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STATUTORY INSTRUMENTS

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**2009 No. 1298**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Pension  
Scheme (Amendment) Regulations 2009**

<i>Made</i>	- - - -	<i>20th May 2009</i>
<i>Laid before Parliament</i>		<i>27th May 2009</i>
<i>Coming into force</i>	- -	<i>1st July 2009</i>

The Secretary of State for Health, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by section 10(1) and (2) of the Superannuation Act 1972<sup>(1)</sup>.

In accordance with section 10(4) of that Act, the Secretary of State has consulted with representatives of persons likely to be affected by these Regulations, as appeared to the Secretary of State to be appropriate.

**Citation and commencement**

1. These Regulations may be cited as the National Health Service Pension Scheme (Amendment) Regulations 2009 and shall come into force on 1st July 2009.

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

2.—(1) The National Health Service Pension Scheme Regulations 1995<sup>(2)</sup> shall be amended as follows.

(2) In paragraph (1) of regulation B1 (membership of the scheme) after “(restrictions on membership)”, insert “and B3 (restriction on further participation in the scheme)”.

(3) In regulation B3 (restriction on further participation in the scheme) after paragraph (3), insert—

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(1) 1972 c.11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32) and section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7). As to Treasury consent, 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).

(2) S.I. 1995/300. Regulation B3 was amended by regulation 3 of S.I. 2009/381; there are other amending instruments but none is relevant.

“(4) Subject to paragraph (7), a person who satisfies Condition A or Condition B may not contribute to or accrue pensionable service under the scheme in respect of any period of NHS employment on or after 1st July 2009 (“the relevant employment”) with effect from the later of—

- (a) that date, and
  - (b) the date on which Condition A or Condition B is met.
- (5) Condition A is that on or after 13th January 2009—
- (a) that person is employed by an employing authority,
  - (b) the relevant employment commences in accordance with an arrangement under which it is the intention of the employing authority to retain that person as an employee following that person’s objection to that person’s transfer to another body (which is not an employing authority) (“a retention arrangement”), and
  - (c) but for that retention arrangement—
    - (i) the transfer of that person’s employment would be a relevant transfer for the purposes of the TUPE Regulations<sup>(3)</sup>, or
    - (ii) that person’s employment would, in the Secretary of State’s opinion, transfer from the employing authority to another employer in the public sector by virtue of an arrangement broadly equivalent to a TUPE transfer.
- (6) Condition B is that on or after 13th January 2009—
- (a) that person—
    - (i) is seconded from an employing authority to another body (which is not an employing authority), but
    - (ii) remains an employee of that employing authority during that secondment, and
  - (b) the purpose of that secondment is, in the opinion of the Secretary of State, for that person to assist that other body in the discharge of any functions which have previously transferred to that other body from that employing authority.

(7) A person referred to in paragraph (4) may contribute to or accrue pensionable service under the scheme in respect of the relevant employment referred to in that paragraph if the Secretary of State considers it appropriate, having regard to the nature of that employment and the circumstances under which it takes place, to accept that person as a member of the scheme.

(8) The reference in paragraph (5)(c)(ii) to an arrangement broadly equivalent to a TUPE transfer is to an arrangement—

- (a) which, having regard to the purpose of the arrangement and its effect on the functions of the employing authority, the Secretary of State considers has that equivalence, and
- (b) under which the Secretary of State requires the parties to agree that the rights of the person whose employment is being transferred should, as far as practicable, be treated no less favourably than they would have been under a TUPE transfer.

(9) In this regulation—

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(4)</sup>;

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<sup>(3)</sup> See regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

<sup>(4)</sup> S.I. 2006/246.

“a TUPE transfer” means a transfer of an undertaking to which the TUPE Regulations apply.”.

### **Amendment of the National Health Service Pension Scheme Regulations 2008**

**3.—(1)** The National Health Service Pension Scheme Regulations 2008<sup>(5)</sup> shall be amended as follows.

(2) In regulation 2.B.2 (restrictions on eligibility: general) after paragraph (8), insert—

“(9) A person who satisfies Condition A or Condition B is not eligible to be an active member of the Scheme in respect of any period of NHS employment on or after 1st July 2009 (“the relevant employment”) with effect from the later of—

- (a) that date, and
- (b) the date on which Condition A or Condition B is met.

(10) Condition A is that on or after 13th January 2009—

- (a) that person is employed by an employing authority,
- (b) the relevant employment commences in accordance with an arrangement under which it is the intention of the employing authority to retain that person as an employee following that person’s objection to that person’s transfer to another body (which is not an employing authority) (“a retention arrangement”), and

(c) but for that retention arrangement—

- (i) the transfer of that person’s employment would be a relevant transfer for the purposes of the TUPE Regulations, or
- (ii) that person’s employment would, in the Secretary of State’s opinion, transfer from the employing authority to another employer in the public sector by virtue of an arrangement broadly equivalent to a TUPE transfer.

(11) Condition B is that on or after 13th January 2009—

- (a) that person—
  - (i) is seconded from an employing authority to another body (which is not an employing authority), but
  - (ii) remains an employee of that employing authority during that secondment, and
- (b) the purpose of that secondment is, in the opinion of the Secretary of State, for that person to assist that other body in the discharge of any functions which have previously transferred to that other body from that employing authority.

(12) A person referred to in paragraph (9) may be an active member of the Scheme in respect of the relevant employment referred to in that paragraph if the Secretary of State considers it appropriate, having regard to the nature of that employment and the circumstances under which it takes place, to accept that person as such a member.

(13) The reference in paragraph (10)(c)(ii) to an arrangement broadly equivalent to a TUPE transfer is to an arrangement—

- (a) which, having regard to the purpose of the arrangement and its effect on the functions of the employing authority, the Secretary of State considers has that equivalence, and

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(5) [S.I. 2008/653](#). Regulation 2.B.2 was amended by regulation 19 of [S.I. 2009/381](#).

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- (b) under which the Secretary of State requires the parties to agree that the rights of the person whose employment is being transferred should, as far as practicable, be treated no less favourably than they would have been under a TUPE transfer.
- (14) In this regulation—
- “the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- “a TUPE transfer” means a transfer of an undertaking to which the TUPE Regulations apply.”.

Signed by authority of the Secretary of State for Health.

20th May 2009

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

We consent

20th May 2009

*Tony Cunningham*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

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

These Regulations further amend the regulations governing the National Health Service Pension Scheme. The Scheme consists of two “sections” – the 1995 section governed by the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (“the 1995 Regulations”) and the 2008 section governed by the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (“the 2008 Regulations”).

Regulation 2 amends regulations B1 and B3 of the 1995 Regulations (which deal with restrictions on membership of the 1995 section of the Scheme) to provide that a person whose employment is subject to a “TUPE” or “TUPE-like” transfer or a person seconded to a non-NHS organisation to assist that organisation in the discharge of any functions previously transferred to it, may not pay contributions or accrue pensionable service in the 1995 section of the Scheme except where the Secretary of State considers it appropriate to accept that person as a member of the Scheme.

Regulation 3 amends regulation 2.B.2 of the 2008 Regulations (which deals with restrictions on membership of the 2008 section of the Scheme) to the same effect as regulation 2 in relation to the 1995 Regulations.