
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 256

The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 1

INTRODUCTION

General interpretation

Interpretation: general

6.—(1) In Part I and in this Part—

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972(1);

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993(2);

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995(3);

“the 1995 Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(4);

“the 1997 Order” means the Health Services (Primary Care) (Northern Ireland) Order 1997(5);

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999(6);

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(7);

“the 2004 Order” means the General Medical Services Transitional and Consequential Provisions (No.2) (Northern Ireland) Order 2004(8);

“the Agency” means the Northern Ireland Central Services Agency for the Health and Social Services established under Article 26 of the 1972 Order;

“active member” has the meaning given in Article 121 (1) of the 1995 Order and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 49(9));

(1) S.I. 1972/1265 (N.I. 14)

(2) 1993 c. 49

(3) S.I. 1995/3213 (N.I. 22)

(4) S.R. 1995 No. 95, as amended by S.Rs. 1997 Nos. 217 and 390, S.R. 1998 No. 299, S.R. 1999 No. 293, S.R. 2002 No. 69, S.Rs. 2004 Nos. 103 and 104, S.Rs. 2005 Nos. 155, 533, 534 and 565, S.Rs. 2006 Nos 159 and 410 and S.Rs 2008 Nos 96, 130 and 163

(5) S.I. 1997/1177 (N.I. 7)

(6) S.I. 1999/3147 (N.I. 11)

(7) S.I. 2003/1250 as amended by S.I. 2007/3101

(8) S.R. 2004 No. 156

“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 34, 36 and 37;

“additional services” has the meaning given in regulation 137;

“APMS contract” means arrangements under Article 56 (2)(b) of the 1972 Order (primary medical services) between a Health and Social Services Board and an APMS contractor;

“APMS contractor” means a person—

- (a) with whom a Health and Social Services Board has made arrangements under Article 56 (2)(b) of the 1972 Order, and
- (b) who has entered into, or would be eligible to enter into, a GMS contract for the provision of primary medical services;

“assistant medical practitioner” has the meaning given in regulation 137;

“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(9);

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

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998 is in force, any equivalent rate determined by Treasury under that section;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 15 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 104;

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

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, 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” has the meaning given in regulation 137;

“chapter” unless otherwise specified, means a chapter in this Part;

“collaborative services” has the meaning given in regulation 137;

“commissioned services” has the meaning given in regulation 137;

“contracting-out requirements” means the requirements mentioned in section 5(2) of the 1993 Act;

“contribution option period” has the meaning given in regulation 34(8);

“corresponding health service scheme” has the meaning given in regulation 103(7);

“deferred member” has the meaning given in section 121(1) of the 1995 Order, except where the context requires otherwise, refers to membership of the Scheme (but see paragraph (2) and regulation 49(9));

“dentist performer” means a dentist who has undertaken to provide general dental services (GDS) and whose name is included in a list of dentists prepared by the Agency under

regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993⁽¹⁰⁾;

“Department” means the Department of Health, Social Services and Public Safety;

“dependent child” is to be construed in accordance with regulation 75;

“dispensing services” has the meaning given in regulation 137;

“employing authority” means—

- (a) a Health and Social Services Board established under Article 16 of the 1972 Order,
- (b) a Health and Social Services Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (HSS Trusts)⁽¹¹⁾,
- (c) the Agency,
- (d) any other body which is constituted under an Order relating to health services and which the Department agrees to treat as an employing authority for the purposes of the Scheme,
- (e) an OOH provider,
- (f) an APMS contractor,
- (g) a GMS practice,
- (h) a PMS practice, and
- (i) in relation to a person who is subject to a direction made under Article 12 (5) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to this Part as the Department may in any particular case direct, any employer of such a person whom the Department agrees to treat as an employing authority for the purposes of this Part;

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

“enhanced services” has the meaning given in regulation 137;

“essential services” has the meaning given in regulation 137;

“GDS arrangements” means arrangements for the provision of general dental services under Article 61 of the 1972 Order;

