

**2016 No. [XXX]**

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

**The [name of employer] (Superannuation) (New Fair Deal)  
Direction 2016**

The Secretary of State, in exercise of the powers conferred by sections 7(2) and (3) of the Superannuation (Miscellaneous Provisions) Act 1967(a), directs as follows:

**Citation and definitions etc.**

**1.** This Direction may be cited as the [name of employer] (Superannuation) (New Fair Deal) Direction 2016.

**2.** In this Direction—

“the 1995 Regulations” means the National Health Service Pension Scheme Regulations 1995 (which set out the provisions relating to the 1995 Section of the Scheme) and any regulations, instrument or enactment amending or re-enacting, in whole or in part, those Regulations;

“the 2008 Regulations” means the National Health Service Pension Scheme Regulations 2008 (which set out the provisions relating to the 2008 Section of the Scheme) 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 direction 4(2);

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

“the Employer” means [name of employer] ;

“the Pension Regulations” means—

---

(a) 1967 C.28 as amended by sections 10(5) and 29(1) of, and paragraph 66 of Schedule 6 to, the Superannuation Act 1972.

- (a) the 1995 Regulations where this Direction affords a person to whom it applies membership of 1995 Section of the Scheme as set out in those Regulations;
- (b) the 2008 Regulations where this Direction affords a person to whom it applies membership of 2008 Section of the Scheme as set out in those Regulations;

“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;

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

“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”(a);

“the Scheme” means the NHS Pension Scheme as set out in the 1995 and 2008 Regulations;”.

3. Other expressions used in this Direction have the same meaning as in the 1995 and 2008 Regulations.

### **Application of Regulations**

4.—(1) This direction applies to a DB who is in an approved employment.

(2) A DB is in an approved employment if he—

- (a) has been the subject of a compulsory transfer from the public sector;
- (b) is performing NHS Health Care Services for more than 50% of his time in his employment with the Employer (the “wholly or mainly condition”) whether or not—
  - (i) his employer is the original receiving employer under the transfer,
  - (ii) those services are the same NHS Health Care Services DB performed prior to his transfer; and

(c) is named in Column 1 of the table in the Schedule.

(3) Where a DB satisfies sub-paragraph (2), the Pension Regulations (as modified by this direction) 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 1995 Regulations**

5. The provisions of the 1995 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 direction.

---

(a) Dated 4 October 2013.

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
Regulation A2	Interpretation: definition of “employing authority”	In paragraph (k), a reference to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 shall be treated as including this direction (having been made in furtherance of the Treasury’s policy on “New Fair Deal”).
Regulation D2	Contributions by employing authorities	<p>In regulation D2—</p> <ol style="list-style-type: none"> <li>1. Paragraphs (5), (6) and (7A) shall be treated as if they did not apply.</li> <li>2. Paragraph (7) shall be treated as if it referred to— <ul style="list-style-type: none"> <li>(a) any additional contributions that are due to the Secretary of State being determined by the Secretary of State on the advice of the Scheme actuary where they are in respect of any of the following— <ul style="list-style-type: none"> <li>(i) the cost of providing a DB with an early retirement pension (including any pension exchanged for a lump sum under regulation E7) under regulation E3A for the period between the date of DB’s retirement and the date on which he would otherwise reach normal pension age where his employment has been terminated by the Employer;</li> <li>(ii) the cost of providing under regulation R6 any benefit that supplements an early retirement pension under regulation E3A for the period between the date of DB’s retirement and the date on which he would otherwise reach normal pension age;</li> <li>(iii) the cost of providing any increase under the Pensions (Increase) Act 1971 in respect of the benefits and periods of time referred to in (a) and (b) above, and</li> <li>(iv) any additional costs attributable to the early payment of a lump sum under regulation E6.</li> </ul> </li> <li>(b) an obligation on the Employer to pay those contributions within one month of the date of</li> </ul> </li> </ol>

