

---

STATUTORY INSTRUMENTS

---

**1997 No. 80**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Pension Scheme  
and Provision of Information and Administrative  
Expenses etc. (Amendment) Regulations 1997**

<i>Made</i>	- - - -	<i>16th January 1997</i>
<i>Laid before Parliament</i>		<i>20th January 1997</i>
<i>Coming into force</i>	- -	<i>12th February 1997</i>

The Secretary of State for Health, in exercise of the powers conferred by sections 10(1), (2) and (3) of, and Schedule 3 to, the Superannuation Act 1972(1), by sections 172(1) and (2) and 174(2) and (3) of the Pensions Act 1995(2), and of all other powers enabling him in that behalf, after consulting with such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate(3), and with the consent of the Treasury(4), hereby makes the following Regulations—

**Citation and commencement**

1. These Regulations may be cited as the National Health Service Pension Scheme and Provision of Information and Administrative Expenses etc. (Amendment) Regulations 1997 and shall come into force on 12th February 1997.

**Interpretation**

2. In these Regulations—

“the Pension Scheme Regulations” means the National Health Service Pension Scheme Regulations 1995(5);

---

(1) 1972 c. 11. Section 10(1)(a) was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c. 32).  
(2) 1995 c. 26.  
(3) See section 10(4) of the Superannuation Act 1972.  
(4) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I.1981/1670).  
(5) S.I. 1995/300.

“the Provision of Information Regulations” means the National Health Service Pension Scheme (Provision of Information and Administrative Expenses etc.) Regulations 1996<sup>(6)</sup>; and  
 “the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(7)</sup>.

### **Amendment of Part B of the Pension Scheme Regulations**

3. In Part B of the Pension Scheme Regulations there shall be added the following regulation—

#### **“Opting into the scheme: mis-sold pensions**

**B5.**—(1) This regulation shall apply to a person who, during any period—

- (a) was eligible to be an active member of the scheme;
- (b) opted out of the scheme under regulation B4(1) and made contributions to a personal pension scheme; and
- (c) has suffered loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986<sup>(8)</sup>.

(2) Where, at any time, a person to whom this regulation applies elects to join or rejoin the scheme under regulation B4(5), there shall, if the Secretary of State so determines, be counted as pensionable service in respect of that person a period equal to the aggregate of—

- (a) his additional period of pensionable service as approved by the Secretary of State for the purposes of regulation N3A(2)(i); and
- (b) his “transferred-out service”, if any, within the meaning of regulation N3A(5),

provided there has been paid to the Secretary of State in respect of that person a transfer payment calculated in accordance with regulation N3A.

(3) Where, at any time, a person to whom this regulation applies elects to join or rejoin the scheme under regulation B4(5) but dies in pensionable employment or becomes entitled to benefits under Part E of these Regulations before the transfer payment referred to in paragraph (2) has been paid to the Secretary of State in respect of him, paragraph (2) shall continue to apply in the case of that person.

(4) In this regulation—

“active member” means a person who is in pensionable employment under the scheme; and

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 and includes—

- (i) a retirement annuity contract approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;
- (ii) a personal pension scheme approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;
- (iii) a retirement benefits scheme approved under section 591(2)(g) of the Income and Corporation Taxes Act 1988.”

### **Amendment of regulation C1 of the Pension Scheme Regulations**

4.—(1) After regulation C1(3) of the Pension Scheme Regulations there shall be inserted the following paragraph—

---

<sup>(6)</sup> S.I. 1996/2424.  
<sup>(7)</sup> 1988 c. 1.  
<sup>(8)</sup> 1986 c. 60.

“(3A) Where a member who was eligible to be a member before 1st June 1989 joins the scheme on or after that date by virtue of being a person to whom regulation B5 applies, any amount by which that member’s pensionable pay exceeds the permitted maximum will not be ignored when calculating the amount of any contributions or benefits payable under these Regulations except in relation to a period following a break in pensionable employment on or after that date.”.

- (2) In regulation C1(4) of the Pension Scheme Regulations—
- (a) for the words “paragraph (3)” there shall be substituted the words “paragraphs (3) and (3A)”; and
- (b) after sub-paragraph (e) there shall be added the following sub-paragraph—
- “(f) the break is due to the member opting out of the scheme as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986.”.

### **Amendment of regulation M3 of the Pension Scheme Regulations**

5. In regulation M3(5) of the Pension Scheme Regulations after the words “Subject to paragraph (7),” there shall be inserted the following words—

“except in the case of a transfer payment accepted under regulation N3A,”.

### **Amendment of Part N of the Pension Scheme Regulations**

6.—(1) At the beginning of regulation N1(3) of the Pension Scheme Regulations the word “The” shall be deleted and there shall be substituted the following words—

“Except in the case of a person to whom regulation B5 applies, the”.

(2) In regulation N1(4) of the Pension Scheme Regulations the words from “and N3” to the end shall be deleted and there shall be substituted the following words—

“, N3 (transfers that are not made under the Public Sector Transfer Arrangements) and N3A (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme) is applicable.”.

