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## STATUTORY INSTRUMENTS

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# 2009 No. 381

## The National Health Service Pension Scheme and Injury Benefits (Amendment) Regulations 2009

### PART 2

#### Amendment of the National Health Service Pension Scheme Regulations 1995

##### Interpretation of Part 2

2. In this Part an alphanumerical reference to a regulation or a reference to a Schedule is a reference to a provision of the National Health Service Pension Scheme Regulations 1995<sup>(1)</sup> bearing that designation.

##### Amendment of regulation B3

3. In regulation B3 (restriction on further participation in the scheme) for paragraph (2), substitute—

“(2) Persons whose pensions under the scheme are payable may not contribute to or accrue further pensionable service under the scheme, except in the cases referred to in—

- (a) regulation E2(11);
- (b) regulation E2A(11) but subject to paragraph (3);
- (c) regulation R4(6).

(3) Persons to whom—

- (a) regulation E2B(3)(a) applies may not (except where paragraph (b) applies) contribute to or accrue further pensionable service under the scheme from the date the Secretary of State makes a determination under that regulation;
- (b) paragraph (a) applies may contribute to or accrue further pensionable service under the scheme from the day after the first anniversary of that person’s NHS employment following the date of the Secretary of State’s determination under regulation E2B if that person is under the age of 50 on that day.”.

##### Amendment of regulation D1

4. For paragraphs (1) to (2T) of regulation D1 (contributions by members), substitute—

“(1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.

(1A) For the 2009-2010 scheme year and each subsequent scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must

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<sup>(1)</sup> [S.I. 1995/300](#), amended by [S.I. 1997/80](#) and [1888](#), [1998/666](#) and [2216](#), [2000/605](#), [2001/1428](#) and [3649](#), [2002/561](#) and [2469](#), [2003/631](#) and [2322](#), [2004/665](#) and [696](#), [2005/661](#) and [3074](#), [2006/600](#) and [2919](#), [2007/2054](#) and [3280](#) and [2008/654](#) and [2263](#), and modified by [S.I. 1996/971](#).

contribute the percentage of the member's pensionable pay specified in column 2 of that table in respect of that amount.

<i>Column 1</i>	<i>Column 2</i>
<i>Pay band</i>	<i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(2) The Secretary of State may, with the consent of the Treasury, make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraph (1A) with effect from a date specified in the determination.

(2A) Before making a determination under paragraph (2), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary, and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2B) 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 regulation (“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 (2E) to (2V) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2C) Subject to paragraphs (2Q) and (2R), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (2D) to (2P) 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.

(2D) For the purposes of paragraphs (2E) to (2P)—

- (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 (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 P1 or P2 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(2E) 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 paragraph (1A) 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.

(2F) 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 paragraph (1A) 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 Secretary of State determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(2G) 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 paragraph (1A) 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 Secretary of State determines 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.

(2H) 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 paragraph (1A) 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;

NDPE is the number of days of pensionable employment with that authority 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.

(2I) 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 paragraph (1A) 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 Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time 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;

NDPE is the number of days of pensionable employment with that authority 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.

(2J) 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 paragraph (1A) 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 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;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time 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;

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.

(2K) 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 paragraph (1A) 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;

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

(2L) 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 paragraph (1A) 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 Secretary of State determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;

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

(2M) 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 paragraph (1A) 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 authority during the previous scheme year;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that authority during the previous scheme year;

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

(2N) 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 paragraph (1A) 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;

NDPE is the number of days of pensionable employment with that authority 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.

(2O) 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 paragraph (1A) 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 Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time 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;

NDPE is the number of days of pensionable employment with that authority 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.

(2P) 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 paragraph (1A) 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 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;

CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time 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;

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.

(2Q) 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 paragraph (1A) 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 (2U).

(2R) Subject to paragraph (2S), 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 next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (1A) 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 (2U), and
- (b) as if the member's employment had commenced on that date.

(2S) Paragraph (2R) 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.

(2T) If the change to a member's pensionable pay referred to in paragraph (2R) 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.