“GDS provider” is a person who is a party to GDS arrangements;

“GMS contract” means a contract under Articles 57 and 57A of the 1972 Order;

“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 Health and Social Services Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a GP Register 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 or an APMS contract,

⁽¹⁰⁾ S.R. 1993 No. 326

⁽¹¹⁾ S.I.1991/194 (N.I. 1); Article 10 was amended by the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2)) Article 3(8)

- (b) on behalf of an OOH provider, or
- (c) under a contract of service or for services with a Health and Social Services Board which relates to arrangements under which it provides primary medical services under Article 56 of the 1972 Order;

“GP Registrar” means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under article 4(5)(d) of the 2003 Order for the purpose of providing training under article 5(1)(c)(i) of that Order, 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;

“HSC employment” means employment with an employing authority;

“the HPSS Superannuation Scheme 1995” means the scheme set out in the 1995 Regulations;

“the guarantee date” has the meaning given in regulation 94(2);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 95(3);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 10 of the 1993 Act;

“host Board”—

- (a) in respect of a non-GP provider who is—
 - (i) a partner in a partnership—
 - (aa) that is a GMS practice; or
 - (bb) that 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 an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
 - (iii) an individual who is an APMS contractor,

means the Health and Social Services Board with which that partnership (in the case of sub-paragraph (i)), company (in the case of sub-paragraph (ii)) or practice or contractor (in the case of sub-paragraph (iii)) has entered into an agreement or contract referred to in those provisions;

- (b) in respect of a registered medical practitioner, means the Health and Social Services Board on whose medical performers list his name appears;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the Finance Act 2004(12);

“locum practitioner” has the meaning given in regulation 137;

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act (Northern Ireland)1992(13);

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

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

(12) 2004 c. 12

(13) 1992 c. 7

“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 in accordance with the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004⁽¹⁴⁾;

“non-GP provider” means—

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Department that non-GP provider assists in the provision of health and personal social services provided by that practice;
- (b) a partner in a partnership all of whose members have entered into an 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 Department that non-GP provider assists in the provision of health and personal social services provided by that partnership;
- (c) 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 Department that non-GP provider assists in the provision of health and personal social services provided by that partnership;
- (d) a shareholder in a company limited by shares that is—
 - (i) a GMS practice; or
 - (ii) an APMS contractor that has entered into an APMS contract for the provision of primary medical services,
but who is not a GP provider and who demonstrates to the satisfaction of the Department that non-GP provider assists in the provision of health and personal social services provided by that company;
- (e) an individual who is an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Department that non-GP provider participates in the provision of health and personal social services;

“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 Finance Act 2004 and which the Department agrees to recognise as a transferring scheme for the purposes of Chapter 6;
- (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⁽¹⁵⁾ (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),

⁽¹⁴⁾ S.R. 2004 No. 149

⁽¹⁵⁾ 1988 c. 1

and on 6th April 2006 became a registered pension scheme for the purposes of the Finance Act 2004 ;

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

“OOH provider” has the meaning given in regulation 20;

“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 to patients to whom the practice is required by its GMS contract to provide essential services, would be or would be similar to essential services;

“opting-out” and related expressions are to be construed in accordance with regulation 25;

“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;

“pensionable earnings” has the meaning given in regulation 143 (read with regulation 144);

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

“pensionable pay” has the meaning given in regulation 13 (read with regulation 14);

“pensionable service” has the meaning given in regulations 7 and 8 (read with regulation 9);

“pensioner member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of the Scheme (but see paragraphs (2) and (3) and regulation 49(9));

“pension credit” means a credit under Article 26 of the 1999 Order and includes a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(16);

“pension credit benefit” has the meaning given by section 97B of the 1993 Act;

“pension credit member” has the meaning given by Article 121(1) of the 1995 Order;

“pension credit rights” has the meaning given by section 97B of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in Article 25 (1) of the 1999 Order;

“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 Finance Act 2004 and which the Department agrees to recognise as a transferring scheme for the purposes of Chapter 6;
- (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 Finance Act 2004;

