
STATUTORY INSTRUMENTS

2014 No. 570

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

PART 3

Amendment of the National Health Service Pension Scheme Regulations 2008

Interpretation of Part 3

18. In this Part, an alphanumerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme Regulations 2008(1) bearing that designation.

Amendment of regulation 1.B.3

19. In paragraph (3A) of regulation 1.B.3 (provision of information relevant for tax purposes)(2)—

- (a) after “to the 2011 Act” insert “or paragraph 1 of Schedule 22 to the Finance Act 2013”;
- (b) after “Regulations 2011” insert “or the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013(3)”.

Amendment of regulation 2.A.1

20. In regulation 2.A.1 (interpretation: general)—

- (a) in paragraph (2)—
 - (i) in the definition of “employing authority”(4), after paragraph (p) add—

“(q) an Independent Provider”;
 - (ii) in paragraph (e) of the definition of “locum practitioner”(5), after “Board” insert “or the National Health Service Commissioning Board”;
 - (iii) omit the definition of “host Board”;
- (b) at the appropriate place in the alphabetical order—
 - (i) in paragraph (1), insert—

““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;

(1) [S.I. 2008/653](#) as amended by [S.I. 2008/2263](#), [2009/381](#), [1298](#) and [2446](#), [2010/492](#) and [1634](#), [2011/591](#) and [2586](#), [2012/610](#), [2013/413](#) and [2014/78](#).

(2) Paragraph (3A) was inserted by [S.I. 2012/610](#) (regulations 9 and 10).

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

(4) The definition of “employing authority” was last amended by [S.I. 2013/413](#) (regulations 22 and 25).

(5) The definition of “locum practitioner” was last amended by [S.I. 2013/413](#) (regulations 22 and 25).

“commissioning party” means a person who commissions services from an Independent Provider under a qualifying 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”

“closed approval” shall be construed in accordance with regulation 2.M.3;”;

(ii) in paragraph (2), insert—

““IP guarantee” shall be construed in accordance with regulation 2.M.2;

“Independent Provider” is to be construed in accordance with regulation 2.M.1;

“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(6);

“open approval” is to be construed in accordance with regulation 2.M.3;

“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 National Health Services Act 2006 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;”

“wholly or mainly condition” is to be construed in accordance with regulation 2.M.1(2);

(c) after paragraph (2), insert—

“(2A) In these Regulations—

(a) “host Board”—

- (i) 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;
- (ii) 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;
- (iii) 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;

- (iv) in respect of a non-GP provider who is a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor which 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 an agreement or contract;
- (v) 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;
- (b) a person referred to in sub-paragraph (a) is deemed to be employed by the appropriate Board, except where—
 - (i) regulation 2.C.5(7) or (8) applies, or
 - (ii) contributions payable pursuant to regulation 2.C.5 by an employing authority in respect of a non-GP Provider: in such a case those contributions and any administration charge or interest under regulation 2.J.9A which attaches to them, are not payable by the NHS Commissioning Board or a relevant Local Health Board but are payable by that non-GP Provider or by the practice in which they are a non-GP provider.”.

New regulation 2.A.12A

21. After regulation 2.A.12 (restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service), insert—

“2.A.12A Restriction of reckonable pay where the Secretary of State considers the amount is inordinate

(1) Where, having regard to the matters referred to in paragraph (2), the Secretary of State considers that the amount which would otherwise constitute the member’s interim reckonable pay for the purposes of regulation 2.A.10 is inordinate, the Secretary of State may, determine what the amount of a member’s interim reckonable pay is to be and the date from which any change in the amount of that pay as a result of that determination is to take effect.

(2) 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.

(3) Where the Secretary of State determines the amount of a member’s interim reckonable pay pursuant to paragraph (1)—

- (a) the difference between the amount which would, but for the determination pursuant to paragraph (1), be the member's interim reckonable pay and the amount so determined pursuant to that paragraph and adjusted for the purposes of regulation 2.A.11, must 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 2.C.1 shall, 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 2.C.5 are to be refunded to that employing authority."

Amendment of regulation 2.B.1

22. In paragraph (3) of regulation 2.B.1 (eligibility: general) for sub-paragraph (b)(7), substitute—

- “(b) entered NHS employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other NHS employment,”.

Amendment of regulation 2.B.2

23. After paragraph (13) of regulation 2.B.2 (restrictions on eligibility: general), insert—

“(13A) For the purposes of paragraphs (13B) to (13F), 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.

(13B) 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 (13E).

(13C) 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 (13E).

(13D) 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

(7) Sub-paragraph (b) was amended by [S.I. 2009/2446](#) (regulations 11, 103 and paragraph 2 of Part 2 of Schedule 2).

service under this Section of the scheme in respect of the performance of any services under that contract.

This is subject to paragraph (13E).

