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STATUTORY INSTRUMENTS

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**2014 No. 570**

**The National Health Service Pension  
Scheme (Amendment) Regulations 2014**

**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 A2**

3. In regulation A2 (interpretation)—

(a) after paragraph (n) of the definition of “employing authority”<sup>(2)</sup>, add—

“(o) an Independent Provider;”;

(b) for the definition of “host Board”, substitute—

““host Board”—

- (a) in respect of a non-GP provider who is a partner in a partnership that has entered into a PMS agreement for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with whom that provider has entered into such an agreement;
- (b) in respect of a non-GP provider who is a partner in a partnership that has entered into a GMS contract for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with which that partnership has entered into such an agreement;
- (c) in respect of a non-GP provider who is a partner in a partnership that is an APMS contractor which has entered into an APMS contract for the provision of primary medical services, means the National Health Service Commissioning Board or each Local Health Board with which that partnership has entered into such a contract;
- (d) in respect of a non-GP provider who is a shareholder in a company limited by shares that—
  - (i) is a GMS practice or a PMS practice or an APMS contractor, and

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(1) S.I. 1995/300, as 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, 2008/654 and 2263, 2009/381, 1298 and 2466, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78 and as modified by S.I. 1996/971.

(2) The last relevant amendment instrument is S.I. 2013/413 (regulations 2 and 3).

- (ii) has entered into a GMS contract, PMS agreement or APMS contract for the provision of primary medical services,  
means the National Health Service Commissioning Board or each Local Health Board with which that company has entered into such a contract or agreement;
- (e) in respect of a non-GP provider who is an individual who is a GMS practice or a PMS practice or an APMS contractor, means the National Health Service Commissioning Board or each Local Health Board with which that practice or contractor has entered into a PMS agreement or an APMS contract as such a practice or contractor;
- (f) in respect of a type 1 medical practitioner, means the National Health Service Commissioning Board or each Local Health Board with whom the practitioner has contracted, or entered into an agreement, to provide GMS, PMS or APMS;
- (g) in respect of a type 2 medical practitioner—
  - (i) in England, means National Health Service Commissioning Board in respect of GMS, PMS, APMS, OOHS and other primary medical services it has commissioned from a GMS practice, PMS practice, APMS contractor or OOH provider and which that practitioner performs for that practice, contractor or provider under a contract of service or for services;
  - (ii) in Wales, means the relevant Local Health Board in respect of GMS, PMS, APMS, OOHS and other primary medical services it has commissioned from a GMS practice, PMS practice, APMS contractor or OOH provider and which that practitioner performs for that practice, contractor or provider under a contract of service or for services;
- (h) in respect of a locum practitioner means the National Health Service Commissioning Board or each Local Health Board on whose medical performers list the practitioner's name appears;
- (i) in respect of a type 1 dental practitioner who holds a GDS contract or has entered into a PDS agreement, means the National Health Service Commissioning Board or each Local Health Board with whom that practitioner—
  - (i) is contracted to provide services under a GDS contract, or
  - (ii) has entered into an agreement to provide services under a PDS agreement;
- (j) in respect of a type 1 dental practitioner who performs GDS or PDS but is not a party to a GDS contract or PDS agreement—
  - (i) in England, means the National Health Service Commissioning Board in respect of GDS, or PDS it has commissioned from a GDS contractor or PDS contractor and which that practitioner performs for that contractor under a contract of service or for services with that contractor;
  - (ii) in Wales, means the relevant Local Health Board in respect of GDS, or PDS it has commissioned from a GDS or PDS contractor and which that practitioner performs for that contractor under a contract of service or for services;
- (k) in respect of a type 2 dental practitioner—
  - (i) in England, means the National Health Service Commissioning Board in respect of GDS or PDS it has commissioned from a GDS contractor or PDS contractor, and which that practitioner performs for that contractor under a contract of service or for services;

- (ii) in respect of Wales, means the relevant Local Health Board in respect of GDS or PDS it has commissioned from a GDS contractor or PDS contractor, and which that practitioner performs for that contractor under a contract of service or for services with that contractor or as a foundation trainee;”;
- (c) at the appropriate place in the alphabetical order, insert—
- ““APMS” are primary medical services provided under an APMS contract;
  - “consumer prices index” means the all items consumer prices index published by the Statistics Board of the UK Statistics Authority for the month of February immediately preceding a relevant year;
  - “GDS” are primary dental services provided under a GDS contract;
  - “GMS” are primary medical services provided under a GMS contract;
  - “Independent Provider” is to be construed in accordance with Schedule 2B;
  - “NHS standard contract” means the standard commissioning contract from time to time drafted by the National Health Service Commissioning Board pursuant to its powers under regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) 2012(3);
  - “PDS” are primary dental services provided under a PDS agreement;
  - “PMS” are primary medical services provided under a PMS agreement;
  - “primary dental services” are to be construed in accordance with section 99 of the 2006 Act;
  - “primary medical services” are to be construed in accordance with section 83 of the 2006 Act;
  - “qualifying contract” means a contract between a relevant commissioning party and an Independent Provider the primary purpose of which is the provision of clinical health care services for the NHS and which is—
    - (a) an NHS standard contract;
    - (b) an APMS contract, or
    - (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;”.

### **Amendment of regulation B3**

4. After paragraph (8) of regulation B3 (restrictions on further participation in this Section of the scheme), insert—

- “(8A) For the purposes of paragraphs (8B) to (8F), a retention arrangement is one under which—
- (a) a person is seconded from an employing authority (“the sending employing authority”) to another body which is not an employing authority (“the other body”), and
  - (b) that person, pursuant to an intention of the sending employing authority, remains an employee of that authority in circumstances where that person’s performance

of services pursuant to a qualifying contract for the other body counts as pensionable service only by reason of that retention arrangement.

(8B) A person who, on 2nd April 2014, and pursuant to a retention arrangement which was entered into before that date, remains engaged by the other body to perform services pursuant to a qualifying contract, may not, from 1st April 2017 contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of those services.

This is subject to paragraph (8E).

(8C) A person who, pursuant to the retention arrangement referred to in paragraph (8B) is, on 2nd April 2014 engaged by the other body to perform services pursuant to the qualifying contract referred to in that paragraph, may not, from that date contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of any services under that contract.

This is subject to paragraph (8E).

(8D) A person who on, or after, 2nd April 2014 and pursuant to a retention arrangement (other than the one referred to in paragraph (8B)) is engaged by the other body to perform services pursuant to a qualifying contract, may not contribute to or accrue pensionable service under this Section of the scheme in respect of the performance of any services under that contract.

This is subject to paragraph (8E).

(8E) The Secretary of State may exceptionally allow a person referred to in paragraph (8B), (8C) or (8D) to contribute to or accrue pensionable service under this Section of the scheme if the Secretary of State considers that appropriate having regard to the nature of the person's employment and the circumstances under which it takes place.

(8F) Nothing in this regulation prevents the other body referred to in paragraph (8B), (8C) or (8D) from applying for approval as an employing authority pursuant to Schedule 2B."

### **Amendment of regulation C1**

5. After paragraph (9) of regulation C1 (meaning of "pensionable pay" and "final year's pensionable pay"), insert—

“(10) Where, having regard to the matters referred to in paragraph (11), the Secretary of State considers that the amount which would, but for the Secretary of State's determination under this paragraph, constitute the member's final year's pensionable pay is inordinate, determine—

- (a) what the amount of that pensionable pay is to be, and
- (b) the date from which any change in the amount of that pay as a result of that determination is to take effect.

