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STATUTORY INSTRUMENTS

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**2011 No. 2586**

**The National Health Service Pension Scheme,  
Injury Benefits and Additional Voluntary  
Contributions (Amendment) Regulations 2011**

**PART 3**

**Amendment of the National Health Service Pension Scheme Regulations 2008**

**Part 3: General**

**14.** The National Health Service Pension Scheme Regulations 2008(1) are amended in accordance with this Part.

**Amendment of regulation 2.A.5**

**15.** In regulation 2.A.5(1) (meaning of “qualifying service”)—

(a) at the end of sub-paragraph (f)(2) omit “and”; and

(b) after sub-paragraph (g), add—

“(h) in the case of a Waiting Period Joiner referred to in regulation 2.L.1(3), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and

(i) in the case of a person who is eligible to join this Section of the Scheme by virtue of regulation 2.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

**Amendment of regulation 2.C.1**

**16.** In paragraph (8) of regulation 2.C.1(4) (contributions by members), for “(3)” substitute “(3A)”.

**Amendment of regulation 2.D.15**

**17.** In paragraphs (4)(5) and (5)(6) of regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum), the words “and before reaching the age of 75” are omitted.

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(1) [S.I.2008/653](#) as amended by [S.I.2008/2263](#), [2009/381](#), [1298](#) and [2446](#), [2010/492](#) and [1634](#) and [2011/591](#).  
(2) Sub-paragraph (f) was inserted by [S.I.2008/2263](#), regulation 28(b).  
(3) Chapter 2.L was inserted by [S.I. 2010/492](#), regulations 16 and 35.  
(4) Regulation 2.C.1 was substituted by [S.I.2010/1634](#), regulation 10.  
(5) Paragraph (4) was amended by [S.I.2009/381](#), regulation 33(b).  
(6) Paragraph (5) was substituted by [S.I.2009/381](#), regulation 33(c).

### **Amendment of regulation 2.E.9**

**18.** In paragraph (1)(c)(i) of regulation 2.E.9 (meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

### **Amendment of regulation 2.E.20A**

**19.** In paragraph (1) of regulation 2.E.20A(7) (pension payable when member dies on or after reaching age 75), after “If” insert “, on or before 5th April 2011,”.

### **Amendment of regulation 2.H.6**

**20.** In paragraph (2) of regulation 2.H.6 (meaning of “previous pay”: members with concurrent employments), for “2.H.(4)” substitute “2.H.5(4)”.

### **Amendment of regulation 2.J.5**

**21.** In paragraph (2)(8) of regulation 2.J.5 (commutation of small pensions),—

- (a) the “and” at the end of sub-paragraph (e) is omitted; and
- (b) after sub-paragraph (f), add—
  - “; and
  - (g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).”.

### **Amendment of regulation 2.J.8**

**22.** At the end of regulation 2.J.8 (deduction of tax)(9), add—

- “(5) Paragraph (6) applies if—
  - (a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)); and
  - (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.
- (6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge).
- (7) Paragraph (8) applies if—
  - (a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 2.D.15 (option for members in serious ill-health to exchange whole pension for lump sum); and
  - (b) that lump sum payment is made to a member who has reached the age of 75.
- (8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 205A of the 2004 Act (serious ill-health lump sum charge).”.

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(7) Regulation 2.E.20A was inserted by [S.I. 2008/2263](#), regulation 37.

(8) In paragraph (2), sub-paragraph (d) was revoked by [S.I.2009/381](#), regulation 49.

(9) Regulation 2.J.8 was amended by [S.I. 2009/2446](#), regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).

### Amendment of regulation 2.J.11

23. After paragraph (2)(f)(10) of regulation 2.J.11(determinations by medical practitioners), add—

- “(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount)(11).”.

### Amendment of regulation 3.A.5

24. In regulation 3.A.5(1) (meaning of “qualifying service”)—

(a) at the end of sub-paragraph (e), omit “and”; and

(b) after sub-paragraph (f)(12), add—

- “(g) in the case of a Waiting Period Joiner referred to in regulation 3.L.1(13), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
- (h) in the case of a person who is eligible to join this Section of the Scheme by virtue of regulation 3.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.”.