(13E) The Secretary of State may exceptionally allow a person referred to in paragraph (13B), (13C) or (13D) 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.

(13F) Nothing in this regulation prevents the other body referred to in paragraph (13B), (13C) or (13D) from applying for approval as an employing authority pursuant to regulation 2M.3."

Amendment of regulation 2.C.1

24. For sub-paragraph (b)(8) of paragraph (6) of regulation 2.C.1 (contributions by members), substitute—

“(b) by deduction from any benefit payable to, or in respect of, the member where the Secretary of State has notified the member of an intention to do so.”.

Amendment of regulation 2.C.2

25.—(1) Regulation 2.C.2 (contribution rate for members other than non-GP providers)(9) is amended as follows.

(2) In paragraph (2), for “2013-2014” substitute “2014-2015”.

(3) For the table in paragraph (2) 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 (2A), for “2013-2014” substitute “2014-2015”.

(5) For the table in paragraph (2A), substitute—

(8) Paragraph (6) was substituted by [S.I. 2013/413](#) (regulations 22 and 31).

(9) Regulation 2.C.2(2) was substituted by [S.I. 2013/1414](#) (regulation 6).

“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%”.

Amendment of regulation 2.C.4

26.—(1) Regulation 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers)(10) is amended as follows.

(2) For paragraphs (5) to (15) substitute—

“(5) A non-GP provider member whose pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table in paragraph (20) must, in respect of the scheme year in question, 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.

(6) For the purposes of paragraph (5), a non-GP provider member’s 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 regulation 2.J.14(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 regulation 2.J.14, or
 - (ii) the amount of earnings that corresponds to the host Board’s estimate of that member’s pensionable earnings from all non-GP provider sources for that year.

(7) Where during the scheme year the host Board and the non-GP provider member agree that the estimated amount of that member’s earnings should be different to that last agreed under paragraph (a) of paragraph (6) or last determined under paragraph (b) of that paragraph, that member must pay the monthly contributions determined in accordance with paragraph (8).

(8) Those contributions are to be determined as follows—

Step 1: agree the member’s new estimated pensionable earnings (Amount A)

(10) Substituted by S.I. 2010/1634 (regulation 13), S.I. 2013/413 (regulation 33) and S.I. 2013/1414 (regulation 8).

Step 2: find the percentage rate of contributions payable on Amount A applying the relevant table in paragraph (20)

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.

(9) A non-GP provider member must pay monthly contributions determined in accordance with paragraph (10), where—

(a) during the scheme year the host Board is satisfied that the member's pensionable earnings will exceed those last agreed under sub-paragraph (a) of paragraph (6) or last determined under sub-paragraph (b) of that that paragraph,

(b) an agreement referred to in sub-paragraph (a) of that paragraph 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.

(10) Those contributions are to be determined as follows—

Step 1: take the new estimated pensionable earnings determined in accordance with paragraph (9)(c) (Amount D)

Step 2: find the percentage rate of contributions payable on Amount D earnings applying the relevant table in paragraph (20)

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.

(11) A non-GP provider member must pay contributions determined in accordance with paragraph (12) where, in respect of a scheme year to which one or more of paragraphs (6), (7) and (9) applied throughout that year, that member has—

(a) in accordance with regulation 2.J.14, 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 paragraphs (6), (7) or (9).

(12) 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 paragraph (20)

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 paragraphs (6), (7) or (9) prior to the certification of earnings in accordance with regulation 2.J.14.

(13) For the purposes of paragraph (12), a member's aggregate earnings are the aggregate of—

- (a) the certified or final pensionable earnings from all 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 2.A.9.

(14) If a non-GP provider member is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority must—

- (a) deduct contributions due under this regulation from any pensionable earnings it pays to that person, and
- (b) if it is not also the host Board, pay those contributions to that Board not later than—
 - (i) except in the circumstances described in paragraph (11), the 7th day of the month following the month in which the earnings were paid;
 - (ii) in the circumstances described in paragraph 11, at the same time as providing that Board with the certificate referred to in regulation 2.J.14.

(15) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation and contributions payable in respect of the member's practitioner service shall be determined under regulation 3.C.2.

(16) In determining member contributions payable in accordance with this regulation, a host Board must take account of pensionable earnings from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another host Board.

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

(18) Where paragraph (17) does not apply, a non-GP provider shall pay member contributions to the host Board.

(19) If a non-GP provider is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority must—

- (a) deduct contributions due under this regulation from any pensionable earnings it pays to that person, and
- (b) if it is not also the host Board, pay those contributions to that Board not later than the 7th day of the month following the month in which the earnings were paid.