(2U) Where paragraph (2Q) or (2R) apply the Secretary of State 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 estimates will be payable to the member in respect of the employment referred to in paragraph (2Q) or, as the case may be, paragraph (2R) during the current scheme year;

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 that 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 (a) being the member's pensionable pay for the purposes of this paragraph if that employment is whole-time employment and the amount determined



under (b) being the member's pensionable pay for the purposes of this paragraph if the further employment is part-time employment.

(2V) If none of paragraphs (2E) to (2R) apply—

- (a) the Secretary of State must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), 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 paragraph (1A) 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).

(2W) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—
  - (i) during an earlier scheme year, or
  - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or
  - (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);
- (b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and
- (c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2X) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—
  - (i) during an earlier scheme year, or
  - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraphs (2Q) or (2R) of this regulation, or
  - (iii) in part during the scheme year referred to in paragraph (i) and in part during the period referred to in paragraph (ii);
- (b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and
- (c) that payment does not exceed £150,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the

member's pensionable employment with that employing authority ceased, and

- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(2Y) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and
- (c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(2Z) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and
- (c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes other than for the purpose of calculating benefits under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.”.

#### **Amendment of regulation E2B**

5. In paragraph (2) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A)—

- (a) at the end of sub-paragraph (b) omit “and”;
- (b) after sub-paragraph (c), add—  
“; and
- (d) the member has not become entitled to a tier 2 pension in respect of any later service under regulation S3A(6).”.

#### **Amendment of regulation E6**

6. In regulation E6 (lump sum on retirement)—

- (a) in paragraph (2) after “paragraphs”, insert “(2A),”;
- (b) after paragraph (2), insert—
  - “(2A) Where regulation E2B(3) applies, the lump sum payable shall be equal to the difference between—
  - (a) three times the yearly rate of pension calculated in accordance with regulation E2A(3)(a), and
  - (b) three times the yearly rate of pension calculated in accordance with regulation E2B(3)(b).”.

#### **Amendment of regulation E7**

- 7. In regulation E7 (general option to exchange part of pension for lump sum)—
  - (a) in paragraph (8) for “The option” substitute, “Subject to paragraphs (9) and (10), the option”;
  - (b) after paragraph (8), add—
    - “(9) If the pension is an ill-health pension under regulation E2A, the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State—
    - (a) where the member is awarded—
      - (i) a tier 1 pension under paragraph (3)(a) of that regulation, at the time of claiming that tier 1 pension,
      - (ii) a tier 2 pension under paragraph (3)(b) of that regulation, at the time of claiming that tier 2 pension; or
    - (b) before such later time as the scheme administrator specifies in writing.
  - (10) If the pension is a tier 2 ill-health pension under regulation E2B to be paid in place of a tier 1 ill-health pension under regulation E2A, the option under this regulation may only be exercised—
    - (a) in relation to the difference between the tier 1 pension that is replaced by the tier 2 pension in accordance with paragraph (3) of regulation E2B and the tier 2 pension to which the member becomes entitled under that paragraph, and
    - (b) by giving notice in writing to the scheme administrator in the form required by the Secretary of State—
      - (i) at the time of award of the tier 2 pension under that paragraph, or
      - (ii) before such later time as the scheme administrator specifies in writing.”.

#### **Amendment of regulation H4**

- 8. In regulation H4 (member dies after pension becomes payable), in—
  - (a) paragraph (4) after “civil partner”, insert “or nominated partner”;
  - (b) paragraph (5) after—
    - (i) “civil partner”, insert “or nominated partner”,
    - (ii) “surviving civil partner’s”, insert “or surviving nominated partner’s”;
  - (c) paragraph (6) after—
    - (i) “surviving civil partner’s”, insert “or surviving nominated partner’s”,
    - (ii) “surviving civil partner”, insert “or surviving nominated partner”;

(d) paragraph (7) after—

- (i) “surviving civil partner’s”, insert “or surviving nominated partner’s”,
- (ii) “surviving civil partner”, insert “or surviving nominated partner”.

#### **Amendment of regulation L1**

9. In paragraph (5) of regulation L1 (preserved pension) after “a lump sum”, add—  
“of an amount consistent with—

- (a) the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule”.