		<p>an invoice issued to it.</p> <p>3. In paragraph (9), a reference to an employing authority shall be treated as including a reference to the Employer.</p>
Regulation E3A	Termination of employment by employing authority	In paragraph (2), the conditions that must be satisfied in order for a DB to be paid an early retirement pension where his employment has been terminated by the Employer, shall be treated as if they included a condition requiring the Secretary of State to have received from the Employer any additional employer contributions it is liable to pay to the Secretary of State under regulation D2.
Regulations N1, N3 and N3A	Member's right to transfer accrued rights to benefits to this Section of the Scheme, transfers that are not made under the Public Sector Transfer Arrangements and transfers in respect of members to whom regulation B5 applies who elect to join or rejoin this Section of the scheme 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 T8	Interest on late payment of benefits	<p>1. In paragraph (4), paragraph (e) of the definition of "due date", is to be treated in the case of an early retirement pension payable to a DB where his employment is terminated by the Employer under regulation E3A, as if it referred to the later of—</p> <p>(a) the date the Secretary of State receives from the Employer any additional contributions it is liable to pay under regulation D2, and</p> <p>(b) the day immediately following the day the DB retired from pensionable employment.</p> <p>2. References in paragraph (4) to "due date" shall also be treated as including a reference to</p>

a “due date” which applies to any other case not already covered by that paragraph and, in that case, the “due date” is the day immediately following the date on which the DB retired from pensionable employment.

Regulation U3

Accounts and actuarial reports

1. In paragraph (3)—

- (a) in sub-paragraphs (c) and (d), references to “regulation D2(1)” shall be treated as references to “regulation D2”;
- (b) in sub-paragraph (f), the reference to “pensionable pay” shall be treated as including a reference to any increases in such pay;
- (c) the list of records to be kept by the Employer shall be treated as including a record of—
  - (i) the number of DB’s employed by the Employer who benefit under by this direction;
  - (ii) any failure by the Employer to meet any of its responsibilities under the 1995 Section of the Scheme;
  - (iii) the date on which a DB ceases to satisfy the terms of this direction;
  - (iv) the fact that the Employer complied with the obligation to immediately notify the Secretary of State of the occurrence referred to in (iii) above, and
  - (v) any other information that the Secretary of State from time to time requires.

2. Paragraph (4) shall be treated as if it referred to—

- (a) any record of the matters referred to in paragraph (3) (see above) being in the form approved by the Secretary of State;
- (b) an obligation on the Employer to immediately notify the Secretary of

State in writing where a DB ceases to satisfy the terms of this direction.

3. Paragraph (5) shall be treated as if it referred to obligations on the Employer to—

- (a) within 2 months of the end of a scheme year, provide the Secretary of State with a composite statement covering all the matters which it is required to keep records of under regulation U3 as modified by this direction;
- (b) within 2 months of the end of a scheme year, confirm to the Secretary of State in writing that—
  - (i) it continues to comply with the terms of its direction and with relevant any 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 direction was granted; and
- (c) immediately upon the occurrence of any event referred to in (b)(ii) above, notify the Secretary of State in writing of that fact.

---

### **Modification of the 2008 Regulations**

6. The provisions of the 2008 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 direction.

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
Regulation 2.A.1	Interpretation: general definition of “employing authority”	In paragraph (l), a reference to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 shall be treated as including this direction (being a direction made in furtherance of the Treasury’s policy on “New Fair Deal”).
Regulation 2.C.6	Contributions by employing authorities: members becoming	In regulation 2.C.6— 1. Paragraph (4) shall be treated as if it referred

entitled to pensions  
under regulation 2.D.11

to—

(a) any additional contributions that are due to the Secretary of State being determined by the Secretary of State on the advice of the Scheme actuary where they are in respect of any of the following—

(i) the cost of providing a DB with an early retirement pension (before any pension is exchanged for a lump sum and after any reduction under regulation 2.K.12) under regulation 2.D.11 for the period between the date of that DB's retirement and the date on which he would otherwise reach normal pension age where his employment has been terminated by the Employer;

(ii) the cost of providing any increase under section 59 of the Social security Pensions Act 1975 where required in respect of the benefits and periods of time referred to in (a) above, and

(iii) any additional costs attributable to the early payment of a lump sum under regulation 2.K.12;

(b) an obligation on the Employer to pay those contributions within one month of the date of an invoice issued to it.

2. Paragraph (4A) shall be treated as if it did not apply.

3. Paragraph (5) shall be treated as if—

(a) in sub-paragraph (b), the reference to "paragraph 4(a)" was a reference to "paragraph (4)"; and

(b) sub-paragraph (c) did not apply.