(20) For the purposes of this regulation, "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 2014-2015**

<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%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

Amendment of regulation 2.C.6

27. After paragraph (5) of regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11), insert—

“(6) In the case of an employing authority which is an Independent Provider, any contributions that are due to the Secretary of State under this regulation must be—

- (a) determined by the Secretary of State on the advice of the Scheme Actuary;
- (b) paid by way of a single lump sum payment;
- (c) received by the Secretary of State within 1 month of the date on which the Provider is notified of the amount of those contributions due.

(7) Where a Provider fails to make the payment in accordance with paragraph (6)(c), entitlement to benefits under regulation 2.D.11 ceases.”.

Amendment of regulation 2.C.7

28.—(1) Regulation 2.C.7 (guarantees, indemnities and bonds) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a), after “fails to pay contributions” insert “or has previously failed to do so”;

(b) after sub-paragraph (b)(iv), insert—

“(v) an Independent Provider.”.

(3) In paragraph (2), after “liabilities of the authority”, insert “(or such liabilities as are specified by the Secretary of State)”.

Amendment of regulation 2.D.6

29. In sub-paragraph (c) of paragraph (1) of regulation 2.D.6 (increase in pensionable pay following exercise of option under regulation 2.D.5), for “less than 90 per cent” substitute “90 per cent or less”.

Amendment of regulation 2.D.11

30. After sub-paragraph (c)(**11**) of paragraph (1) of regulation 2.D.11 (early retirement on termination of employment by employing authority), insert—

“(ca) where the member’s employing authority is an Independent Provider, that the Secretary of State has received the contributions referred to in paragraph (6) of regulation 2.C.6 in respect of that member;”.

Amendment of regulation 2.H.1

31.—(1) Regulation 2.H.1 (application of Chapter 2.H) is amended as follows.

(2) At the end of paragraph (4)(**12**), add (as full out words) “This is subject to paragraph (5).”

(3) After paragraph (4), add—

“(4A) This Chapter does not apply to a person who is a pensioner member of this Section of the Scheme if—

(a) that person is employed by an Independent Provider—

(i) on the day that Provider’s approval as an employing authority takes effect in accordance with Chapter 2.M (“the effective date”); and

(ii) on the day immediately before the effective date; and

(b) any of paragraphs (4B), (4C) or (4D) apply to that person.

(4B) This paragraph applies to a person who is not eligible to be an active member of this Section of the Scheme on the effective date and remains ineligible to be such a member.

(4C) This paragraph applies to a person who exercises an option not to rejoin this Section of the Scheme which takes effect from the effective date and has not been cancelled.

(4D) This paragraph applies to a person who—

(a) is not eligible to rejoin this Section of the Scheme on the effective date,

(11) Sub-paragraph (c) was substituted by [S.I. 2013/413](#) (regulations 22 and 38).

(12) Sub-paragraph (b) was substituted by [S.I. 2013/413](#) (regulations 22 and 38).

- (b) becomes eligible to do so on the day immediately following the first anniversary of the member entering NHS employment in accordance with paragraph (5)(b) of regulation 2.G.4 (“the day of eligibility”),
- (c) exercises an option not to rejoin this Section of the Scheme that takes effect from the day of eligibility has which has not been cancelled.”

Amendment of regulation 2.J.9

32. Before sub-paragraph (a) of paragraph (5) of regulation 2.J.9 (interest on late payment of benefits and refunds of contributions), insert—

- “(za) in the case of a pension payable under regulation 2.D.11, where the member’s employing authority is an Independent Provider, the later of—
 - (i) the date on which the Secretary of State receives the contributions referred to in paragraph (6) of regulation 2.C.6, or
 - (ii) the day immediately following that on which the member retires from pensionable employment;”.

New regulation 2.J.9A

33. After regulation 2.J.9 (interest on late payment of benefits and refunds of contributions), insert—

“2.J.9A Interest and Administration Charges: late paid contributions

(1) For the purposes of this regulation, where an employing authority fails to pay, by the dates therein specified, contributions it is required to pay under any or all of regulations 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10, 2.C.11 or 2.M.6, there is a chargeable event.

(2) Where there is a chargeable event, the Secretary of State may determine what amount of contributions are unpaid having regard to—

- (a) the amount of contributions historically paid at a chargeable event 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 at such an event;
- (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 constituting that event 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 the chargeable event;
- (b) the amount of unpaid contributions determined under paragraph (2);
- (c) the amount of interest at the standard rate payable in respect 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 all, or part, of such an 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 administration charges, payable.

(7) The standard rate of interest in respect of arrears in respect of the scheme year 2014-2015 and subsequent years is the rate of 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) The administration charge in respect of arrears in respect of the scheme year 2014-2015 and subsequent years 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 2.J.14

34.—(1) Regulation 2.J.14 (employing authority and certain member record keeping and contribution estimates) is amended as follows.

