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## STATUTORY INSTRUMENTS

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# 2008 No. 653

## The National Health Service Pension Scheme Regulations 2008

### PART 3

#### BENEFITS FOR PRACTITIONERS ETC.

##### CHAPTER 3.A

##### INTRODUCTION

##### *Preliminary*

#### **3.A.1 Interpretation of Part 3: general**

(1) In this Part—

“the 1993 Act” means the Pension Schemes Act 1993<sup>(1)</sup>;

“the 1995 Act” means the Pensions Act 1995<sup>(2)</sup>;

“the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995<sup>(3)</sup>;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997<sup>(4)</sup>;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999<sup>(5)</sup>;

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003<sup>(6)</sup>;

“the 2004 Act” means the Finance Act 2004<sup>(7)</sup>;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003<sup>(8)</sup>;

“the 2004 Order” means the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004<sup>(9)</sup>;

“the 2006 Act” means the National Health Service Act 2006<sup>(10)</sup>;

“the 2006 (Wales) Act” means the National Health Service (Wales) Act 2006<sup>(11)</sup>;

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(1) 1993 c. 48.

(2) 1995 c. 26.

(3) S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, and 2008/653, and modified by S.I. 1996/971.

(4) 1997 c. 46.

(5) 1999 c. 30.

(6) 2003 c. 43.

(7) 2004 c. 12.

(8) S.I. 2003/1250.

(9) S.I. 2004/865.

(10) 2006 c. 41.

(11) 2006 c. 42.

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 3.D.5(9));

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 3.C.6, 3.C.8 and 3.C.9;

“additional services” with regard to a—

- (a) GMS practice has the meaning given in regulation 2(1) of the GMS Contracts Regulations; or
- (b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be additional services within the meaning given in regulation 2(1) of those Regulations;

“APMS contract” means arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act (primary medical services) between a Primary Care Trust or Local Health Board and an APMS contractor;

“APMS contractor” means a person—

- (a) with whom a Primary Care Trust or Local Health Board has made arrangements under section 80(2)(b) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act, and
- (b) who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services;

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“appropriate proportion” means

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971<sup>(12)</sup>;

“base rate” means the Bank of England base rate—

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998<sup>(13)</sup> is in force, any equivalent rate determined by the Treasury under that section;

“Board and advisory work” means—

- (a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, a PMS practice, an APMS contractor or an OOH provider; or
- (b) advisory work commissioned by and undertaken on behalf of such an authority, if it is connected to the authority’s role in performing, or securing the delivery of, primary medical services or associated management activities or similar duties,  
but which is not in itself the performance of primary medical services, and payment for which is made by that authority directly to the person carrying out that work;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act and “buy-out” must be read accordingly;

“capped transferred-in service” must be read in accordance with regulation 3.F.12;

“cash equivalent” is to be construed in accordance with Chapter 4 of Part 4 of the 1993 Act;

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<sup>(12)</sup> 1971 c. 80.

<sup>(13)</sup> 1998 c. 11.

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3) (a) of that Order;

“certification services” means services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts Regulations;

“collaborative services” means primary medical services provided by a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider under or as a result of an arrangement between—

(a) the Secretary of State, the National Assembly for Wales, a Primary Care Trust or a Local Health Board; and

(b) a local authority,

under, in the case of England, section 80(6) of the 2006 Act or in the case of Wales, section 38(6) of the 2006 (Wales) Act, under which the Secretary of State, the National Assembly for Wales, the Primary Care Trust or the Local Health Board is responsible for providing services for purposes related to the provision of health care;

“commissioned services” means medical services provided under a contract between—

(a) a GP performer, a GMS practice, a PMS practice, an APMS contractor or an OOH provider; and

(b) one of the following bodies—

(i) a Strategic Health Authority or a Special Health Authority, which relates to the provision of health care; or

(ii) the Secretary of State, the National Assembly for Wales, a Primary Care Trust or a Local Health Board under, in the case of England, section 12 of the 2006 Act or in the case of Wales, section 10 of the 2006 (Wales) Act; or

(iii) a National Health Service trust under paragraph 18 of Schedule 4 to the 2006 Act or paragraph 18 of Schedule 3 to the 2006 (Wales) Act; or

(iv) a National Health Service foundation trust under section 47(2)(b) of the 2006 Act, which is for the purposes of the health service;

“contracting-out requirements” means the requirements mentioned in section 9(2) of the 1993 Act;

“contribution option period” has the meaning given in regulation 3.C.6(8);

“corresponding health service scheme” has the meaning given in regulation 3.F.11(7);

“core hours” means the period beginning at 8am and ending at 6:30pm on any day from Monday to Friday except Good Friday, Christmas Day and a bank holiday;

“deferred member” has the meaning given in section 124(1) of the 1995 Act and, except where the context requires otherwise, refers to membership of the Scheme (but see paragraph (3) and regulation 3.D.5(9));

“dental performers list” means a list of dental practitioners prepared in accordance with regulations made under—

(a) in the case of England, section 106 of the 2006 Act; or

(b) in the case of Wales, section 63 of the 2006 (Wales) Act;

“dentist performer” means a dental practitioner—

(a) whose name is included in a dental performers list or who is a vocational trainee in the first two months of vocational training; and

- (b) who performs primary dental services under—
  - (i) a GDS contract;
  - (ii) a PDS agreement to which a PDS contractor is a party; or
  - (iii) a contract for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary dental services under section 99(2) of the 2006 Act or section 56(2) of the 2006 (Wales) Act or a PDS agreement to which a PDS contractor is not a party;