#### **Amendment of regulation S3A**

10. In regulation S3A (benefits in respect of pensionable employment after pension becomes payable under regulation E2A) after paragraph (6), add—

“(7) A member—

- (a) to whom a tier 2 pension is payable in place of a tier 1 pension in respect of the member’s previous service in accordance with regulation E2B(3), and
- (b) who satisfies the tier 1 condition or, as the case may be the tier 2 condition, in respect of the member’s later service,

shall be entitled to the following benefit.

(8) That benefit is the aggregate of—

- (a) a tier 2 pension paid in accordance with regulation E2B in respect of the member’s previous service; and
- (b) a tier 1 pension in respect of the member’s later service.”.

#### **Amendment of regulation T8**

11. In paragraph (4) of regulation T8 (interest on late payment of benefits)—

- (a) in the definition of “due date” after “possession of all information” insert, “(including information which the Secretary of State obtains as result of a determination under regulation E2B(3))”;
- (b) in the definition of “qualifying payment” for paragraph (b), substitute—  
  - “(b) any amount paid that increases the amount of an earlier payment due to—
  - (i) a backdated or later increase in pensionable pay, or
  - (ii) the payment of a tier 2 pension under regulation E2A in place of a tier 1 pension being paid to a member following a determination by the Secretary of State under regulation E2B(3),”.

#### **Amendment of regulation U1A**

12. In paragraph (1)(g) of regulation U1A (determinations by medical practitioners) for “and E2A(7)(b)”, substitute “, E2A(7)(b) and L1(5)(b)”.

#### **Amendment of Schedule 2**

13.—(1) Schedule 2 (medical and dental practitioners) shall be amended as follows.

(2) For sub-paragraphs (1) to (2Z) of paragraph 10 of Schedule 2 (medical and dental practitioners), substitute—

“(1) In the case of members who are practitioners or non-GP providers, regulation D1 (contributions by members) and regulation D2 (contributions by employing authorities) are modified as described in the following sub-paragraphs.

(2) Subject to sub-paragraph (2A), for the 2009-2010 scheme year and each subsequent scheme year, a member’s contribution rate is the percentage specified in column 2 of the following table in respect of the corresponding amount of pensionable earnings specified in column 1 of the table into which the member’s earnings fall.

<i>Column 1</i> <i>Amount of pensionable earnings</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(2A) The Secretary of State may, with the consent of the Treasury, make a determination substituting any or all of the amounts of pensionable earnings or contribution rates specified in the table in sub-paragraph (2) with effect from a date specified in the determination.

(2B) Before making a determination under sub-paragraph (2A), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary; and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2C) If, apart from this sub-paragraph, the earnings for a scheme year in respect of a member’s practitioner or non-GP provider service would not be a whole number of pounds, those earnings will be rounded down to the nearest whole pound.

(2D) If a member is in practitioner or non-GP provider service as well as (concurrently) employment other than as a practitioner or non-GP provider in respect of which the member is liable to pay contributions in accordance with regulation D1, the contributions payable in respect of the member’s—

- (a) practitioner or non-GP provider service, shall be determined in accordance with the provisions of these regulations that apply to a practitioner or non-GP provider, and
- (b) employment as an officer, shall be determined in accordance with the provisions of these regulations that apply to an officer.

(2E) Where a practitioner (other than a dentist performer) or a non-GP provider is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) or as a non-GP provider and the practitioner service as a dentist performer will each be treated separately under this paragraph.

(2F) In determining the contributions payable in accordance with sub-paragraph (2) of this regulation, a host Trust or Board must take account of pensionable earnings as a practitioner or as a non-GP provider or, as the case may be, a dentist performer, from all practitioner or non-GP provider or, as the case may be, dentist performer sources, including any such pensionable earnings determined by another host Trust or Board.

(2G) An employing authority that is not a host Trust or Board shall, in respect of any pensionable earnings it pays to a practitioner or to a non-GP provider, take advice from the relevant host Trust or Board in determining the contributions payable in accordance with sub-paragraph (2) of this regulation.