(2) In paragraph (3), after “zero” insert “and no contributions paid in respect of that scheme year are to be refunded”.

(3) For paragraph (6) to (9), substitute—

“(6) An employing authority must, in respect of a person, keep a record of all—

- (a) contributions paid under regulations 2.C.1, 2.C.8 or 2.C.10;
- (b) contributions due under regulations 2.C.1, 2.C.8 or 2.C.10, but unpaid;
- (c) contributions paid under regulation 2.C.5;
- (d) contributions due under regulation 2.C.5, but unpaid;
- (e) hours or sessions referred to in regulation 2.A.3;
- (f) pensionable pay or, in the case of non-GP Provider, pensionable earnings;
- (g) absences from work referred to in regulation 2.A.4;
- (h) commencement and termination of pensionable employment;
- (i) reasons for termination of pensionable employment.

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

(8) Except where the Secretary of State waives such requirement, an employing authority must provide a composite statement in respect of the matters referred to in paragraph (6) in respect of all scheme members to the Secretary of State within 2 months of the end of each scheme year.

(9) Where an employing authority has provided the information in accordance with paragraph (8) and there is then a change to any of the information provided, that employing

authority must, within 1 month of the change, provide the Secretary of State with the revised information.

(10) In respect of each scheme year an employing authority shall, 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 2.C.1, 2.C.5 and 2.C.8.

(11) Where an employing authority has provided the information requested pursuant to paragraph (10) and there is a revision to the total contributions paid, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised total.

(12) In respect of each scheme year an employing authority shall, 1 month before the beginning of that scheme year, and in a manner prescribed the Secretary of State, provide the Secretary of State and, in the case of a non-GP Provider, the host Board with a statement of estimated total contributions due under regulations 2.C.1, 2.C.5 and 2.C.8.”

New Chapter 2.M

35. After Chapter 2.L (waiting period joiners), insert—

“Chapter 2.M

Independent Providers

2.M.1 General

(1) In this Chapter—

“approval application” is to be construed in accordance with regulation 2.M.3;

“default notice” is to be construed in accordance with regulation 2.M.7;

“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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 in respect of the qualifying contract in respect of which it was granted employing authority status.

(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.

2.M.2 IP Guarantees

(1) 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.

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

(3) Without prejudice to the generality of paragraphs (1) and (2), 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 Chapter, 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 Chapter, 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.

(4) 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 Chapter 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.

(5) 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 guarantee.

(6) 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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 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.

(7) Where paragraph (6)(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 its 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 IP 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.

(8) Where paragraph (6)(f) 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.

2.M.3 Approval Applications

(1) An Independent Provider may only make an approval application as an employing authority in respect of a qualifying contract.

(2) 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).

(3) 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 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2), 2.C.8 and 2.C.10;
 - (v) the total employer contributions payable in respect of those employees pursuant to regulation 2.C.5 and 2.C.11;
 - (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 employee referred to in paragraph (vi).
- (4) An approval application may specify the date from which approval by the Secretary of State (if granted) is to have effect (“the nominated date”).
- (5) Where the Secretary of State is satisfied that the Independent Provider will satisfy the matters set out in paragraph (3) at that nominated date, approval shall take effect from that date provided it is later than the date on which approval is granted.
- (6) If an approval application does not specify a nominated date, approval shall take effect from that date it is granted.
- (7) 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 (8) or (9) and who satisfy the wholly or mainly condition, shall become an 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 Part 3 of these Regulations.
- (8) 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.
- (9) 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.

(10) Where an Independent Provider, having been granted employing authority status, subsequently becomes a party to another qualifying contract or that approval extends under paragraph (8) or (9) to another qualifying contract and that contract would have the effect of increasing its estimated contribution liability under regulations 2.C.5, 2.C.6, 2.C.8, 2.C.10 and 2.C.11 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 11.

- (11) 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 it has more than one);
 - (b) provide one or more further IP guarantees 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 it was not previously required to provide one.

2.M.4 Change from open approval to closed approval basis

(1) 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.

(2) A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

- (3) 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 regulation 2.M.3(7).

- (4) 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.

(5) 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.

(6) Nothing in sub-paragraph (5) 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.

(7) During the modification period, a person who was eligible to become an officer member of this Section of the Scheme in accordance with regulation 2.M.3(7) but who did not do so by virtue of opting out in accordance with regulation 2.B.5, may, in accordance with regulation 2.B.4, join or re-join this Section of the Scheme.

2.M.5 Change from closed approval to open approval basis

(1) 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.

(2) 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.

(3) An application referred to in paragraphs (1) and (2) 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.

(4) Where the Secretary of State is satisfied that the Independent Provider will, at the modification date, satisfy the matters set out in regulation 2.M.3, the change to open approval basis is to take effect from that date.

2.M.6 75% Pensionable Pay Threshold and Contribution Surcharge

(1) 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”).