“dependent child” is to be construed in accordance with regulation 3.E.9;

“dispensing services” means the provision of drugs, medicines or appliances that may be provided as pharmaceutical services by a registered medical practitioner in accordance with arrangements made under regulation 20 of the National Health Service (Pharmaceutical Services) Regulations 1992<sup>(14)</sup>;

“Doctors’ Retainer Scheme” has the same meaning as given at paragraph 39 of the Statement published in accordance with regulation 34 of the National Health Service (General Medical Services) Regulations 1992<sup>(15)</sup>;

“employing authority” means—

- (a) a Strategic Health Authority established under section 13 of the 2006 Act;
- (b) a Special Health Authority established under section 28 of the 2006 Act or section 22 of the 2006 (Wales) Act 2006;
- (c) a Primary Care Trust established under section 18 of the 2006 Act;
- (d) a Local Health Board established under section 11 of the 2006 (Wales) Act;
- (e) a National Health Service trust established under section 25 of the 2006 Act or section 18 of the 2006 (Wales) Act;
- (f) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act;
- (g) any other body which—
  - (i) is constituted under an Act relating to health services; and
  - (ii) the Secretary of State agrees to treat as an employing authority for the purposes of the Scheme;
- (h) an OOH provider;
- (i) an APMS contractor;
- (j) a GMS practice;
- (k) a PMS practice;
- (l) in relation to a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(16)</sup>, and subject to such modifications to this Part as the Secretary of State may in any particular case direct, any employer of such a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;
- (m) in relation to officers of a hospital of such classes as may be provided in an agreement to participate in benefits under this Part pursuant to section 235 of the 2006 Act (superannuation of officers of certain hospitals), and subject to such modifications to this Part as the Secretary of State may in any particular case direct, any employer of such

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<sup>(14)</sup> S.I. 1992/662.

<sup>(15)</sup> S.I. 1992/635.

<sup>(16)</sup> 1967 c. 28.

a person whom the Secretary of State agrees to treat as an employing authority for the purposes of this Part;

(n) a host Trust or Board;

“employment” includes an office or appointment (other than an honorary office or appointment) and related expressions are to be read accordingly;

“enhanced services” with regard to—

(a) a GMS practice, has the meaning given in regulation 2(1) of the GMS Contracts Regulations; or

(b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of those Regulations;

“essential services” means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations, whether provided by a GMS practice, a PMS practice or an APMS contractor;

“Executive Committee” means the committee of a Primary Care Trust appointed under regulation 9(1) of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000<sup>(17)</sup>;

“GDS contract” means a general dental services contract under section 100 of the 2006 Act or section 57 of the 2006 (Wales) Act;

“GDS contractor” means a person who is a party to a GDS contract, other than a Primary Care Trust or a Local Health Board;

“GMS contract” means—

(a) in relation to England, a contract under section 84 of the 2006 Act or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004<sup>(18)</sup>;

(b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004<sup>(19)</sup>;

“GMS Contracts Regulations” means—

(a) in relation to England, the National Health Service (General Medical Services Contracts) Regulations 2004<sup>(20)</sup>;

(b) in relation to Wales, the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004<sup>(21)</sup>;

“GMS practice” means—

(a) a registered medical practitioner; or

(b) two or more individuals practising in partnership; or

(c) a company limited by shares,

with whom a Primary Care Trust or Local Health Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a GP Registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services,

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<sup>(17)</sup> S.I. 2000/89.

<sup>(18)</sup> S.I. 2004/433.

<sup>(19)</sup> S.I. 2004/477.

<sup>(20)</sup> S.I. 2004/291.

<sup>(21)</sup> S.I. 2004/478.

commissioned services, OOH services or certification services (or a combination of those services)—

- (a) under a GMS contract, PMS agreement or APMS contract;
- (b) on behalf of an OOH provider;
- (c) under a contract of service or for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary medical services—
  - (i) under section 83(2)(a) of the 2006 Act or 41(2)(a) of the 2006 (Wales) Act; or
  - (ii) under an agreement pursuant to section 50 arrangements or section 92 arrangements made between a Primary Care Trust or a Local Health Board and a Strategic Health Authority;

“GP provider” means a GP performer who is—

- (a) a GMS practice, a PMS practice or an APMS contractor;
  - (b) a partner in a partnership that is a GMS practice, a PMS practice or an APMS contractor; or
  - (c) a shareholder in a company limited by shares that is a GMS practice, PMS practice or APMS contractor,
- and who performs medical services as or on behalf of that practice or contractor;

“GP Registrar” means a medical practitioner who is being trained in general practice—

- (a) in England by a general medical practitioner who is approved under article 4(5)(d) for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise; or
- (b) in Wales by a medical practitioner who is being trained in general practice by a GP trainer whether as part of training leading to the award of a CCT or otherwise;

“GP trainer” means a registered medical practitioner who is approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“the guarantee date” has the meaning given in regulation 3.F.2(2);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 3.F.3(3);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 of the 1993 Act;

“the health service” has the meaning given in section 275 of the 2006 Act;