Regulation 2.C.7

Guarantees,  
indemnities and bonds

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 an employer of a person who is subject to a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 where the Secretary of State agrees to treat that employer as an employing authority for the purposes of the 2008 Regulations (see paragraph (l) of the definition of "employing

		authority” in regulation 2.A.1 of the 2008 Regulations as amended by this direction).
Regulation 2.D.11	Early retirement on termination of employment by employing authority	In paragraph (1), the conditions that must be satisfied in order for a member to be paid an early retirement pension where their employment has been terminated by their employing authority, shall be treated as if they included a condition requiring the Secretary of State to have received from the Employer any additional employer contributions it is liable to pay to the Secretary of State under regulation 2.C.6 in respect of a DB.
Regulations 2.F.8, 2.F.9, 2.F.10, 2.F.11 and 2.F.12	Right to apply for acceptance of transfer value payment from another scheme, procedure for applications under regulation 2.F.8, acceptance of transfer value payments, calculation of transferred-in pensionable service and meaning of “capped transferred-in service”,	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 2.J.9	Interest on late payment of benefits and refunds of contributions	In paragraph (5), the definition of “due date” is to be treated, in the case of an early retirement pension payable to a DB where his employment is terminated by the Employer under regulation 2.D.11, as if it referred to the later of— <ul style="list-style-type: none"> <li>(a) the date the Secretary of State receives from the Employer any additional contributions it is liable to pay in respect of that pension under regulation 2.C.6, and</li> <li>(b) the day immediately following the day that DB retired from pensionable employment.</li> </ul>
Regulation 2.J.14	Employing Authority and certain member record keeping and	1. In paragraph (6)— <ul style="list-style-type: none"> <li>(a) in sub-paragraphs (c) and (d), references to “regulation 2.C5” shall</li> </ul>



contribution estimates

be treated as including references to “regulation 2.C.6”;

- (b) in sub-paragraph (f), the reference to “pensionable pay” and “pensionable earnings” shall be treated as including a reference to any increases in such pay or earnings;
- (c) the list of records to be kept by an employer shall be treated, in the case of the Employer, as including a record of—
  - (i) the number of DB’s employed by the Employer who benefit under by this direction;
  - (ii) any failure by the Employer to meet any of its responsibilities under the 2008 Section of the Scheme;
  - (iii) the date on which a DB ceases to satisfy the terms of this Direction;
  - (iv) the fact that the Employer complied with the obligation to immediately notify the Secretary of State of the occurrence referred to in (iii) above, and
  - (v) any other information that the Secretary of State from time to time requires.

2. Paragraph (7) shall be treated as if it referred to—

- (a) any record of the matters referred to in paragraph (6) (see above) being in the form approved by the Secretary of State;
- (b) an obligation on the Employer to immediately notify the Secretary of State in writing where a DB ceases to satisfy the terms of this Direction.

3. Paragraph (8) shall be treated as if it referred to obligations on the Employer to—

- (a) within 2 months of the end of a scheme year, provide the Secretary of State with a composite statement covering all the matters which it is required to keep records of under regulation 2.J.14 as modified by

this direction;

(b) within 2 months of the end of a scheme year, confirm to the Secretary of State in writing that—

(i) it continues to comply with the terms of its direction and with relevant any 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 this direction was granted; and

(c) immediately upon the occurrence of any event referred to in (b)(ii) above, notify the Secretary of State in writing of that fact.

---

### **Effective date of Direction**

7. This direction takes effect in relation to a DB (named in Column 1 of the table in the Schedule) from the date of transfer to the Employer (shown in Column 3 of that table) and the Schedule has effect.

### **Cessation of Direction**

8. The Pension 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 reaches his “eligibility cessation date”, (shown in Column 4 of the table in the Schedule), where relevant;
- (c) the date on which he ceases to satisfy the wholly or mainly condition;
- (d) the date on which the Employer ceases to be a party to a qualifying contract; or
- (e) where the Secretary of State considers it appropriate having regard to such changes, the date on which the person or body that is the Employer changes its constitution, form or structure or otherwise ceases to be the same legal entity it was when the Direction took effect.

### **Termination of Direction**

9. Where the Secretary of State is satisfied that the Employer has failed to comply with any provision of the Pension Regulations (as modified by this Direction) the Secretary of State may

terminate this direction 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:









