
STATUTORY INSTRUMENTS

2000 No. 619

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service Pension Scheme
(Additional Voluntary Contributions) Regulations 2000**

<i>Made</i>	- - - -	<i>16th March 2000</i>
<i>Laid before Parliament</i>		<i>20th March 2000</i>
<i>Coming into force</i>	- -	<i>10th April 2000</i>

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 10(1), (2), (2A) and (3) and 12(1) of, and Schedule 3 to, the Superannuation Act 1972⁽¹⁾, and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him to be appropriate⁽²⁾ and with the consent of the Treasury⁽³⁾, hereby makes the following Regulations:

**PART I
PRELIMINARY**

Citation, commencement and retrospective effect

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000.

(2) These Regulations shall come into force on 10th April 2000.

(3) The following regulations shall have effect from 1st February 1991⁽⁴⁾—

(a) regulations 1 to 10;

(1) 1972 c. 11; subsection (1)(a) of section 10 was amended by the National Health Service Reorganisation Act 1973 (c. 32), Schedule 5; subsection (1) was amended, and subsection (2A) was inserted, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2) and 8(5).

(2) See section 10(4) of the Superannuation Act 1972.

(3) 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).

(4) See section 12(1) of the Superannuation Act 1972 which provides that regulations may be framed so as to have effect from a date earlier than that of their making.

- (b) regulations 11(1) to (5), (7) and (8);
 - (c) regulations 12 to 18; and
 - (d) regulation 21.
- (4) Regulation 11(6) shall have effect from 1st December 1999.

Interpretation

2.—(1) In these Regulations—

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

“the Schedule” means the Schedule to these Regulations;

“the Taxes Act” means the Income and Corporation Taxes Act 1988⁽⁶⁾;

“approved scheme” means a retirement benefit scheme approved under Chapter I of Part XIV of the Taxes Act (retirement benefit schemes);

“authorised fund” means a fund managed by an authorised provider selected by the Secretary of State for the purposes of these Regulations;

“authorised provider” has the meaning given to it by sections 10(6) of the Superannuation Act 1972⁽⁷⁾;

“child” means a child who qualifies for a child’s allowance under regulation H2 of the Pension Scheme Regulations;

“contributor” means a person in respect of whom an election under regulation 3(1) has effect;

“date of retirement” means the date on which benefits become payable to the participator under regulations E1 to E5 or regulation L1, of those Regulations⁽⁸⁾;

“dependant” means—

- (a) a surviving spouse of a participator (providing the marriage was not, prior to 6th March 1995, subject to an order of judicial separation);
- (b) any surviving child of a participator; or
- (c) any person in whose favour a participator has made an election under regulation J1 of the Pension Scheme Regulations (allocation of pension);

“dependant’s pension” means a pension which becomes payable to a dependant on the death of a participator;

“free-standing additional voluntary contributions scheme” means an approved scheme which falls within section 591(2)(h) of the Taxes Act (discretionary approval);

“the Index” at any time means the Retail Price Index, or any successor agreed as appropriate by the Board of Inland Revenue, for the calendar month three months prior to that time;

“insurance company” means a body authorised under section 3 or 4 of the Insurance Companies Act 1982⁽⁹⁾ to carry on long term business (within the meaning of section 1 of that Act⁽¹⁰⁾) or an EC company as defined by section 2(6) of that Act⁽¹¹⁾ which carries on ordinary long

⁽⁵⁾ S.I. 1995/300 as amended by S.I. 1997/80, 1997/1888, 1998/666, 1998/2216 and 2000/605.

⁽⁶⁾ 1988 c. 1.

⁽⁷⁾ Subsection (6) was added to section 10 by section 8(6) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7) and was amended by section 190 of, and paragraph 7 of Schedule 8 to, the Pension Schemes Act 1993 (c. 48).

⁽⁸⁾ Regulation E2 was amended by S.I. 1998/666, and regulations E3 and E4 were amended by S.I. 1997/1888, 1998/666, 1998/2216 and 2000/605.

⁽⁹⁾ 1982 c. 50.

⁽¹⁰⁾ Section 1 was amended by S.I. 1990/1159.

⁽¹¹⁾ Subsection (6) was inserted by S.I. 1994/1696.

term business (within the meaning of section 96(1) of that Act⁽¹²⁾) in the United Kingdom and in respect of which such of the requirements of Part I of Schedule 2F to that Act⁽¹³⁾ as are applicable have been complied with;

“lump sum death benefit” means a lump sum which will become payable in the event of a person’s death while paying contributions to provide for it;

“participator” means—

- (a) a contributor who has made benefits election under regulation 11(3);
- (b) a contributor who has died;
- (c) a person who has ceased to be a contributor but has not exercised any right to receive a cash equivalent within the meaning of section 94 of the Pension Schemes Act 1993⁽¹⁴⁾ or to be paid a lump sum under regulation 14; or
- (d) a person in respect of whom investments have been made under regulation 7(1), 8(2) or 9(4);

“pensionable employment” means NHS employment in respect of which a person contributes to the NHS Pension Scheme, or such other employment as the Secretary of State may approve for the purposes of a direction under section 7(2) of the Superannuation (Miscellaneous Provisions) Act 1967⁽¹⁵⁾;

“pensionable service” is to be construed in accordance with regulation C2 of the Pension Scheme Regulations;

“personal pension scheme” means a scheme approved under Chapter IV and Part XIV of the Taxes Act;

“retirement” is to be construed in accordance with the Pension Scheme Regulations;

“retirement benefits scheme” has the meaning given in section 611 of the Taxes Act;

“salary” means all salary, wages, fees and other payments paid or made to a person for his own use in respect of his employment.

(2) Subject as aforesaid and except where the context otherwise requires, other expressions in these Regulations have the same meaning as in the Pension Scheme Regulations.