(2H) If, in respect of a scheme year, a practitioner (other than a dentist performer) or a non-GP provider has—

- (a) certified their pensionable earnings in accordance with paragraph 23 of this Schedule and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that paragraph but the host Trust or Board has the figure that represents the practitioner's or non-GP provider's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in sub-paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) certified or final pensionable earnings from all practitioner or non-GP provider sources, and
- (ii) any additional pensionable earnings the practitioner (other than a dentist performer) or non-GP provider is treated as having received during an absence from work in accordance with regulation P1 or P2 and the modifications described in paragraph 19 of this Schedule.

(2I) Subject to sub-paragraph (2J), if sub-paragraph (2H) does not apply to a practitioner (other than a dentist performer) or to a non-GP provider in respect of a scheme year, that practitioner or non-GP provider shall pay contributions at the rate in column 2 of the table in sub-paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) corresponds to the practitioner's or non-GP provider's most recent certified or final pensionable earnings referred to in sub-paragraph (2H), or
- (c) corresponds to the host Trust or Board's estimate of the practitioner's or non-GP provider's pensionable earnings from all practitioner or non-GP provider sources for that year.

(2J) If sub-paragraph (2I) applies to a practitioner (other than a dentist performer) or to a non-GP provider in respect of a scheme year and sub-paragraph (2H)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner or non-GP provider shall pay contributions at the rate determined in accordance with sub-paragraph (2H).

(2K) If, in respect of a scheme year, a dentist performer has—

- (a) certified their pensionable earnings in accordance with paragraph 23 of this Schedule and forwarded a record of those earnings to the host Trust or Board, or
- (b) was not required to certify their earnings in accordance with that paragraph but the host Trust or Board has the figure that represents the dentist performer's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in sub-paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of —

- (i) certified or final pensionable earnings from all dentist performer sources, uprated according to the formula—

$$(PE / NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the dentist performer service commenced in the scheme year to the end of the scheme year, and

- (ii) any additional pensionable earnings the dentist performer is treated as having received during an absence from work in accordance with regulation P1 or P2 and the modifications described in paragraph 19 of this Schedule.

(2L) Subject to sub-paragraph (2M), if sub-paragraph (2K) does not apply to a dentist performer in respect of a scheme year, that dentist performer shall pay contributions at the rate in column 2 of the table in sub-paragraph (2), which—

- (a) has been agreed between the host Trust or Board on the one hand and the dentist performer on the other hand, or
- (b) corresponds to the dentist performer's most recent certified or final pensionable earnings referred to in sub-paragraph (2K), or
- (c) corresponds to the host Trust or Board's estimate of the dentist performer's pensionable earnings from all dentist performer sources for that year updated according to the formula referred to in sub-paragraph (2K) .

(2M) If sub-paragraph (2L) applies to a dentist performer in respect of a scheme year and sub-paragraph (2K)(a) or (b) is subsequently satisfied in respect of that scheme year, that dentist performer shall pay contributions at the rate determined in accordance with sub-paragraph (2K).

(2N) A host Trust or Board may adjust a practitioner's or a non-GP provider's contribution rate for any scheme year determined in accordance with sub-paragraphs (2I) or (2L)—

- (a) by agreement between the host Trust or Board on the one hand and the practitioner or non-GP provider on the other hand, or
- (b) without such agreement, if the host Trust or Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.”.

(3) For paragraph 14 (lump sum on member's death in pensionable employment or after pension becomes payable), substitute—

**“Lump sum on member's death in pensionable employment or after pension becomes payable**

**14.—**(1) In the case of members who die in pensionable employment as practitioners, regulation F1 (lump sum payable on member's death in pensionable employment) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F1(2) is treated as a reference to—

- (a) in the case of a member who is required to pay contributions under regulation D1(4), the yearly average of the member's updated earnings at the date of death, or

- (b) in the case of a member who is no longer required to pay contributions under regulation D1(4), the yearly average of the member's uprated earnings on the member's last day of pensionable service.

(2) In the case of members who die after a pension under the scheme in respect of practitioner service becomes payable, regulation F2 (lump sum payable on member's death after pension becomes payable) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F2(2) is treated as a reference to the yearly average of the member's uprated earnings on the member's last day of pensionable service.”.