“host Trust or Board”—

- (a) in respect of a non-GP provider who is—
  - (i) a partner in a partnership—
    - (aa) that is a GMS practice; or
    - (bb) that has entered into a PMS agreement or is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
  - (ii) a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services;
  - (iii) an individual who is a PMS practice or an APMS contractor,

means the Primary Care Trust or Local Health Board with which that partnership (in the case of (i)), company (in the case of (ii)) or practice or contractor (in the case of (iii)) has entered into an agreement or contract referred to in those provisions;

- (b) in respect of a registered medical practitioner, means the Primary Care Trust or Local Health Board on whose medical performers list his name appears and such a person shall be deemed to be employed by the appropriate Trust or Board for the purposes of this Part;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the 2004 Act<sup>(22)</sup>;

“local authority” means—

- (a) any of the bodies listed in section 1 of the Local Authority Social Services Act 1970<sup>(23)</sup>; or  
(b) the Council of the Isles of Scilly;

“locum practitioner” means a registered medical practitioner (other than a GP Registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by—

- (a) a GMS practice;  
(b) a PMS practice;  
(c) an APMS contractor;  
(d) an OOH provider; or  
(e) a Primary Care Trust or Local Health Board,

to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services or collaborative services (or any combination thereof);

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992<sup>(24)</sup>;

“lump sum rule” has the meaning given in section 166 of the 2004 Act;

“lump sum death benefit rule” has the meaning given in section 168 of the 2004 Act;

“member”, except where the context otherwise requires, means an active member, a deferred member, a pensioner member or a pension credit member;

“medical performers list” means a list of registered medical practitioners prepared and published—

- (a) by a Primary Care Trust pursuant to regulation 3(1) of the National Health Service (Performers Lists) Regulations 2004<sup>(25)</sup>; or  
(b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004<sup>(26)</sup>;

“NHS employment” means employment with an employing authority;

“the NHS Pension Scheme 1995” means the scheme set out in the National Health Service Pension Scheme Regulations 1995<sup>(27)</sup>;

“non-GP provider” means—

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<sup>(22)</sup> 2004 c. 12.

<sup>(23)</sup> 1970 c. 42.

<sup>(24)</sup> 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and amended by section 7(1) to (3) of the Pensions Act 2007 (c. 22).

<sup>(25)</sup> S.I. 2004/585.

<sup>(26)</sup> S.I. 2004/1020.

<sup>(27)</sup> S.I. 1995/300.

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership all of whose members have entered into a PMS agreement for the provision of primary medical services—
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services—
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is—
  - (i) a GMS practice; or
  - (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services,
 but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider assists in the provision of NHS services provided by that company;
- (e) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that non-GP provider participates in the provision of NHS services and these Regulations shall apply as if that non-GP provider were a whole time officer;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the 1993 Act which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of Chapter 3.F;
- (b) in the case of such a scheme established before that date, was—
  - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988<sup>(28)</sup> (retirement benefits schemes) or whose application for approval under that Chapter was under consideration,
  - (ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or
  - (iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980),

“officer” means a person (other than a GP performer or dentist performer) employed by an employing authority and includes a GP Registrar and a non-GP provider;

“officer service” means pensionable service as an officer under Part 2;

“OOH provider” has the meaning given by regulation 3.A.16;

“OOH services” means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice or PMS practice to patients to



whom the practice is required by its GMS contract or PMS agreement to provide essential services, would be or would be similar to essential services;

“opting-out” and related expressions are to be construed in accordance with regulation 3.B.5;

“out of hours period” means—

- (a) the period beginning at 6:30pm on any day from Monday to Thursday and ending at 8am the following day;
- (b) the period between 6:30pm on Friday and 8am the following Monday;
- (c) Good Friday, Christmas Day and a bank holiday;

“pay period” means—

- (a) in relation to a practitioner who receives regular payments for his service under a contract for services or contract of employment, means the period in respect of which each payment of salary, wages or fees is made in accordance with that contract, and
- (b) in all other cases, any period of three months ending on the last day of March, June, September or December;

“PDS agreement” means an agreement for the provision of primary dental services pursuant to section 64 arrangements or section 107 arrangements;

“PDS contractor” means a person who—

- (a) is a party to a PDS agreement, and
- (b) is neither a Primary Care Trust, nor a Strategic Health Authority, nor a Local Health Board;

“pensionable earnings” has the meaning given in regulation 3.A.7 (read with regulation 3.A.8);

“pensionable earnings ceiling” in relation to a GDS contract or a PDS agreement, is to be construed in accordance with regulation 3.A.7(4);

“pensionable employment” means employment as a practitioner which is pensionable under this Part;

“pensionable service” has the meaning given by regulations 3.A.3 and 3.A.4 (read with regulation 3.A.5);

“pensioner member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the Scheme (but see regulation 3.A.2 and regulation 3.D.5(9));

“pension credit” means a credit under section 29(1)(b) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

“pension credit benefit” has the meaning given by section 101B of the 1993 Act;

“pension credit member” has the meaning given by section 124(1) of the 1995 Act;

“pension credit rights” has the meaning given by section 101B of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1) of the 1999 Act;

“personal pension scheme” means a personal pension scheme which—

- (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Secretary of State agrees to recognise as a transferring scheme for the purposes of Chapter 2.F;
- (b) in the case of a scheme established before that date, was—

- (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes); and
- (ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“PMS agreement” means an agreement for the provision of primary medical services pursuant to—

- (a) section 50 arrangements,
- (b) section 92 arrangements, or
- (c) a transitional agreement under Part 4 of the 2004 Order;