PART II

ADDITIONAL VOLUNTARY CONTRIBUTIONS

Making and acceptance of elections

3.—(1) Subject to paragraph (3), a person in pensionable employment may elect to pay contributions under these Regulations for one or both of the following purposes—

- (a) for investment under regulation 7(1) to provide for an annuity payable on retirement; or
- (b) in accordance with regulation 7(2) to provide for a lump sum death benefit.

(2) An election under paragraph (1) may relate to contributions to be paid by, or on behalf of, the contributor, or contributions to be paid by the contributor’s employer, or both.

(3) If the person making an election—

⁽¹²⁾ There are amendments to section 96(1) which are not relevant to these Regulations.

⁽¹³⁾ Schedule 2F was inserted by S.I. 1996/1696.

⁽¹⁴⁾ 1993 c. 48. Section 94 was amended by section 154 of the Pensions Act 1995 (c. 26).

⁽¹⁵⁾ 1967 c. 28. Section 7(2) was amended by section 10(5) and 29(1) of, and paragraph 66(b) of Schedule 6 to, the Superannuation Act 1972.

- (a) under paragraph (1)(b) is on leave of absence from his employment due to ill health on the date on which the notice of such an election is received by the Secretary of State; or
- (b) under paragraph (1)(a) or (b) is not receiving tax relief under section 594(1) of the Taxes Act⁽¹⁶⁾ (exempt statutory schemes) or otherwise in respect of contributions paid under regulation D1 of the Pension Scheme Regulations (contributions by members)⁽¹⁷⁾ on the date on which the notice of such an election is received by the Secretary of State,

such an election shall not have effect.

(4) An election under paragraph (1) shall be made by giving written notice to the Secretary of State which shall specify—

- (a) whether the election is with a view to investment under regulation 7(1) of regulation 7(2), or both;
- (b) the amount of contributions; and
- (c) in relation to contributions for the purpose of investment under regulation 7(1), the authorised fund or funds in which the contributions are to be invested.

(5) The Secretary of State shall not accept an election under paragraph (1)—

- (a) where any limit imposed by regulation 4(4) or (5), or 13 (limits on contributions and benefits) would be exceeded; or
- (b) in the case of an election for the purposes of paragraph (1)(b), unless he is satisfied that—
 - (i) the person making the election has complied with the requirements of regulation 16(2) (provision of information); and
 - (ii) at the time of making an election the person is in good health; and
 - (iii) there is not reason why his health should prevent him from making contributions.

(6) Subject to paragraph (5)(b) above and regulation 4(4)—

- (a) where contributions are paid for the purposes of paragraph (1)(b)—
 - (i) until the contributor reaches his 60th birthday; and
 - (ii) on reaching his 60th birthday he continues to be in pensionable employment, the contributor may elect for further contributions to be paid until he reaches his 61st birthday; and
- (b) a person to whom paragraph (a) above applies may continue to elect annually for further contributions to be paid provided he continues to be in pensionable employment.

(7) For the purposes of paragraph (1) or (6) of this regulation, an election shall have effect from the date when it is accepted by the Secretary of State.

(8) The Secretary of State shall notify in writing the person who has made an election under paragraph (1), of the Secretary of State's acceptance of that election.

Payment and amount of additional voluntary contributions

4.—(1) Contributions under these Regulations may be made by way of—

- (a) periodical payments on a weekly, monthly, quarterly, or any other basis, depending upon when the contributor's salary is paid; or
- (b) a single payment.

⁽¹⁶⁾ Section 594 was amended by section 75 of, and paragraphs 1, 6, 18(1) and (4) of Part I of Schedule 6 to, the Finance Act 1989 (c. 26).

⁽¹⁷⁾ Regulation D1 was amended by S.I. 1998/2216.

(2) The contributor's employer may deduct any amount payable by the contributor from the contributor's salary.

(3) Deductions from salary made in accordance with paragraph (2) above—

(a) shall commence in respect of the first whole pay period falling after the date when the employer receives authorisation from the authorised provider to make the deductions;

(b) shall be remitted to the Secretary of State—

(i) as soon as is reasonably practicable; or

(ii) in the case of deductions to be made on or after the date on which these Regulations come into force, no later than 7 days after their deduction.

(4) Subject to paragraph (5), in any period of 12 months beginning on 6th April in any year the total contributions payable by the contributor shall not exceed—

(a) 15 per cent. of the amount which represents the contributor's salary less the total of any contributions paid by the contributor in respect of that year—

(i) to another approved scheme;

(ii) to free-standing additional voluntary contributions scheme; or

(iii) under the Pension Scheme Regulations;

(b) the amount which would be likely to provide benefits of the largest amounts allowed by regulation 13,

whichever is the lesser.

(5) Where an election has been made under regulation 3(1)(b) to provide for a lump sum death benefit, contributions payable by virtue of that election, or of any further election under regulation 3(6) or 5(2)(a), may not, on or after the date on which the Secretary of State accepts the election under regulation 3(1)(b), be of such an amount as to provide for a lump sum death benefit in excess of the amount permitted under paragraph 19(4) of the Schedule.

Variation and cancellation of elections

5.—(1) A contributor who has elected under regulation 3(1)(a) to pay contributions for the purpose of investment under regulation 7(1) may at any time by giving written notice to the Secretary of State—

(a) subject to regulation 4(4), alter the amount of the contributions;

(b) require the whole or part of any future contributions to be invested in some other authorised fund;

(c) require the Secretary of State to realise the whole or part of any investments made and to reinvest the proceeds in some other authorised fund; or

(d) cancel the election.

(2) A contributor who has elected under regulation 3(1)(b) to pay contributions to provide a lump sum death benefit under regulation 7(2) may at any time by giving written notice to the Secretary of State—

(a) subject to regulation 4(4) and (5) and provided the circumstances described in regulation 3(3) do not exist such that the Secretary of State would not accept an election under regulation 3(1)(b), elect that a specified larger sum is to be secured and the contributions increased accordingly; or

(b) cancel the election.

