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STATUTORY INSTRUMENTS

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**2014 No. 570**

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

**PART 3**

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

**New Chapter 2.M**

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

*“Chapter 2.M*

*Independent Providers*

**2.M.1 General**

(1) In this Chapter—

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

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

“required level of cover” means a sum equal to 110% of 3/12ths of a reasonable estimate of the Independent Provider’s total annual contribution liability arising under regulations 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 in respect of the qualifying contract in respect of which it was granted employing authority status.

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

(a) is not otherwise an employing authority in respect of that individual;

(b) is a party to a qualifying contract;

(c) has been granted employing authority status for the purposes of this Section of the Scheme by the Secretary of State following a written application made by it to the Secretary of State for that purpose, and

(d) has, if so required by the Secretary of State, provided the Secretary of State with an IP guarantee.

(3) The “wholly or mainly condition”—

(a) requires that any employee of an Independent Provider performing services pursuant to a qualifying contract does so, if not for the whole of their time in that employment, then for more than 50% of that time;

(b) is to be assessed over—

(i) each scheme year, or

- (ii) part of a scheme year where the services referred to in paragraph (a) commence or cease part way through such a year.

## **2.M.2 IP Guarantees**

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

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

(3) Without prejudice to the generality of paragraphs (1) and (2), the Secretary of State may, in particular, require an Independent Provider to provide an IP guarantee if—

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

(4) Where the Secretary of State requires an Independent Provider to provide an IP guarantee the Secretary of State must require that guarantee to—

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

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

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

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

- (a) no later than 1 month prior to the start of a scheme year;
- (b) no later than 1 month after the date on which it was granted employing authority status;
- (c) no later than 1 month before the date on which they are expressed to cease to have effect (where that is not the start of a scheme year);
- (d) whenever it becomes a party to another qualifying contract;
- (e) immediately whenever it reasonably believes that its estimated contribution liability pursuant to regulations 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11 has increased, or may increase, by more than 10%;
- (f) upon the Secretary of State notifying it in writing that the Secretary of State considers that the sum guaranteed by those guarantees does not, at least, equal the required level of cover.

(7) Where paragraph (6)(e) applies, and the Independent Provider determines that the amount of cover currently provided by its extant IP guarantee(or guarantees where it has more than one) does not equal the required level of cover in respect of all of its qualifying contracts, it must within 14 days of that determination either—

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

(8) Where paragraph (6)(f) applies, and the Independent Provider determines that the amount of cover currently provided by its IP guarantee or guarantees remains at least equal to the required level of cover in respect of all of its qualifying contracts, it shall—

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

### **2.M.3 Approval Applications**

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

(2) An Independent Provider must apply for approval on either—

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

(3) An approval application must—

- (a) be in writing;
- (b) be in a form that the Secretary of State may from time to time require;
- (c) contain—
  - (i) a declaration that an employee of an Independent Provider who is, at the date of that application, already engaged in performing services pursuant to a qualifying contract satisfies the wholly or mainly condition;
  - (ii) an undertaking that any person who on or after the date of approval is engaged to perform such services will do so in a way that complies with the wholly or mainly condition;
- (d) contain a declaration that the Independent Provider is not already an employing authority in respect of any employee referred to in paragraph (c);