- (4) For paragraph 23 (accounts and actuarial reports), substitute—

**“Accounts and actuarial reports**

**23.**—(1) In the case of members who are practitioners or non-GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each scheme year, a type 1 medical practitioner and a non-GP provider shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(3) In respect of each scheme year, a type 2 medical practitioner and a locum practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(4) In respect of each scheme year, a type 1 dental practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the notice of pensionable earnings referred to in paragraph 5A of this Schedule; and
- (b) their pensionable earnings as a type 1 dental practitioner from all other type 1 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(5) In respect of each scheme year, a type 2 dental practitioner shall provide each relevant host Trust or Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services, and
- (b) their pensionable earnings as a type 2 dental practitioner from all other type 2 dental practitioner sources,

no later than 6 months after the end of that scheme year.

(6) In respect of each scheme year, a GMS or a PMS practice or an APMS contractor shall provide the Secretary of State with—



- (a) a statement of estimated pensionable earnings in respect of any—
  - (i) non-GP provider that is a PMS practice or APMS contractor or who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor,
  - (ii) type 1 medical practitioners who perform medical services as, or on behalf of, the practice or contractor, and
  - (iii) type 2 medical practitioners employed by the practice or contractor, and
- (b) an end-of-year statement of—
  - (i) pensionable earnings,
  - (ii) contributions to the Scheme made under regulation D1 (contributions by members),
  - (iii) contributions to the Scheme made under regulation D2 (contributions by employing authorities), and
  - (iv) any pensionable earnings deemed in accordance with regulation P1 and the modifications to that regulation referred to in paragraph 19 of this Schedule, in respect of type 2 medical practitioners employed by the practice or contractor.
- (7) The Secretary of State shall be provided with—
  - (a) the statement referred to in sub-paragraph (6)(a) at least 1 month before the beginning of that scheme year;
  - (b) the statement referred to in sub-paragraph (6)(b) no later than 3 months after the end of that scheme year.
- (8) A host Trust or Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Secretary of State a copy of the records the host Trust or Board maintains in respect of—
  - (a) all contributions to the Scheme made under paragraph 10 of this Schedule in respect of type 1 medical practitioners and non-GP providers, and
  - (b) their pensionable earnings.
- (9) Subject to paragraph (10), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to that member, the member's pensionable earnings for that scheme year shall be zero.
- (10) If, in respect of a scheme year—
  - (a) a practitioner or non-GP provider has failed to comply with the requirements of whichever of sub-paragraphs (2) to (5) applies to them,
  - (b) a benefit in respect of such service is payable to, or in respect of that member, under these Regulations, and
  - (c) the member's employing authority is in possession of a figure representing all or part of the member's pensionable earnings for that year,the Secretary of State may treat that figure as the amount of the member's pensionable earnings for that year.
- (11) If, in respect of a scheme year, a practitioner or non-GP provider—
  - (a) dies without complying with the requirements of whichever of sub-paragraphs (2) to (5) applies to them, or

- (b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005(2),

the Secretary of State may require that practitioner or non-GP provider's personal representatives or person (or person's) duly authorised to act on the member's behalf to provide the relevant certificate—

- (i) within the period referred to in whichever of sub-paragraphs (2) to (5) was or is applicable to them, or
  - (ii) within such other period as the Secretary of State permits.
- (12) The certificates and statements referred to in this regulation—
- (a) shall be in such form as the Secretary of State shall from time to time require;
  - (b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.”.

#### **Amendment of Schedule 2A**

**14.—**(1) Schedule 2A (Pension Sharing on Divorce or Nullity of Marriage or, on the Dissolution or Nullity of a Civil Partnership) shall be amended as follows.

(2) Omit paragraph 2 (safeguarded rights).

(3) In paragraph 3 (pension credit benefit)—

- (a) in the heading, after “benefit” insert “on attaining normal benefit age”;
- (b) in sub-paragraph (2), for “paragraph 4” substitute “paragraphs 3A to 4”;
- (c) in sub-paragraph (5), for “The value” substitute “Subject to paragraph (7), the value”;
- (d) after sub-paragraph (6), add—

“(7) A pension credit member who is entitled to a lump sum in accordance with sub-paragraph (1)(b) may opt to exchange part of a pension to which the pension credit member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(8) If a pension credit member so opts, for every £1 by which the pension credit member's annual pension is reduced, the pension credit member is to be paid a lump sum of £12.