(3) The Secretary of State shall give effect as soon as is reasonably practicable to the terms of any notice given under this regulation.

Circumstances in which elections cease to have effect

6. An election shall cease to have effect where a contributor—
- (a) receives payment of benefits under regulations E1 to E5 or regulation L1, of the Pension Scheme Regulations, except where the contributor is entitled to accrue further benefits in the circumstances described in regulation B3(2) of those Regulations (restriction on further participation in the scheme);
 - (b) leaves pensionable employment;
 - (c) ceases to be in pensionable employment by virtue of an election under regulation B4 of the Pension Scheme Regulations (opting-out of the scheme); or
 - (d) ceases to receive tax relief under section 594(1) of the Taxes Act (exempt statutory schemes) or otherwise in respect of contributions paid under regulation D1 of the Pension Scheme Regulations (contributions by members).

Investment of additional voluntary contributions

7.—(1) Any contributions paid in respect of a contributor for investment under this paragraph shall be invested by the Secretary of State in accordance with any notice under regulation 3(4) or 5(1).

(2) Any contributions paid in respect of a contributor to provide for a lump sum death benefit under this paragraph shall be paid by the Secretary of State to an insurance company selected by him so as to secure the payment of a lump sum death benefit of the amount required by any notice under regulation 3(4) or 5(2).

Inward transfers

- 8.—(1) Where a person who enters pensionable employment has paid contributions to—
- (a) a free-standing additional voluntary contributions scheme; or
 - (b) an approved scheme which provides additional benefits by virtue of additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval),

that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of entering pensionable employment, or such longer period as the Secretary of State may in any particular case allow, give written notice to the Secretary of State that he wishes the Secretary of State to accept from the trustees or managers of that scheme a transfer value representing at least the value of the investments derived from his contributions.

(2) Where a transfer value is accepted by the Secretary of State it shall be invested by him, in accordance with the wishes of the person entering pensionable employment, in one or more of the authorised funds.

(3) Where a transfer value is invested under paragraph (2) the person may at any time, by giving written notice to the Secretary of State, require the Secretary of State to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

Inward transfers: mis-sold pensions

9.—(1) This regulation shall apply to a person to whom regulation B5 of the Pension Scheme Regulations (opting into the scheme: mis-sold pensions) applies and in respect of whom a transfer payment within the meaning of regulation N3A of those Regulations⁽¹⁸⁾ (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme) has been paid by a personal pension scheme to the Secretary of State.

(18) Regulations B5 and N3A were inserted by S.I. 1997/80.

(2) Subject to paragraph (3), where, at any time, a person to whom this regulation applies elects to join or rejoin the scheme under regulation B4(5) of the Pension Scheme Regulations (joining or rejoining the scheme after opting-out), that person, whether or not he becomes a contributor within the meaning of these Regulations, may, within 12 months of joining or rejoining the scheme, or such longer period as the Secretary of State may in any particular case allow, give written notice to the Secretary of State that he wishes the Secretary of State to accept a transfer value for the purposes of these Regulations.

(3) For the purposes of paragraph (2), the transfer value shall be of an amount representing the difference between—

- (a) the capitalised value of the accrued rights to benefit in the personal pension scheme from which the transfer value is paid which is attributable to contributions made to that scheme by the person referred to in paragraph (1) during his opted-out service; and
- (b) the amount referred to in regulation N3A(2)(i) of the Pension Scheme Regulations (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme).

(4) Where a transfer value is accepted by the Secretary of State it shall be invested by him, in accordance with the wishes of the person referred to in paragraph (1), in one or more of the authorised funds.

(5) Where a transfer value is invested under paragraph (4) that person may at any time, by giving written notice to the Secretary of State, require the Secretary of State to realise the whole or part of the sums so invested and to reinvest the proceeds in a different way.

(6) In this regulation—

“opted-out service” means the period of NHS employment in respect of which the Secretary of State has approved an additional period of pensionable service for the purposes of regulation N3A(2)(i) of the Pension Scheme Regulations; and

“personal pension scheme” has the meaning given by regulation B5(4) of the Pension Scheme Regulations.

Outward transfers

10.—(1) Subject to paragraph (2), the Secretary of State shall, in circumstances where a transfer payment in respect of a person is provided and used in accordance with regulation M1 of the Pension Scheme Regulations (member’s right to transfer or buy-out), pay a transfer value representing the value of the investments made in relation to that person under regulation 7(1), 8(2) or, as the case may be, 9(4) at that person’s option to one of the following schemes in which that person may be participating—

- (a) an approved scheme which provides additional benefits by virtue of additional voluntary contributions but does not fall within section 591(2)(h) of the Taxes Act (discretionary approval);
- (b) a personal pension scheme; or
- (c) any other arrangement which has been approved by the Board of Inland Revenue to accept transfer payments, provided that the transfer value shall not be used to purchase benefits in the form of a tax free lump sum.

(2) Where the Secretary of State is required to make a transfer payment under this regulation, he shall do so by whichever is the earlier of—

- (a) the end of the period of 6 months beginning with the guarantee date; or
- (b) if the person in respect of whom the transfer payment is to be made—

- (i) is no longer making contributions to the National Health Service Pension Scheme on a date prior to his attaining the age of 59 years; and
- (ii) made his application for a transfer payment during the period of 6 months beginning with that date,

the date on which he attains the age of 60 years.

(3) In this regulation “the guarantee date” has the meaning given to it in section 93A(2) of the Pension Schemes Act 1993(19) (salary related schemes: right to statement of entitlement).

PART III

PROVISION OF BENEFITS

Retirement and dependants' pensions

11.—(1) Subject to paragraph (7) and regulation 15(10) and (11), the proceeds of any investment made under regulation 7(1), 8(2) or 9(4) may be used only for the purchase from an insurance company of an annuity which complies with the requirements of paragraph (2).