- (e) provide such details as the Secretary of State may from time to time require of the qualifying contracts to which the Independent Provider is a party;
  - (f) confirm that employing authority status is sought on a closed approval basis or, as the case may be, on an open approval basis;
  - (g) where the Secretary of State has, prior to the approval of an application, notified the Independent Provider that an IP guarantee is required, contain such details of that guarantee as the Secretary of State may from time to time require;
  - (h) provide an estimate, for the Scheme year in respect of which approval (if given) is to take effect, of—
    - (i) the gross sums the Independent Provider anticipates receiving from the commissioning party in respect of the clinical services it is to provide under each qualifying contract it is a party to;
    - (ii) the number of employees who will be engaged in performing services pursuant to each such qualifying contract and who will satisfy the wholly or mainly condition;
    - (iii) the total pensionable pay of those employees referred to in paragraph (ii);
    - (iv) the total member contributions payable by those employees pursuant to regulation 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2), 2.C.8 and 2.C.10;
    - (v) the total employer contributions payable in respect of those employees pursuant to regulation 2.C.5 and 2.C.11;
    - (vi) the total number of employees who would satisfy the wholly or mainly condition and who are engaged in performing services pursuant to each such qualifying contract but who are otherwise not eligible to be members of this Section of the Scheme;
    - (vii) the total estimated pay of those employee referred to in paragraph (vi).
- (4) An approval application may specify the date from which approval by the Secretary of State (if granted) is to have effect (“the nominated date”).
- (5) Where the Secretary of State is satisfied that the Independent Provider will satisfy the matters set out in paragraph (3) at that nominated date, approval shall take effect from that date provided it is later than the date on which approval is granted.
- (6) If an approval application does not specify a nominated date, approval shall take effect from that date it is granted.
- (7) Where an Independent Provider has been granted employing authority status, any of its employees engaged in performing services pursuant to any qualifying contract in respect of which that approval was granted or extends under paragraph (8) or (9) and who satisfy the wholly or mainly condition, shall become an officer members of this Section of the Scheme: this applies equally to any such employee who would, if otherwise a member of this Section of the Scheme, be subject to Part 3 of these Regulations.
- (8) Where an Independent Provider has been granted employing authority status in respect of one or more qualifying contracts, that approval and the basis on which it was granted automatically extends to any other qualifying contract to which the Independent provider is, or subsequently becomes, a party: approval in respect of any other qualifying contract takes effect from the date that other qualifying contract was entered into.
- (9) Where an Independent Provider is an associated Independent Provider (“AIP”) in relation to another Independent Provider (“IP1”) and IP1 has been granted employing authority status in respect of one or more qualifying contracts, that approval and the open

or closed approval basis on which it was granted automatically extends to any qualifying contract to which—

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

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

(10) Where an Independent Provider, having been granted employing authority status, subsequently becomes a party to another qualifying contract or that approval extends under paragraph (8) or (9) to another qualifying contract and that contract would have the effect of increasing its estimated contribution liability under regulations 2.C.5, 2.C.6, 2.C.8, 2.C.10 and 2.C.11 by 10% or more on the date on which approval in respect of that contract takes effect, the Secretary of State may require that Independent Provider to take any of the steps referred to in paragraph 11.

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

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

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

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

- (3) A modification notice must—
  - (a) be in writing;
  - (b) specify a date on which the modification is to take effect ("the operative modification date"): that date cannot fall within the period of 6 months commencing with the date of the modification notice ("the modification period");
  - (c) be accompanied by the written consent of any affected person who has consented to the giving of that notice: for these purposes an "affected person" is any person who became an officer member of this Section of the Scheme pursuant to regulation 2.M.3(7).

- (4) On the operative modification date—
  - (a) the basis of the Independent Provider's approval changes from an open to a closed approval basis;

- (b) any affected person who gave consent to the giving of the modification notice ceases to be a member of this Section of the Scheme;
- (c) any affected person who did not give such consent remains a member of this Section of the Scheme.

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

(6) Nothing in sub-paragraph (5) prevents a person referred to in that paragraph from becoming a member of this Section of the Scheme by virtue of their employment with some other employing authority.

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

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

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

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

(3) An application referred to in paragraphs (1) and (2) must specify—

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

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

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

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

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

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

This is subject to sub-paragraph (4).

(4) Where the Secretary of State is satisfied that the Independent Provider has provided a reasonable explanation or justification for the threshold being exceeded, the Secretary of State may require the Independent Provider to pay an employer contribution surcharge on such part of that excess as the Secretary of State considers reasonable having regard to its declared NHS income, profits, losses and expenses for the scheme year in question.

(5) Where the employer contribution surcharge has been imposed on all or part of the excess in accordance with paragraphs (3) and (4) and the Secretary of State subsequently considers that all or part of it should no longer attract the surcharge, the Secretary of State must notify the Independent Provider of what part of the excess is to remain subject to an employer contribution surcharge.

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

(7) Where an Independent Provider fails to pay an employer contribution surcharge, it is liable to pay the administration charge and interest referred to in regulation 2.J.9A: interest is to continue to accrue on the late paid surcharge for so long as it remains unpaid and further administration charges may be levied in respect of it.

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

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

(10) Where the 75% threshold is exceeded, the whole of the pensionable pay an employee receives in respect of the performance of services pursuant to a qualifying contract is nevertheless (subject to regulation 2.A.12A) to count both for the purpose of ascertaining that employee's entitlement to benefits under these Regulations and for the purpose of calculating them.