(2) 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.

(3) 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 sub-paragraph (4).

(4) 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.

(5) Where the employer contribution surcharge has been imposed on all or part of the excess in accordance with paragraphs (3) and (4) 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.

(6) 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 contribution surcharge to be paid within a different period.

(7) 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 2.J.9A: 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.

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

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

(10) 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 (subject to regulation 2.A.12A) to count both for the purpose of ascertaining that employee's entitlement to benefits under these Regulations and for the purpose of calculating them.

2.M.7 Default Notices

(1) Where, in respect of a 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 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11, the Secretary of State must issue a default notice to that Independent Provider.

(2) A default notice must notify the Independent Provider—

- (a) of any charges accrued or accruing in accordance with regulation 2.J.9A;
- (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.

(3) The Secretary of State must provide the commissioning party to the qualifying contract referred to in sub-paragraph (1) with a copy of any default notice issued to an Independent Provider.

- (4) Where, one month after issue of a default notice, some or all of the contributions referred to in paragraph (1) remain unpaid, the Secretary of State must—
- (a) notify the commissioning party to a qualifying contract referred to in subparagraph (1) 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.
- (5) Where the Secretary of State receives an amount from the commissioning party pursuant to paragraph 4(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 4(b) and paid to the Secretary of State by the commissioning party pursuant to that paragraph.

2.M.8 Pension Returns

- (1) 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 (3) 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.
- (2) For—
- (a) paragraph (1)(a), the relevant period is the complete scheme year in respect of which the information is being provided;
 - (b) paragraph (1)(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.
- (3) The information referred to in paragraph (1)—
- (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 in accordance with regulation 2.M.3(3), 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 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2) and to regulations 2.C.8 and 2.C.10;
- (i) the total actual employer contributions payable in respect of those employees pursuant to, as the case may be, regulations 2.C.5, 2.C.6 and 2.C.11;
- (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 regulation 2.M.6;
- (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.

(4) Where any employee of an Independent Provider who became an officer member of this Section of the Scheme pursuant to regulation 2.M.3(7) 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.

2.M.9 Provision of information

(1) 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 regulation 2.M.3(7);
- (b) relating to all or any qualifying contracts 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.

(2) Information referred to in paragraph (1) must be provided within 14 days of the Secretary of State requesting it.

(3) The Secretary of State may, by notice in writing, require the Independent Provider to provide such information (which does not fall within sub-paragraph (1)) 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.

2.M.10 Termination of employing authority status by Secretary of State

(1) 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.

(2) 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 (q), of the definition of "employing authority" in regulation 2.A.1: in such a case the Independent Provider ceases to be an employing authority as an Independent Provider but not by virtue of whichever of those paragraphs applies to it;
- (b) where all of the employees of the Independent Provider who have acquired membership of this Section of the Scheme pursuant to regulation 2.M.3(7) cease to satisfy the wholly or mainly condition;
- (c) the Independent Provider fails to review, in accordance with regulation 2.M.2(6) the amount of cover guaranteed by its IP guarantee or, having carried out such a review (whether pursuant to a default notice or otherwise), fails to increase the amount of cover provided 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 by the date specified in regulation 2.M.7(2);
- (e) where, regulation 2.M.2(7) applies and the Independent Provider fails to take the action required by paragraph (a) and (b) within the specified period;
- (f) where an Independent Provider fails to provide the information referred to in regulation 2.M.9(1) or (3);
- (g) where the Secretary of State is not satisfied that the information provided by an Independent Provider pursuant to regulation 2.M.9(1) supports the continuation of the Independent Provider's status as an employing authority;
- (h) where an Independent Provider fails to notify the Secretary of State that the guarantor of any of 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 or has a pattern of doing so.

(3) Where the Secretary of State determines that an Independent Provider's status as an employing authority must or should be terminated in accordance with this regulation, 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.

(4) Where an Independent Provider's employing authority status is so terminated, its employees who are, or who were eligible to be, members of this Section of the Scheme, cease to be such members or eligible to be such members on the date of that termination.

2.M.11 Withdrawal of participation in this Section of the Scheme

(1) 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 (q) of the definition of an employing authority in regulation 2.A.1, to cease.

(2) 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

regulation 2.M.3(7) unless that person gives the Independent Provider written consent to that happening.

(3) 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”).

(4) A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent of the persons referred to in paragraph (2) to the giving of that notice: such a notice has no effect in respect of such a person who has not given such consent.

(5) A withdrawal notice is effective in respect of all qualifying contracts to which the Independent Provider is a party.

(6) Where paragraph (4)(b) is satisfied, a person who has given written consent pursuant to paragraph (2) ceases, on the operative withdrawal date, to be an officer member of this Section of the Scheme.