“PMS practice” means—

- (a) an individual,
- (b) two or more individuals practising in partnership, or
- (c) a company limited by shares,  
with whom, or with whose members, a Primary Care Trust or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the Primary Care Trust or Local Health Board);

“practice staff” means a person who—

- (a) is not a registered medical practitioner, a GP Registrar or a non-GP provider, and
- (b) is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides;

“practitioner” means—

- (a) a registered medical practitioner who—
  - (i) is not a GP Registrar, and
  - (ii) is a locum practitioner, a GP provider or a GP performer, or
- (b) a dentist performer;

“practitioner income” has the meaning given in regulation 3.A.7(2) to (8);

“practitioner service” means service as a practitioner which is pensionable under this Part;

“preservation requirements” means the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes;

“public sector transfer arrangements” means arrangements approved by the Secretary of State as providing reciprocal arrangements for the payment and receipt of transfer values between the Scheme and other occupational pension schemes;

“qualifying service” has the meaning given in regulation 3.A.5 (read with regulation 3.A.6);

“quarter” means a 3 month period ending on the last day of March, June, September or December;

“recent leaver” has the meaning given in regulation 3.E.6(3);

“registered” means registered under Chapter 2 of Part 4 of the 2004 Act;

“retail prices index” has the meaning given in section 989 of the Income Tax Act 2007(29);

“safeguarded percentage” has the meaning given by section 68A(3) of the 1993 Act;

“safeguarded rights” has the meaning given by section 68A(1) of the 1993 Act;

“the Scheme” means the scheme the rules of which are set out in this Part of the Regulations;

“the Scheme Actuary” means the actuary appointed by the Secretary of State for the time being to provide a consulting service on actuarial matters relevant to the Scheme;

“scheme year” means a period of one year beginning with 1st April and ending with 31st March;

“section 50 arrangements” has the meaning given by the 2006 (Wales) Act;

“section 64 arrangements” has the meaning given by the 2006 (Wales) Act;

“section 92 arrangements” has the meaning given by the 2006 Act;

“section 107 arrangements” has the meaning given by the 2006 Act;

“specialist” means a consultant, other than a nurse consultant, or a senior hospital medical officer or senior hospital dental officer;

“State pension age” means pensionable age, as defined in section 181(1) of the 1993 Act;

“tax year” means a year of assessment for income tax purposes;

“tier 1 ill-health pension” must be read in accordance with regulation 3.D.7;

“tier 2 ill-health pension” must be read in accordance with regulation 3.D.7;

“trade dispute” has the meaning given in section 35(1) of the Jobseekers Act 1995<sup>(30)</sup>;

“type 1 dental practitioner” means a dentist performer who is not a type 2 dental practitioner;

“type 1 medical practitioner” means a GP provider who is not a type 2 medical practitioner;

“type 1 practitioner” means a type 1 dental practitioner or a type 1 medical practitioner;

“type 2 dental practitioner” means—

- (a) a vocational trainee who is employed by a GDS or PDS contractor; or
- (b) a dentist performer with a contract for services with a Primary Care Trust or Local Health Board which relates to arrangements under which the Trust or Board provides primary dental services under—
  - (i) in the case of England, section 99(2) of the 2006 Act or, in the case of Wales, section 56(2) of the 2006 (Wales) Act; or
  - (ii) a PDS agreement to which a PDS contractor is not a party;

“type 2 medical practitioner” means a GP performer who—

- (a) is not a GP provider, and—
  - (i) is employed (whether under a contract of service or for services) by a GMS practice, a PMS practice, an APMS contractor, an OOH provider, a Primary Care Trust or a Local Health Board, and
  - (ii) in that employment is engaged wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS practice, a PMS practice, an APMS contractor, an OOH provider, a Primary Care Trust or a Local Health Board; or
- (b) is participating in a Doctors’ Retainer Scheme;

“type 2 practitioner” means a type 2 dental practitioner or a type 2 medical practitioner;

“uprated earnings” is to be construed in accordance with regulation 3.D.1(4)(b);

“vocational trainee” means a dentist performer who is employed as a vocational trainee as a consequence of a placement arrangement made by a local postgraduate dental dean or a director of postgraduate dental education.

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(30) 1995 c.18.

### **3.A.2 Interpretation: further provisions**

(1) In determining whether a person who is an active member or a pensioner member of the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person's rights as such are to be disregarded.

(2) In determining whether a person is a pensioner member of the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 3.H is to be disregarded.

### **3.A.3 Meaning of "pensionable service"**

(1) In this Part, references to a member's pensionable service, are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to the scheme under regulation 3.C.1 (contributions by members),
- (b) any period of absence from service which counts as pensionable service under regulation 3.A.4,
- (c) any period of service credited to the member as pensionable service under Chapter 3.F (transfers from other pension arrangements).

This is subject to paragraph (2).

(2) A member's pensionable service does not include—

- (a) any period of service in respect of which the Secretary of State has paid contributions to another occupational pension scheme in respect of the member,
- (b) in the case of a pensioner member or deferred member, any period taken into account—
  - (i) in determining the member's entitlement to the pension in payment or, as the case may be, the deferred pension, or
  - (ii) in calculating the amount of that pension,

but, in the case of a pensioner member or deferred member entitled to a pension under regulation 3.D.5 (partial retirement) subject to paragraph (7) of this regulation;

- (c) any period of service in respect of which the Secretary of State's liability to provide benefits is discharged—
  - (i) by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act,
  - (ii) under regulation 3.C.16 (repayment of contributions), or
  - (iii) by the payment of a transfer value payment on transfer out under Chapter 3.F (transfers); or
- (d) subject to paragraph (3), any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.