### **2.M.7 Default Notices**

(1) Where, in respect of a qualifying contract, an Independent Provider does not pay the Secretary of State, on the due date, all of the contributions which it is liable to pay under regulations 2.C.1, 2.C.5, 2.C.6, 2.C.8, 2.C.10 or 2.C.11, the Secretary of State must issue a default notice to that Independent Provider.

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

- (a) of any charges accrued or accruing in accordance with regulation 2.J.9A;
- (b) that continued non-payment of the contributions will result in the Secretary of State terminating the Independent Provider's employing authority status on the day following the end of the second month following the month for which the contributions are due but not paid.

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

- (4) Where, one month after issue of a default notice, some or all of the contributions referred to in paragraph (1) remain unpaid, the Secretary of State must—
- (a) notify the commissioning party to a qualifying contract referred to in subparagraph (1) of that non-payment specifying the period or periods for which contributions are outstanding and the amount or amounts outstanding, and
  - (b) request that commissioning party to consider withholding from any payments it is due to pay to the Independent Provider in pursuance of any qualifying contract, an amount equal to the amount of the unpaid contributions and to pay that amount to the Secretary of State.
- (5) Where the Secretary of State receives an amount from the commissioning party pursuant to paragraph 4(b), the Secretary of State must—
- (a) give that commissioning party a written receipt of such payment;
  - (b) notify the Independent Provider in writing that a sum equal to the amount of its unpaid contributions has been withheld pursuant to paragraph 4(b) and paid to the Secretary of State by the commissioning party pursuant to that paragraph.

### **2.M.8 Pension Returns**

- (1) An Independent Provider must, in writing and in such form as the Secretary of State may from time to time require, provide the Secretary of State with the information referred to in paragraph (3) in respect of the relevant period—
- (a) within two months of the end of a scheme year; and
  - (b) within two months of the date of its termination, or withdrawal, of participation in this Section of the Scheme, where that does not occur at the end of a scheme year.
- (2) For—
- (a) paragraph (1)(a), the relevant period is the complete scheme year in respect of which the information is being provided;
  - (b) paragraph (1)(b), the relevant period is that beginning with the start of the scheme year in which withdrawal or termination took place and ending on the date of that withdrawal or termination.
- (3) The information referred to in paragraph (1)—
- (a) a complete list of all qualifying contracts to which the Independent Provider is or has been a party over the relevant period;
  - (b) the total gross amounts—
    - (i) estimated in accordance with regulation 2.M.3(3), to be payable over the relevant period under those contracts to the Independent Provider by the commissioning party;
    - (ii) actually received by the Independent Provider from the commissioning party in respect of those contracts over the relevant period;
  - (c) whether the Independent Provider was granted approval as an employing authority on an open or closed approval basis;
  - (d) whether the Independent Provider has changed its approval status and, if so, when;
  - (e) where the Secretary of State has required the Independent Provider to have an IP guarantee, the amount guaranteed by it or by each guarantee where there is more than one;
  - (f) the number of employees who were engaged in performing services pursuant to a qualifying contract who satisfied the wholly or mainly condition;



- (g) the total actual pensionable earnings of those employees;
- (h) the total actual employee contributions payable by those employees pursuant to regulation 2.C.1 (broken down to correspond to the estimated tiers tabulated in regulation 2.C.2) and to regulations 2.C.8 and 2.C.10;
- (i) the total actual employer contributions payable in respect of those employees pursuant to, as the case may be, regulations 2.C.5, 2.C.6 and 2.C.11;
- (j) confirmation that those of its employees who were or became officer members of the scheme during the relevant period continued to satisfy the wholly or mainly condition throughout that period;
- (k) the total actual number of employees who did satisfy the wholly or mainly condition and who were engaged in performing services pursuant to a qualifying contract but who were otherwise not eligible to be members of this Section of the Scheme;
- (l) the total actual amount of pensionable earnings of employees satisfying the wholly or mainly condition compared to the total gross amounts payable to the Independent Provider by a commissioning party in respect of all of its qualifying contracts: that amount to be expressed as a percentage;
- (m) where the percentage referred to in (l) exceeds the 75% threshold, an explanation for that. This is subject to regulation 2.M.6;
- (n) whether the Independent Provider has ceased to be a party to a qualifying contract;
- (o) whether the Independent Provider no longer employs any person who satisfies the wholly or mainly condition.

