

2005 No. 565

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) (Amendment) Regulations (Northern Ireland) 2005

Made - - - - - *14th December 2005*

Coming into operation *19th December 2005*

The Department of Health, Social Services and Public Safety^(a) in exercise of the powers conferred upon it by Articles 12 and 14 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972^(b) and of all other powers enabling it in that behalf, and after consulting with such representatives of persons likely to be affected by these Regulations as appear to it be appropriate as required by Article 12(4) of that Order, and with the consent of the Department of Finance and Personnel, hereby make the following Regulations:

Citation, commencement and retrospective effect

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation Scheme and Injury Benefits) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 19th December 2005.

(2) These Regulations shall have retrospective effect from 1st April 2004.

2. In these Regulations—

the “Injury Benefits Regulations” means the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001^(c);

the “Superannuation Scheme Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995^(d).

Amendment of regulation 2 of the Superannuation Scheme Regulations

3. In regulation 2 of the Superannuation Scheme Regulations (Interpretation)—

(a) omit the definitions “associate general practitioner” and “medical pilot scheme employee^(e)”;

(b) at the appropriate places in the alphabetical order insert the following definitions –

“the GMS Contracts Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004^(f);

(a) See S.I. 1999/283 (N.I.): Article 3(6)
(b) S.I. 1972/1073 (N.I. 10) as amended by S.I. 1990/1509 (N.I. 13)
(c) S.R. 2001 No. 367 as amended by paragraph 9 of Schedule 1 of S.R. 2004 No. 156
(d) S.R. 1995 No. 95 as amended by S.R. s 1997 No. 217 and 390, S.R. 1998 No. 299, S.R. 1999 No. 293, S.R. 2002 No. 69 and S.Rs. 2004 Nos. 103 and 104, and S.R. 2005 Nos. 155
(e) The definition of “medical pilot scheme employee” was inserted by regulation 3 of S.R. 1999 No. 293
(f) S.R. 2004 No. 140

“the 2003 Order means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(a);

“additional services”, with regard to—

- (a) a GMS practice, has the meaning given in regulation 2 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 of regulation 2 of those Regulations;

“APMS contract” means arrangements under Article 56(2)(b) of the 1972 Order (primary medical services)(b) between a Health and Social Services Board and an APMS contractor;

“APMS contractor” means a person with whom a Health and Social Services Board has made arrangements under Article 56(2)(b) of the 1972 Order, but only if that person is also a person who has entered into, or would be eligible to enter into, a GMS contract for the provision of primary medical services;

“CCT” means 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 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 3 to the GMS Contracts Regulations (List of prescribed medical certificates);

“core hours” means the period beginning at 8am and ending at 6:30pm on any day from, and including, Monday to Friday except a public holiday and a local holiday agreed with the Health and Social Services Boards;

“dispensing services” means the provision of drugs, medicines or appliances that may be provided by a registered medical practitioner in accordance with arrangements made under regulation 12 of the Pharmaceutical Services Regulations 1997(c) (Arrangement for the provision of pharmaceutical services by doctors);

“enhanced services”, with regard to—

- (a) a GMS practice, has the meaning given in regulation 2 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 of regulation 2 of those Regulations;

“essential services” means services required to be provided in accordance with regulation 15 of the GMS Contracts Regulations (whether provided by a GMS practice or an APMS contractor);

“GMS contract” means a contract under Article 57 of the 1972 Order or under Article 13 of the General Medical Services Transitional and Consequential Provisions (No. 1) (Northern Ireland) Order 2004(d);

“GMS practice” means—

- (a) a registered medical practitioner; or
- (b) two or more individuals practicing in a partnership; or
- (c) a company limited by shares,

with whom a Health and Social Services Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a trainee practitioner or a locum practitioner, whose name is included in a medical performers list and who

(a) S.I. 2003/1250

(b) Article 56 was substituted by Article 3 of S.I. 2004/311 (NI 2)

(c) S.R. 1997 No. 387 – Regulation 12 was substituted by S.R. 2005 No. 231 - regulation 8

(d) 2004 No. 141

performs essential services, enhanced services, additional services, dispensing services, commissioned services, OOH services or certification services (or a combination thereof)—

- (a) under a GMS contract or an APMS contract,
- (b) on behalf of an OOH provider, or
- (c) under a contract of service or for services with a Health and Social Services Board which relates to it to arrangements by it to provide services under Article 56(2)(b) of the 1972 Order;

“GP provider” means a GP performer who is—

- (a) a GMS practice or an APMS contractor.
- (b) a partner in a partnership that is a GMS practice or an APMS contractor, or
- (c) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor,

and who performs medical services as or on behalf of that practice or contractor;

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(a);

“host Health and Social Services Board” means—

- (a) in respect of a non-GP provider who is—
 - (i) a partner in a partnership—
 - (aa) that is a GMS practice;
 - (bb) that 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 in shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of essential services;
 - (iii) an individual who is an APMS contractor,

the Health and Social Services Board with which that partnership (in the case of (i)), company (in the case of (ii)) or contractor (in the case of (iii)) has entered into a contract referred to in those provisions;