(3) A member's pensionable service must not exceed 45 years unless—

- (a) the member gives notice in writing to the Secretary of State and the member's employing authority of an intention to remain in pensionable service beyond 45 years; and
- (b) that notice is received by the Secretary of State and the member's employing authority—
  - (i) not earlier than three months before the member reaches 45 years pensionable service, and
  - (ii) by the end of the pay period during which the member reaches the 45 year limit.

(4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—

- (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service; and
  - (b) the Secretary of State shall select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) For the purposes of paragraph (4)(b), in order to calculate the length of a member's pensionable service, all periods of pensionable service will be added together and each resulting period of 365 days (disregarding pensionable service on 29 February in a leap year) will be treated as one year.
- (6) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—
- (a) the member's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made, and
  - (b) the payment is treated as the member's pensionable earnings for that period.
- (7) In the case of a pensioner member or deferred member entitled to a pension under regulation 3.D.5 (partial retirement), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 3.D.5(8)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (8) References in this Part to any period expressed in days are references to the period in question ignoring 29 February, expressed in days.

#### **3.A.4 Pensionable service: breaks in service**

- (1) This regulation applies to members who are absent from work because of—
- (a) illness or injury,
  - (b) maternity leave,
  - (c) adoption leave,
  - (d) paternity leave, or
  - (e) parental leave.
- (2) Subject to paragraph (5), a period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the scheme.
- (3) If—
- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e), and
  - (b) the member contributes to the scheme under regulation 3.C.1 by contributions made at the same intervals as those made by the member before the absence,
- so much of the period of absence beginning with the first day of absence as is a period in respect of which the conditions in sub-paragraphs (a) and (c) are met counts as pensionable service.
- (4) This paragraph applies if a person—
- (a) ceased to be an active member because of—
    - (i) ceasing to be employed in an employment in which the person is eligible to be such a member, or
    - (ii) exercising the option under regulation 3.B.5 (opting out of the Scheme), and
  - (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

(5) If paragraph (4) applies, the person's pensionable service before the person ceased to be an active member and after the person became such a member again is treated as a single continuous period of pensionable service, unless paragraph (6) applies.

(6) This paragraph applies if—

- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member,
- (b) the person has received a repayment of contributions under regulation 3.C.16 in respect of that service (but see paragraph (8)), or
- (c) the person's rights under the Scheme in respect of that service have been extinguished under regulation 3.F.7 because a transfer value payment has been made in respect of them.

(7) In the case of a member who leaves pensionable service whilst the person is absent from work because of—

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave, or
- (e) parental leave,

this regulation applies as if the reference to 12 months in paragraph (4)(b) were a reference to 3 years.

(8) Paragraph (6)(b) does not apply if the person repays to the Secretary of State any contributions repaid to the person as mentioned in that paragraph, together with any interest paid to the person on those contributions, before the expiry of the period of 6 months beginning with the date on which the person becomes an active member again.

(9) For the regulations where paragraph (5) applies because the person has become a deferred member in respect of the service in which the person was an active member and becomes an active member again, see Chapter 3.G (re-employment and rejoining the Scheme).

### *Qualifying service*

#### **3.A.5 Meaning of “qualifying service”**

(1) In this Part, references to a member's qualifying service, are references to the aggregate of the following periods—

- (a) the member's pensionable service under this Part other than such pensionable service as is referred to in regulation 3.A.3(1)(c) (transferred-in service);
- (b) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement has been accepted under Chapter 3.F (transfers), a period equal to the person's period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) any period treated as qualifying service under paragraph (3) or under regulation 3.A.6, and
- (d) where the member ceased to be an active member under Part 2 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 2.

(2) Paragraph (3) applies if the member is a locum practitioner who—

- (a) ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable service; and
- (b) is re-engaged as a locum practitioner before the expiry of a period not exceeding three months from the date of such cessation.

(3) Where this paragraph applies—

- (a) a locum practitioner is treated as continuing to be in qualifying service during the period of non-engagement as such a practitioner and is not required to re-join the Scheme on being re-engaged as a locum practitioner; and
- (b) that period does not count as practitioner service.

### **3.A.6 Qualifying service: disregard of breaks in service**

(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 3.A.5(3) applies).

(2) If the interval—

- (a) does not exceed one month, or
- (b) is due to a trade dispute,

the member's qualifying service before and after the interval is treated as continuous for the purpose of calculating the member's qualifying service after the interval (but the period of the interval is ignored).

(3) For the purposes of paragraph (2) it does not matter if the member's pensionable service before the interval is treated separately from that after the interval for the purpose of calculating the member's benefits.

(4) If—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to the Scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment, and
- (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

qualifying service in the earlier employment is treated as a single continuous period of qualifying service with that in the later employment.

(5) If—

- (a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service, and
- (b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

qualifying service in the earlier period of active membership is treated as a single period of qualifying service with that in the later period of such membership.

(6) Paragraphs (2), (4) and (5) do not apply if—

- (a) the person has received a repayment of contributions under regulation 3.C.16 in respect of the earlier period (but see paragraph (7)); or
- (b) the person's rights under the Scheme in respect of that period have been extinguished under regulation 3.F.7 because a transfer value payment has been made.