### Amendment of regulation 3.A.7

25. For paragraph (3)(b) of regulation 3.A.7 (meaning of “pensionable earnings”), substitute—

“(b) but does not include—

- (i) charges collected from patients which are not required, by virtue of such directions, to be so set off,
- (ii) income received by a practitioner to whom regulation 3.B.2 (restrictions on eligibility: general), regulation 3.B.5 (opting out of this section of the scheme) or regulation 3.B.6 (restriction on further participation in this section of the scheme) applies, or
- (iii) income received on or after 7<sup>th</sup> November 2011 by a practitioner in respect of the performance of services under a GDS contract or a PDS agreement to which the practitioner’s employer is not a party.”.

### Omission of regulation 3.A.12

26. Regulation 3.A.12 (distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor)(14) is omitted.

### Amendment of regulation 3.C.1

27. In paragraph (3) of regulation 3.C.1 (contributions by members)(15), for “(3)” substitute “(3A)”.

(10) Paragraph (2) was amended by [S.I. 2008/2263](#), regulation 52 and by [S.I.2009/381](#), regulation 51.

(11) [2004 c. 12](#). Section 229 has been amended by the Finance Act [2011 \(c.11\)](#), section 66, Schedule 17, Part 1, paragraphs 1, 6(1) and (4).

(12) Sub-paragraph (f) was inserted by [S.I.2009/2446](#), regulations 11, 55(b).

(13) Chapter 3.L was inserted by [S.I. 2010/492](#), regulations 16, 52.

(14) Regulation 3.A.12 was amended by [S.I. 2010/492](#), regulations 16, 37.

(15) Regulation 3.C.1 was amended by [S.I.2009/2446](#) and by [2010/1634](#).

### **Amendment of regulation 3.C.2**

**28.** Regulation 3.C.2 (members' contribution rate)(16) is amended as follows—

- (a) in paragraph (6)—
  - (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”; and
  - (ii) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the practitioner's (other than a dentist performer) earnings that”;
- (b) in paragraph (8)—
  - (i) in sub-paragraph (a), at the beginning, insert “reconciled or”;
  - (ii) in sub-paragraph (b), after “required to” insert “reconcile or”; and
  - (iii) in paragraph (i) of sub-paragraph (b), insert “reconciled,” before the word “certified” in both places where it occurs;
- (c) in paragraph (9)—
  - (i) for “, which” substitute “on the basis of whichever of the following the host Trust or Board considers the most appropriate in the circumstances”;
  - (ii) in sub-paragraphs (a), (b) and (c), at the beginning, insert “the amount of the performer's earnings that”; and
  - (iii) in sub-paragraph (b), after “most recent” insert “reconciled,”.

### **Amendment of regulation 3.D.11**

**29.** In paragraphs (4)(17) and (5)(18) of regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum), the words “and before reaching the age of 75” are omitted.

### **Amendment of regulation 3.E.9**

**30.** In paragraph (1)(c)(i) of regulation 3.E.9 (meaning of “dependent child”) for “whilst the deceased was an active member” substitute “before the deceased ceased to be an active member”.

### **Amendment of regulation 3.E.20A**

**31.** In paragraph (1) of regulation 3.E.20A (pension payable when member dies on or after reaching age 75)(19), after “If” insert “, on or before 5th April 2011,”.

### **Amendment of regulation 3.J.5**

**32.** In paragraph (2)(20) of regulation 3.J.5 (commutation of small pensions),—

- (a) the “and” at the end of sub-paragraph (e) is omitted; and
- (b) after sub-paragraph (f), add—
  - “; and
  - (g) regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payments by larger pension schemes).”.

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(16) Paragraphs (6), (8) and (9) were amended by [S.I. 2010/1634](#), regulations 8, 16(1), (3).

(17) Paragraph (4) was amended by [S.I.2009/381](#), regulation 63(b).

(18) Paragraph (5) was substituted by [S.I.2009/381](#), regulation 63(c).

(19) Regulation 3.E.20A was inserted by [S.I.2008/2263](#), regulation 69.

(20) In paragraph (2), sub-paragraph (d) was revoked by [S.I.2009/381](#), regulation 80.

### **Amendment of regulation 3.J.8**

**33.** At the end of regulation 3.J.8 (deduction of tax)(21), add—

“(5) Paragraph (6) applies if—

(a) a lump sum death benefit is payable on the death of a pensioner member in accordance with paragraph (2) of regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)); and

(b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member’s death.

(6) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge).