(11) Those matters are—

- (a) any variations in the level of the member's pensionable pay during a period not exceeding ten years and ending with the earlier of the date the member ceases to be in pensionable employment or the date the member dies;
- (b) the general level of pensionable pay pertaining in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);

- (c) promotion and re-grading prospects in NHS employment for members of the same or an equivalent grade or post during the period under consideration for the purposes of paragraph (a);
  - (d) any other matters the Secretary of State considers relevant.
- (12) Where the Secretary of State determines the amount of a member's final year's pensionable pay pursuant to paragraph (10)—
- (a) the difference between the amount which would, but for that determination, be the member's final year's pensionable pay and the amount so determined shall be ignored for the purposes of this regulation ("the ignored amount");
  - (b) any contributions referable to the ignored amount and paid by the member pursuant to regulation D1 or Q6, paragraph 10 or 23 of Schedule 2 or Schedule 2B, must, net of any tax payable, be refunded to that member;
  - (c) any contributions referable to the ignored amount and paid by the employing authority pursuant to regulation D2 or paragraph 10 or 23 of Schedule 2, or Schedule 2B, must be refunded to that employing authority;
  - (d) the amount so determined is not to be regarded as an "excessive pay increase" for the purposes of regulation D3."

#### **Amendment of regulation D1**

6.—(1) Regulation D1 (contributions by members)(4) is amended as follows.

(2) In paragraph (1A), for "2013-2014" substitute "2014-2015".

(3) For the table in paragraph (1A), substitute—

#### **"Scheme Year 2014-2015**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.6%
£21,388 to £26,823	7.1%
£26,824 to £49,472	9.3%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%".

(4) In paragraph (1B), for "2013-2014" substitute "2014-2015".

(5) For the table in paragraph (1B), substitute—

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(4) Regulation D1(1A) was substituted by [S.I. 2013/1414](#) (regulation 3).

**“Scheme Year 2014-2015**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.6%
£21,388 to £26,823	7.1%
£26,824 to £49,472	9.3%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

(6) For paragraph (6), substitute—

“(6) Where an employing authority has failed to deduct contributions in accordance with paragraph (5), the Secretary of State may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member provided the Secretary of State has notified the member of an intention to do so: this is without prejudice to any other method of recovery.”.

**Amendment of regulation D2**

7.—(1) Regulation D2 (contributions by employing authorities) is amended as follows.

(2) After paragraph (7A), insert—

“(7B) In the case of an employing authority which is an Independent Provider—

- (a) any additional contributions that are due to the Secretary of State under paragraph (3)(b), (c), (e) and (f) must be paid within one month of the date on which that Provider is notified of that fact;
- (b) where a Provider fails to make the payment in accordance with paragraph (a), any entitlement to benefits under regulation E3A ceases.”.

(3) In paragraph (9)—

- (a) after “fails to pay or remit”, insert “, or has previously failed to pay or remit”;
- (b) after “these Regulations or”, insert “such liabilities as are specified by the Secretary of State under these Regulations or”.

**New regulation D3**

8. After regulation D2 (contributions by employing authorities), insert—

**“Further contributions by employing authorities in respect of excessive pay increases**

**D3.**—(1) This regulation applies where a member becomes entitled to a benefit in accordance with regulation E1, E2A, E3A, E3C, E5 or L1 and the Secretary of State determines that the member’s final year’s pensionable pay determined under regulation C1(6) exceeds the allowable amount.

(2) For the purposes of this regulation—

- (a) Year 1 is the year in which the member ceases to be in pensionable employment or dies, whichever occurs first;
  - (b) Year 2 is the year immediately preceding Year 1;
  - (c) Year 3 the year immediately preceding Year 2.
- (3) The allowable amount in respect of Year 1 is the lower of—
- (a) the member's pensionable pay for Year 1, and
  - (b) the allowable amount for Year 2 increased by the lower of—
    - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
    - (ii) the percentage increase in the member's pensionable pay Year 1 compared with Year 2.
- (4) The allowable amount in respect of Year 2 is the lower of—
- (a) the member's pensionable pay for Year 2, and
  - (b) the allowable amount for Year 3 increased by the lower of—
    - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
    - (ii) the percentage increase in the member's pensionable pay Year 2 compared with Year 3.
- (5) The allowable amount for Year 3 is the lower of—
- (a) the member's pensionable pay for Year 3, and
  - (b) the member's pensionable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months.
- (6) An excess employer contribution is determined as follows—
- Step 1: find Amount A, which is the difference between the member's final year's pensionable pay and the allowable amount for that year
- Step 2: calculate Amount B, which is the amount of the pension payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of that amount
- Step 3: calculate Amount C, which is the amount of the lump sum payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a lump sum of that amount
- Step 4: multiply Amount B by the applicable factor to find Amount D
- Step 5: in the case of a member who is entitled to a benefit under regulation L1, multiply Amount C by the applicable factor to find Amount E
- Step 6: add together—
- (a) Amount C and Amount E, in the case of a member entitled to a benefit under regulation L1;
  - (b) Amount C and Amount D, in all other cases,  
to find the amount of the excess employer contribution.
- (7) Where the member's final year's pensionable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the

Advisory Committee on Clinical Excellence Awards, the body responsible for the funding of that award must pay the excess employer contribution.

(8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—

- (a) an increased pay award from the member’s employing authority, and
- (b) a national award recommended by the Advisory Committee on Clinical Excellence Awards.

(9) Where—

- (a) the inclusion of both of the awards referred to in paragraph (8) in the member’s pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member’s final year’s pensionable pay in accordance with regulation C1(6), but
- (b) the exclusion of the award referred to in paragraph (8)(b) from the member’s pensionable pay in the year identified in sub-paragraph (a) would result in a different one of those years being so identified,

the Secretary of State, after consulting the Scheme Actuary, is to determine the proportion of the excess employer contribution determined in accordance with paragraph (6) to be paid by the member’s employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards: the determination of the excess employer contribution is to take account of the award referred to in paragraph (8)(b).

(10) Where the inclusion of both of the awards referred to in paragraph (8) in the member’s pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member’s final year’s pensionable pay in accordance with regulation C1(6), and the exclusion of the award referred to in paragraph (8)(b) would not result in a different one of those years being so identified, the amount of the excess employer contribution determined in accordance with paragraph (6) (and taking account of the amount referred to in paragraph (8)(b)) payable by the member’s employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined in accordance with paragraph (11).

(11) The amount of the excess employer contribution payable by the member’s employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards is to be determined as follows—

Step 1: find Amount A in accordance with Step 1 of paragraph (6)

Step 2: find Amount F, which is the difference between—

- (a) the member’s pensionable pay for the member’s last year of pensionable employment as if that, and the member’s pensionable pay in previous years, did not include the award referred to in paragraph (8)(b), and
- (b) the allowable amount for that year as if the member’s pensionable pay for previous years had not included the award referred to in paragraph (8)(b)

Step 3: divide Amount F by Amount A and express the result as a percentage: that is the percentage of the excess employer contribution payable by the member’s employing authority

Step 4: subtract the percentage found under Step 3 from 100% to find the percentage of the excess employer contribution payable by the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards.

(12) The amount of an excess employer contribution must be paid to the Secretary of State within 1 month of the Secretary of State notifying the payer of its liability for that amount: but the Secretary of State may exceptionally specify that it is to be paid within some other period.

(13) Where a payer fails to pay all, or any part, of the excess employer contribution it is liable to pay, the Secretary of State is to give that payer a written notice (“a late payment notice”) specifying all of the following—

- (a) the amount of the excess employer contribution that is unpaid;
- (b) the amount of any interest due on the amount referred to in paragraph (a);
- (c) the amount of the administration charge arising from the late payment of the excess employer contribution;
- (d) that the amounts in (a) to (c) are to be received by the Secretary of State within 1 month of the date of the notice.

(14) Where a payer fails to comply with a late payment notice, the Secretary of State may issue a further late payment notice amended to take account of that failure.

(15) Where a member has pensionable employment with more than one employing authority during the years referred to in paragraph (2), this regulation applies to each such employment separately.

(16) In the case of a member in part-time employment, this regulation is subject to regulation R5.

(17) An increase in pensionable pay during Year 3, Year 2 or, as the case may be, Year 1 which arises solely as a result of the member taking up a new employment with a new employer shall be ignored for the purposes of this regulation: this is subject to the Secretary of State being satisfied that the employer in question is a new employer.

(18) If the Secretary of State is not satisfied that the employer in question is a new employer, that employer is to be treated as an employing authority liable for an excess employer contribution in accordance with this regulation.