(7) Paragraph (6)(b) does not apply if the person repays to the Secretary of State any contributions repaid to the person as mentioned in that paragraph together with any interest on those contributions, before the expiry of the period of 6 months beginning with the date on which the member becomes a member again.

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval, and
- (b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 3.A.4(5) or regulation 3.G.3(2)(a),

the period of pensionable service in respect of which the member is a deferred member or a pensioner member is treated as qualifying service in relation to the period after the interval.

### *Pensionable earnings*

#### **3.A.7 Meaning of “pensionable earnings”**

(1) In the case of either a type 1 practitioner who is not in receipt of any salary, wages, fees or any other regular payment in respect of his employment by virtue of the application of these Regulations to him as if he were such an officer under Part 2, pensionable earnings means—

- (a) in the case of a type 1 medical practitioner, practitioner income less any sum on account of practice expenses (for these purposes, C3 contributions payable under regulation 3.C.5(5) or (6) are neither practitioner income nor practice expenses); and
- (b) in the case of a type 1 dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).

(2) Subject to paragraph (3), for the purposes of this regulation, the practitioner income of a type 1 medical practitioner means—

- (a) income that accrues to the type 1 medical practitioner which is derived from—
  - (i) a GMS contract;
  - (ii) a PMS agreement;
  - (iii) an APMS contract;
  - (iv) payments from, or to, a practitioner who is a GMS practice, a PMS practice or an APMS contractor in respect of the performance of certification services, commissioned services or collaborative services;
  - (v) his engagement by a Primary Care Trust or a Local Health Board to assist in the provision of primary medical services under—
    - (aa) in the case of England, section 83(2)(a) of the 2006 Act; or
    - (bb) in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act;
  - (vi) in the case of a type 1 medical practitioner, the provision of locum services;
  - (vii) payments made to a type 1 medical practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services, collaborative services and certification services;
  - (viii) payments made to a type 1 medical practitioner by an employing authority in respect of primary dental services, general ophthalmic services or pharmaceutical services provided by the practitioner;
  - (ix) practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners.
- (b) any charges collected from patients in respect of the services mentioned in sub-paragraph (a) which the type 1 medical practitioner is authorised by or under any enactment to retain, other than charges authorised by regulations made under—
  - (i) in the case of England, section 185(1) of the 2006 Act; or



- (ii) in the case of Wales, section 133(1) of the 2006 (Wales) Act; and
  - (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital;
  - (d) in the case of a type 1 medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.
- (3) Subject to paragraphs (4), (6) and (8), for the purposes of this paragraph, the practitioner income of a type 1 dental practitioner means income that accrues to the practitioner which is derived from a GDS contract or a PDS agreement and—
- (a) includes charges collected from patients which are required, by virtue of directions given under, in the case of England, sections 94, 103 or 109 of the 2006 Act or in the case of Wales, sections 52, 60 or 66 of the 2006 (Wales) Act, to be set off against payments under the contract or agreement;
  - (b) but does not include charges collected from patients which are not required, by virtue of such directions, to be so set off.
- (4) For each GDS contract or PDS agreement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from that contract in any financial year is, subject to paragraph (5), the value of that contract in that financial year less the value of following payments (if payable in that financial year by the Primary Care Trust or Local Health Board that is a party to the contract or agreement)—
- (a) monthly seniority payments;
  - (b) maternity leave, paternity leave, parental leave or adoption leave payments;
  - (c) sickness leave payments;
  - (d) reimbursement of the salary of a vocational trainee;
  - (e) reimbursement of the national insurance contributions of a vocational trainee;
  - (f) reimbursement of non-domestic rates;
- then multiplied by a percentage to be determined by the Secretary of State, which produces the amount referred to in this Part as the pensionable earnings ceiling.
- (5) Income which accrues to a type 1 dental practitioner that is derived from the following payments under a GDS contract or PDS agreement is practitioner income for the purposes of this regulation (that is, it is pensionable earnings, notwithstanding that it is not included in the calculation of the pensionable earnings ceiling for a particular GDS contract or PDS agreement)—
- (a) monthly seniority payments;
  - (b) maternity leave, paternity leave, parental leave or adoption leave payments;
  - (c) sickness leave payments.
- (6) The following payments under a GDS contract or PDS agreement are not to be considered practitioner income for the purposes of this regulation—
- (a) reimbursement of the salary of a vocational trainee;
  - (b) reimbursement of the national insurance contributions of a vocational trainee, and
  - (c) reimbursement of non-domestic rates.
- (7) For the avoidance of doubt, income which accrues to a type 1 dental practitioner while engaged as a type 2 practitioner is practitioner income of that type 1 dental practitioner, but unaffected by any pensionable earnings ceiling.
- (8) If a practitioner is in concurrent employment as an officer, or with a local authority or university, or as a civil servant, or in any other employment that the Secretary of State may in any

particular case allow, practitioner income does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

(9) In paragraph (2)(a), locum services shall have the meaning given by regulation 3.A.13(4).

### **3.A.8 Pensionable earnings—breaks in service**

(1) This regulation applies to members who are absent from work because of—

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave, or
- (e) parental leave.

(2) If the earnings used to calculate a member's pensionable earnings are reduced during a period of absence to which this regulation applies—

- (a) for the purpose of calculating the member's contributions to the scheme under regulation 3.C.1, pensionable earnings for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable earnings for the period of absence will be calculated in accordance with paragraph (3)(a) or (b).