(7) Paragraph (8) applies if—

(a) an active, non-contributing or pension credit member opts to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of regulation 3.D.11 (option for members in serious ill-health to exchange whole pension for lump sum); and

(b) that lump sum payment is made to a member who has reached the age of 75.

(8) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 205A of the 2004 Act (serious ill-health lump sum charge).”.

### **Amendment of regulation 3.J.11**

**34.** After paragraph (2)(f)(22) of regulation 3.J.11(determinations by medical practitioners), add—

“(g) determining whether an individual satisfies the severe ill health condition for the purposes of subsection (3)(a) of section 229 of the 2004 Act (total pension input amount)(23).”.

### **Amendment of regulation 3.J.14**

**35.**—(1) Regulation 3.J.14 (employing authority and certain member record keeping and contribution estimates)(24) is amended as follows.

(2) For paragraphs (3) to (14), substitute—

“(3) Within 1 month of the end of each financial year, a host Trust or Board must give to each—

(a) GDS or PDS contractor with which that host Trust or Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the host Trust or Board’s records, the amount of the pensionable earnings ceiling and the amount of the pensionable earnings the contractor has paid to every type 1 dental practitioner who has performed services under that contract or agreement during that financial year (“an annual reconciliation notice”); and

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(21) Regulation 3.J.8 was amended by [S.I. 2009/2446](#), regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).

(22) Paragraph (2) was amended by [S.I. 2008/2263](#), regulation 82 and by [S.I.2009/381](#), regulation 82.

(23) [2004 c.12](#). Section 229 has been amended by the Finance Act [2011 \(c.11\)](#), section 66, Schedule 17, Part 1, paragraphs 1, 6(1) and (4).

(24) Regulation 3.J.14 was substituted by [S.I.2009/381](#), regulation 83 and amended by [S.I.2009/2446](#), regulations 11, 103, Schedule 2, Part 1, paragraph 1(a).

- (b) type 1 dental practitioner referred to in (a), a notice which sets out the amount of pensionable earnings each practitioner has been paid for that financial year as indicated in the host Trust or Board's records ("a performer's notice").
- (4) Within 3 months of the end of each financial year the GDS or PDS contractor must return the annual reconciliation notice to the host Trust or Board stating—
  - (a) that the amounts referred to in paragraph (3)(a) are correct or, where either, or both, of those amounts are incorrectly shown in the notice, the correct figure or figures;
  - (b) in the case of a type 1 dental practitioner whose earnings, during the period covered by the annual reconciliation notice, are not pensionable because they fall within paragraph (3)(b) of regulation 3.A.7, the earnings that would otherwise have been pensionable if that paragraph did not apply;
  - (c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under the contract or agreement during the financial year;
  - (d) the amount of pensionable earnings the contractor has paid to each type 1 dental practitioner under the contract or agreement during the financial year;
  - (e) whether each type 1 dental practitioner who performed services under the contract or agreement referred to in paragraph (3)(a) was given the opportunity to verify the pensionable earnings declared for them in the annual reconciliation notice; and
  - (f) the name and dentist's reference number of any type 1 dental practitioner who—
    - (i) failed to verify; or
    - (ii) disagrees with,
 the amounts declared for them in the annual reconciliation notice, and, where paragraph (ii) applies, the reason for the disagreement.
- (5) Within 3 months of the end of each financial year, each type 1 dental practitioner who performed services under the contract or agreement referred to in paragraph (3)(a) must return the performers' notice to the host Trust or Board, stating—
  - (a) that they were (or were not, as the case may be) in pensionable employment for the period covered by the performer's notice;
  - (b) that they were (or were not, as the case may be) directly employed by the contractor referred to in paragraph (3)(a) during the period covered by the performer's notice;
  - (c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings they received under the contract or agreement during that period;
  - (d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within paragraph (3)(b) of regulation 3.A.7, the earnings that would otherwise have been pensionable if that paragraph did not apply;
  - (e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments received by the practitioner under the contract or agreement during the financial year; and
  - (f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of sub-paragraphs (c), (d) or (e) are

the same as the equivalent amounts declared in the annual reconciliation notice referred to in paragraph (4).

(6) Within 3 months of the end of each financial year, a type 2 dental practitioner must provide the host Trust or Board with whom their employer has entered into a GDS contract or a PDS agreement, with a notice of their pensionable earnings based on—

- (a) the payments they have received from their employer for practitioner services provided under that GDS contract or PDS agreement during that financial year; and
- (b) the pensionable earnings they have received, as a type 2 dental practitioner, from all other type 2 dental practitioner sources during that financial year.