(7) A person who could, but for a withdrawal notice, have become entitled to participate in this Section of the Scheme by virtue of satisfying regulation 2.M.3(7) during the withdrawal period, continues to be so entitled during that period: at the end of that period such a person will not be entitled to be member of this Section of the Scheme pursuant to this Chapter.

This is subject to paragraph (8).

(8) Nothing in paragraphs (2) to (7) prevents a person referred to in that paragraph from becoming such a member by virtue of their employment with some other employing authority.

(9) During the withdrawal period, a person who was eligible to become an officer member of this Section of the Scheme in accordance with regulation 2.M.3(7) but who did not do so by virtue of opting out in accordance with regulation 2.B.5 may, in accordance with regulation 2.B.4, join or re-join this Section of the Scheme.

(10) An Independent Provider that has withdrawn from participation in this Section of the Scheme, may apply for approval as an employing authority pursuant to this Chapter.

This is subject to paragraph (11).

(11) An application referred to in paragraph (10) must specify that approval is sought in respect of all persons the Independent Provider engages 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 regardless of whether they 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).

(12) Where after approval as an employing authority pursuant to this Chapter—

- (a) an Independent Provider satisfies one of the other paragraphs of the definition of employing authority in regulation 2.A.1 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 regulation 2.M.10(1).”

Amendment of regulation 3.A.1

36.—(1) Regulation 3.A.1 (interpretation of Part 3: general) is amended as follows.

(2) In paragraph (1)—

(a) omit the definition of “host Board”;

(b) at the appropriate place in the alphabetical order, insert—

““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;”

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

- (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 an approval application made by it to the Secretary of State for that purpose under Part 2 of these Regulations, and
- (d) has if so required by the Secretary of State, provided the Secretary of State with an IP guarantee;

“NHS standard contract” means the standard commissioning contract from time to time drafted by 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⁽¹³⁾;

“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 the purposes of Part 2 of these Regulations;”.

(3) After paragraph (1), add—

“(2) In these Regulations—

(a) “host Board”—

- (i) in respect of a type 1 medical practitioner 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;
- (ii) in respect of a type 1 medical practitioner 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;
- (iii) in respect of a type 1 medical practitioner 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;
- (iv) in respect of a type 1 medical practitioner who is a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor which 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 an agreement or contract;
- (v) in respect of a type 1 medical practitioner 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 an agreement or contract as such a practice or contractor;
- (vi) in respect of a GDS or a PDS contractor who is a dentist performer, means the National Health Service Commissioning Board or each Local Health Board with whom the dentist performer performs primary dental services under—
- (aa) a GDS contract;
 - (bb) a PDS agreement (whether or not a PDS contractor is a party to that agreement);
 - (cc) a contract for services with the National Health Service Commissioning Board or each Local Health Board which relates to arrangements under which it provides primary dental services under section 99(2) of the 2006 Act (in the case of England) or section 56(2) of the “2006 (Wales) Act (in the case of Wales);
- (b) a person referred to in paragraphs (i) to (v) of sub-paragraph (a) is deemed to be employed by the appropriate Board, except where—
- (i) regulation 3.C.5(5) or (6) applies, or
 - (ii) contributions payable pursuant to regulation 3.C.3 by an employing authority in respect of a GP Provider: in such a case those contributions and any administration charge or interest under regulation 3.J.9A which attaches to them, are not payable by the NHS Commissioning Board or a relevant Local Health Board but are payable by that GP Provider or the practice where they are a GP Provider;
- (c) a person referred to in paragraph (vi) of sub-paragraph (a) is deemed to be employed by the appropriate Board.”.

Amendment of regulation 3.A.7

37. After sub-paragraph (e) of paragraph (2) of regulation 3.A.7 (meaning of “pensionable earnings”) add—

- “(f) any sums paid 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;
- (g) any sums paid in respect of the provision of services under an NHS standard contract;
- (h) any sums paid in respect of 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 3.A.9

38. In paragraph (3) of regulation 3.A.9 (calculating pensionable earnings of medical practitioners in partnership), for “registered medical practitioner” substitute “type 1 medical practitioner”.

Amendment of regulation 3.A.13

39. After sub-paragraph (d) of paragraph (1) of regulation 3.A.13 (meaning of pensionable earnings in relation to other practitioners), add—

- “(e) practice based income paid by an employing authority in respect of the provision of services under an NHS standard contract;
- (f) income paid in respect of 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 3.B.1

40. In paragraph (3) of regulation 3.B.1 (eligibility: general) for sub-paragraph (b), substitute—

- “(b) entered NHS employment before that date and whether or not that person was, on that date, an active member of the 1995 Section in that employment or any other NHS employment.”.

Amendment of regulation 3.B.5

41. In paragraph (7)(**14**) of regulation 3.B.5 (opting out of this section of the scheme) after “locum practitioner”, insert “: this is subject to paragraph (16) of regulation 3.J.14”.