(3) In the case of a member who—

- (a) is one of a number of practitioners or non-GP providers who have elected as described in regulation 3.A.9(2), each practitioner's or non-GP provider's pensionable earnings will be calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased, and
- (b) (except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (a)), that member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.

(4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—

- (a) a practitioner falling within paragraph (1)(a) will, subject to sub-paragraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a member falling within paragraph 1(b) to (e) of this regulation who paid contributions on the basis of reduced earnings in accordance with paragraph (3)(a) will, subject to paragraph (6), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.

(5) For the purposes of paragraph (4)(a)—

- (a) during the 12 month period, the member's pensionable earnings will be calculated as described in paragraph (3)(a) or (b);
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.

(6) For the purposes of paragraph (4)(b), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (2)(a) had the member's reduced earnings excluded any earnings for a day during which the member, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(7) If a member fails to pay any contributions which are required to be paid to the scheme in respect of a period of absence to which this regulation applies, the member will be treated as having left pensionable employment except that no refund of contributions or other benefit shall be payable unless the member actually leaves pensionable employment.

(8) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (3)(a) or (4), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation 3.A.6(4)(b) will apply as if the reference to 12 months was a reference to 3 years.

(9) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his earnings ceased.

### **3.A.9 Calculating pensionable earnings of medical practitioners in partnership**

(1) In the case of type 1 medical practitioners practising in partnership (with or without a non-GP provider who is a partner in a partnership), the pensionable earnings of each type 1 medical practitioner and non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the Scheme) and, subject to paragraph (2), dividing the total equally by reference to the number of such partners.

(2) If the type 1 medical practitioners and any non-GP providers who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(3) If a registered medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner (under Part 2), the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their respective shares of the partnership profits.

(4) The calculations described in paragraphs (2) and (3) will be made by the Local Health Board or Primary Care Trust to which the partners are required to give notice of their election in accordance with regulation 3.A.10(1).

### **3.A.10 Elections relating to calculation of pensionable earnings in medical partnerships**

(1) Type 1 medical practitioners who are partners in any partnership must exercise the elections described in regulation 3.A.9(2) and (3) by giving notice in writing to their host Trust or Board in accordance with this regulation.

(2) The notice must be signed by all the type 1 medical practitioners and any non-GP providers in the partnership and must state as a fraction each practitioner's and non-GP provider's share in the partnership profits.

(3) In the case of medical practitioners, the notice must state the name of every Primary Care Trust or Local Health Board on whose list the name of any practitioner in the partnership is included.

(4) A notice given under this regulation—

(a) will take effect—

- (i) from the date agreed between the practitioners and any non-GP providers and the Primary Care Trust or Local Health Board concerned; or
- (ii) if no agreement is reached, a date decided by the Secretary of State;
- (b) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the practitioners and any non-GP providers in the partnership;
- (c) will be automatically cancelled upon a change in the members of the partnership.

### **3.A.11 Restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service**

(1) This regulation applies for determining the amount of a member's pensionable earnings for the purposes of calculating so much of any benefit under the Scheme as falls to be calculated by reference to capped transferred-in service<sup>(31)</sup>.

(2) If a member's pensionable earnings exceed the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

(3) In this regulation "permitted maximum" means—

- (a) in relation to the tax year 2008-09, £117,600, and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index, and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(5) If the retail prices index for the month of September preceding the tax year 2009-10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation, "pensionable earnings" has the meaning given in regulation 3.A.7.

### **3.A.12 Distribution of pensionable earnings between type 1 dental practitioners employed or engaged by the same GDS or PDS contractor**

(1) After the end of each financial year, each GDS or PDS contractor must, by a date to be decided by the Secretary of State, send to the employing authority with which he is party to a GDS contract or PDS agreement a notice, in a format approved by the Secretary of State, specifying, in respect of that financial year—

- (a) the pensionable earnings ceiling for that contract or agreement; and
- (b) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under that contract or agreement,

and how much of the practitioner income that relates to the contract or agreement each type 1 dental practitioner that performed services under that contract or agreement is to be treated as having earned during that financial year (and those who are partners in, or directors of, the contractor must be identified as such).

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(31) For the meaning of capped transferred-in service, see regulation 3.F.12.

(2) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, extend the date decided by the Secretary of State in accordance with paragraph (1) by which notices are to be submitted.

(3) The notice from the GDS or PDS contractor is invalid if—

- (a) it contains information that is inaccurate or misleading in a material particular;
- (b) it is not received by the due date (although the employing authority may accept replacement notices in appropriate circumstances);
- (c) the total of the amounts specified in the notice in respect of each type 1 dental practitioner that performed services under that contract or agreement is greater than the total of the amounts referred to in paragraph (1)(a) and (b).

(4) If an employing authority has received a valid notice under this regulation, the amounts notified to it in respect of each type 1 dental practitioner mentioned in the notice are, for the financial year to which the notice relates, the pensionable earnings for that practitioner under the contract or agreement to which the notice relates.

(5) Despite paragraph (4), the employing authority may revise the amounts notified to it in appropriate circumstances (such as where it receives a valid replacement notice signed by all the type 1 dental practitioners who performed services under the contract or agreement).

(6) If an employing authority does not receive a valid notice under this paragraph from a GDS or PDS contractor with which it is party to a GDS contract or PDS agreement, the pensionable earnings of each type 1 dental practitioner under that contract or agreement for the financial year in respect of which the valid notice was required but not received are to be an equal share of the maximum amount of practitioner income that could be derived from that contract or agreement in that financial year (that is, the total of the amounts referred to in paragraph (1)(a) and (b)), less the difference between—

- (a) that maximum amount; and
- (b) the total of monthly amounts in respect of which estimated member contributions were paid on account during the financial year to which the earnings relate,

but if the total mentioned in sub-paragraph (b) is greater than the maximum amount referred to in sub-paragraph (a), then no amount is to be deducted pursuant to this paragraph.

### **3.A.13 Meaning of pensionable earnings in relation to other practitioners**

(1) In the case of a type 2 medical practitioner, pensionable earnings means—

- (a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, collaborative services, general dental services or pharmaceutical services;
- (b) allowances and other sums (but excluding payments made to cover expenses) paid by an employing authority in respect of Board and advisory work;
- (c) earnings from practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners,

but does not include bonuses or payments made to cover expenses or for overtime.

(2) In the case of a type 2 dental practitioner, pensionable earnings means all salary, wages, fees and other regular payments paid to the practitioner—

- (a) in the case of a vocational trainee, under his contract of employment with a GDS or PDS contractor; or

- (b) in all other cases, by an employing authority in respect of the performance of primary dental services,

but does not include bonuses or payments made to cover expenses or for overtime.

(3) In the case of a locum practitioner, pensionable earnings means all fees and other payments made to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Secretary of State.

(4) In this regulation, references to the provision of locum services, in relation to a practitioner, are to primary medical services, commissioned services, collaborative services or pharmaceutical services 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.

### **3.A.14 Exclusions and deductions from pensionable earnings—all practitioners**

**3.A.14** Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>(32)</sup> will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Secretary of State may approve.

### **3.A.15 Limit on pensionable earnings—dentist performers carrying on deceased person's business**

**3.A.15** In the case of a dentist performer employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those persons, plus any amounts paid to him by a Primary Care Trust, Local Health Board or the Dental Practice Division of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)<sup>(33)</sup> that those persons allow him to retain.

### **3.A.16 Out of hours providers**

- (1) For the purposes of these Regulations, an OOH provider is—

- (a) a company limited by guarantee (which is not otherwise an employing authority)—
  - (i) in which all the members of the company are registered medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are—
    - (aa) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services; or
    - (bb) registered medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract,
  - (ii) which has a contract with a Primary Care Trust, a Local Health Board, an APMS contractor or a GMS or PMS practice for the provision of OOH services, and
  - (iii) in respect of which a Primary Care Trust or Local Health Board appointed by the Secretary of State or the Welsh Ministers to act on his or its behalf—

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<sup>(32)</sup> [S.I. 1992/664](#).

<sup>(33)</sup> The Authority was established by [S.I. 2005/2414](#).

- (aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
  - (bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
  - (cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or
- (b) some other body corporate (which is not otherwise an employing authority) which—
  - (i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (ii) operates on a not-for-profit basis;
  - (iii) is not an associated company in relation to another person;
  - (iv) has memorandum or articles or rules that—
    - (aa) prohibit the payment of dividends to its members; and
    - (bb) require its profits (if any) or other income to be applied to promoting its objects, and
    - (cc) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
  - (v) has at least one member who is—
    - (aa) an APMS contractor, a GMS practice or a PMS practice; or
    - (bb) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice; or
    - (cc) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice,
  - (vi) has a contract with a Primary Care Trust or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
  - (vii) is approved as an employing authority by a Primary Care Trust or Local Health Board appointed by the Secretary of State to act on his behalf—
    - (aa) pursuant to a written application made by the body to it for that purpose; and
    - (bb) that Trust or Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii)—
  - (a) a body corporate is to be treated as another person's associated company if that person has control of it, except if that person is an employing authority; and
  - (b) a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is entitled to acquire, direct or indirect, control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Primary Care Trust or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf ("the appointed Trust or Board").
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Trust or Board (if given) shall have effect ("the nominated date").

- (5) If a company limited by guarantee or other body corporate makes an application and—
- (a) the appointed Trust or Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
  - (b) it approves that application,

that approval shall take effect on the later of the nominated date and the approval date.

(6) If paragraph (5) applies, NHS employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(7) For the purposes of this regulation the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be.

(8) The appointed Trust or Board may give an OOH provider a notice in writing terminating its participation in the Scheme where that provider—

- (a) does not have in force a guarantee, indemnity or bond as required by the Secretary of State in accordance with regulation 3.C.4;
- (b) has ceased to satisfy the conditions for approval;
- (c) has notified the Trust or Board that any one of the following events has occurred in respect of it—
  - (i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986<sup>(34)</sup> (“the 1986 Act”); or
  - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act; or
  - (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act; or
  - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965<sup>(35)</sup>; or
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX of the Companies Act 1985<sup>(36)</sup>.

(9) An OOH provider—

- (a) must give the appointed Trust or Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event;
- (b) that wishes to cease to participate in the Scheme must give the appointed Trust or Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.

(10) An OOH provider must cease to participate in the scheme on—

- (a) such date as the appointed Trust or Board may specify in a notice under paragraph (8);
- (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

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<sup>(34)</sup> 1988 c. 45.

<sup>(35)</sup> 1965 c. 12.

<sup>(36)</sup> 1985 c. 6.



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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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