(2) An annuity complies with the requirements of this paragraph if—

- (a) it provides a retirement pension which commences not earlier than the date of the participator’s retirement and is payable to him for life;
- (b) any dependant’s pension which is payable under it is payable only on the death of the participator after his retirement and is payable to the dependant for life, except that in the case of a dependant who is a child to whom Part H of the Pension Scheme Regulations (child allowance) applies it shall cease to be payable when that person ceases to be a dependent child within the meaning of those Regulations; and
- (c) it is not capable in whole or in part of surrender, assignment or commutation.

(3) Not earlier than 3 months before the date of his retirement, a participator, by giving written notice to the Secretary of State, shall make a benefits election which shall specify—

- (a) whether only a retirement pension is to be provided;
- (b) for whom, if anyone, a dependant’s pension is to be provided;
- (c) if more than one pension is to be provided; either—
 - (i) the proportion of the amount secured by the total investments made under regulation 7(1), 8(2) or 9(4) that is to be applied to the purchase of each of them; or
 - (ii) the dependants' pensions to be provided expressed as a percentage of the retirement pension;
- (d) in respect of every pension to be provided, whether the annual rate of the pension—
 - (i) is to be fixed; or
 - (ii) is to vary in accordance with the Index; or
 - (iii) is to increase yearly by a specified percentage or, if lower than that percentage, by the increase in the Index for the year in question; and
- (e) the authorised provider who is to provide each pension.

(4) In the case of a retirement pension, the notice of election under paragraph (3) may also specify that if the participator dies within the period of 5 years beginning with the date with which the

retirement pension commences, the balance that would have been payable during the remainder of that period, if the pension had continued at the rate in force at the time of the participator's death, is to be paid as a lump sum in accordance with regulation 15(3).

(5) Upon receipt of a notice of election under paragraph (3) the Secretary of State shall, as soon as reasonably practicable, realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of an annuity from the authorised provider specified in the notice of election.

(6) Notwithstanding whether benefits to which a participator may be entitled under Part E or regulation L1 of the Pension Scheme Regulations (benefits for members or preserved pension) are payable, where a participator's date of retirement falls on or after 1st December 1999 and he has—

- (a) reached the age of 75; and
- (b) failed to give a notice of election under paragraph (3) on or before the date of his 75th birthday,

the Secretary of State may realise the investments made under regulation 7(1), 8(2) or 9(4) and apply the proceeds to the purchase of a pension policy from an insurance company in order to provide such benefits as appear to him to be suitable.

(7) Where the participator dies before retirement, or dies after retirement but before an annuity such as is mentioned in paragraph (5) is acquired, the investments made under regulation 7(1), 8(2) or 9(4) shall be realised and shall be payable as a lump sum in accordance with regulation 15(3), subject to any limit imposed by regulation 13 and paragraph 19 of the Schedule.

(8) If the benefits provided by the annuity purchased in accordance with paragraph (5), when aggregated with the benefits payable under the Pension Scheme Regulations arising from the participator's pensionable service, do not exceed any amount prescribed by regulations for the time being in force under section 21(1) of the Pension Schemes Act 1993 (commutation, surrender and forfeiture), the authorised provider may discharge the liability for payment of the benefits under the annuity by payment of a lump sum representing their capital value in accordance with regulation 15(4).

Lump sums on death

12.—(1) Subject to paragraph (2), where a contributor who has elected under regulation 3(1)(b) to pay contributions to provide for a lump sum death benefit dies, the lump sum shall be payable.

(2) Any lump sum payable under paragraph (1) shall not exceed the amount permitted under paragraph 19(4) of the Schedule.

Benefit limits

13.—(1) The Schedule shall have effect for limiting the benefits that may be paid under these Regulations.

(2) The maximum annual rate of a retirement pension or dependant's pension ascertained from the Schedule may be increased—

- (a) by 3 per cent. for each completed year that has elapsed; or
- (b) if a greater increase results, in proportion to the increase in the Index that has occurred, since the date on which the pension became payable.

(3) The Secretary of State shall comply with the requirements of regulation 5 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993(20) (restriction on discretion to approve—other schemes), and where, within the

meaning of those Regulations, the scheme is the “leading scheme” in relation to a member, with the requirements of regulation 6 of those Regulations (calculation of surplus funds) so far as they concern “main schemes” for the purposes of those Regulations.

PART IV

MISCELLANEOUS PROVISIONS

Repayment of investments in certain cases

14.—(1) In the case of a person who—

- (a) ceases to be employed in pensionable employment; and
- (b) has applied for and received a refund of contributions under regulation L2 of the Pension Scheme Regulations (refund of contributions),

the Secretary of State shall subject to paragraph (2), make arrangements for that person to receive a lump sum equal to the total realisable value of the investments made by the Secretary of State in respect of that person under regulation 7(1), 8(2) or 9(4) less the amount of tax chargeable under section 598 of the Taxes Act (charge to tax: repayment of employee’s contributions)(21), in accordance with regulation 15(4).

(2) Where, in the circumstances mentioned in paragraph (1), contributions have been made by an employer, the Secretary of State shall make arrangements for that employer to receive a lump sum equal to the total realisable value of the investments made by the Secretary of State under regulation 7(1) in respect of contributions made by that employer less the amount of tax chargeable under section 601 of the Taxes Act (charge to tax: payment to employers).

Payments by the Secretary of State

15.—(1) Subject to paragraph (2), where an authorised provider fails to pay any amount due by way of an annuity or lump sum death benefit to be provided in accordance with these Regulations, the Secretary of State shall be liable to pay that amount.

(2) Where, on or after the date on which these Regulations come into force, a participator elects for benefits to be provided by an authorised provider other than the provider selected by the Secretary of State, the Secretary of State shall not be liable under paragraph (1).