“practice staff” means a person who—

- (a) is not an assistant medical practitioner, a principal medical practitioner, a GP Registrar or a non-GP provider, and
- (b) is employed by a GMS 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 IV of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

“public sector transfer arrangements” means arrangements approved by the Department 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 10 (read with regulation 11);

“recent leaver” has the meaning given in regulation 72 (3);

“reckonable pay” has the meaning given in regulation 15 (read with regulations 16 to 19);

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

“retail prices index” has the meaning given in section 989 of the Income Tax Act 2007⁽¹⁷⁾;

“safeguarded percentage” has the meaning given by section 64A(3) of the 1993 Act;

“safeguarded rights” has the meaning given by section 64A(1) of the 1993 Act;

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

“the Scheme actuary” means the actuary appointed by the Department 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 next following;

“specialist” means a consultant, other than a nurse consultant, or a senior hospital medical officer or senior hospital dental officer;

“State pension age” means pensionable age, as defined in section 176(1) of the 1993 Act;

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

“tier 1 ill-health pension” must be read in accordance with regulation 52;

“tier 2 ill-health pension” must be read in accordance with regulation 52;

“trade dispute” has the meaning given in Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995⁽¹⁸⁾;

“whole-time”, in relation to an employment that is comparable to one or more part-time employments, has the meaning given by paragraph (4).

(2) 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.

(3) 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 8 (abatements) is to be disregarded.

(17) 2007 c. 3

(18) S.I. 1995/2705 (N.I. 15)

- (4) 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 Department 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 Department 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

Meaning of “pensionable service”

- 7.—(1) In this Part, references to a member’s pensionable service, subject to paragraphs (2) and (3), 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 27 (contributions by members),
 - (b) any period of absence from service which counts as pensionable service under regulation 9, and
 - (c) any period of service credited to the member as pensionable service under Chapter 6 (transfers).
- (2) A member’s pensionable service does not include—
- (a) any period of service in respect of which the Department 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 49 (partial retirement) subject to paragraph (6),
 - (c) any period of service in respect of which the Department’s liability to provide benefits is discharged—
 - (i) by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act,
 - (ii) under regulation 44 (repayment of contributions), or
 - (iii) by the payment of a transfer value payment on transfer out under Chapter 6 (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 Department 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 Department 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 Department 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 49 (partial retirement), paragraph (2)(b) applies only to so much of the member's pensionable service as is mentioned in regulation 49(9)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).

(7) Regulation 8 makes further provision where service is in part-time employment.

Meaning of “pensionable service”: part-time service

8.—(1) Subject to paragraphs (2) to (6), 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.

(2) Subject to paragraphs (3) to (6), 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.

(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 7(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.

Pensionable service: breaks in service

9.—(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 27 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 27 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 25 (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 44 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 99 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 Department 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 7 (re-employment and rejoining the Scheme).

Qualifying service

Meaning of “qualifying service”

10.—(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 7(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 6 (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 102,the period of employment that qualified the member for those rights, and
 - (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 11, 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 11.
- (5) If—
- (a) a pension becomes payable to a member under regulation 55 (early retirement on termination of employment by employing authority) in a case where regulation 57 (5) applies, and

- (b) the member has elected to take benefits under regulation 55 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 8 (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.

Qualifying service: disregard of breaks in service

11.—(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 10(2) applies).

(2) Subject to paragraph (6), if the interval—

- (a) does not exceed one month, or
- (b) is due to a trade dispute,

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

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

(4) Subject to paragraph (6), if—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to 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.

(5) Subject to paragraph (6), if—

- (a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service, and
- (b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

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

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

- (a) the person has received a repayment of contributions under regulation 44 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 99 because a transfer value payment has been made.