- (b) in respect of a practitioner, means the Health and Social Services Board on whose medical performers list his name appears;

“Non-GP provider” means—

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who is able to demonstrate to the satisfaction of the Department that he assists in the provision of HPSS services provided by that practice ;
- (b) a partner in a partnership that is an APMS contractor—
 - (i) that has entered into an APMS contract for the provision of primary medical services, but
 - (ii) who is not a GP provider and who is able to demonstrate to the satisfaction of the Department that he assists in the provision of HPSS services provided by that partnership;
- (c) a shareholder in a company limited by shares that is—
 - (i) a GMS practice, or
 - (ii) an APMS contractor that has entered into an APMS contract for the provision of primary medical services,

but who is not a GP provider and who demonstrates to the satisfaction of the Department that he assists in the provision of HPSS services provided by that company;

(a) 2002 c. 17

- (d) an individual who is an APMS contractor but who is not a GP provider and who is able to demonstrate to the satisfaction of the Department that he participates in the provision of HPSS services;

“OOH provider” shall be construed in accordance with regulation 2A;

“out of hour’s period” means—

- (a) the period beginning at 6:30pm on any day from and including Monday to Thursday and ending at 8am the following day;
- (b) the period between 6:30pm on and including Friday and 8am on the following Monday; and
- (c) any public holiday or local holiday agreed with the Health and Social Services Board;”

(c) in the definition of “employing authority”—

- (i) omit paragraph (f)(a),—
- (ii) after paragraph (g) add the following paragraphs—
 - “(h) an OOH provider;
 - (i) an APMS contractor;
 - (j) a GMS practice.”;

(d) for the definitions of “medical list”, “practice staff”, “OOH services” and “trainee practitioner”, substitute respectively—

“ “practice staff” means a person (other than an assistant practitioner, a principal practitioner, a trainee practitioner or a non-GP provider) employed by a GMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides;

“OOH services” means such services as are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice to patients to whom the practice is required by its GMS contract to provide essential services, would be or would be similar to essential services;

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

until the coming into operation for all purposes of Article 5 of the 2003 Order, means a general medical practitioner who—

- (a) has been approved for that purpose by the Joint Committee on Postgraduate Training for general practice under regulation 7 of the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998(b), and
- (b) from the coming into operation for all purposes of that Article, a general medical practitioner who is approved under that Article for the purpose of providing training under Article 5 of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise;”.

(e) in the definition of “officer” after “person” insert “other than a GP performer”;

(f) in the definition of “practitioner” (e) for paragraph (a), substitute—

“(a) a registered medical practitioner, other than a trainee practitioner, who is a locum practitioner, a GP provider or GP performer;”.

Insertion of new regulation (2A) in the Superannuation Scheme Regulations relating to the approval of OOH providers

4. After regulation 2 of the Superannuation Scheme Regulations (Interpretation) add—

“Approved Out of Hours Providers

2A.—(1) For the purposes of these Regulations, an “OOH provider” is—

(a) Paragraph (f) was inserted by S.R. 1997 No.390
(b) S.R. 1998 No.13
(c) The definition of “practitioner” was inserted by S.R. 2005 No. 534

- (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 or GMS practices, and the majority of those members are—
 - (aa) APMS contractors or GMS practices whose APMS contracts or GMS contracts, require them to provide OOH services, or
 - (bb) registered medical practitioners who are partners or shareholders in an APMS Contractor or GMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under an APMS contract or a GMS contract,
 - (ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services; and
 - (iii) in respect of which a Health and Social Services Board appointed by the Department to act on its behalf—
 - (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) the memorandum of articles or rules of which—
 - (aa) prohibit the payment of dividends to its members,
 - (bb) require its profits (if any) or other income to be applied in promoting its objects, and
 - (cc) require all 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 or anything incidental or conducive thereto,
 - (v) has at least one member who is—
 - (aa) an APMS contractor or a GMS practice,
 - (bb) a partner in a partnership that is an APMS contractor or a GMS practice or,
 - (cc) a shareholder in a company limited by shares that is a APMS contractor or a GMS practice,
 - (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice, for the provision of OOH services; and
 - (vii) and is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
 - (aa) pursuant to a written application made by the body to it for that purpose, and
 - (bb) that Health and Social Services 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 body corporate is to be treated as another person's "associated company" if that person has control of it, except where that person is an employing authority; and for these purposes, 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 shall

make a written application to a Health and Social Services Board appointed by the Department to act on its behalf (the appointed Health and Social Services Board).

(4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Health and Social Services Board (if given) shall have effect (“the nominated date”).

(5) Where before 19th December 2005,—

(a) a company limited by guarantee or other body corporate makes an application which contains a nominated date earlier than the date on which approval is subsequently given (“the approval date”); and

(b) the appointed Health and Social Services Board is satisfied that, throughout the period beginning with and including the nominated date and ending with the approval date, the company or other body has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(6) Where, before 1st March 2006—

(a) a company limited by guarantee or other body corporate makes an application which contains a nominated date later than the approval date; and

(b) the appointed Health and Social Services Board is satisfied that the company or other body will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(7) Where, on or after 1st March 2006, a company limited by guarantee or other body corporate makes an application and;

(a) the appointed Health and Social Services 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.

