service as an officer were treated as pensionable service as a practitioner, and
  - (ii) the amount of pensionable pay received in respect of that officer service were treated as pensionable earnings as a practitioner for the respective period,
- (b) the amount payable under Part 2 of these Regulations (if any) if the member's pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in sub-paragraph (a), and

- (c) the amount payable under Part 3 of these Regulations but for the operation of this Part.

#### **4.B.9 Calculation method B**

**4.B.9** Calculation method B is the aggregate of—

- (a) the amount payable under Part 3 of these Regulations if the member's uprated earnings is increased by the formula—

$$UE \times \frac{LPS_o + LPS_p}{LPS_p}$$

where—

UE is the amount of the member's uprated earnings,

LPS<sub>o</sub> is the length of the member's discrete period of pensionable service as an officer, expressed in days, and

LPS<sub>p</sub> is the length of the member's pensionable service as a practitioner, expressed in days, and

- (b) the amount payable under Part 2 of these Regulations (if any) if the member's pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in sub-paragraph (a).

#### **4.B.10 Calculation method C**

**4.B.10** Calculation method C is the aggregate of—

- (a) the amount that would be payable under Part 3 of these Regulations if the member's pensionable earnings as a practitioner were uprated to the date of—
- (i) cessation of the employment as an officer, or
  - (ii) retirement,
- whichever is the earlier, and
- (b) the amount payable under Part 2 of these Regulations.

### CHAPTER 4.C

#### MODIFICATION OF BENEFITS

##### *Members' retirement benefits*

#### **4.C.1 Top-up where reference amount greater than base amount**

(1) Where the reference amount calculated in any of regulations 4.B.2 to 4.B.7 is greater than the base amount, a top-up amount is payable.

(2) The top-up amount is equal to the aggregate of the amounts by which the reference amount is greater than the base amount in each of regulations 4.B.2 to 4.B.7 (where applicable).

(3) The top-up amount provided for under this regulation shall be treated as forming part of the member's pension for the purposes of increases payable under the Pensions (Increase) Act 1971(2), and shall be increased in similar manner to pensions payable under Parts 2 and 3.

## *Death benefits*

### **4.C.2 Death benefits where member entitled to top-up**

(1) This regulation applies in relation to any benefit payable under Chapter 2.E of Part 2 and Chapter 3.E of Part 3 of these Regulations where the deceased member is (or would have been) entitled to a top-up amount under regulation 4.C.1.

(2) In calculating the amount of the benefit payable under Chapter 2.E of Part 2 of these Regulations, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the pension payable to the member had no benefit been payable in respect of any discrete period of pensionable service as an officer that gives rise to a top-up payment under regulation 4.C.1.

(3) In calculating the amount of the benefit payable under Chapter 3.E of Part 3 of these Regulations, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the sum of—

- (a) the pension payable under Part 3 of these Regulations, and
- (b) the top-up amount payable under regulation 4.C.1, inclusive of any increase payable under the Pensions (Increase) Act 1971 pursuant to paragraph (3) of that regulation.

## CHAPTER 4.D

### GENERAL MODIFICATIONS

#### *45 year service limit*

### **4.D.1 Pensionable service limit**

(1) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 2.A.2, the amount of pensionable service accrued under Part 3 of these Regulations shall be included in the aggregate calculated under paragraph (1) of that regulation.

(2) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 3.A.3, the amount of pensionable service accrued under Part 2 of these Regulations shall be included in the aggregate calculated under paragraph (1) of that regulation.

(3) Where a person is concurrently in officer service and practitioner service in any year, that year shall count as a single year for the purpose of calculating 45 years pensionable service.

- (4) Where the aggregate of pensionable service under Part 2 and Part 3 is in excess of 45 years—
- (a) benefits under each of Part 2 and Part 3 shall be calculated by reference to such number of years as the Secretary of State determines;
  - (b) the aggregate of pensionable service under Part 2 and Part 3 determined in paragraph (a) shall be 45 years; and
  - (c) the Secretary of State shall select the years by reference to which the benefits under each Part are to be calculated, selecting the years which produce the most favourable result to the member.

---

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

### *Claims and notices*

#### **4.D.2 Applications, claims and notices**

**4.D.2** An application or claim made or a notice given for the purposes of a regulation listed in column 1 of the following table shall be treated as an application or claim made or notice given for the purposes of the corresponding regulation in column 2 (and vice versa) without more.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Regulation in Part 2</i>	<i>Regulation in Part 3</i>
2.D.8	3.D.7
2.D.10	3.D.9
2.D.14	3.D.11
2.E.21	3.E.21
2.F.2	3.F.2
2.F.3	3.F.3

---

### *Abatement*

#### **4.D.3 Reduction of pension**

(1) The pension payable under Part 3 shall be reduced in accordance with Chapter 3.H but with the following modifications—

- (a) relevant income shall include the enhancement amount determined under regulation 2.H.4(2); and
- (b) where a practitioner becomes entitled to receive a pension under Part 3 and in the 12 months preceding the date on which the member becomes so entitled also held concurrent pensionable employment as an officer, the member's previous earnings in respect of the member's practitioner service shall be increased by the amount of the member's previous pay in respect of the member's officer service.

(2) Where the reduction applied under the modified Part 3 is not the full amount of the excess determined under that modified Part, such part of the excess as has not given rise to a reduction in the old service pension in Part 3 shall be the excess for the purposes of regulation 2.H.3(3).