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STATUTORY INSTRUMENTS

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**2014 No. 570**

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

**PART 2**

**Amendment of the National Health Service Pension Scheme Regulations 1995**

**New regulation D3**

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

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

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

(2) For the purposes of this regulation—

- (a) Year 1 is the year in which the member ceases to be in pensionable employment or dies, whichever occurs first;
- (b) Year 2 is the year immediately preceding Year 1;
- (c) Year 3 the year immediately preceding Year 2.

(3) The allowable amount in respect of Year 1 is the lower of—

- (a) the member’s pensionable pay for Year 1, and
- (b) the allowable amount for Year 2 increased by the lower of—
  - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
  - (ii) the percentage increase in the member’s pensionable pay Year 1 compared with Year 2.

(4) The allowable amount in respect of Year 2 is the lower of—

- (a) the member’s pensionable pay for Year 2, and
- (b) the allowable amount for Year 3 increased by the lower of—
  - (i) the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months, and
  - (ii) the percentage increase in the member’s pensionable pay Year 2 compared with Year 3.

(5) The allowable amount for Year 3 is the lower of—

- (a) the member’s pensionable pay for Year 3, and

- (b) the member's pensionable pay for the year immediately preceding Year 3 increased by the aggregate of 4.5% and the percentage increase in the consumer prices index over the preceding twelve months.
- (6) An excess employer contribution is determined as follows—
- Step 1: find Amount A, which is the difference between the member's final year's pensionable pay and the allowable amount for that year
- Step 2: calculate Amount B, which is the amount of the pension payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of that amount
- Step 3: calculate Amount C, which is the amount of the lump sum payable to the member as if the member's final year's pensionable pay consisted only of Amount A increased by an amount equal to any increases that would be due under the Pensions (Increase) Act 1971 on a lump sum of that amount
- Step 4: multiply Amount B by the applicable factor to find Amount D
- Step 5: in the case of a member who is entitled to a benefit under regulation L1, multiply Amount C by the applicable factor to find Amount E
- Step 6: add together—
- (a) Amount C and Amount E, in the case of a member entitled to a benefit under regulation L1;
- (b) Amount C and Amount D, in all other cases,
- to find the amount of the excess employer contribution.
- (7) Where the member's final year's pensionable pay exceeds the allowable amount by reason only of it including an amount in respect of a national award recommended by the Advisory Committee on Clinical Excellence Awards, the body responsible for the funding of that award must pay the excess employer contribution.
- (8) Paragraphs (9) and (10) apply where Amount A found under Step 1 of paragraph (6) includes both—
- (a) an increased pay award from the member's employing authority, and
- (b) a national award recommended by the Advisory Committee on Clinical Excellence Awards.
- (9) Where—
- (a) the inclusion of both of the awards referred to in paragraph (8) in the member's pensionable pay in Year 3, Year 2 or, as the case may be, Year 1 means that pay is the member's final year's pensionable pay in accordance with regulation C1(6), but
- (b) the exclusion of the award referred to in paragraph (8)(b) from the member's pensionable pay in the year identified in sub-paragraph (a) would result in a different one of those years being so identified,
- the Secretary of State, after consulting the Scheme Actuary, is to determine the proportion of the excess employer contribution determined in accordance with paragraph (6) to be paid by the member's employing authority and the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards: the determination of the excess employer contribution is to take account of the award referred to in paragraph (8)(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) An increase in pensionable pay during Year 3, Year 2 or, as the case may be, Year 1 which arises solely as a result of the member taking up a new employment with a new

employer shall be ignored for the purposes of this regulation: this is subject to the Secretary of State being satisfied that the employer in question is a new employer.

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

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

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

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

(21) For the purposes of this regulation—

- (a) a "payer" is the person who is liable to pay all or part of an excess employer contribution to the Secretary of State in accordance with this regulation;
- (b) the pensionable pay to be taken into account by the Secretary of State for a year or part of a year referred to in paragraph (2) will be derived from the pensionable pay for that period recorded in scheme year pension records provided to the Secretary of State in accordance with paragraph (5) of regulation U3;
- (c) where the member is in pensionable employment for less than 12 months pensionable pay for that year means—
 
$$(\text{pensionable pay/number of days pensionable employment}) \times 365$$
- (d) no account is to be taken of increases in pensionable pay prior to 1st April 2014 or more than 1095 days prior to the member's last day of pensionable employment,
- (e) the applicable factor is to be determined from time to time by the Secretary of State having considered the advice of the Scheme Actuary and having obtained the Treasury's consent;
- (f) if the percentage increase in the consumer prices index referred to in paragraphs (3), (4) and (5) is less than zero, it will be regarded as a percentage increase of 0% for the purposes of this regulation;
- (g) a benefit referred to in paragraph (1) means—
  - (i) in the case of regulation E2A, a benefit including the effects of any increase in pensionable service referred to in paragraph (4) of that regulation;
  - (ii) in the case of regulation E5, a benefit including the effects of any reduction referred to in paragraph (2) of that regulation;
- (h) for the purposes of making any payment it is liable to pay under this regulation, the body responsible for the funding of awards recommended by the Advisory Committee on Clinical Excellence Awards shall have the same liabilities and duties as an employing authority under these Regulations in respect of that payment."