(19) An increase in a member’s pensionable pay due to the acceptance of a transfer payment in the circumstances described in regulation C1(5) shall be ignored for the purposes of this regulation.

(20) In any particular case the Secretary of State may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

- (a) the transferee under a transfer of staff order pursuant to—
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;
  - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
- (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of an employing authority’s business or functions.

(21) For the purposes of this regulation—

- (a) a “payer” is the person who is liable to pay all or part of an excess employer contribution to the Secretary of State in accordance with this regulation;
- (b) the pensionable pay to be taken into account by the Secretary of State for a year or part of a year referred to in paragraph (2) will be derived from the pensionable pay for that period recorded in scheme year pension records provided to the Secretary of State in accordance with paragraph (5) of regulation U3;

- (c) where the member is in pensionable employment for less than 12 months pensionable pay for that year means—  
(pensionable pay/number of days pensionable employment) x 365
- (d) no account is to be taken of increases in pensionable pay prior to 1st April 2014 or more than 1095 days prior to the member’s last day of pensionable employment,
- (e) the applicable factor is to be determined from time to time by the Secretary of State having considered the advice of the Scheme Actuary and having obtained the Treasury’s consent;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—
  - (i) in the case of regulation E2A, a benefit including the effects of any increase in pensionable service referred to in paragraph (4) of that regulation;
  - (ii) in the case of regulation E5, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation;
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment.”.

#### **Amendment of regulation E3A**

9. After sub-paragraph (c) of paragraph (2) of regulation E3A (early retirement pension (termination of employment by employing authority))(5), insert—

“(ca) where the member’s employing authority is an Independent Provider, that the Secretary of State has received the additional contributions referred to in regulation D2 in respect of that member;”.

#### **Amendment of regulation R1**

10. In paragraph (3) of regulation R1 (practitioners and specialist trainees in general practice)(6), omit “the relevant” and after “Schedule 2” insert “and Schedule 2B”.

#### **Amendment of regulation S2**

11. After sub-paragraph (b) of paragraph (15) of regulation S2 (reduction of pension on return to NHS employment)(7), add—

- “(c) a person in respect of whom a pension is payable under any of regulations E1 to E5 and L1 who was employed by an Independent Provider on both the day that Provider’s approval as an employing authority takes effect in accordance with Schedule 2B (“the effective date”) and the day immediately before the effective date, and who—
  - (i) was ineligible to rejoin this Section of the scheme on the effective date and remains ineligible to do so;

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(5) Paragraph (2) was substituted by [S.I. 2013/413](#) (regulations 2 and 9).

(6) Paragraph (3) was inserted by [S.I. 2005/661](#) (regulation 8) and amended by [S.I. 2007/3280](#) (regulation 2) and [S.I. 2013/413](#) (regulations 2 and 16).

(7) Paragraph (15) was substituted by [S.I. 2008/654](#) (regulation 57).

- (ii) made an election not to rejoin this Section of the scheme with effect from the effective date and has not cancelled it; or
- (iii) was ineligible to rejoin this Section of the scheme on the effective date and became eligible to do so on the day immediately following the expiry of the protection period in regulation E2C(6)(b) (“the day of eligibility”), but who has made an election not to rejoin with effect from the day of eligibility and that election remains operative.”.

#### **Amendment of regulation T2A**

- 12.**—(1) Regulation T2A (deduction of tax: further provisions) is amended as follows.
- (2) In paragraph (8A)(8)—
    - (a) after “to the 2011 Act” insert “or paragraph 1 of Schedule 22 to the Finance Act 2013”;
    - (b) in paragraph (a), after “Regulations 2011” insert “or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013(9)”.
  - (3) In paragraph (9), after “paragraph (8)” insert “or (8A)”.
  - (4) In paragraph (10), after “paragraph (8)” insert “or (8A)”.

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

- 13.** Before sub-paragraph (a) of the definition of “due date” in paragraph (4) of regulation T8 (interest on late payment of benefits)(10), insert—
- “(za) in the case of a pension payable under regulation E3A, where the member’s employing authority is an Independent Provider the later of—
    - (i) the date on which the Secretary of State receives the additional contributions referred to in regulation D2, or
    - (ii) the day immediately following that on which the member retires from pensionable employment.”.

#### **New regulation T9**

- 14.** After regulation T8 (interest on late payment of benefits), add—

##### **“Interest and Administration Charges: late paid contributions**

**T9.**—(1) For the purposes of this regulation there is a “chargeable event” where an employing authority fails to pay, by the dates therein specified, the full amount of contributions it is required to pay under any of the following provisions—

- (a) regulations D1, D2, D3, Q4, Q5, Q6, Q8, Q10, Q11;
- (b) paragraph 10 or 23 of Schedule 2,
- (c) Schedule 2B.

(2) Where there is a chargeable event, the amount of contributions that should have been paid under a provision referred to in paragraph (1) is to be determined by the Secretary of State having regard to—

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(8) Paragraph (8A) was inserted by [S.I. 2012/610](#) (regulations 2 and 7).

(9) [S.I. 2013/1740](#).

(10) The last relevant amendment to paragraph (4) is [S.I. 2009/381](#) (regulation 11).

- (a) the amount of contributions historically paid pursuant to the provision in question by that employing authority;
  - (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid pursuant to that provision;
  - (c) any other factors that the Secretary of State considers relevant.
- (3) Where there is a chargeable event, the employing authority is liable to pay standard rate interest on the amount of unpaid contributions determined under paragraph (2) and an administration charge in respect of each such event.
- (4) Where the Secretary of State becomes aware of a chargeable event, the Secretary of State shall give the employing authority a written notice specifying—
- (a) the date of that event;
  - (b) the amount of unpaid contributions determined under paragraph (2) ;
  - (c) the amount of standard rate interest payable in respect of that event;
  - (d) the amount of administration charge payable in respect of it;
  - (e) that payment of the amounts referred to in paragraphs (c) and (d) is to be made within 1 month of the date of the notice and that failure to do so incurs further interest and administration charges.
- (5) Any amount payable by way of interest or payable by way of an administration charge is to be paid as single lump sum unless the Secretary of State considers the case to be exceptional and considers it appropriate for that amount to be paid over a period, and by a number of instalments, determined by the Secretary of State.
- (6) Where the Secretary of State considers the case to be exceptional, nothing in the preceding paragraphs prevents the Secretary of State from waiving all or any part of the amount of interest, or all or any part of an administration charges, payable.
- (7) In respect of arrears in respect of the scheme year 2014-2015 and subsequent years, the standard rate of interest is the consumer prices index for the month of February immediately preceding the scheme year in which the chargeable event arose plus 3 per cent compounded at annual intervals.
- (8) In respect of arrears in respect of the scheme year 2014-2015 and subsequent years, the administration charge is £75.
- (9) In any particular case the Secretary of State may direct that, for the purposes of this regulation, “employing authority” includes one or more of—
- (a) the transferee under a transfer of staff order pursuant to—
    - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act;
    - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act;
  - (b) without limiting sub-paragraph (a), a successor, transmittee or assignee of all or part of an employing authority’s business or functions.”.

### **Amendment of regulation U3**

15. For regulation U3 (accounts and actuarial reports), substitute—

### “Accounts and actuarial reports

**U3.**—(1) The Secretary of State must keep accounts for the scheme in a form approved by the Treasury.

(2) The accounts are to be open to examination by the Comptroller and Auditor General.

(3) In respect of a member, an employing authority must keep a record of all—

- (a) contributions paid under regulations D1, Q6 and Q8;
- (b) contributions due under regulations D1, Q6 and Q8 but unpaid;
- (c) contributions paid under regulation D2(1);
- (d) contributions due under regulation D2(1) but unpaid;
- (e) hours, half-days or sessions constituting part-time pensionable employment for the purposes of regulation R5;
- (f) pensionable pay;
- (g) absences from work referred to in regulations P1 and P2;
- (h) commencement and termination of pensionable employment;
- (i) reason for termination of pensionable employment.

(4) That record is to be in a manner approved by the Secretary of State.

