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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 208**

The National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment (No. 2) Regulations 2009

PART 3

Amendment of the National Health Service Pension Scheme (Scotland) Regulations 2008

**Replacement of regulation 2.C.3**

21. For regulation 2.C.3 (employees), substitute—

**“Employees**

**2.C.3.—**(1) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this Part (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) Subject to paragraphs (16) and (17), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

(3) For the purposes of paragraphs (4) to (15)—

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in sub paragraph (a) shall be deemed to have been paid; and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.9 shall be included; and

- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) If a member—

- (a) was in pensionable employment with an employing authority on a whole time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during the previous scheme year.

(5) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment during the previous scheme year.

(6) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole time and part time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole time employment; and
- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment for that period in respect of the member's part time employment.

(7) If a member—

- (a) was in pensionable employment with an employing authority on a whole time basis throughout the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(8) If a member—

(a) was in pensionable employment with an employing authority on a part time basis throughout the previous scheme year;

(b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(9) If a member—

(a) was in pensionable employment with an employing authority on a combination of a whole time and part time basis throughout the previous scheme year;

(b) did not pay contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and

(c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(10) If a member—

- (a) commenced pensionable employment with an employing authority on a whole time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(11) If a member—

- (a) commenced pensionable employment with an employing authority on a part time basis during the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid for that employment during the previous scheme year in respect of a single comparable whole time employment; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

- (12) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole time and part time basis;

- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and

- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer during the previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer during the previous scheme year; and

NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

- (13) If a member—

- (a) commenced pensionable employment with an employing authority on a whole time basis during the previous scheme year;

- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year;

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{RPP}{NDPE} \times 365$$

where—

RPP is the pensionable pay received in respect of that employment for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(14) If a member—

- (a) commences pensionable employment with an employing authority on a part time basis during the previous scheme year;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that employer commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(15) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole time and part time basis with that employing authority;
- (b) did not pay contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$\frac{(RPP + CWTE)}{NDPE} \times 365$$

where—

RPP is the pensionable pay received for the whole time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

CWTE is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole time employment in respect of the member's part time employment with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

NDPE is the number of days of pensionable employment with that authority for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year.

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

(17) Subject to paragraph (18), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

- (a) from the first day of the pay period in which the change is made at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20); and
- (b) as if the member's employment had commenced on that date.

(18) Paragraph (17) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

- (a) unplanned changes to that member's duties; or
- (b) changes to that member's duties that are unlikely to persist for at least 12 months.

(19) If the change to a member's pensionable pay referred to in paragraph (17) is made in respect of an existing part time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole time comparable employment.

(20) Where paragraph (16) or (17) apply the Scottish Ministers shall determine the member's pensionable pay—

(a) by applying the formula—

$$\frac{EPP}{NDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority considers will be payable to the member in respect of that employment during the current scheme year; and

NDPE is the number of days of pensionable employment from the date employment commences to the end of the current scheme year; and

(b) if the further employment is part time employment, by determining how much would be paid in respect of a whole time comparable employment,

with the amount determined under sub paragraph (a) being the member's pensionable pay for the purposes of this paragraph if the further employment is whole time employment and the amount determined under sub paragraph (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part time employment.

(21) If none of paragraphs (4) to (17) apply—

(a) the Scottish Ministers must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in regulation 2.C.2(4), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances; and

(b) the member shall pay contributions at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (a).

(22) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008/09 scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

(23) If a transfer payment from a corresponding health service scheme is accepted in respect of a person, the person is treated for the purposes of this regulation as if—

(a) the person was an active member of the scheme during any period during which the person was an active member of that scheme; and

(b) the pay by reference to which the person's benefits under that scheme were calculated was pensionable pay for the purposes of the scheme.”.