(9) An option under paragraph (7) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(10) In paragraph (9) “annual amount” in relation to a pension means the amount of the annual pension to which the pension credit member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(11) A pension credit member may not exchange pension for lump sum under this paragraph to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act.

(12) The option under sub paragraph (7) may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.”.

(4) After paragraph 3, insert—

**“Pension credit benefit before attaining normal benefit age (with actuarial reduction)**

**3A.—**(1) Subject to sub-paragraph (2), a pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule on or after attaining normal minimum pension age but before attaining normal benefit age.

(2) The pension and the lump sum (if any) described in that paragraph will be reduced by such amount as the Secretary of State, after taking the advice of the Scheme Actuary, may determine.

**Pension credit benefit before attaining normal benefit age (on grounds of ill health)**

**3B.—**(1) A pension credit member shall be entitled to the payment of the pension credit benefit described in paragraph 3 of this Schedule before attaining normal benefit age if the Secretary of State is satisfied that the pension credit member—

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the 2004 Act, and
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in regular employment due to mental or physical infirmity.

(2) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”.

(5) In paragraph 4 (commutation of the whole of pension credit benefit before normal benefit age)—

- (a) in sub-paragraph (1), for “in the circumstances described in regulation 3(2)(a) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension credit benefit)” substitute “in the circumstances permitted by paragraph (b) of the lump sum rule in section 166(1) of the 2004 Act”;

(b) after sub-paragraph (1), insert—

“(1A) For the purpose of sub-paragraph (1), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.”;

(c) for sub-paragraph (2), substitute—

“(2) The pension credit payable in the circumstances described in sub-paragraph (1) shall consist of—

(a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of—

- (i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for,
- (ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and
- (iii) the lump sum resulting from the reduction to the pension credit member’s pension referred to in paragraph (ii);

(b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule

had the pension credit member reached normal benefit age on the date when commutation in accordance with this paragraph is applied for.”.

(6) In paragraph 5 (commutation of the whole of pension credit benefit at normal benefit age) for sub-paragraph (2), substitute—

“(2) The pension credit payable in the circumstances described in sub-paragraph (1)(a) shall consist of—

- (a) where paragraph 3(1)(b) applies, a lump sum equal to the aggregate of—
  - (i) 3 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule,
  - (ii) 5 times the annual rate of the pension referred to in paragraph (i) after that annual rate has been reduced by the maximum amount of pension that the pension credit member may exchange for a lump sum under paragraph 3(7) of this Schedule, and
  - (iii) the lump sum resulting from the reduction to the pension credit member’s pension referred to in paragraph (ii);
- (b) where paragraph 3(1)(b) does not apply, a lump sum equal to 5 times the annual rate of the pension otherwise payable under paragraph 3 of this Schedule.”.

(7) In paragraph 7 (pension credit member dies after pension credit benefit becomes payable) for sub-paragraph (3), substitute—

“(3) The maximum payment under this regulation shall not exceed the amount calculated in accordance with sub-paragraph (4), less the aggregate of—

- (a) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(6), and
- (b) the amount of any lump sum paid to the pension credit member in accordance with paragraph 3(7).”.

(8) In paragraph 12 (offset for crime, negligence or fraud), omit sub-paragraph (b).

(9) In paragraph 13 (loss of rights to benefits), omit sub-paragraph (b).

(10) After paragraph 15 (administrative matters), add—

**“Medical determinations**

**16.** The Secretary of State may make arrangements for the Secretary of State’s functions under this Schedule in relation to a decision whether a person is—

- (a) permanently incapable of regular employment because of physical or mental infirmity for the purpose of paragraph 3B;
- (b) expected to live for less than one year for the purposes of the lump sum rule referred to in paragraph 4,

to be discharged by—

- (i) a registered medical practitioner (whether practising on his own or as part of a group); or
- (ii) a body corporate or unincorporate employing such practitioners (whether under a contract of service or for services),

approved by the Secretary of State to act on the Secretary of State’s behalf.”.