(8) Where—

(a) paragraph (5) or (6) applies, HPSS employment shall be treated as commencing on the nominated date;

(b) paragraph (7) applies, it shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(9) For the purposes of this regulation—

(a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be, and

(b) the “nominated date” cannot be a date earlier than 1st April 2004.

(10) The appointed Health and Social Services Board may give an OOH provider a notice in writing terminating its participation in the scheme where the provider—

(a) does not have in force a guarantee, indemnity or bond as required by the Department in accordance with regulation 11(8);

(b) has ceased to satisfy the conditions for approval as an employing authority.

(c) has notified the Health and Social Services 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 II of the Insolvency (Northern Ireland) Order 1989(a),

(ii) an application for an administration order has been made or an administrator has been appointed under Part III of the 1989 Order,

(iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order,

(a) S.I. 1989/2405 (N.I. 19)

- (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 V of the 1989 Order, 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 (Northern Ireland) Order 1986(a).
- (11) An OOH provider—
- (a) shall give the appointed Health and Social Services Board notice in writing upon the occurrence of any of the events referred to in paragraph (10)(c) and shall give such notice on the same day as that event;
 - (b) that wishes to cease to participate in the Scheme shall give the appointed Health and Social Services Board and its employees no less than 3 months notice in writing (to commence with and include the date of that notice) of that fact.
- (12) An OOH provider shall cease to participate in the Scheme on—
- (a) such date as the appointed Health and Social Services Board may specify in a notice under paragraph (10);
 - (b) the day upon which the period referred to in paragraph (11)(b) expires where a notice under that sub-paragraph (b) has been given.”.

Amendment of Regulation 3 of the Superannuation Scheme Regulations

5. For paragraph (1) of regulation 3 of the Superannuation Scheme Regulations (Meaning of “superannuable pay”) substitute—

- “(1) In these Regulations, “superannuable pay” means subject to the provisions of this regulation—
- (a) all salary, wages, fees and other regular payments made to a member in respect of superannuable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime;
 - (b) superannuable earnings calculated in accordance paragraph 3, or as the case may be, paragraph 4 of Schedule 2 in the case of a non-GP provider who does not receive any of the payments referred to above in respect of his superannuable employment as an officer by virtue of the application of these Regulations to him as if he were an officer under regulation 74 (Practitioners and trainee practitioners).”

Amendment of regulation 9 of the Superannuation Scheme Regulations

6. Regulation 9 of the Superannuation Scheme Regulations (Opting-out of the Scheme) shall be amended in accordance with the following provisions of this regulation.

- (1) For paragraph (2), substitute—
- “(1A) Where, following an application under regulation 2A(5) an OOH provider is approved as an employing authority, an employee of such a provider who does not wish to, or who no longer wishes to, participate in the Scheme—
- (a) may opt out of it from any day falling within the period specified in paragraph (1B) by giving notice in writing (“an opt-out notice”) to that provider; and
 - (b) will be treated as having left superannuable employment on the date on which that notice takes effect.
- (1B) That period—
- (a) starts on the date on which the HPSS employment is treated as commencing under regulation 2A(8); and
 - (b) ends on the date on which the opt-out notice is received by the OOH provider.
- (1C) A notice referred to in paragraph (1A) must be given no later than one month from the end of the pay period in which the date on which approval of an application under regulation 2A falls.

(a) 1986 No. 1032 (N.I.6)

- (2) A notice—
 - (a) referred to in paragraph (1) shall take effect—
 - (i) from the first day of the pay period immediately following its receipt by the employing authority; or
 - (ii) where a later date is specified in the notice, from the first day of the period following the pay period in which the specified date falls;
 - (b) referred to in paragraph (1A) shall take effect—
 - (i) from the first day of the pay period immediately following its receipt by the employing authority; or
 - (ii) where a date not earlier than the date on which HPSS employment is treated as commencing under regulation 2A(8) is specified in the notice, from that date.
- (3) A person—
 - (a) who opts-out of the Scheme under paragraph (1) before the end of the pay period during which the employing authority included that person in the Scheme; or
 - (b) whose opt-out under paragraph (1A) takes effect in respect of that period,
 shall be treated as never having been included in the Scheme.”.
- (2) In paragraph (5) after “opted-out of the scheme”, insert “in accordance with paragraph (1)”.
- (3) After paragraph (5), insert—

“(5A) Subject to paragraph (6), a person who has previously opted-out of the Scheme in accordance with paragraph (1A) may, if eligible to do so, join or rejoin the Scheme by giving notice in writing to the employing authority and on doing so shall be included in the Scheme on—

 - (a) the first day of the first pay period after the notice to join or rejoin the Scheme is received; or
 - (b) such other date, being—
 - (i) the first day of a pay period; and
 - (ii) no earlier than the first day of the pay period in which the opt-out notice referred to in paragraph (1A) (or the latest of them) took effect in accordance with paragraph (2),
 as is specified in that notice.”.

