
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

**The National Health Service Pension
Scheme (Scotland) Regulations 2008**

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.A

INTRODUCTION

Reckonable pay

Meaning of “reckonable pay”: general

2.A.10.—(1) This regulation applies for the purpose of determining the meaning of “reckonable pay”, in relation to—

- (a) a member whose active membership ceases; or
 - (b) a member becoming entitled to the immediate payment of a pension during the member’s active membership period—
 - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55); or
 - (ii) under regulation 2.D.1(1)(b)(ii) (normal retirement pensions).
- (2) This regulation is subject to regulations 2.A.11 to 2.A.14.
- (3) A member’s “reckonable pay” is determined by the formula—

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

where—

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

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

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

(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; and
- (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); and
 - (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) Paragraph (9) applies if 2 or more periods of pensionable service are treated as a single continuous period of pensionable service under–
- (a) regulation 2.A.4(5); or
 - (b) regulation 2.G.3(2) (exception to general rule in regulation 2.G.2).
- (9) The reference in–
- (a) paragraph (4) to a period of pensionable service equalling 365 days;
 - (b) paragraph (5) to a period of 1095 days; and
 - (c) 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.
- (10) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) despite being entitled to a pension under regulation 2.D.11 (early retirement on termination of employment by employing authority).
- (11) 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 2.A.10

2.A.11.—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 2.A.10(4);
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.10(6); or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.10(7),

the amount of pensionable pay is adjusted for inflation.

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

(3) In this regulation—

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

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

2.A.12.—(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 calculation 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 in the following way—

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

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

(6) In this regulation—

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

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

2.A.13.—(1) This regulation applies if a member’s reckonable pay falls to be determined under regulation 2.A.10 by reference to the member’s pensionable pay for any period for a part time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) Subject to paragraph (4), the member’s reckonable pay for that period in respect of the part time employment is the amount that would have been paid in respect of that employment for that period if it had been a whole time employment not held concurrently with any other employment.

(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 Scottish Ministers 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 paid under paragraph (2), that amount must be reduced by such amount as is in the opinion of the Scottish Ministers appropriate having regard to what would have been paid for that period in respect of a comparable whole-time employment.

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

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

2.A.14.—(1) This regulation applies if under regulation 2.A.10(11) a member’s reckonable pay falls to be determined by reference to the member’s pensionable pay for any period for 2 or more part time employments held concurrently during that period.

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

Step 1—

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

Step 2—

find the appropriate fraction for each of the employments (see paragraph (3)); and

Step 3—

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

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

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

where—

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

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

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

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

where—

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

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

(5) If—

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

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

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

Out of hours providers

2.A.15.—(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, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are—

(aa) HBPMS contractors, GMS practices or section 17C agreement providers whose HBPMS contracts, GMS contracts or section 17C agreements require them to provide OOH services; or

(bb) registered medical practitioners who are partners or shareholders in a HBPMS contractor, a GMS practice or section 17C agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or section 17C agreement;

(ii) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a section 17C agreement provider for the provision of OOH services; or

(iii) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf—

(aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;

(bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and

(cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or

(b) some other body corporate (which is not otherwise an employing authority) which—

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

(ii) operates on a not for profit basis;

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

(iv) has memorandum or articles or rules which—

- (aa) prohibit the payment of dividends to its members;
- (bb) require its profits (if any) or other income to be applied in promoting its objects; and
- (cc) require all assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
- (v) has at least one member who is–
 - (aa) an HBPMS contractor, GMS practice or a section 17C agreement provider;
 - (bb) a partner in a partnership which is an HBPMS contractor, GMS practice or a section 17C agreement provider; or
 - (cc) a shareholder in a company limited by shares that is a HBPMS contractor, GMS practice or a section 17C agreement provider;
- (vi) has a contract with a Health Board, an HBPMS contractor, GMS practice or section 17C agreement provider, for the provision of OOH services; and
- (vii) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf–
 - (aa) pursuant to a written application made by the body to it for that purpose; and
 - (bb) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.

(2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person’s “associated company” if that person has control of it, except where that person is an employing authority, and for these purposes a person shall be taken to have control of a body corporate if they exercise, or are able to exercise, or are entitled to acquire direct or indirect control over its affairs.

(3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”).

(4) An application referred to in paragraph (3) may specify a date from which approval by the appointed Board (if given) has effect (“the nominated date”).

- (5) Where a company limited by guarantee or other body corporate makes an application and–
 - (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the date on which approval is actually given (“the approval date”); and
 - (b) it approves that application,

that approval takes effect on the later of the nominated date and approval date.

(6) 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–
 - (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
 - (b) the nominated date cannot be earlier than 1st April 2004.

(8) The appointed Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider–

- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation 3.C.4(2) (guarantees, indemnities and bonds);
 - (b) has ceased to satisfy the conditions for approval; or
 - (c) has notified or has an obligation to notify the 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 1 (company voluntary arrangements) of the Insolvency Act 1986⁽¹⁾ (“the 1986 Act”);
 - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act;
 - (iii) a receiver, manager or administrative receiver has been appointed under Part III (receivership) of the 1986 Act;
 - (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part IV (winding up of companies registered under the Companies Acts) 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⁽²⁾; 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 (winding up of companies registered under this Act or the former Companies Acts) of the Companies Act 1985⁽³⁾.
- (9) An OOH provider–
- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event; and
 - (b) that wishes to cease to participate in 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 ceases to participate in the scheme on–
- (a) such date as the appointed Board may specify in notice under paragraph (8); or
 - (b) the day upon which the period referred to in paragraph (9)(b) expires where a notice under that paragraph has been given.

⁽¹⁾ 1986 c. 45.

⁽²⁾ 1965 c. 12, section 58 was amended by S.I.2000/3649, article 180.

⁽³⁾ 1985 c. 6.