(7) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in paragraphs (1) to (6) and may, if a material particular has changed, accept a replacement.

(8) Subject to paragraph (9), an annual reconciliation notice will be invalid if—

- (a) it contains information that the employing authority's records show is inaccurate or misleading in a material particular;
- (b) subject to paragraph (7), it is not received within the specified time limit;
- (c) the total of the amounts specified in it in respect of each type 1 dental practitioner that performed services under the contract or agreement referred to in paragraph (3)(a) is greater than the aggregate of the pensionable earnings ceiling referred to in paragraph (3)(a) and the amount referred to in paragraph (4)(c);
- (d) it is incomplete in any material particular; or
- (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.

(9) Where an employing authority has received an annual reconciliation notice which is valid for some or all of the practitioners listed in that notice, the amounts notified to it for the financial year to which the notice relates will, subject to paragraphs (16), (17) and (18), be the pensionable earnings for those practitioners.

(10) Where an employing authority has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in that notice, the pensionable earnings for those practitioners will be—

- (a) zero, where the employing authority's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or
- (b) the figure that the employing authority estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in paragraph (3)(a) and the amount referred to in paragraph (4)(c) ("the maximum amount"), less the difference between—
  - (i) that maximum amount; and
  - (ii) the total of the monthly amounts in respect of which estimated contributions to this Section of the Scheme under regulation 3.C.2 (members' contribution rate) were paid on account during the financial year to which the earnings relate,

but if the total mentioned in paragraph (ii) is greater than the maximum amount, then no amount is to be deducted pursuant to this paragraph.

(11) In respect of each scheme year, a GMS or PMS practice, an APMS contractor or a GDS or PDS practice shall provide the Secretary of State with a statement of estimated pensionable earnings in respect of any—

- (a) non-GP provider that is a GMS or PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor;
- (b) type 1 medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) type 2 medical practitioner employed by the practice or contractor;
- (d) type 1 dental practitioner who performs services under a GDS contract or a PDS agreement, or
- (e) type 2 dental practitioner employed to perform services under a GDS contract or a PDS agreement.

(12) In respect of each scheme year, each employing authority and GDS or PDS contractor shall, in respect of any of the persons referred to in paragraph (11)(a) to (e), provide the Secretary of State with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the Scheme made under regulation 3.C.2 (members' contribution rate);
- (c) contributions to this Section of the Scheme made under regulation 3.C.3 (contributions by employing authorities: general); and
- (d) any pensionable earnings deemed in accordance with regulation 3.A.8 (pensionable earnings-breaks in service).

(13) The Secretary of State shall be provided with—

- (a) the statement referred to in paragraph (11) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in paragraph (12) no later than 3 months after the end of that scheme year.

(14) All employing authorities must, for each scheme year—

- (a) provide the Secretary of State with a statement of estimated total contributions due to this Section of the Scheme under regulation 3.C.1 (contributions by members) and 3.C.3 (contributions by employing authorities: general); and
- (b) maintain, in a manner approved by Secretary of State from time to time, the records of contributions to this Section of the Scheme made under regulations 3.C.1 and 3.C.3.

(15) The statement referred to in paragraph (14)(a) must be provided to the Secretary of State no later than 2 months after the end of each scheme year and, except where the Secretary of State waives such requirement, an employing authority must provide the Secretary of State with a statement of contributions to this Section of the Scheme recorded in accordance with paragraph (14)(b) no later than 2 months after the end of each scheme year.

(16) Subject to paragraphs (17) and (18), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(17) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's



pensionable earnings for that year, the Secretary of State may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) applies to them, and
  - (b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.
- (18) If, in respect of a scheme year, a practitioner or non-GP provider—
- (a) dies without complying with the requirements of whichever of paragraphs (1), (2), (4), (5) or (6) 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,

the Secretary of State may require that practitioner's or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in paragraph (19).

- (19) The period is—
- (a) that referred to in whichever of paragraphs (1), (2), (4), (5) or (6) was or is applicable to them; or
  - (b) such other period as the Secretary of State permits.
- (20) 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 that the host Trust or Board maintains in respect of practitioners under regulation 3.C.5(17)(b) (payment of contributions).
- (21) The certificates, notices 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.”.