(5) Except where the Secretary of State waives such requirement, an employing authority must provide the Secretary of State with a composite statement in respect of all scheme members covering all the matters referred to in paragraph (3) within 2 months of the end of a scheme year: this is subject to Schedule 2.

(6) Where an employing authority has provided the information in accordance with paragraph (5) and subsequently there is a change to any of that information, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised information.

(7) In respect of each scheme year an employing authority must, within 2 months of a request and in a manner prescribed by the Secretary of State, provide the Secretary of State with details of the total contributions paid for all scheme members under regulations D1, D2, Q6 and Q8.

(8) Where an employing authority has provided the details requested in accordance with paragraph (7) and subsequently there is a change in those details, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised details.

(9) An employing authority must, 1 month before the beginning of each scheme year, and in a manner prescribed the Secretary of State, provide the Secretary of State with a statement of estimated total contributions due under regulations D1, D2, Q6 and Q8 for that scheme year.”

### Amendment of Schedule 2

**16.**—(1) Schedule 2 (medical and dental practitioners) is amended as follows.

(2) In paragraph 1 (additional definitions used in this Schedule) in paragraph (e) of the definition of “locum practitioner”**(11)**, before “Local Health Board” insert “a”.

(3) In sub-paragraph (2) of paragraph 2, after “locum practitioner”, insert “: this is subject to sub-paragraph (16) of paragraph 23”.

(4) In paragraph 3 (meaning of “pensionable earnings”)—

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**(11)** Substituted by [S.I. 2005/661](#), regulation 11(1), (2)(b) and amended by [S.I. 2013/413](#) (regulations 2 and 21).

- (a) for sub-paragraph (2)(a), substitute—
- “(a) payments made to such a person—
- (i) pursuant to a GMS contract, a PMS agreement or an APMS contract, an NHS standard contract or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;
  - (ii) in respect of the performance of certification services, commissioned services or collaborative services where the practitioner is a GMS practice, a PMS practice or an APMS contractor: this also applies to such payments received from such a practitioner;
  - (iii) in respect of the provision of primary medical services under, in the case of England, section 83(2)(a) of the 2006 Act or, in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act where such a person has been engaged by a Local Health Board to assist in the provision of such services;
  - (iv) in respect of the provision of locum services;
  - (v) in respect of the performance of primary medical services, commissioned services, collaborative services, NHS 111 services and certification services where those payments are made by an OOH provider or other employing authority providing OOH services;
  - (vi) in respect of primary dental services, general ophthalmic services or pharmaceutical services;
  - (vii) in respect of practice-based work carried out in educating or training, or organising the education or training of, medical students or practitioners;
  - (viii) in respect of the provision of primary medical services where such a person has been engaged by a clinical commissioning group to assist in the provision of such services;”
- (b) in sub-paragraph (2C) after paragraph (a), insert—
- “(aa) a dental trainers grant;”.
- (5) In paragraph 5 (elections relating to calculation of “pensionable earnings” in medical partnerships), omit sub-paragraph (5).
- (6) In paragraph 6 (meaning of “pensionable earnings” in relation to other practitioners)—
- (a) in sub-paragraphs (1)(a) and (2), omit “or for overtime”;
  - (b) in sub-paragraph (1)(a), after “pharmaceutical services” insert “an NHS standard contract or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes”
- (c) for sub-paragraph (4), substitute—
- “(4) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to board and advisory work performed for the National Health Service Commissioning Board or a Local Health Board, and—
- (a) primary medical services,
  - (b) commissioned services,
  - (c) collaborative services,
  - (d) health-related functions exercised under section 75 of the 2006 Act,

- (e) pharmaceutical services,
  - (f) NHS 111 services,
  - (g) services pursuant to an NHS standard contract or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes,
  - (h) performed by a practitioner engaged by an employing authority under a contract for services to deputise for a registered medical practitioner or to temporarily assist in the provision of such services.”.
- (7) in paragraph 10 (contributions to this section of the scheme)—
- (a) for sub-paragraph (1A)(12) substitute—
    - “(1A) For the purposes of this paragraph, the “relevant table” means—
    - (a) in respect of the 2013-2014 scheme year, table 1;
    - (b) in respect of the 2014-2015 scheme year, table 2.

**Table 1****Scheme Year 2013-2014**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.3%
£21,388 to £26,823	6.8%
£26,824 to £49,472	9%
£49,473 to £70,630	11.3%
£70,631 to £111,376	12.3%
£111,377 to any higher amount	13.3%

**Table 2****Scheme Year 2013-2014**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.6%
£21,388 to £26,823	7.1%
£26,824 to £49,472	9.3%

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(12) The relevant amending instruments are [S.I. 2006/600](#) (regulation 21), [S.I. 2008/2263](#) (regulation 22), [S.I. 2009/381](#) (regulation 13), [S.I. 2010/1634](#) (regulations 2 and 7), [S.I. 2011/2586](#) (regulations 2 and 12) and [S.I. 2013/1414](#) (regulation 4).

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

(b) for sub-paragraphs (2H) to (2N), substitute—

“(2H) A practitioner and a non-GP provider member whose applicable pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table in sub-paragraph (1A) must, in respect of a scheme year, contribute the percentage of that person’s pensionable earnings specified in column 2 of that table in respect of that amount: such contributions must be paid in 12 equal monthly instalments throughout that year.

(2I) For the purposes of sub-paragraph (2H), a practitioner and a non-GP provider member’s applicable pensionable earnings are—

- (a) the estimated amount of that member’s earnings agreed between the host Board and that member having regard to any estimates of pensionable earnings which have been provided pursuant to paragraph 23(12);
- (b) in the absence of an agreement referred to in sub-paragraph (a), whichever of the following the host Board considers the most appropriate in the circumstances—
  - (i) an estimate of the amount of that member’s earnings that corresponds to that member’s most recent certified pensionable earnings referred to in paragraph 23, or
  - (ii) the amount of earnings that corresponds to the host Board’s estimate of that member’s pensionable earnings from, as the case may be, all practitioner, or non-GP provider sources for that year.

(2J) Where during the scheme year the host Board and the member agree that the estimated amount of that member’s earnings should be different to that last agreed under paragraph (a) of sub-paragraph (2I) or last determined under paragraph (b) of that sub-paragraph, that member must pay the monthly contributions determined in accordance with sub-paragraph (2K).

(2K) Those contributions are to be determined as follows—

- Step 1: agree the member’s new estimated pensionable earnings (Amount A)
- Step 2: find the percentage rate of contributions payable on Amount A applying the relevant table in sub-paragraph (1A)
- Step 3: find Amount B by dividing Amount A by the percentage rate found at Step 2
- Step 4: find Amount C by deducting from Amount B the amount of any contributions already paid prior to the new estimate of earnings being agreed
- Step 5: divide Amount C by the number of whole months of the scheme year remaining to find the amount payable in each such month.

(2L) A member must pay monthly contributions determined in accordance with sub-paragraph (2M), where—

- (a) during the scheme year the host Board is satisfied that the member’s pensionable earnings will exceed those last agreed under paragraph (a) of sub-paragraph (2I) or last determined under paragraph (b) of that sub-paragraph,
- (b) an agreement referred to in paragraph (a) of sub-paragraph (2I) cannot be reached, and