Amendment of Regulation 10 of the Superannuation Scheme Regulations

7. In regulation 10 of the Superannuation Scheme Regulations (Contributions by members) after paragraph (5) insert—

- “(6) Without prejudice to any other method of recovery, where an employing authority has failed to deduct contributions in accordance with paragraph (5), the Department may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits payable to, or in respect of the member entitled to them where—
- (a) the member agrees to such a deduction; and
 - (b) the deduction is to the member’s advantage.”.

Amendment of regulation 11 of the Superannuation Scheme Regulations

8. In regulation 11 of the Superannuation Scheme Regulations (Contributions by employing authorities) after paragraph (7) insert—

- “(8) Where an employing authority which is—
- (a) a GMS practice, or
 - (b) an APMS contractor, or
 - (c) an OOH provider,

fails to pay or remit contributions in accordance with the provisions of this regulation, the Department may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount and provided by a person approved by the Department, which provides for the payment to the Department of all future liabilities of the employing authority under these Regulations or under the Health and Personal Social Services (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999(a) should the authority fail to meet them.”.

Amendment of regulation 74 of the Superannuation Scheme Regulations

9. In regulation 74 of the Superannuation Scheme Regulations (Practitioners and trainee practitioners) after paragraph (2), insert—

“(3) These Regulations apply from 1st April 2004 to a non-GP provider as if they were whole-time officers employed by the relevant Health and Social Services Board.”.

Amendment of regulation 83A of the Superannuation Scheme Regulations

10. In paragraph (1) of regulation 83A(b) of the Superannuation Scheme Regulations (Participators in pilot schemes)—

- (a) in sub-paragraph (a) omit “a registered medical practitioner or”;
- (b) in sub-paragraph (a)(i) omit “a medical pilot scheme employee,”;
- (c) for sub-paragraph (d) substitute—
 - “(d) a registered dentist to whom paragraph (a) does not apply shall—
 - (i) if he is providing piloted services, be treated as a practitioner employed by the relevant Health and Social Services Board; or
 - (ii) if he is a dental pilot scheme employee, be treated as an officer employed by the provider of the piloted services;”;
- (d) in sub-paragraph (e) omit “ as a medical pilot scheme employee, or as”;
- (e) omit sub-paragraph (f)(ii)
- (f) omit sub-paragraph (g).

Amendment of regulation 97 of the Superannuation Scheme Regulations

11.—(1) In regulation 97 of the Superannuation Scheme Regulations (Accounts and actuarial reports)—

- (a) in paragraph (3) for “31st March 1999” and “5 years” substitute “31st March 2007” and “4 years” respectively;
- (b) for paragraph (5) substitute—
 - “(5) Employing authorities shall keep records of all—
 - (a) contributions collected from salaries and wages; and
 - (b) contributions to the Scheme made under regulation 11(1) (Contributions by employing authorities)

in a manner approved by the Department, and except where the Department waives such requirement, provide a statement in respect of such matters in respect of all members except principal practitioners and non –GP providers to the Department within 2 calendar months of the end of each financial year.”.

(2) After paragraph (5), insert the following paragraph—

“(6) In respect of each financial year, employing authorities shall also provide the Department with the best estimate in writing that can reasonably be made of the total contributions due to the scheme under regulations 10(1) and 11(1) within 2 months of the end of each such year.”.

(a) S.R. 1999 No. 294 as amended by S.R. 2002 No. 129; S.R. 2004 No. 104 and S.R. 2005 No. 154
(b) Regulation 83A was inserted by S.R. 1999 No. 293

Amendment of Schedule 2 of the Superannuation Scheme Regulations

12. Schedule 2 of the Superannuation Scheme Regulations (Medical and dental practitioners) shall be amended in accordance with the following provisions of this Regulation.

- (1) In paragraph 1(b) (additional definitions)—
- (a) omit the definition of “associate general practitioner(a)”;
 - (b) for the definition of “Assistant practitioner” substitute—
 - “assistant practitioner” means—
 - (a) in the case of a registered medical practitioner—
 - (i) a GP performer who is not a GP provider but who is—
 - (aa) employed (whether under a contract of service or for services) by a GMS practice, an APMS contractor, an OOH provider or a Health and Social Services Board, and
 - (bb) who in that employment is engaged wholly or mainly in assisting his employer in the discharge of the employer’s duties as a GMS practice, an APMS contractor, an OOH provider or a Health and Social Services Board; or
 - (ii) a registered medical practitioner who is participating in a Doctor’s Retainer Scheme.
 - (b) in the case of a dental practitioner, means a practitioner whose name is included in a dental list prepared by each Health and Social Services Board pursuant to regulation 4 of the Health and Personal Services General Dental Services Regulations (Northern Ireland) 1993(b) employed by a principal practitioner, who in that employment is wholly or mainly engaged in assisting his employer in the discharge of the employer’s duties as a registered dentist;”.
 - (c) in the definition of “locum practitioner(c)” for paragraph (c) there shall be substituted—
 - “(c) a registered medical practitioner (other than a trainee practitioner) 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 of services by—
 - (a) a GMS practice;
 - (b) an APMS Contractor;
 - (c) an OOH provider, or
 - (d) a Health and Social Services Board
- to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services and certification services (or any combination thereof).”.
- “principal practitioner” means—
- (a) in the case of a medical practitioner, a GP provider;
 - (b) in the case of a dental practitioner, a registered dentist who is included in a list prepared in accordance with regulation 4(1) of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993;
- (d) at the appropriate place in the alphabetical order insert—
- “Board and advisory work” means—
- (a) work undertaken as a member of the Board of an employing authority, which is not a GMS practice, an APMS contractor or an OOH provider; or
 - (b) advisory work commissioned by and undertaken on behalf of such an authority, where 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,