Amendment of regulation 3.C.2

42.—(1) Regulation 3.C.2 (members’ contribution rate)(**15**) is amended as follows.

(2) For paragraphs (5) to (17) of regulation 3.C.2 (member’s contribution rate), substitute—

- “(5) A practitioner member whose applicable pensionable earnings fall into a pensionable earnings band specified in column 1 of the relevant table in paragraph (22) 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.

(14) Paragraph (7) was last amended by [S.I. 2013/413](#) (regulations 22 and 61).

(15) Substituted by [S.I. 2009/381](#), regulation 55 and amended by [S.I. 2010/1634](#), regulations 8, 16(1), (2), (3) and by [S.I. 2011/2586](#), regulations 14, 28(a)(i), (ii), (b)(i), (b)(ii), (iii), (c)(i), (ii), (iii) and by [S.I. 2012/610](#), regulations 9, 18 and by [S.I. 2013/413](#) regulations 62(5) and by [S.I. 2013/1414](#) regulation 9.

(6) For the purposes of paragraph (5), practitioner 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 regulation 3.J.14(11);
- (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 regulation 3.J.14, or
 - (ii) the amount of earnings that corresponds to the host Board's estimate of that member's pensionable earnings from all practitioner sources for that year.

(7) 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 those last agreed under sub-paragraph (a) of paragraph (6) or last determined under sub-paragraph (b) of that paragraph, that member must pay the monthly contributions determined in accordance with paragraph (8).

(8) 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 paragraph (22)
- 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.

(9) A practitioner member must pay monthly contributions determined in accordance with paragraph (10), where—

- (a) during the scheme year the host Board is satisfied that the member's pensionable earnings will exceed those last agreed under sub-paragraph (a) of paragraph (6) or last determined under paragraph (b) of that paragraph,
- (b) an agreement referred to in sub-paragraph (a) of paragraph (6) 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

(10) Those contributions are to be determined as follows—

- Step 1: take the new estimated pensionable earnings determined in accordance with paragraph (9)(c) (Amount D)
- Step 2: find the percentage rate of contributions payable on Amount D earnings applying the relevant table in paragraph (22)
- 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.

(11) A practitioner member (other than a dentist performer) must pay contributions determined in accordance with paragraph (12) where, in respect of a scheme year to which one or more of paragraph (6), (7) or (9) applied throughout that year, that member has—

- (a) in accordance with regulation 3.J.14, 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 paragraphs (6), (7) or (9).

(12) 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 paragraph (22)

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 (6), (7) or (9) prior to the certification of earnings in accordance with regulation 3.J.14.

(13) For the purposes of paragraph (12), a member's final earnings are the member's certified or final pensionable earnings from all practitioner sources together with any additional pensionable earnings the member is treated as having received during an absence from work in accordance with regulation 3.A.8.

(14) A dentist performer member must pay contributions determined in accordance with paragraph (15) where, in respect of a scheme year to which one or more of paragraph (6), (7) or (9) applied throughout that year, that member has—

- (a) in accordance with regulation 3.J.14, 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 paragraphs (6), (7) or (9).

(15) The contributions are payable at the rate specified in column 2 of the relevant table in paragraph (22) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to that part of the relevant earnings which exceeds the amount of pensionable earnings on which contributions have already been paid pursuant to any or all of sub-paragraphs (6), (7) or (9).

(16) For the purposes of paragraph (15), the relevant earnings are 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 member is treated as having received during an absence from work in accordance with regulation 3.A.8.

(17) If a member is in practitioner service and concurrently in NHS employment in respect of which the member is liable to pay contributions in accordance with regulation 2.C.1 of these Regulations, contributions payable in respect of the member's practitioner service shall be determined under this Part of these Regulations and contributions payable in respect of the member's NHS employment shall be determined under Part 2 of these Regulations.

(18) Where a practitioner (other than a dentist performer) is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) and the practitioner service as a dentist performer will each be treated separately under this regulation.

(19) In determining the contributions payable in accordance with this regulation and regulation 3.C.3, a host Board must take account of pensionable earnings as a practitioner from all practitioner sources, including any such pensionable earnings determined by another host Board.

(20) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a practitioner, take advice from the relevant host Board in determining the contributions payable in accordance with this regulation and regulation 3.C.3.

(21) If, apart from this paragraph, the earnings for a scheme year in respect of a member's practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.

(22) For the purposes of this regulation, "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%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

Amendment of regulation 3.C.4

43.—(1) Regulation 3.C.4 (guarantees, indemnities and bonds) is amended as follows.

(2) In paragraph (1)(a), after “fails to pay contributions” insert “or has previously failed to pay contributions”;

(3) In paragraph (2) after “liabilities of the authority”, insert “(or such liabilities as are specified by the Secretary of State)”.

