

2016 No. [XX]

**THE NATIONAL HEALTH SERVICE PENSION
SCHEME, ENGLAND AND WALES**

**The [name of employer] (Pension) (New Fair Deal)
Determination 2016**

The Secretary of State, in exercise of the powers conferred by section 25 of the Public Service Pensions Act 2013 (a), determines as follows:

Citation and definitions etc.

1. This determination may be cited as the [name of employer] (Pension) (New Fair Deal) Determination 2016.

2. In this Determination—

“the 2015 Regulations” means the National Health Service Pension Scheme Regulations 2015 and any regulations, instrument or enactment amending or re-enacting, in whole or in part, those Regulations;

“the approved employment” means an employment that satisfies the requirements of paragraph 4(2);

“DB” means a person to whom this determination applies and who benefits from it by virtue of satisfying paragraph 4 (a Determination Beneficiary);

“the Employer” means [name of employer];

“NHS Health Care Services” is to be construed in accordance with section 64(4) and (5) of the Health and Social Care Act 2012 and “non-NHS Health Care Services” shall be construed accordingly;

“the Treasury’s policy on “New Fair Deal”, means that policy as it applies from time to time which includes, but is not limited to, the document “Fair Deal for staff pension pensions: staff transfers from central government”(b);

“qualifying contract” means any contract for the provision of NHS Health Care Services to which the employer is a party;

“the wholly or mainly condition” has the same meaning as in the 2015 Regulations and applies in the same way to the Employer as it applies to an independent provider for the purposes of those Regulations.

3. Other expressions used in this determination have the same meaning as in the 2015 Regulations.

(a) 2013 c.25.

(b) Dated 4 October 2013.

Application and effect of Determination

- 4.—(1) This Determination applies to a DB who is in an approved employment.
- (2) A DB is in an approved employment if he—
- (a) is performing NHS Health Care Services for more than 50% of a DB's time in the Employer's employment (the "wholly or mainly condition") whether or not they are the same NHS Health Care Services a DB performed prior to being transferred to that employment,
 - (b) has been the subject of a compulsory transfer from the public sector, whether or not the Employer is—
 - (i) the transferor to whom a DB was first transferred pursuant to that compulsory transfer, or
 - (ii) a second or subsequent transferor, and
 - (c) is named in Column 1 of the table in the Schedule.
- (3) Where a DB satisfies sub-paragraph (2), the 2015 Regulations (as modified in this determination) shall apply to him as if he were, within the meaning of those Regulations, an officer in the employment of an employing authority.

Modification of the 2015 Regulations

5. The provisions of the 2015 Regulations specified in the first column of the table below, with the modifications specified in the third column, have effect for the purposes of this determination.

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
Regulation 33	Contributions by employing authorities (definition of employing authority)	In column 1 of the table in paragraph (6), a reference to an employment by a determination employer shall be treated as including the employment of a DB by the Employer under this determination (being a determination made in furtherance of the Treasury's policy on "New Fair Deal").
Regulation 37	Members' contributions: records and estimates	<p>1. In paragraph (1), the list of records to be kept by an employing authority shall be treated, in the case of the Employer, as including a record of—</p> <ul style="list-style-type: none">(a) the number of DB's employed by the Employer who benefit under by this determination;(b) any failure by the Employer to meet any of its responsibilities under the 2015 Regulations;(c) the date on which a DB ceases to satisfy the terms of this determination;(d) the fact that the Employer complied with the obligation to immediately notify the scheme manager of State of the occurrence referred to in (iii) above, and(e) any other information that the scheme manager from time to time requires. <p>2. In place of paragraph (2)—</p> <ul style="list-style-type: none">(a) any record of the matters referred to in

paragraph (1) (see above) is to be in the form approved by the scheme manager;

- (b) where a DB ceases to satisfy the terms of this determination, the employer must immediately notify the scheme manager in writing of that fact.

3. In place of paragraph (3), the Employer, must in respect of a DB—

- (a) within 2 months of the end of a scheme year, provide the scheme manager with a composite statement covering all the matters the Employer is required to keep records of under regulation 37 as modified by this determination;
- (b) within 2 months of the end of a scheme year, confirm to the scheme manager in writing that—
 - (i) it continues to comply with the terms of its determination and with any relevant guidance that the Treasury may have issued from time to time, and
 - (ii) that it has not changed its constitution, form or structure or otherwise ceased to be the same legal entity it was when the determination was granted;
- (c) immediately upon the occurrence of any event referred to in (b)(ii) above, notify the scheme manager in writing of that fact.

Regulations 141 to 143 (inclusive)	Right to apply for acceptance of transfer value payment, application procedure and acceptance of transfer value payment (respectively)	These regulations shall be treated as if they did not apply in the case of a DB who is eligible for a bulk transfer of accrued rights in a broadly comparable pension scheme as a result of HM Treasury’s “Fair Deal” policy until such time as he either opts to be included, or not included, in such a transfer.
Regulation 165	Guarantees, bonds and indemnities	In paragraph (1), the list of employing authorities that may be required to provide a guarantee, bond or indemnity in respect of the payment of contributions, shall be treated as including the Employer.

Effective date of Determination

6. This determination takes effect in relation to a DB (named in Column 1 of the table in the Schedule) from the date shown in Column 3 of that table: and the Schedule has effect accordingly.

Cessation of Determination

7. This determination (and accordingly the 2015 Regulations) cease to apply to a DB on the first of the following dates—

- (a) the date on which he ceases employment with the Employer;

- (b) the date on which he ceases to satisfy the wholly or mainly condition;
- (c) the date on which the Employer ceases to be a party to a qualifying contract; or
- (d) where the Secretary of State considers it appropriate having regard to such changes, the date on which the Employer ceases to be the same legal entity it was when the Determination took effect or otherwise changes its constitution, form or structure.

Termination of Determination

8. Where the Secretary of State is satisfied that the Employer has failed to comply with any provision of the 2015 Regulations (as modified in this Determination) the Secretary of State may terminate this determination after giving three months written notice to the Employer of an intention to do so.

Signed by authority of the Secretary of State for Health

Tim Sands
A member of the Senior Civil Service
Department of Health

Date:

SCHEDULE

<i>Column 1</i>		<i>Column 2</i>	<i>Column 3</i>
Surname	First Name	NI Number	Date <i>(of transfer to the Employer/entry into National Health Service Pension Scheme 2015)</i>