(a) The definition was amended by Regulation 4(1)(b) of S. R. 2005 No. 534

(b) S.R. 1993 No. 326

(c) The definition of “locum practitioner” was inserted by regulation 4(1)(c) of S.R. 2005 No. 534

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;”;

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

- (a) a GP performer, a GMS practice, an APMS contractor and an OOH provider; and
- (b) either—
 - (i) a special health and social services agency, which relates to the provision of health services;
 - (ii) the Department or a Health and Social Services Board under Article 14A of the 1972 Order (which relates to arrangements for provision of health services by other bodies or persons); or
 - (iii) a Health and Social Services Trust under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (Specific Powers),

which is for the provision of health services.

(2) In paragraph 2 (Application of Regulations with modifications)—

- (a) for the words “relevant Health and Social Services Board” substitute “host Health and Social Services Board”;
- (b) paragraph (1A) shall be deleted.

(3) In paragraph 3 (Meaning of superannuable earnings)—

- (a) in sub-paragraph (1)—
 - (i) after “principal practitioner”(a), insert “ and a non-GP provider who is not in receipt of a salary, wages, fees or any other regular payment in respect of his employment as an officer by virtue of the application of these Regulations to him as if he were such an officer under regulation 74”;
 - (ii) for sub-paragraph (a) substitute?
“(a) any sum on account of practice expenses; and;”
- (b) for sub-paragraph (2)(a)(b) substitute—
“(a) income which accrues to the practitioner or the non-GP provider which is derived from—
 - (i) a GMS contract,
 - (ii) an APMS contract,
 - (iii) payments from, or to a practitioner who is a GMS practice or an APMS contractor in respect of the performance of certification services or commissioned services,
 - (iv) his engagement by a Health and Social Services Board to assist in the provision of primary medical services under Article 56(2) of the 1972 Order,
 - (v) in the case of a practitioner, the provision of locum services,
 - (vi) payments made to a principal practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services and certification services,
 - (vii) payments made to a principal practitioner by an employing authority in respect of general dental services, general ophthalmic services or pharmaceutical services provided by the practitioner,
 - (viii) practice based work carried out in educating or training, or organising the education or training of, medical students or practitioners.”
- (c) after sub-paragraph (c) there shall be inserted the following sub-paragraph—
“(d) in the case of a practitioner, allowances and any other sums (but excluding payments made to cover to cover expenses) paid in respect of Board and advisory work.”.

(4) For paragraph 4 “(Calculating “superannuable earnings” of practitioners in partnership)”, substitute—

(a) The words “principal practitioner” were inserted by regulation 3(1)(a) of S.R. 2005 No. 534
(b) Paragraph 3 was amended by SR 2005 No. 534

“Calculating “superannuable earnings” of practitioners in partnership

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

(2) Where the principal 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 superannuable earnings shall correspond to each partner’s share of the partnership profits.

(3) Where a registered medical practitioner practising in partnership also has earnings in respect of HPSS employment other than as a practitioner, the partners that elect the superannuable earnings of that practitioner, as determined in accordance with Sub-paragraphs (1) or (2), shall be reduced by the amount of those earnings and the superannuable 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 sub-paragraphs (2) and (3) will be made by the Health and Social Services Board to which the partners are required to give notice of their election in accordance with paragraph 5.”.

(5) In paragraph 5 (Elections relating to the calculation of “superannuable earnings” in partnerships)

(a) In sub-paragraph (1) after—

(i) “Practitioners”, insert “and any non-GP providers who are partners in any partnership”;

(ii) “writing”, insert “to their host Health and Social Services Board”;

(b) omit sub-paragraph (3);

(c) In sub-paragraph (4) after –

(i) “principal practitioners” insert “and non-GP providers”;

(ii) “each practitioner’s” insert “and non-GP provider’s”;

(d) in sub-paragraph (5) for “quarter” in both places where it occurs, substitute “financial year”.

(6) In paragraph 6(a) (Meaning of “superannuable earnings” in relation to other practitioners)—

(a) For sub-paragraph (1) substitute—

“(1) In the case of an assistant practitioner “superannuable 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, general dental services or pharmaceutical services, but does not include bonuses or payments made to cover expenses or for overtime;

(b) allowances and other sums (but excluding payment made to cover expenses) paid by an employing authority in respect of Board and advisory work; and

(c) practise based work carried out in educating or training, or organising the education or training of, medical students or practitioners.”.