(4) Where any employee of an Independent Provider who became an officer member of this Section of the Scheme pursuant to regulation 2.M.3(7) ceases to satisfy the wholly or mainly condition or any other condition relating to membership of this Section of the Scheme, the Independent Provider must inform that employee that the employee's membership of this Section of the Scheme has come to an end on that date of failure to comply with the relevant condition and notify the Secretary of State in writing of that fact.

#### **2.M.9 Provision of information**

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

- (a) relating to those employed by it who have become officer members of this Section of the scheme pursuant to regulation 2.M.3(7);
- (b) relating to all or any qualifying contracts in respect of which employing authority status was granted or extended;
- (c) relating to the numbers of persons engaged in performing services pursuant to such contracts and the proportion of their time spent in doing so;
- (d) which the Secretary of State considers relevant for that purpose.

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

(3) The Secretary of State may, by notice in writing, require the Independent Provider to provide such information (which does not fall within sub-paragraph (1)) as the Secretary of State considers necessary to determine whether there has been compliance with any provision of these Regulations: the Independent Provider must provide that information within the period specified in that notice.

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

(1) The Secretary of State must terminate an Independent Provider’s status as an employing authority where that Independent Provider is no longer a party to any qualifying contract.

(2) The Secretary of State may terminate an Independent Provider’s status as an employing authority in any of the following circumstances—

- (a) where the Independent Provider subsequently acquires the status of an employing authority specified in any of the paragraphs, other than paragraph (q), of the definition of “employing authority” in regulation 2.A.1: in such a case the Independent Provider ceases to be an employing authority as an Independent Provider but not by virtue of whichever of those paragraphs applies to it;
- (b) where all of the employees of the Independent Provider who have acquired membership of this Section of the Scheme pursuant to regulation 2.M.3(7) cease to satisfy the wholly or mainly condition;
- (c) the Independent Provider fails to review, in accordance with regulation 2.M.2(6) the amount of cover guaranteed by its IP guarantee or, having carried out such a review (whether pursuant to a default notice or otherwise), fails to increase the amount of cover provided by the IP guarantee where such an increase is required;
- (d) where, following the issue of a default notice, the Independent Provider fails to pay to the Secretary of State the amount by the date specified in regulation 2.M.7(2);
- (e) where, regulation 2.M.2(7) applies and the Independent Provider fails to take the action required by paragraph (a) and (b) within the specified period;
- (f) where an Independent Provider fails to provide the information referred to in regulation 2.M.9(1) or (3);
- (g) where the Secretary of State is not satisfied that the information provided by an Independent Provider pursuant to regulation 2.M.9(1) supports the continuation of the Independent Provider’s status as an employing authority;
- (h) where an Independent Provider fails to notify the Secretary of State that the guarantor of any of its IP guarantees has withdrawn or revoked it;
- (i) where an Independent Provider has in any three years in any five year period exceeded the 75% threshold or has a pattern of doing so.

(3) Where the Secretary of State determines that an Independent Provider’s status as an employing authority must or should be terminated in accordance with this regulation, the Secretary of State is to give that Independent Provider, as soon as reasonably practicable, written notice of that fact and the date from which termination takes effect.

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

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

(1) An Independent Provider can withdraw from participation in this Section of the Scheme by giving the Secretary of State notice (“a withdrawal notice”) stating that it wishes its status as an employing authority under paragraph (q) of the definition of an employing authority in regulation 2.A.1, to cease.

(2) An Independent Provider may not give a withdrawal notice that affects any person who has become an officer member of this Section of the Scheme by virtue of

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

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

(4) A withdrawal notice must—

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

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

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

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

This is subject to paragraph (8).

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

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

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

This is subject to paragraph (11).

(11) An application referred to in paragraph (10) must specify that approval is sought in respect of all persons the Independent Provider engages to perform services pursuant to any qualifying contracts at the date on which approval is granted provided always that such persons satisfy the wholly or mainly condition regardless of whether they were so engaged at the date of any earlier approval or have been so engaged since the operative withdrawal date (or the latest of them if there is more than one).

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

- (a) an Independent Provider satisfies one of the other paragraphs of the definition of employing authority in regulation 2.A.1 and by virtue of doing so would otherwise become an employing authority for the purposes of these Regulations, and
- (b) that Independent Provider gives the Secretary of State a withdrawal notice, that notice does not affect its employees who would otherwise qualify as members of this Section of the scheme by virtue of paragraph (a) provided always that the Secretary has not terminated that Independent Provider’s status as an employing authority pursuant to regulation 2.M.10(1).”