(3) Lump sums payable as mentioned in regulation 11(4), or under regulation 11(7) or 12 shall be paid—

- (a) to the deceased’s spouse; or
- (b) to the deceased’s personal representatives if—
 - (i) there is no spouse; or
 - (ii) a notice has been given in accordance with regulation F5(3) of the Pension Scheme Regulations (payment of lump sum)(22) that the spouse is not to receive the payment.

(4) Lump sums payable under regulation 11(8) or 14(1) shall be paid to the participator.

(5) Subject to paragraph (6) below, if, on the death of a participator, a lump sum would have been payable under regulation 11(7) or 12, but the whole or part of that sum cannot be paid by reason of regulation 13 and paragraph 19 of the Schedule, any amount which cannot be paid under

(21) Section 598 was amended by section 75 of, and paragraphs 1, 10 and 18(1) of Part I of Schedule 6 to, the Finance Act 1989.

(22) Paragraphs (1) to (3) of regulation F5 were substituted by S.I. 2000/605.

these provisions shall be used for the purchase of annuity which complies with the provisions of regulation 11(2)(b) and (c) to provide a pension for—

- (a) the spouse of the participator, but if none is living;
 - (b) any dependant child of the participator.
- (6) In relation to paragraph (5) above any such pension shall be—
- (a) subject to any limit imposed by regulation 13 and paragraph 18 of the Schedule; and
 - (b) paid to the deceased's personal representatives after any amount of tax chargeable under section 599A of the Taxes Act(23) (charge to tax: payments out of surplus funds) has been deducted from—
 - (i) any amount remaining after the purchase of such a pension; or
 - (ii) the whole amount if no person who is mentioned in paragraph (5)(a) or (b) above is living.

(7) If, by reason of regulation 13 and paragraphs 11 to 18 of the Schedule, an annuity falling to be provided under regulation 11 is not payable in full, there shall, subject to paragraph (8), be paid to the participator the balance of the amount, or aggregate of amounts, not exceeding the prescribed amount as defined in paragraph (9), out of investments realised by virtue of regulation 11(5) which would otherwise have been applicable to the purchase of the annuity, less the amount of any tax chargeable under section 599A of the Taxes Act.

(8) Where, in the circumstances mentioned in paragraph (7), contributions have been made by the employer, the balance (to the extent that it is attributable to contributions made by the employer) less the amount of any tax chargeable under section 601 of the Taxes Act (charge to tax: payments to employers), shall be paid to the employer.

(9) In paragraph (7) the reference to the prescribed amount is to an amount calculated in accordance with the method for the time being specified in regulations made for the purposes of section 591 of the Taxes Act (discretionary approval) as the method to be used for calculating the amount of any surplus funds.

(10) Subject to paragraph (11) below, in the case of a participator to whom any of regulations E1 to E5 or L1 of the Pension Scheme Regulations applies (benefits for members, or preserved pension), the Secretary of State may realise such part of the investments made under these Regulations as is derived from an contributions made by the participator's employer without purchasing an annuity and, in that event, the amount shall be payable to the participator as a lump sum.

(11) In the case of a participator to whom regulation E2(7) (early retirement on grounds of ill health) or L1(5) (preserved pension) of the Pension Scheme Regulations applies, the Secretary of State may realise the investments made under these Regulations without purchasing an annuity and, in that event, the proceeds shall be payable to the participator as a lump sum less any charge to tax under section 599 of the Taxes Act.

Information

16.—(1) A person making an election under these Regulations, and his employer, shall give the Secretary of State such information as he may reasonably require for the purposes of his functions under these Regulations.

- (2) Without prejudice to the generality of paragraph (1), a person making—
 - (a) an election under regulation 3(1)(b) or (6) for the provision of a lump sum death benefit; or
 - (b) an election under regulation 5(2)(a),

(23) Section 599A was inserted by section 75 of, and paragraph 12 of Schedule 6 to, the Finance Act 1989, and amended by sections 121(8), 122(7)(b) and (c) and 205 of, and paragraph 6 of Part V of Schedule 41 to, the Finance Act 1996 (c. 8).

shall, in particular, give the Secretary of State such information about his health as the Secretary of State may reasonably require.

Payments in respect of deceased persons

17.—(1) This regulation applies where a person dies and the total of—

- (a) any sums that were due to him under these Regulations; and
- (b) any sums payable under these Regulations to his personal representatives,

does not exceed the amount specified in any order for the time being in force for the purposes of section 1 of the Administration of Estates (Small Payments) Act 1965⁽²⁴⁾ and which applies in relation to the death.

(2) Where this regulation applies the Secretary of State may, without requiring the production of proof of title, pay any amount due under either, or, as the case may be, both of sub-paragraphs (a) and (b) of paragraph (1)—

- (a) to the deceased's personal representatives; or
- (b) to the person, or to or among any one or more of any persons, appearing to him to be beneficially entitled to the estate,

and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Benefits not assignable on bankruptcy

18.—(1) On the bankruptcy of a person entitled to benefit under these Regulations, no part of the benefit shall be paid to any trustee or other person acting on behalf of creditors, except as provided for in paragraph (2).

(2) Where, following the bankruptcy of any person entitled to benefit under these Regulations, the court makes an order under section 310 of the Insolvency Act 1986⁽²⁵⁾ that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy the Secretary of State shall comply with that order.

Offset for crime, negligence or fraud

19. Where, on or after the date on which these Regulations come into force—

- (a) the circumstances set out in regulation T5 of the Pension Scheme Regulations (offset for crime, negligence or fraud) have occurred; and
- (b) there has been a loss to public funds,

the Secretary of State may, in relation to benefits which arise by virtue of any employer's contributions paid on or after the date on which these Regulations come into force, reduce the amount of any benefit payable to or in respect of a person under these Regulations, to the extent set out, and subject to the conditions specified, in that regulation.