Amendment of regulation 3.C.5

44. For sub-paragraph (b) of paragraph (19A)(16) of regulation 3.C.5 (payment of contributions), substitute—

“(b) by deduction from any benefit payable to, or in respect of, the member where the Secretary of State has notified the member of an intention to do so.”.

Amendment of regulation 3.D.6

45. In sub-paragraph (c) of paragraph (1) of regulation 3.D.6 (increase in level of engagement following exercise of option under regulation 3.D.5), for “less than 90 per cent”, substitute “90 per cent or less”.

Amendment of regulation 3.H.1

46.—(1) Regulation 3.H.1 (application of Chapter 3.H) is amended as follows.

(2) At the end of paragraph (5), add (as full out words) “This is subject to paragraph (6).”

(3) After paragraph (5), add—

“(5A) This Chapter does not apply to a person who is a pensioner member of this Section of the Scheme if—

(a) that person is employed by an Independent Provider—

(16) Paragraph 19A was inserted by [S.I. 2013/413](#) (regulations 22 and 63).

- (i) on the day that Provider’s approval as an employing authority takes effect in accordance with Chapter 3.M (“the effective date”); and
 - (ii) on the day immediately before the effective date; and
 - (b) any of paragraphs (5B), (5B) or (5C) apply to that person.
- (5B) This paragraph applies to a person who is not eligible to be an active member of this Section of the Scheme on the effective date and remains ineligible to be such a member.
- (5C) This paragraph applies to a person who exercises an option not to rejoin this Section of the Scheme which takes effect from the effective date and has not been cancelled.
- (5D) This paragraph applies to a person who—
- (a) is not eligible to rejoin this Section of the Scheme on the effective date,
 - (b) becomes eligible to do so on the day immediately after the first anniversary of the member entering NHS employment in accordance with paragraph (5)(b) of regulation 3.G.4 (“the day of eligibility”),
 - (c) exercises an option not to rejoin this Section of the Scheme that takes effect from the day of eligibility and which has not been cancelled.”.

New regulation 3.J.9A

47. After regulation 3.J.9 (interest on late payment of benefits and refunds of contributions), insert—

“3.J.9A Interest and Administration Charges: Late paid contributions

- (1) For the purposes of this regulation, where an employing authority fails to pay, by the dates therein specified, contributions it is required to pay under any or all of regulations 3.C.1, 3.C.3, 3.C.5, 3.C.6, 3.C.8, or 3.C.9, there is a chargeable event.
- (2) Where there is a chargeable event, the Secretary of State may determine what amount of contributions are unpaid having regard to—
 - (a) the amount of contributions historically paid at a chargeable event 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 at such an event;
 - (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 constituting that event 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 each chargeable event;
 - (b) the amount of unpaid contributions determined under paragraph (2) constituting each such chargeable event;
 - (c) the amount of interest at the standard rate payable in respect of each of those events;
 - (d) the amount of administration charge payable in respect that event;

(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 all, or part, of such an 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 administration charges, payable.

(7) The standard rate of interest in respect of arrears in respect of the scheme year 2014-2015 and subsequent years is the rate of 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) The administration charge in respect of arrears in respect of the scheme year 2014-2015 and subsequent years 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 3.J.14

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

(2) In paragraph (11), after “earnings” insert “and contributions due under regulations 3.C.1, 3.C.3 and 3.C.6”.

(3) For 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 member has failed to comply with the requirements of—

- (a) whichever of paragraphs (1), (2), (4), (5), or (6) applies to that member, or
- (b) paragraph (7) of regulation 3.B.5.

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

(4) For paragraph (20), substitute—

“(20) An employing authority must, in respect of a person, keep a record of all—

- (a) contributions paid under regulations 3.C.1, 3.C.6 or 3C.8;
- (b) contributions due under regulations 3.C.1, 3.C.6 or 3C.8, but unpaid;
- (c) contributions paid under regulation 3.C.3 or 3.C.9;
- (d) contributions due under regulation 3.C.3 or 3.C.9, but unpaid;
- (e) pensionable earnings;

- (f) absences from work referred to in regulation 3.A.4;
- (g) commencement and termination of pensionable employment;
- (h) reasons for termination of pensionable employment.

(20A) That record is to be in a manner approved by the Secretary of State.

(20B) Except where the Secretary of State waives such requirement, an employing authority must provide a statement in respect of the matters referred to in paragraph (20) in respect of all scheme members to the Secretary of State no later than 13 months of the end of each scheme year.

(20C) Where an employing authority has provided the information in accordance with paragraph (20B) and there is then a change to any of the information provided, that employing authority must, within 1 month of the change, provide the Secretary of State with the revised information.”.