(b) in sub-paragraph (2)—

(i) in (a) before “practitioner” insert “dental”

(ii) in (b) omit “medical or”;

(c) for sub-paragraph (4) substitute—

(a) Paragraph 6 was amended by S.R. 2005 No. 534

“(4) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to primary medical services, commissioned 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.”

(7) For paragraph 10 (Contributions to the scheme) substitute—

“Contributions to the scheme

10.—(1) In the case of members who are practitioners or non-GP providers, regulation 10 (Contributions by members) and regulation 11 (Contributions by employing authorities) are modified as described in the following sub-paragraphs.

(2) The contribution rate for practitioners and non-GP providers is 6 percent of superannuable earnings.

(3) Contributions must be paid until the member—

- (a) reaches age 70 or completes 45 years’ superannuable service and reaches age 65, if the member is not a special class officer;
- (b) reaches age 65, or completes 45 years’ superannuable service and reaches age 60, if the member is not a special class officer.

(4) Save where sub-paragraph (5) applies, principal practitioners and non-GP providers shall pay regulation 10 contributions to the host Health and Social Services Board and dental practitioners shall pay such contributions to the appropriate employing authority.

(5) Where a principal practitioner or 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 shall—

- (a) deduct regulation 10 contributions from any superannuable earnings it pays to him; and
- (b) where it is not also the Health and Social Services Board, pay those contributions to the host Health and Social Services Board.

(6) Subject to sub-paragraph (7), where a principal practitioner or a non-GP provider is—

- (a) an employing authority which is a GMS practice or an APMS contractor; or
- (b) a shareholder or partner in such an employing authority,

that employing authority shall pay regulation 11(1) contributions to the host Health and Social Services Board.

(7) Where the principal practitioner or non-GP provider is a shareholder or partner in more than one employing authority referred to in sub-paragraph (6), each such employing authority shall pay regulation 11(1) contributions on superannuable earnings it pays to the practitioner or non-GP provider or, as the case may be, on the practitioner’s or non-GP provider’s share of the partnership profits, to the host Health and Social Services Board.

(8) Where sub-paragraph (5) applies (but sub-paragraph (6) does not) and the employing authority referred to in that sub-paragraph is—

- (a) not the host Health and Social Services Board, that employing authority shall pay regulation 11(1) contributions to the host Health and Social Services Board;
- (b) is the host Health and Social Services Board, that Board shall pay the contributions to the Department in respect of any superannuable earnings it pays to him.

(9) Where an assistant practitioner (other than a locum practitioner) is engaged under a contract of services or for services by an employing authority, that authority shall—

- (a) deduct regulation 11 contributions from any superannuable earnings it pays to him; and
- (b) where it is not also the host Health and Social Services Board, pay those contributions to the host Health and Social Services Board.

(10) Where sub-paragraph (9) applies, and the employing authority referred to in that sub-paragraph—

- (a) is not the host Health and Social Services Board, that employing authority shall pay regulation 11(1) contributions to the host Health and Social Services Board;
- (b) is the host Health and Social Services Board, that employing authority shall pay regulation 10 and 11(1) contributions to the Department in respect of any superannuable earnings it pays to him.

(11) Locum practitioners must pay regulation 10 contributions to the host Health and Social Services Board.

(12) Where a locum practitioner is liable to pay contributions under sub-paragraph (11) in respect of superannuable locum work he does for an employing authority which is not—

- (a) the host Health and Social Services Board;
- (b) a GMS practice; or
- (c) an APMS contractor,

that employing authority shall pay regulation 11(1) contributions to the host Health and Social Services Board.

(13) Where contributions are payable by a locum practitioner under sub-paragraph (11) in respect of superannuable locum work carried out for an employing authority which is—

- (a) the host Health and Social Services Board;
- (b) a GMS practice; or
- (c) an APMS contractor,

the host Health and Social Services Board shall pay contributions payable under regulation 11(1) in respect of such a practitioner.

(14) Contributions which are due to be paid to the host Health and Social Services Board in accordance with this paragraph shall be paid to that Board not later than the 7th day of the month following the month in which the earnings were paid.

(15) Where an employing authority—

- (a) is not the host Health and Social Services Board, it shall be a function of that employing authority to provide the host Health and Social Services Board with a record of—
 - (i) any superannuable earnings paid by it to a practitioner;
 - (ii) contributions deducted by it in accordance with sub-paragraph (5) or (9), not later than the 7th day of the month following the month in which the earnings were paid;
- (b) is the host Health and Social Services Board that has deducted contributions in accordance with sub-paragraph (5) or (9) and is liable to pay regulation 11(1) contributions in respect of any superannuable earnings it pays to a practitioner, it shall be a function of that Board to maintain a record of—
 - (i) the matters referred to in paragraph (a)(i) and (ii);
 - (ii) any contributions paid to it by a principal practitioner; and
 - (iii) any contributions paid to it by a locum practitioner.

(16) It shall be a function of the host Health and Social Services Board to pay the contributions

- (a) paid to it by a principal practitioner or locum practitioner;
- (b) paid to it by another employing authority;
- (c) it is liable to pay by virtue of sub-paragraphs (8)(b) and (10)(b),

in accordance with the provisions of this paragraph, to the Department not later than the 19th day of the month following the month in which the earnings were paid.