- (c) the host Board determines what the new estimated amount of earnings is for the purpose of identifying the rate of contributions to be paid by the member.
- (2M) Those monthly contributions are to be determined as follows—
- Step 1: take the new estimated pensionable earnings determined in accordance with sub-paragraph (2L)(c) (Amount D)
- Step 2: find the percentage rate of contributions payable on Amount D earnings applying the relevant table in sub-paragraph (1A)
- Step 3: find Amount E by dividing Amount D by the percentage rate found at Step 2
- Step 4: find Amount F by deducting from Amount E the amount of any contributions already paid prior to the new estimate of earnings being agreed
- Step 5: divide Amount F by the number of whole months of the scheme year remaining to find the amount payable in each such month.
- (2N) A practitioner (other than a dentist performer) and a non-GP provider member must pay contributions determined in accordance with sub-paragraph (2O) where, in respect of a scheme year to which one or more of sub-paragraph (2I), (2J) and (2L) applied throughout that year, that member has—
- (a) in accordance with paragraph 23 of this Schedule, certified their pensionable earnings for that year and forwarded it to the host Board, or the host Board has the figure that represents that member's final pensionable earnings for that scheme year where that member was not required to certify them, and
- (b) the amount of earnings referred to in paragraph (a) exceed the amount of earnings used for the purposes of, as the case may be, one or more of sub-paragraphs (2H), (2J) or (2L).
- (2O) Those contributions are determined as follows—
- Step 1: find the member's aggregate earnings for the scheme year in question (Amount G)
- Step 2: find the percentage rate of contributions payable on Amount G applying the relevant table in sub-paragraph (1A)
- Step 3: find Amount H by dividing Amount G by the percentage rate found at Step 2
- Step 4: find the amount of contributions to be paid by deducting from Amount H the amount of any contributions already paid in respect of that scheme year in accordance with any or all of sub-paragraphs (2H), (2J) or (2L) prior to the certification of earnings in accordance with paragraph 23 of this Schedule.
- (2P) For the purposes of sub-paragraph (2O), a member's aggregate earnings are the aggregate of—
- (a) the certified or final pensionable earnings from all practitioner (but not dentist performer) or, as the case may be, non-GP provider sources, and
- (b) any additional pensionable earnings the member is treated as having received during an absence from work in accordance with regulation P1 or P2 as modified by paragraph 19 of this Schedule.
- (2Q) A dentist performer member must pay contributions determined in accordance with sub-paragraph (2R) where, in respect of a scheme year to which one or more of sub-paragraph (2I), (2J) and (2L) applied throughout that year, that dentist performer has—
- (a) in accordance with paragraph 23 of this Schedule, certified their pensionable earnings for that year and forwarded it to the host Board, or

- (b) was not required to certify their earnings in accordance with that paragraph but the host Board has the figure that represents that member’s pensionable earnings for that scheme year.

(2R) The contributions are payable at the rate specified in column 2 of the relevant table in sub-paragraph (1A) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to that part of the relevant aggregate which exceeds the amount of pensionable earnings on which contributions have already been paid pursuant to any or all of sub-paragraphs (2H), (2J) or (2L).

(2S) For the purposes of sub-paragraph (2R), the relevant aggregate is the aggregate of—

- (a) the 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

- (b) any additional pensionable earnings the dentist performer is treated as having received during an absence from work in accordance with regulation P1 or P2 as modified by paragraph 19 of this Schedule.”;

- (c) for sub-paragraph (7), substitute—

“(7) Where—

- (a) the type 1 medical practitioner is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), each such employing authority shall pay D2(1) contributions on any pensionable earnings it pays to that practitioner or, as the case may be, on the practitioner’s share of the partnership profits, to the host Board;

- (b) the non-GP provider is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), that non-GP provider must nominate one of those employing authorities and that nominated authority must pay D2(1) contributions on any pensionable earnings it pays to that non-GP provider or, as the case may be, on the non-GP provider’s share of the partnership profits, to the host Board.”;

- (d) for sub-paragraph (14), substitute—

“(14) Contributions which are required to be paid to the host Board—

- (a) other than pursuant to sub-paragraphs (2N) or (2Q) must be paid to that Board not later than the 7th day of the month following the month in which the earnings were paid;

- (b) pursuant to sub-paragraph (2N) or, as the case may be, sub-paragraph (2Q) at the same time as providing that Board with the certificate referred to in the relevant sub-paragraph.”;

- (e) in sub-paragraph (17), in—

- (i) paragraph (a), for “D1 contributions” substitute “contributions payable pursuant to regulations D1, Q4, Q5, Q6, Q8 and Q10”;

- (ii) paragraph (c) for “D1 contributions”, substitute “or pay to the Secretary of State contributions pursuant to regulations D1, Q4, Q5, Q6, Q8 and Q10”;
- (f) in sub-paragraph (17A), in paragraph (b) for “such a deduction must be to the member’s advantage and is subject to the member’s consent” substitute “such a deduction may only be made where the Secretary of State has notified the member of an intention to do so”;
- (g) after sub-paragraph (17B), insert—
  - “(17C) Notwithstanding regulation R1 and regulation D2(1), contributions payable by an employing authority in respect of a GP Provider or non-GP Provider under these Regulations and any administration charge or interest under regulation T9 payable in respect of them, are not payable by the National Health Service Commissioning Board or a relevant Local Health Board but are—
    - (a) payable by that GP Provider or non-GP Provider where that Provider is a sole Provider, or
    - (b) payable by the practice where the provider is a GP Provider or non-GP Provider.”;
- (8) in paragraph 23 (accounts and actuarial reports)(13)—
  - (a) in sub-paragraphs (2)(14) and (3), after “certificate” insert “that correctly records the totality”;
  - (b) in sub-paragraph (12), for “Secretary of State with a statement of” substitute “host Board and the Secretary of State with a statement of estimated contributions due under regulations D1, D2, Q6 and Q8”;
  - (c) for sub-paragraph (15), substitute—
    - “(15) No later than 13 months after the end of each scheme year, each employing authority, GDS contractor and PDS contractor must forward to the Secretary of State a copy of the records referred to in regulation U3(3) and (4).”;
  - (d) for sub-paragraph (16), substitute—
    - “(16) A member’s pensionable earnings for a scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded where, in respect of that scheme year, a practitioner or non-GP Provider has failed to comply with the requirements of—
      - (a) whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to that member, or
      - (b) sub-paragraph (2) of paragraph 2.

This is subject to sub-paragraphs (17) and (18).”.

## **New Schedule 2B**

**17.** After Schedule 2A (pension sharing on divorce or nullity of marriage or on dissolution or nullity of a civil partnership), insert—

“Schedule (2B)

Independent Providers

**1.** In this Schedule—

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(13) Amended by S.I. 2009/381 (regulation 13) and S.I. 2011/2586 (regulations 2 and 12).

(14) Sub-paragraph (2) was amended by S.I. 2013/413 (regulations 2 and 21).

“75% threshold” means 75% of the total gross amounts payable in a scheme year to an Independent Provider by the commissioning party in respect of a qualifying contract they have entered into;

“approval application” is to be construed in accordance with paragraphs 13 to 23;

“commissioning party” is a person who commissions services from an Independent Provider under a qualifying contract;

“default notice” is to be construed in accordance with paragraphs 45 to 49;

“Independent Provider” is to be construed in accordance with paragraph 2;

“IP guarantee” means a guarantee, indemnity, bond or other form of assurance which the Secretary of State may require an Independent Provider to provide to guarantee payment to the Secretary of State of such of the Independent Provider’s liabilities or potential liabilities under this Section of the scheme as the Secretary of State specifies;

“required level of cover” means a sum equal to 110% of 3/12ths of a reasonable estimate of the Independent Provider’s total annual contribution liability arising under regulations D1, D2, Q6, Q8, Q10 and Q11 in respect of the qualifying contract in respect of which it was granted employing authority status;

“wholly or mainly condition” is to be construed in accordance with paragraph 3.

2. An “Independent Provider” means a person that employs an individual under a contract of service and—

- (a) is not otherwise an employing authority in respect of that individual;
- (b) is a party to a qualifying contract;
- (c) has been granted employing authority status for the purposes of this Section of the scheme by the Secretary of State following a written application made by it to the Secretary of State for that purpose, and
- (d) has, if so required by the Secretary of State, provided the Secretary of State with an IP guarantee.

3. The “wholly or mainly condition”—

- (a) requires that any employee of an Independent Provider performing services pursuant to a qualifying contract does so, if not for the whole of their time in that employment, then for more than 50% of that time;
- (b) is to be assessed over—
  - (i) each scheme year, or
  - (ii) part of a scheme year where the services referred to in paragraph (a) commence or cease part way through such a year.

### **IP Guarantees**

4. The Secretary of State may, as a condition of granting an Independent Provider employing authority status pursuant to an approval application, require that Independent Provider to provide an IP guarantee.

5. The Secretary of State may at any time require an Independent Provider that has been granted employing authority status to provide an IP guarantee.