(3) After regulation N3 of the Pension Scheme Regulations there shall be inserted the following regulation—

#### **“Transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme**

**N3A.**—(1) In the case of a member to whom regulation B5 applies, this regulation shall apply for the purpose of calculating the amount of the transfer payment by reference to which an additional period of pensionable service may be credited by the Secretary of State to that member.

(2) Subject to paragraphs (3) and (4), the transfer payment in respect of which an additional period of pensionable service may be credited by the Secretary of State to a member referred to in paragraph (1) shall be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 (amount of member’s cash equivalent) in the case of transfers that are not made under the Public Sector Transfer Arrangements and shall be of an amount equal to the total amount of—

- (i) an amount which would enable the member to be credited by the scheme with such additional period of pensionable service as the Secretary of State may approve in respect of the period during which he made contributions to a personal pension scheme (“the relevant scheme”);

- (ii) the amount of the cash equivalent, if any, which the member transferred to the relevant scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out) (“the transferred rights”); and
- (iii) an amount, to be determined from time to time by the Government Actuary, which represents the income which would have been received on the amount referred to in sub-paragraph (ii) had that amount been invested during the period commencing at the end of the month in which it was paid by the scheme to the relevant scheme and ending at the end of the month in which the transfer payment was paid to the scheme by the relevant scheme.

(3) The amount, if any, payable by virtue of paragraphs (2)(ii) and (iii) shall be at least equal to the amount of the cash equivalent transfer value which would be payable by the scheme in respect of the transferred-out service if the scheme were to pay a cash equivalent transfer value in respect of that service immediately after the time at which the transfer payment is paid to the scheme by the relevant scheme.

(4) In the case of a member to whom regulation B5 applies who has been credited with an additional period of pensionable service calculated as specified in regulation N3 (transfers that are not made under the Public Sector Transfer Arrangements), the Secretary of State may adjust the amount of the transfer payment referred to in paragraph (2) on account of the payment by reference to which that pensionable service was credited.

(5) In this regulation—

“personal pension scheme” has the same meaning as in regulation B5(4);

“transfer payment” means the payment payable to the scheme by the relevant scheme in respect of a member to whom regulation B5 applies who elects to join or rejoin the scheme; and

“transferred-out service” means the period of pensionable service which the member transferred out of the scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out).”.

#### **Amendment of regulation 2 of the Provision of Information Regulations**

7. In regulation 2 of the Provision of Information Regulations, in paragraph (iii) of the definition of “personal pension scheme”, after the words “section 591” there shall be added “(2)(g)”.

#### **Amendment of regulation 4 of the Provision of Information Regulations**

8. In regulation 4 of the Provision of Information Regulations—

(1) after the words “the individual in respect of whom the information relates” there shall be inserted the words “or any person acting in respect of that individual”; and

(2) the word “him” where it appears in paragraph (a) shall be deleted and there shall be substituted the words “a prescribed person”.

#### **Amendment of regulation 6 of the Provision of Information Regulations**

9. In regulation 6 of the Provision of Information Regulations the words “regulation 5(2)(a) to (d), (f) to (i) and (k) above” shall be deleted and there shall be substituted the following words—

“regulation 5(a) to (d), (f) to (i) and any person appointed to act on behalf of any of those persons”.

Signed by authority of the Secretary of State for Health.

15th January 1997

*Gerald Malone*  
Minister of State,  
Department of Health

We consent to the making of these Regulations.

16th January 1997

*Roger Knapman*  
*Bowen Wells*  
Lords Commissioners of Her Majesty's Treasury

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service Pension Scheme Regulations 1995 (“the Pension Scheme Regulations”) and the National Health Service (Provision of Information and Administrative Expenses etc.) Regulations 1996 (“the Provision of Information Regulations”).

Regulations 1 and 2 provide for citation, commencement and interpretation.

Regulation 3 inserts a new regulation B5 into Part B of the Pension Scheme Regulations which makes special provision in respect of persons electing to join or rejoin the NHS Pension Scheme (“the scheme”) who have previously opted out of the scheme as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (mis-sold personal pensions).

Regulation 4 makes amendments to the Pension Scheme Regulations which are consequential upon the insertion of regulation B5.

Regulation 5 makes an amendment to regulation M3 of the Pension Scheme Regulations which is consequential upon the insertion by regulation 6 of regulation N3A into those Regulations.

Regulation 6 makes amendments to Part N of the Pension Scheme Regulations it also inserts a new regulation N3A into those Regulations which makes provision for the manner in which the transfer payment by reference to which the additional period of pensionable service which may be credited by the scheme to persons to whom regulation B5 applies is to be calculated.

Regulations 7 to 9 make minor technical amendments to the Provision of Information Regulations.

Regulation 7 amends the definition of “personal pension scheme” in regulation 2(1) of the Provision of Information Regulations.

Regulation 8 amends regulation 4 of the Provision of Information Regulations.

Regulation 9 amends regulation 6 of the Provision of Information Regulations.

An assessment of the compliance cost to business of the measures arising from these Regulations has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Health, HRD-Employment Issues Branch, Room 111, Hesketh House, 200/220 Broadway, Fleetwood, Lancashire, FY7 8LG.