Loss of rights to benefits

20. Where—

- (a) A person entitled to benefit under these Regulations is convicted of an offence referred to in paragraph (1) of regulation T6 of the Pension Scheme Regulations (loss of rights

⁽²⁴⁾ 1965 c. 32. The amount specified in S.I. 1984/539 is £5,000.

⁽²⁵⁾ 1986 c. 45. Section 310(7) was amended by paragraph 2 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30).

to benefits), which was committed on or after the date on which these Regulations come into force; and

- (b) the circumstances are such that a direction may be made by the Secretary of State under regulation T6 of those Regulations,

the Secretary of State may direct that all or part of any rights to benefit under these Regulations which arise by virtue of any employer's contributions paid on or after the date on which these Regulations come into force, are to be forfeited.

Determination of questions

21. Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Secretary of State.

14th March 2000

John Denham
Minister of State,
Department of Health

We consent to the making of these Regulations.

16th March 2000

Greg Pope
Clive Betts
Lords Commissioners of Her Majesty's Treasury

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SCHEDULE

Regulation 13

BENEFIT LIMITS

PART 1

INTERPRETATION

1. Paragraphs 2 to 10 have effect for defining expressions used in this Schedule.

2. “Adjusted salary” means

$A + B$

where—

- a A is the participator’s total taxable earnings for the year in question less any fluctuating emoluments such as bonus payments and payments for overtime; and
- b B is the annual average of the fluctuating emoluments, which shall for these purposes be averaged—
 - (i) in a case where such emoluments have been paid for a period of less than 3 years, over the period during which they have been paid; or
 - (ii) in any other case, over a period of whole years, not being less than 3 consecutive years, ending on the last day of the year in question.

3.—(1) “Final remuneration” means, subject to sub-paragraphs (2) and (3), the greater of C and D, where—

- (a) C is the highest amount of adjusted salary earned by the participator in respect of pensionable service in any year during the period of 5 years ending on the material date; and
- (b) D is the annual average of the participator’s adjusted salary in respect of any period of 3 or more consecutive years ending no earlier than 10 years before the material date,

but, in respect of any year other than the one ending on the material date, the adjusted salary shall be taken to have been increased in proportion to any increase in the Index from the end of that year up to the material date.

(2) In respect of the tax year 1987–88 and following tax years, “final remuneration” shall not include any sums chargeable to tax under section 148 of the Taxes Act (payments on retirement or removal from office or employment) or chargeable under Schedule E to Part I of the Taxes Act and arising from the acquisition or disposal of shares, or an interest in shares, or from a right to acquire shares except where the shares or rights which gave rise on or after 17th March 1987 to a tax liability under that Schedule had been acquired before that date.

(3) Where the participator entered pensionable employment on or after 1st June 1989 and final remuneration, calculated under sub-paragraph (1), exceeds the permitted maximum under section 590C of the Taxes Act⁽²⁶⁾ (conditions for approval of retirement benefit schemes: earnings cap), then for the purposes of calculating the participator’s final remuneration, no account shall be taken of the excess over that amount unless the participator is a person mentioned in regulation C1(3) of the Pension Scheme Regulations (meaning of “pensionable pay” and “final year’s pensionable pay”)⁽²⁷⁾.

⁽²⁶⁾ Section 590C was inserted by paragraph 4 of Schedule 6 to the Finance Act 1989.

⁽²⁷⁾ Regulation C1 was amended by S.I. 1997/80.

(4) For the purposes of this paragraph, the Secretary of State shall select the years by reference to which the participant's final remuneration is to be calculated and the years selected shall be those which produce the result most favourable to the participant.

4. "Material date" means the earlier of—

- (a) the participant's retirement date; and
- (b) the date on which the participant ceased to be in pensionable employment.

5. "Permitted amount" means—

- (a) in relation to a retirement pension, the amount determined in accordance with whichever of paragraphs 12 to 17 below is applicable in the case of the participant;
- (b) in relation to dependants' pensions, the amount determined in accordance with whichever of paragraph 18(2) and (3) is applicable in the case of the participant; and
- (c) in relation to a lump sum on death the amount determined in accordance with paragraph 19(4).

6.—(1) "Retained benefits" means the total of any pensions payable to the participant, in respect of employment before the participant entered pensionable employment, under—

- (a) a retirement benefit scheme falling within Chapter I of Part XIV of the Taxes Act (retirement benefit schemes, approval of schemes);
- (b) a retirement annuity contract or trust scheme approved under Chapter III of Part XIV of the Taxes Act (retirement annuities);
- (c) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act (personal pension schemes);
- (d) a statutory scheme as defined in section 612(1) of the Taxes Act (other interpretative provisions, and regulations for purposes of this Chapter); or
- (e) an approved scheme.

(2) Where the participant joined the NHS Pension Scheme on or after 1st June 1989, retained benefits may be ignored if his salary during his first year of being employed by an employing authority does not exceed one quarter of the permitted maximum under section 590C of the Taxes Act (conditions for approval of retirement benefit schemes: earnings cap).

(3) Where the participant joined the NHS Pension Scheme before 1st June 1989, retained benefits may be ignored if his salary during the year in which he made an election under regulation 3 did not exceed one quarter of the permitted maximum under section 590C of the Taxes Act.

(4) In this paragraph—

- (a) "employing authority"**(28)** has the meaning given to that expression in regulation A2 of the Pension Scheme Regulations (interpretation)**(29)**; and
- (b) "pension" includes the actuarial equivalent as an annual pension, as determined by the Board of the Inland Revenue, of any lump sum.

7. "Tax year" means the 12 months beginning with 6th April in any year.

8. "Total retirement benefits" means the total of so much of—

- (a) the annual rate of the participant's retirement pension derived from an annuity purchased in accordance with these Regulations;

(28) Section 612 was amended by sections 103(2), 258 of, and paragraph 12 of Part V of Schedule 26 to, the Finance Act 1994 (c. 9).

(29) The definition of "employing authority" was amended by S.I. 1997/1888, 1998/666 and 2000/605.