6. Without prejudice to the generality of paragraphs 4 and 5, the Secretary of State may, in particular, require an Independent Provider to provide an IP guarantee if—

- (a) that Independent Provider has, after being approved as an employing authority pursuant to this Schedule, failed to meet any of its liabilities under these Regulations as an employing authority;
- (b) that Independent Provider has, before being approved as an employing authority pursuant to this Schedule, previously failed to meet any of those liabilities in any other capacity as an employing authority;
- (c) the Secretary of State has reasonable grounds to believe that the Independent Provider is unable, or is likely to become unable, to meet any of those liabilities.

7. Where the Secretary of State requires an Independent Provider to provide an IP guarantee the Secretary of State must require that guarantee to—

- (a) guarantee payment to the Secretary of State of the required level of cover: such a guarantee must take effect on the date on which approval under this Schedule takes effect;
- (b) be in a form approved by the Secretary of State from time to time;
- (c) be underwritten by one or more bodies satisfactory to the Secretary of State.

But the Secretary of State may exceptionally specify that a guarantee is to meet other requirements.

8. Where an Independent Provider is required to provide an IP guarantee and has been granted employing authority status in respect of more than one qualifying contract, the required level of cover applies to each of those contracts and may be guaranteed by one or more IP guarantees.

9. In order to ensure that the required level of cover continues to be guaranteed by its extant IP guarantees, those guarantees must be reviewed by the Independent Provider—

- (a) no later than 1 month prior to the start of a scheme year;
- (b) no later than 1 month after the date on which it was granted employing authority status;
- (c) no later than 1 month before the date on which they are expressed to cease to have effect (where that is not the start of a scheme year);
- (d) whenever it becomes a party to another qualifying contract;
- (e) immediately whenever it reasonably believes that its estimated contribution liability pursuant to regulations D1, D2, Q6, Q8, Q10 and Q11 has increased, or may increase, by more than 10%;
- (f) upon the Secretary of State notifying it in writing that the Secretary of State considers that the sum guaranteed by those guarantees does not, at least, equal the required level of cover.

10. Where paragraph 9(e) applies, and the Independent Provider determines that the amount of cover currently provided by its extant IP guarantee (or guarantees where it has more than one) does not equal the required level of cover in respect of all of its qualifying contracts, it must within 14 days of that determination either—

- (a) increase the amount of cover provided by that guarantee or guarantees so that it is at least equal to the required level of cover and notify the Secretary of State in writing of it having done so; or
- (b) take out one or more further guarantees for the amount by which the required level of cover has increased and notify the Secretary of State in writing of it having done so.

11. Paragraph 10 applies with equal effect where the Independent Provider is advised by the Secretary of State in accordance with paragraph (9)(f) that the amount of cover currently provided

by its extant IP guarantee (or guarantees) is not at least equal the required level of cover in respect of all of its qualifying contracts.

12. Where paragraph 10 or 11 applies, and the Independent Provider determines that the amount of cover currently provided by its IP guarantee or guarantees remains at least equal to the required level of cover in respect of all of its qualifying contracts, it shall—

- (a) notify the Secretary of State in writing of that fact within 14 days of its determination, and
- (b) provide the Secretary of State with such information in that regard as the Secretary of State may require from time to time.

### **Approval and Approval Applications**

13. An Independent Provider may only make an approval application in respect of a qualifying contract.

14. An Independent Provider must apply for approval on either—

- (a) a “closed approval” basis which, if granted, covers an employee—
  - (i) who is not otherwise covered by a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and
  - (ii) who was, within the twelve months preceding the date of entering into employment with the Independent Provider, in an employment in which that employee was entitled to participate in superannuation benefits provided under section 10 of the Superannuation Act 1972 whether or not that employee had actually been a member of this Section of the Scheme pursuant to that entitlement; or
- (b) an “open approval” basis which, if granted, covers any employee performing services pursuant to such a contract who satisfies the wholly or mainly condition and regardless of whether that employee would fall within sub-paragraph (a).

15. An approval application must—

- (a) be in writing;
- (b) be in a form that the Secretary of State may from time to time require;
- (c) contain—
  - (i) a declaration that an employee of an Independent Provider who is, at the date of that application, already engaged in performing services pursuant to a qualifying contract satisfies the wholly or mainly condition;
  - (ii) an undertaking that any person who, on or after the date of approval is engaged to perform such services, will do so in a way that complies with the wholly or mainly condition;
- (d) contain a declaration that the Independent Provider is not already an employing authority in respect of any employee referred to in paragraph (c);
- (e) provide such details as the Secretary of State may from time to time require of the qualifying contracts to which the Independent Provider is a party;
- (f) confirm that employing authority status is sought on a closed approval basis or, as the case may be, on an open approval basis;
- (g) where the Secretary of State has, prior to the approval of an application, notified the Independent Provider that an IP guarantee is required, contain such details of that guarantee as the Secretary of State may from time to time require;

- (h) provide an estimate, for the scheme year in respect of which approval (if given) is to take effect, of—
- (i) the gross sums the Independent Provider anticipates receiving from the commissioning party in respect of the clinical services it is to provide under each qualifying contract it is a party to;
  - (ii) the number of employees who will be engaged in performing services pursuant to each such qualifying contract and who will satisfy the wholly or mainly condition;
  - (iii) the total pensionable pay of those employees referred to in paragraph (ii);
  - (iv) the total member contributions payable by those employees pursuant to regulation D1 (broken down to correspond to the estimated tiers tabulated in that regulation), Q6, Q8 or Q10;
  - (v) the total employer contributions payable in respect of those employees pursuant to regulation D2 and Q11;
  - (vi) the total number of employees who would satisfy the wholly or mainly condition and who are engaged in performing services pursuant to each such qualifying contract but who are otherwise not eligible to be members of this Section of the scheme;
  - (vii) the total estimated pay of those employees referred to in paragraph (vi).

**16.** An approval application may specify the date from which approval by the Secretary of State (if granted) is to have effect (“the nominated date”).

**17.** Where the Secretary of State is satisfied that the Independent Provider will satisfy the matters set out in paragraph 15 at that nominated date, approval shall take effect from that date provided it is later than the date on which approval is granted.

**18.** If an approval application does not specify a nominated date, approval shall take effect from that date it is granted.

**19.** Where an Independent Provider has been granted employing authority status, any of its employees engaged in performing services pursuant to any qualifying contract in respect of which that approval was granted or extends under paragraph 20 or 21 and who satisfy the wholly or mainly condition, shall become officer members of this Section of the scheme: this applies equally to any such employee who would, if otherwise a member of this Section of the scheme, be subject to regulation R1 of and Schedule 2 to, these Regulations.

**20.** Where an Independent Provider has been granted employing authority status in respect of one or more qualifying contracts, that approval and the basis on which it was granted automatically extends to any other qualifying contract to which the Independent Provider is, or subsequently becomes, a party: approval in respect of any other qualifying contract takes effect from the date that other qualifying contract was entered into.

**21.** Where an Independent Provider is an associated Independent Provider (“AIP”) in relation to another Independent Provider (“IP1”) and IP1 has been granted employing authority status in respect of one or more qualifying contracts, that approval and the open or closed approval basis on which it was granted automatically extends to any qualifying contract to which—

- (a) AIP is a party: that extension takes effect from the date on which IP1 was granted approval;
- (b) AIP subsequently becomes a party: that extension takes effect from the date that contract is entered into.

For these purposes an Independent Provider is another provider's AIP if that other Independent Provider exercises, or is able to exercise, or is entitled to acquire direct or indirect control over the AIP's affairs.

**22.** Where an Independent Provider, having been granted employing authority status, subsequently becomes a party to another qualifying contract or that approval extends under paragraph 20 or 21 to another qualifying contract and that contract would have the effect of increasing its estimated contribution liability under regulations D1, D2, Q6, Q8, Q10 and Q11 by 10% or more on the date on which approval in respect of that contract takes effect, the Secretary of State may require that Independent Provider to take any of the steps referred to in paragraph 23.