(17) Without prejudice to any other method of recovery, where in respect of regulation 10 contributions—

- (a) a principal practitioner, assistant practitioner, locum practitioner or non-GP provider has failed to pay contributions;
- (b) an employing authority has failed to deduct such contributions,

in accordance with this paragraph, the Department may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them where —

- (a) the member agrees to such a deduction; and
- (b) the deduction is to the member's advantage.

(18) For the purposes of this paragraph—

- (a) "regulation 10 contributions" means contributions payable under regulation 10 by a practitioner under the Scheme;
- (b) "regulation 11(1) contributions" means contributions payable under regulation 11(1) by an employing authority in respect of a practitioner."

(8) In sub-paragraph (6) of paragraph 19 (Members absent from work)—

- (a) Omit the words "medical or" where they occur;
- (b) In paragraph (b)(a), omit the words from "whether" to the end.

(9) After paragraph 22 (Reduction of pension on return to HPSS employment), add—

"Accounts and actuarial returns

23.—(1) In the case of members who are practitioners or non-GP providers, regulation 97 (Accounts and actuarial reports) is modified as in this paragraph.

(2) In respect of each financial year, a principal practitioner and a non-GP provider shall provide the host Health and Social Services Board with a certificate of their superannuable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which he is a member; and
- (b) the return he has made to the Inland Revenue in respect of his earnings for that year no later than one month from and including the date on which the return was required to be submitted to the Inland Revenue.

(3) In respect of each financial year, a host Health and Social Services Board shall forward a record of—

- (a) all contributions to the Scheme made under paragraph 10 in respect of principal practitioners and non-GP providers; and
- (b) their superannuable earnings,

to the Department within 1 month of the end of the financial year immediately following the financial year to which that return relates."

13.—(1) The Injury Benefits Regulations shall be amended in accordance with the provisions of this regulation.

(2) In regulation 2 (Interpretation)—

(a) In—

- (i) the definition of "assistant practitioner" for paragraph (a)(b), substitute—
 - "(a) means a GP performer who is not a GP provider but who is—
 - (i) employed whether under a contract of service or for services by a GMS practice, an APMS contractor, an OOH provider or a Health and Social Services Board; and
 - (ii) who in that employment is engaged wholly or mainly in assisting his employer in the discharge of the employer's duties as a GMS practice, an APMS contractor or an OOH provider;"

(a) Sub-paragraph (b) was inserted by S.R. 1998 No. 299 and amended by S.R. 1999 No. 293

(b) The definition of "assistant practitioner" was amended by paragraph 9(2) of Schedule 1 to the General Medical Services Transitional and Consequential Provisions (No. 2) (Northern Ireland) Order 2004 - S.R. 2004 No. 156

- (ii) the definition of “practitioner” after “practitioner” in paragraph (f)(a) insert “(other than a locum practitioner)” and after sub-paragraph (ii), add—
“(iii) an APMS contract,.”
- (b) At the appropriate place in the alphabetical order, insert—
“APMS contract” has the same meaning as in the Superannuation Scheme Regulations;
“APMS contractor has the same meaning as in the Superannuation Scheme Regulations;
“enhanced services” with regard to—
(a) a GMS practice, has the meaning given in regulation 2 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 of the GMS Contracts Regulations.
“enhanced services” has the same meaning as in the Superannuation Scheme Regulations;
“GP performer” has the same meaning as in the Superannuation Scheme Regulations;
“GP provider” has the same meaning as in the principal Regulations;
“GMS practice” has the same meaning as in the Superannuation Scheme Regulations;
“non-GP provider” has the same meaning as in the Superannuation Scheme Regulations;
“OOH provider” shall be construed in accordance with regulation 2A of the Superannuation Scheme Regulations;”.
- (3) In regulation 3(b) (Persons to whom these Regulations apply) after paragraph (1) (j), add—
“(k) a non- GP Provider”.
- (4) In regulation 5(c) (Recovery of costs) after paragraph (7)(e) there shall be inserted the following sub-paragraph—
“(f) to—
(i) a person providing personal medical services as if he were a whole-time officer of that Health and Social Services Board;
(ii) non-GP provider as if he were a whole-time officer of the Health and Social Services Board that has entered into the GMS contract or APMS contract.”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 14th December 2005.

(L.S.)

D Bingham

Senior Officer of the Department of Health, Social Services and Public Safety

The Department of Finance and Personnel hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 14th December 2005.

(L.S.)

M McIvor

Senior Officer of the Department of Finance and Personnel

(a) Paragraph (f) was inserted by paragraph 9(2) of Schedule 1 to S.R. 2004 No. 156
(b) Regulation 3 was amended by paragraph 9(3) of Schedule 1 to S.R. 2004 No. 156
(c) Regulation 5 was amended by paragraph 9(4) of Schedule 1 to S.R. 2004 No. 156

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Health and Personal Social (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95), “the Superannuation Scheme Regulations”, which provide for the superannuation of persons engaged in the Health and Personal Social Services. The Regulations also amend the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001, S.R. 2001 No. 367 which provide for the payment of injury benefits to, or in respect of any person engaged in the Health and Personal Social Services whose earning ability is reduced or who dies as a result of an injury or disease contracted in the course of his or her employment.