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- (b) the annual rate of any pension payable under Part E or regulation L1 of the Pension Scheme Regulations (benefits for members or preserved pension);
- (c) the annual rate of any pension payable to the participator under any approved scheme; and
- (d) the actuarial equivalent as an annual pension, as determined by the Board of the Inland Revenue, of any retirement lump sum under—
 - (i) the Pension Scheme Regulations; or
 - (ii) an approved scheme,as is attributable to contributions, including any contribution made by the employer, paid while in pensionable employment.

9. “Total taxable earnings” means all salary, wages, fees and other regular payments made to a participator in respect of pensionable employment which are chargeable to income tax under Schedule D or Schedule E to Part I of the Taxes Act.

10. “The year in question” means—

- (a) in the case of a practitioner—
 - (i) a 12 month period running from 1st April to 31st March; or
 - (ii) a 12 month period beginning immediately prior to the practitioner’s date of termination of employment,whichever is more favourable to the practitioner; or
- (b) in any other case, a 12 month period beginning immediately prior to the participator’s date of termination of employment.

PART II

RETIREMENT PENSIONS

11. The annual rate of a participator’s retirement pension derived from an annuity purchased in accordance with these Regulations must not be such as to cause the participator’s total retirement benefits to exceed the permitted amount.

12.—(1) Where the participator becomes entitled to a pension under regulation E1 of the Pension Scheme Regulations (normal retirement pension) on his 60th birthday, the permitted amount is the greater of E and F, where—

- (a) E is $\frac{1}{60}$ th of the participator’s final remuneration multiplied by the number of years of his pensionable service not exceeding 40 years; and
 - (b) F is the lesser of G and H.
- (2) For the purposes of sub-paragraph (1)—
- (a) G is—
 - (i) in the case of a participator who entered pensionable employment before 17th March 1987, such fraction of his final remuneration as is specified in column (2) of the Table below in relation to the number of years of his pensionable service specified in column (1) of that Table—

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Table

<i>Column (1)</i> <i>Years of pensionable service at age 60</i>	<i>Column (2)</i> <i>Fraction</i>
Not more than 5	1/60th for each year
6	8/60 ^{ths}
7	16/60 ^{ths}
8	24/60 ^{ths}
9	32/60 ^{ths}
10 or more	40/60 ^{ths}

and

(ii) in any other case, is 1/30th of the participator's final remuneration multiplied by the number of the years of his pensionable service, not exceeding 20 years; and

(b) H is 2/3rds of the participator's final remuneration less any retained benefits.

13. Where the participator becomes entitled to a pension under regulation E1 of the Pension Scheme Regulations (normal retirement pension) on a date later than his 60th birthday, the permitted amount is the greatest of J, K and, where applicable, L, where—

- (a) J is an amount calculated in accordance with paragraph 12 as at the material date;
- (b) K is an amount calculated in accordance with paragraph 12 as at the participator's 60th birthday increased up to the date of his retirement, in proportion to any increase in the Index during that period; and
- (c) L is, in the case of a participator with more than 40 years of pensionable service, 1/60th of the participator's final remuneration multiplied by the number of years of his pensionable service, not exceeding 45 years and excluding any years before the participator's 60th birthday in excess of 40.

14.—(1) Where the participator becomes entitled to a pension under regulation L1 of the Pension Scheme Regulations (preserved pension)**(30)** the permitted amount is—

(a) where the participator first entered pensionable employment before 1st June 1989, the greater of—

$$\frac{(M + R) \text{ and } (N \times Q + R)}{P}$$

where—

- (i) M is 1/60th of the participator's final remuneration multiplied by the number of the years of his pensionable service, not exceeding 40 years;
- (ii) N is the number of years by reference to which M is calculated;
- (iii) P is the number of years by reference to which M would have been calculated if the participator had continued in pensionable employment until his 60th birthday;
- (iv) Q is the maximum amount calculated in accordance with paragraph 12 if the participator had continued in pensionable employment until he attained the age of 60;

(30) Regulation L1 was amended by S.I. 2000/605.

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- (v) R is the appropriate increase; and
- (b) in any other case, the amount calculated in accordance with paragraph 12(1), (2)(a)(ii) and (2)(b) increased up to the date of his retirement in proportion to any increase in the Index during that period.

(2) For the purpose of sub-paragraph (1)(a) “the appropriate increase” is an increase in the amount in question in proportion to any increase in the Index during the period beginning with the cessation of pensionable employment and ending with the date of payment of the participator’s retirement pension.

15. In their application to persons who are special class officers for the purposes of regulations R2 (nurses, physiotherapists, midwives and health visitors) and R3 (mental health officers) of the Pension Scheme Regulations, paragraphs 12 and 13 shall have effect subject to the modification that “55th birthday” shall be substituted for “60th birthday”, and “age of 55” shall be substituted for “age of 60”.

16. If the participator becomes entitled to a pension under regulation E2 of the Pension Scheme Regulations (early retirement pension on grounds of ill health), the permitted amount is that fraction of the participator’s final remuneration, which in accordance with paragraph 12, he could have received had he remained in pensionable employment until his 60th birthday.

17.—(1) If the participator becomes entitled to a pension under regulation E3 (early retirement pension in respect of redundancy), E4 (early retirement pension with employer’s consent) or E5 (early retirement pension with actuarial reduction) of the Pension Scheme Regulations, the permitted amount is—

- (a) where the participator first entered pensionable employment before 1st June 1989, the greater of—

$$\frac{M \text{ and } (N \times Q)}{P}$$

and

- (b) in any other case, S.

(2) In sub-paragraph (1) above, M, N, P and Q have the same meaning as in paragraph 14, and S is the amount calculated in accordance with paragraph 12(1), (2)(a)(ii) and (2)(b).

PART III

DEPENDANTS' PENSIONS

18.—(1) The annual rate of a dependant’s pension under these Regulations, or where more than one such pension is payable, the total of their annual rates, must not be such as to cause the total of the annual rates of the relevant benefits to exceed the permitted amount.