**23.** Those steps are to require the Independent Provider to—

- (a) increase the sum already guaranteed by the Independent Provider's IP guarantee or guarantees where there is more than one;
- (b) provide one or more further IP guarantee guaranteeing payment of a sum equal to the amount of the increase in the potential contribution liability;
- (c) guarantee, by way of one or more IP guarantees, payment of a sum equal to the total potential contribution liability in respect of both the contract or contracts in respect of which the Independent Provider was originally granted employing authority status and the subsequent qualifying contract where the Independent Provider has not previously been required to provide one.

#### **Change from open approval to closed approval basis**

**24.** An Independent Provider granted employing authority status on an open approval basis may give the Secretary of State a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on a closed approval basis.

**25.** A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

**26.** A modification notice must—

- (a) be in writing;
- (b) specify a date on which the modification is to take effect ("the operative modification date"): that date cannot fall within the period of 6 months commencing with the date of the modification notice ("the modification period");
- (c) be accompanied by the written consent of any affected person who has consented to the giving of that notice: for these purposes an "affected person" is any person who became an officer member of this Section of the scheme pursuant to paragraph 19.

**27.** On the operative modification date—

- (a) the basis of the Independent Provider's approval changes from an open to a closed approval basis;
- (b) any affected person who gave consent to the giving of the modification notice ceases to be a member of this Section of the scheme;
- (c) any affected person who did not give such consent remains a member of this Section of the scheme.

**28.** A person who is, but for a modification notice, otherwise entitled to participate in this Section of the scheme during the modification period by virtue of the Independent Provider having been granted approval on an open approval basis, continues to be so entitled but only for the duration of that period.

29. Nothing in paragraph 28 prevents a person referred to in that paragraph from becoming a member of this Section of the scheme by virtue of their employment with some other employing authority.

30. During the modification period, a person who was eligible to become an officer member of this Section of the scheme in accordance with paragraph 19 but who did not do so by virtue of opting out in accordance with regulation B4, may, in accordance with paragraph (5) of that regulation, join or re-join this Section of the scheme.

### **Change from closed approval to open approval basis**

31. An Independent Provider granted employing authority status on a closed approval basis when it first applied for approval may give the Secretary of State a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on an open approval basis.

32. An Independent Provider that has previously modified its participation in this Section of the scheme may give the Secretary of State a further modification notice stating that it wishes its status as an employing authority to cease to be on a closed approval basis but to continue instead on an open approval basis.

33. An application referred to in paragraphs 31 and 32 must specify—

- (a) the date (“the modification date”) from which the change to open approval is sought: the modification date must not be less than 3 months from the date the application is received by the Secretary of State;
- (b) that approval on an open approval basis is sought in respect of all employees of the Independent Provider engaged to perform services pursuant to a qualifying contract at the modification date provided always that such persons satisfy the wholly or mainly condition and regardless of whether they were so engaged at the date of any earlier approval.

34. Where the Secretary of State is satisfied that the Independent Provider will, at the modification date, satisfy the matters set out in paragraph 15, the change to open approval basis is to take effect from that date.

### **The 75% Pensionable Pay Threshold and Contribution Surcharge**

35. The maximum proportion of the gross sums payable to an Independent Provider in respect of a qualifying contract that may, in a scheme year, be paid to its employees who are members of this Section of the scheme without it being liable for an employer contribution surcharge, is 75% (“the 75% threshold”).

36. Where an Independent Provider has two or more qualifying contracts, the 75% threshold is to be determined by reference to the aggregate of the gross sums payable in respect of all of those contracts.

37. Where the 75% threshold is exceeded, the Independent Provider must pay the Secretary of State an employer contribution surcharge on that part of the total pensionable pay of that Independent Provider’s employees in excess of the 75% threshold.

This is subject to paragraph 38.

38. Where the Secretary of State is satisfied that the Independent Provider has provided a reasonable explanation or justification for the threshold being exceeded, the Secretary of State may require the Independent Provider to pay an employer contribution surcharge on such part

of that excess as the Secretary of State considers reasonable having regard to its declared NHS income, profits, losses and expenses for the scheme year in question.

**39.** Where the employer contribution surcharge has been imposed on all or part of the excess in accordance with paragraphs 37 and 38 and the Secretary of State subsequently considers that all or part of it should no longer attract the surcharge, the Secretary of State must notify the Independent Provider of what part of the excess is to remain subject to an employer contribution surcharge.

**40.** An Independent Provider must pay an employer contribution surcharge to the Secretary of State within 1 month, beginning with the date of that notice, of being notified by the Secretary of State that it is so payable (“a contribution surcharge notice”); the Secretary of State may, by that notice, exceptionally require a contributions surcharge to be paid within a different period.

**41.** Where an Independent Provider fails to pay an employer contribution surcharge, it is liable to pay the administration charge and interest referred to in regulation T9: interest is to continue to accrue on the late paid surcharge for so long as it remains unpaid and further administration charges may be levied in respect of it.

**42.** The Secretary of State may exceptionally waive all or any part of a sum payable by way of interest or an administration charge.

**43.** The rate of the employer contribution surcharge for the scheme year 2014-2015 and subsequent years, is 12%.

**44.** Where the 75% threshold is exceeded, the whole of the pensionable pay an employee receives in respect of the performance of services pursuant to a qualifying contract is nevertheless, and subject to regulation C1(10) to (12), to count both for the purpose of ascertaining that employee’s entitlement to benefits under these Regulations and for the purpose of calculating them.

### **Default Notices**

**45.** Where, in respect of any qualifying contract, an Independent Provider does not pay the Secretary of State, on the due date, all of the contributions which it is liable to pay under regulations D1, D2, Q6, Q8, Q10, the Secretary of State must issue a default notice to that Independent Provider.

**46.** A default notice must notify the Independent Provider—

- (a) of any charges accrued or accruing in accordance with regulation T9(4);
- (b) that continued non-payment of the contributions will result in the Secretary of State terminating the Independent Provider’s employing authority status on the day following the end of the second month following the month for which the contributions are due but not paid.

**47.** The Secretary of State must provide the commissioning party to the contract referred to in paragraph 45 with a copy of any default notice issued to an Independent Provider.

**48.** Where, one month after issue of a default notice, some or all of the contributions referred to in paragraph 45 remain unpaid, the Secretary of State must—

- (a) notify the commissioning party to the contract referred to in paragraph 45 of that non-payment specifying the period or periods for which contributions are outstanding and the amount or amounts outstanding, and
- (b) request that commissioning party to consider withholding from any payments it is due to pay to the Independent Provider in pursuance of any qualifying contract an amount equal to the amount of the unpaid contributions and to pay that amount to the Secretary of State.

**49.** Where the Secretary of State receives an amount from the commissioning party pursuant to paragraph 48(b), the Secretary of State must—

- (a) give that commissioning party a written receipt of such payment;
- (b) notify the Independent Provider in writing that a sum equal to the amount of its unpaid contributions has been withheld pursuant to paragraph 48(b) and paid to the Secretary of State by the commissioning party pursuant to that paragraph.

### **Pension Returns**

**50.** An Independent Provider must, in writing and in such form as the Secretary of State may from time to time require, provide the Secretary of State with the information referred to in paragraph 52 in respect of the relevant period—

- (a) within two months of the end of a scheme year; and
- (b) within two months of the date of its termination, or withdrawal, of participation in this Section of the scheme where that does not occur at the end of a scheme year.

**51.** For—

- (a) paragraph 50(a), the relevant period is the complete scheme year in respect of which the information is being provided;
- (b) paragraph 50(b), the relevant period is that beginning with the start of the scheme year in which withdrawal or termination took place and ending on the date of that withdrawal or termination.