(7) Paragraph (6)(a) does not apply if the person repays to the Department 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 9(5) or regulation 111(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

Calculation of periods of membership or service

12.—(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

Meaning of “pensionable pay”

13.—(1) In this Part, subject to the following paragraphs, “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 Department 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 Department, 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 27(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) an APMS contract;
 - (c) payments from, or to, a practitioner who is a GMS 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 principal 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 principal 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 Health and Social Services Board to which the partners are required to give notice of their election in accordance with paragraph (10).
- (10) Non-GP providers and any principal medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their host Board in accordance with paragraph (11).
- (11) A notice given under this regulation—
- (a) must be signed by all the non-GP providers and principal 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 Health and Social Services Board concerned; or
- (ii) if no agreement is reached, a date decided by the Department;
- (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.

Pensionable pay: breaks in service

14.—(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 13 are reduced or cease.

(2) For the purposes of this Part (apart from regulations 27 and 28), 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 13 have ceased to be paid to the member.

(4) For the purposes of regulations 27 and 28, if for any period whilst the member falls within—

- (a) paragraph (1) the earnings used to calculate the member's pensionable pay under regulation 13 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 13 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 9(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 13(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) 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) applies leaves pensionable employment or, by virtue of paragraph (10), 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 9(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

Meaning of "reckonable pay": general

15.—(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 49 (partial retirement: members aged at least 55), or
 - (ii) under regulation 45(1)(b)(ii).

(2) This regulation is subject to regulations 16 to 19.

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

$$IRP \times \frac{RPa}{RPI}$$

where—

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

RPa 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 16, and

RPi 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 16 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 (Northern Ireland) 1971(19).

(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 9(5) (pensionable service: breaks in service), or
- (b) regulation 111(2) (exception to general rule in regulation 110),

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 57 despite being entitled to a pension under regulation 55.

(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.

Adjustments for inflation in determining reckonable pay under regulation 15

16.—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 15(4),
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 15(6), or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 15(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 (Northern Ireland) 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 regulation 15(4), (6) or (7), and
- (b) "the relevant day" has the meaning given in regulation 15(5).

Restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service

17.—(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 104; and
 - (b) “pensionable pay” has the meaning given by regulation 13.

Meaning of “reckonable pay”: non-concurrent part-time employment

18.—(1) This regulation applies if a member’s reckonable pay falls to be determined under regulation 15 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, subject to paragraph (4), 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.

(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 Department 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 Department 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 83(1) or (2) (lump sum payable on death of active or pensioner member).

Meaning of “reckonable pay”: concurrent part-time employments

19.—(1) This regulation applies if under regulation 15(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 18 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 paragraphs (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Department may in any particular case determine.

Out of hours providers

20.—(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 or GMS practices and the majority of those members are—

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

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

(ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and

(iii) in respect of which a Health and Social Services Board appointed by the Department to act on 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 or a GMS practice; or
 - (bb) a partner in a partnership that is an APMS contractor or a GMS practice; or
 - (cc) a shareholder in a company limited by shares that is an APMS contractor or a GMS practice,
 - (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice, for the provision of OOH services; and
 - (vii) is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
 - (aa) pursuant to a written application made by the body to it for that purpose; and
 - (bb) that Health and Social Services 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 Health and Social Services Board appointed by the Department to act on its behalf (“the appointed Board”).
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed 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 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, HSC 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 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 Department in accordance with regulation 33;
- (b) has ceased to satisfy the conditions for approval;
- (c) has notified the Health and Social Services 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 II of the Insolvency (Northern Ireland) Order 1989⁽²⁰⁾ (“the 1989 Order”); 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 Part III of the 1989 Order; or
 - (iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order; 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 V or Part VI of the 1989 Order or an instrument of dissolution has been drawn up in accordance with section 67 of the Industrial and Provident Societies (Northern Ireland) Act 1969⁽²¹⁾; 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 (Northern Ireland) Order 1986⁽²²⁾.

(9) An OOH provider—

- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event;
- (b) that wishes to cease to participate in the Scheme must give the appointed 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 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.

⁽²⁰⁾ S.I. 1989/2405 (N.I. 19)

⁽²¹⁾ 1969 c. 24

⁽²²⁾ S.I. 1986/1032 (N.I. 6)