(2) Where only one dependant’s pension is payable, the relevant benefits are—

- (a) that pension; and
- (b) any similar pension payable to the dependant under the Pension Scheme Regulations or under a free-standing additional voluntary contributions scheme to which contributions were paid while the participator was in pensionable employment,

and the permitted amount is 2/3rds of the maximum retirement pension.

(3) Subject to sub-paragraph (4), where two or more dependants' pensions are payable, the relevant benefits are—

- (a) those pensions; and
 - (b) any similar pensions payable as mentioned in sub-paragraph (2)(b),
- and the permitted amount is the annual rate of the maximum retirement pension.
- (4) The relevant benefits payable in respect of any one dependant shall not exceed the permitted amount calculated in accordance with sub-paragraph (2).
- (5) Subject to sub-paragraph (6), the maximum retirement pension is the permitted amount calculated in accordance with paragraphs 12 to 17 in relation to the participator, but disregarding any retained benefits.
- (6) The maximum retirement pension is to be calculated on the assumption that—
- (a) where the participator died in pensionable employment and had not attained the age of 60, he continued in pensionable employment and was in receipt of the same level of salary which he was receiving at the time of his death up to, and retired on, his 60th birthday; and
 - (b) where the participator died in pensionable employment and had attained the age of 60, he retired on the day before his death.

PART IV

LUMP SUMS ON DEATH

- 19.**—(1) The lump sum payable under regulation 11(7) must not be such as to cause the total of the lump sums payable on death to exceed the total realisable value of the investments made by the Secretary of State under regulation 7(1), 8(2) or 9(4) in respect of contributions made by the participator.
- (2) The total lump sums payable on death are the total of—
- (a) any lump sum death benefit arising pursuant to an election under regulation 3(1)(b) or (6) or 5(2)(a);
 - (b) any lump sum payable under regulation 11(7); and
 - (c) any lump sum death benefits which in total exceed £2,500 and which are payable under relevant schemes.
- (3) The relevant schemes are—
- (a) approved schemes;
 - (b) schemes approved under Chapter IV of Part XIV of the Taxes Act (personal pension schemes);
 - (c) free-standing additional voluntary contribution schemes;
 - (d) retirement annuity contracts approved under Chapter III of Part XIV of the Taxes Act;
 - (e) the Scheme constituted by the Pension Scheme Regulations; and
 - (f) relevant statutory schemes as defined in section 611A(31) of the Taxes Act.
- (4) The permitted amount for the purposes of regulations 4(5) and 12(2) is £5,000 or, if greater, 4 times the participator's remuneration.
- (5) The participator's remuneration is the greatest of T, U and V, where—
- (a) T would have been the amount of the participator's final remuneration if the date of his death had been the material date;

(31) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989.

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- (b) U is the highest amount of the participator's adjusted salary applicable under paragraph (3) for the purpose of calculating T, and
- (c) V is the participator's total taxable earnings during any period of 12 months ending on a date not more than 3 years immediately before his death, increased in proportion to any increase in the Index during the period beginning with that date and ending on the material date.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the payment of additional voluntary contributions by persons who are members of the pension scheme constituted by the National Health Service Pension Scheme Regulations 1995 ("the NHS Pension Scheme"), or by their employers, in order to secure additional benefits financed by investment of those contributions. Regulations 1 to 10, 11(1) to (5), (7) and (8), 12 to 18 and 21 take effect from 1st February 1991. Regulation 11(6) takes effect from 1st December 1999. Section 12(1) of the Superannuation Act 1972 confers power to make Regulations having effect from a date earlier than the date of their making.

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

Regulation 3 provides for elections to pay periodical contributions in order to secure additional retirement and dependants' pensions and a lump sum death benefit in the event of death while paying such contributions and contains general provisions as to the making and acceptance of elections.

Regulation 4 deals with the payment of contributions and imposes a limit on their total amount.

Regulation 5 allows elections made under regulation 3 to be varied or cancelled, and regulation 6 prescribes the circumstances under which an election ceases to have effect.

Regulation 7 makes provision in relation to the investment of contributions by the Secretary of State.

Regulation 8 makes provision relating to the acceptance of a transfer value from another scheme.

Regulation 9 makes special provision regarding the acceptance of a transfer value from a personal pension scheme in the case of persons who have opted out of the NHS Pension Scheme and suffered a loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986 (mis-sold personal pensions).

Regulation 10 makes provision regarding payment of a transfer value (representing the value of the investments) to another scheme.

Regulation 11 makes provision for the payment of retirement and dependant's pensions and for the making of elections relating thereto, and regulation 12 provides for the payment of lump sum death benefits.

Regulation 13 and the Schedule impose limits on benefits payable under the Regulations.

Regulation 14 provides for the realisable value of investments to be repaid where contributions under the National Health Service Pension Scheme Regulations 1995 are repaid.

Regulation 15 makes provision in relation to the circumstances in which the Secretary of State will make any payments of benefits that an authorised provider fails to make. It also makes provision as to the persons to whom certain payments are to be made and as to the deduction of income tax.

Regulation 16 provides for the Secretary of State to be given information needed for the purposes of his functions under the Regulations.

Regulation 17 provides for any payments, up to a prescribed maximum (currently £5,000), payable to the personal representatives of deceased persons, to be made without proof of title.

Regulation 18 provides that on bankruptcy, benefits under the Regulations may only be assigned to a person's trustee in bankruptcy if the court makes an order to that effect.

Regulation 19 provides for the offsetting of any benefits arising from the employer's contributions in circumstances of crime, negligence or fraud, and regulation 20 provides for the forfeiture of rights to any benefits arising from the employer's contributions in certain circumstances.

Regulation 21 provides for the determination of questions by the Secretary of State.

These Regulations do not impose any costs on business.