**52.** The information referred to in paragraph 50 is—

- (a) a complete list of all qualifying contracts to which the Independent Provider is or has been a party over the relevant period;
- (b) the total gross amounts—
  - (i) estimated for the purposes of paragraph 15 and expressed to be payable over the relevant period under those contracts to the Independent Provider by the commissioning party;
  - (ii) actually received by the Independent Provider from the commissioning party in respect of those contracts over the relevant period;
- (c) whether the Independent Provider was granted approval as an employing authority on an open or closed approval basis;
- (d) whether the Independent Provider has changed its approval status and, if so, when;
- (e) where the Secretary of State has required the Independent provider to have an IP guarantee, the amount guaranteed by it or by each guarantee where there is more than one;
- (f) the number of employees who were engaged in performing services pursuant to a qualifying contract who satisfied the wholly or mainly condition;
- (g) the total actual pensionable earnings of those employees;
- (h) the total actual employee contributions payable by those employees pursuant to regulation D1 (broken down to correspond to the tiers tabulated in that regulation), Q6, Q8 or Q10;
- (i) the total actual employer contributions payable in respect of those employees pursuant to, as the case may be, either or both of regulations D2 and Q11;

- (j) confirmation that those of its employees who were or became officer members of the scheme during the relevant period continued to satisfy the wholly or mainly condition throughout that period;
- (k) the total actual number of employees who did satisfy the wholly or mainly condition and who were engaged in performing services pursuant to a qualifying contract but who were otherwise not eligible to be members of this Section of the scheme;
- (l) the total actual amount of pensionable earnings of employees satisfying the wholly or mainly condition compared to the total gross amounts payable to the Independent Provider by a commissioning party in respect of all of its qualifying contracts: that amount to be expressed as a percentage;
- (m) where the percentage referred to in (l) exceeds the 75% threshold, an explanation for that: this is subject to paragraph 37;
- (n) whether the Independent Provider has ceased to be a party to a qualifying contract;
- (o) whether the Independent Provider no longer employs any person who satisfies the wholly or mainly condition.

**53.** Where any employee of an Independent Provider who became an officer member of this Section of the scheme pursuant to paragraph 19 ceases to satisfy the wholly or mainly condition or any other condition relating to membership of this Section of the scheme, the Independent Provider must inform that employee that the employee's membership of this Section of the scheme has come to an end on that date of failure to comply with the relevant condition and notify the Secretary of State in writing of that fact.

#### **Provision of information**

**54.** In order to assess whether the grant of employing authority status to an Independent Provider should continue, the Secretary of State may at any time require an Independent Provider to provide the Secretary of State with information—

- (a) relating to those employed by it who have become officer members of this Section of the scheme pursuant to paragraph 19;
- (b) relating to all or any qualifying contracts it has entered into in respect of which employing authority status was granted or extended;
- (c) relating to the numbers of persons engaged in performing services pursuant to such contracts and the proportion of their time spent in doing so;
- (d) which the Secretary of State considers relevant for that purpose.

**55.** Information referred to in paragraph 54 must be provided within 14 days of the Secretary of State requesting it.

**56.** The Secretary of State may, by notice in writing, require the Independent Provider to provide such information (which does not fall within paragraph 54) as the Secretary of State considers necessary to determine whether there has been compliance with any provision of these Regulations: the Independent Provider must provide that information within the period specified in that notice.

#### **Termination of employing authority status by Secretary of State**

**57.** The Secretary of State must terminate an Independent Provider's status as an employing authority where that Independent Provider is no longer a party to any qualifying contract.

**58.** The Secretary of State may terminate an Independent Provider's status as an employing authority in any of the following circumstances—

- (a) where the Independent Provider subsequently acquires the status of an employing authority specified in any of the paragraphs, other than paragraph (o), of the definition of “employing authority” in regulation A2: in such a case the Independent Provider ceases to be an employing authority as an Independent Provider by virtue of paragraph (o) of that definition but not otherwise;
- (b) where all of the employees of the Independent Provider who have acquired membership of this Section of the Scheme pursuant to paragraph 19 cease to satisfy the wholly or mainly condition;
- (c) where the Independent Provider fails to review, in accordance with paragraph 9, the amount of cover guaranteed by its IP guarantee or, having carried out such a review fails to increase the amount of cover guaranteed by the IP guarantee where such an increase is required;
- (d) where, following the issue of a default notice, the Independent Provider fails to pay to the Secretary of State the amount specified in that notice by the date specified in it;
- (e) where paragraph 10 applies and the Independent Provider fails to take the action required by sub-paragraph (a) and (b) of that paragraph within the specified period;
- (f) where an Independent Provider fails to provide information in accordance with paragraph 54 and the Secretary of State is not satisfied that the information so provided supports the continuation of the Independent Provider’s status as an employing authority;
- (g) where an Independent Provider fails to provide information in accordance with paragraph 56;
- (h) where an Independent Provider fails to notify the Secretary of State that the guarantor of any its IP guarantees has withdrawn or revoked it;
- (i) where an Independent Provider has in any three years in any five year period exceeded the 75% threshold;
- (j) where an Independent Provider otherwise has a history or pattern of exceeding the 75% threshold .

**59.** Where an Independent Provider’s status as an employing authority must be terminated in accordance with paragraph 57 or the Secretary of State determines that it should be pursuant to paragraph 58, the Secretary of State is to give that Independent Provider, as soon as reasonably practicable, written notice of that fact and the date from which termination takes effect.

**60.** Where an Independent Provider’s employing authority status is terminated, on the date of that termination—

- (a) its employees who are members of this Section of the scheme cease to be such members;
- (b) its employees who were eligible to be members of this Section of the scheme cease to be so eligible.

#### **Withdrawal of participation in this Section of the scheme**

**61.** An Independent Provider can withdraw from participation in this Section of the scheme by giving the Secretary of State notice (“a withdrawal notice”) stating that it wishes its status as an employing authority under paragraph (o) of the definition of an employing authority in regulation A2 to cease.

**62.** An Independent Provider may not give a withdrawal notice that affects any person who has become an officer member of this Section of the scheme by virtue of paragraph 19 unless that person gives the Independent Provider written consent.

**63.** The date on which withdrawal from this Section of the scheme takes effect (“the operative withdrawal date”), cannot fall within the period of 6 months commencing with the date of the withdrawal notice (“the withdrawal period”).

**64.** A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent of the persons referred to in paragraph 62 to the giving of that notice: such a notice has no effect in respect of such a person who has not given such consent.

**65.** A withdrawal notice is effective in respect of all qualifying contracts to which the Independent Provider is a party.

**66.** Where paragraph 64(b) is satisfied, a person who has given written consent pursuant to paragraph 62 ceases, on the operative withdrawal date, to be an officer member of this Section of the scheme in respect of their employment with that Independent Provider.

**67.** A person who could, but for a withdrawal notice, have become entitled to participate in this Section of the scheme by virtue of satisfying paragraph 19 during the withdrawal period, will continue to be entitled to do so: at the end of that period, such a person is no longer entitled to participate in this Section of the scheme.

This is subject to paragraph 68.

**68.** Nothing in paragraphs 62 to 67 prevents a person from becoming a member of this Section of the scheme by virtue of their employment with some other employing authority.

**69.** A person who was eligible to become an officer member of this Section of the Scheme in accordance with paragraph 19 but who did not do so by virtue of opting out in accordance with regulation B4, may, in accordance with paragraph (5) of that regulation, join or re-join this Section of the scheme during the withdrawal period.

**70.** An Independent Provider that has withdrawn from participation in this Section of the scheme, may again apply for approval as an employing authority pursuant to this Schedule.

This is subject to paragraph 71.

**71.** An application referred to in paragraph 70 must specify that approval is sought in respect of all persons the Independent Provider has engaged pursuant to a contract of service to perform services pursuant to any qualifying contracts at the date on which approval is granted provided always that such persons satisfy the wholly or mainly condition: for these purposes it does not matter whether such persons were so engaged at the date of any earlier approval or have been so engaged since the operative withdrawal date (or the latest of them if there is more than one).

**72.** Where after approval as an employing authority pursuant to this Schedule—

- (a) an Independent Provider satisfies one of the other paragraphs of the definition of employing authority in regulation A2 and by virtue of doing so would otherwise become an employing authority for the purposes of these Regulations, and
- (b) that Independent Provider gives the Secretary of State a withdrawal notice, that notice does not affect its employees who would otherwise qualify as members of this Section of the scheme by virtue of paragraph (a) provided always that the Secretary has not terminated that Independent Provider’s status as an employing authority pursuant to paragraph 58(a).”.