The Regulations shall have retrospective effect as authorised by Article 14(1) of the Superannuation (Northern Ireland) Order 1972.

Regulation 1 provides for the citation, commencement and retrospective effect.

Regulation 2 contains definitions.

Regulations 3 to 12 amend the Superannuation Scheme Regulations

Regulation 3 amends regulation 2 of the Superannuation Scheme Regulations (Interpretation) and inserts new definitions relating to the types of medical services provided and the persons or bodies who provide them. It also amends the definition of “employing authority” so as to include those providers.

Regulation 4 inserts new regulation 2A (Provisions relating to Out of Hours providers) into the Superannuation Scheme Regulations which deals with the date from which a company which satisfies the conditions to be an Out of Hours (OOH) provider, is to be approved as an “employing authority”. It also sets out the circumstances when such a provider may, and will, cease to be such an employing authority.

Regulation 5 amends regulation 3 of the Superannuation Scheme Regulations (Meaning of superannuable pay) by substituting a new definition of “superannuable pay”.

Regulation 6 amends regulation 9 of the Superannuation Scheme Regulations (Opting out of the Scheme) to enable an employee of an OOH provider that has retrospectively been approved as an employing authority for the purposes of the Scheme to opt-out, join or rejoin the Scheme during that retrospective period.

Regulation 7 amends regulation 10 of the Superannuation Scheme Regulations (Contributions by members) to provide that where an employing authority has failed to deduct contributions, the Department may recover the amount of those contributions by deduction from benefits payable to, or in respect of the member if that would be to the member’s advantage and the member agrees to the deduction.

Regulation 8 amends regulation 11 of the Superannuation Scheme Regulations (Contributions by employing authorities) by adding a new paragraph (8) which provides that certain employing authorities that have failed to pay or remit contributions to the Scheme in the past may, in the future, be required to have in force a guarantee, bond or indemnity to secure future payments of such contributions.

Regulation 9 amends regulation 74 of the Superannuation Scheme Regulations (Practitioners and trainee practitioners) so as to provide that Superannuation Scheme Regulations apply to non-GP providers as if they were whole-time officers as from 1st April 2004.

Regulation 10 amends regulation 83A of the Superannuation Scheme Regulations (Participants in pilot schemes) by omitting references to a registered medical practitioner engaged in such a scheme.

Regulation 11 amends regulation 97 of the Superannuation Scheme Regulations (Accounts and actuarial reports) so as to require certain employing authorities to provide the Department with a certificate of superannuable earnings within 12 months of the end of the financial year.

Regulation 12 amends Schedule 2 to the Superannuation Scheme Regulations (Medical and dental practitioners) as follows—

Paragraph (1) amends paragraph 1 of the Schedule (Additional definitions used in this Schedule) by amending and omitting existing definitions and adding new ones. In particular, it adds definitions of “board and advisory work”, “commissioned services” and “collaborative services”;

Paragraph (2) amends paragraph 2 of the Schedule (Applications of Regulations with modifications) in respect of Health and Social Services Boards;

Paragraph (3) amends paragraph 3 of the Schedule (Meaning of superannuable earnings) to provide new definitions of what constitutes “superannuable earnings” for principal practitioners and non-GP providers;

Paragraphs (4) and (5) amend paragraphs 4 and 5 of the Schedule (Calculating “superannuable earnings” of practitioners in partnership), (Elections in relation to the calculation of “superannuable earnings in partnerships) with or without a non-GP provider;

Paragraph (6) amends paragraph 6 of the Schedule (Meaning of “superannuable earnings” in relation to other practitioners) to provide new definitions of superannuable pay;

Paragraph (7) amends paragraph 10 of the Schedule (Contributions to the scheme) so as to specify to whom a Superannuation Scheme practitioner must pay his contributions in respect of the various services he provides. It also makes similar provision in relation to locum practitioners and non-GP providers and contributions by employing authorities;

Paragraph (8) amends paragraph 19(6) of the Schedule (Members absent from work) by omitting reference to a medical practitioner;

Paragraph (9) inserts a new paragraph 23 in Schedule 2 which modifies regulation 97 (Accounts and actuarial reports) in respect of practitioners and non-GP providers.

Regulation 13 amends the Injury Benefits Regulations

Regulation 13 amends the Injury Benefits Regulations as follows –

Paragraph (2) amends regulation 2 of the Injury Benefits Regulations (Interpretation) in like manner to those made to regulation 2 of the Superannuation Scheme Regulations;

Paragraph (3) amends regulation (3) of the Injury Benefits Regulations (Persons to whom these Regulations apply) so as to include a non-GP provider and a person providing personal medical services who is not a practitioner;

Paragraph (4) amends regulation 5(7) of the Injury Benefits Regulations (Recovery of costs) so that it also applies to a person providing personal medical services and a non-GP provider as if they were whole-time officers of the relevant Health and Social Services Board.

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