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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**

**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 uprated 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 uprated 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<sup>(1)</sup>,

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.”.

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(1) 2005 c. 9.