EXPLANATORY MEMORANDUM TO THE

NATIONAL HEALTH SERVICE (APPOINTMENT OF CONSULTANTS) AMENDMENT REGULATIONS 2004

2004 No. 3365

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The NHS (Appointment of Consultants) Regulations 2004 make a number of minor changes to the NHS (Appointment of Consultants) Regulations 1996 ("the 1996 Regulations"). The 1996 Regulations regulate the way in which the appointment of consultants to NHS posts are made by setting out how a post should be advertised; specifying the circumstances in which posts will be regulated and in which they will be exempt; the fact that appointments should be made on the recommendation of an Advisory Appointments Committee ("AAC") and how those AACs should be constituted

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The NHS (Appointment of Consultants) Regulations 2004 will create two new exemptions from the requirement that an AAC must be held to appoint a consultant. The first new exemption applies to consultants moving from posts in the armed services to NHS posts without the location or the duties involved in their post altering in a significant way. The second exemption applies to consultants who retire then return to a similar post in the same body. The amended regulations will also allow one of the two required adverts for a consultant post to be in electronic form as opposed to the current situation in which both need to be featured in publications. They also clarify the way in which a joint AAC, set up by two or more of the bodies to whom the 1996 regulations apply, should be constituted. These amendments should, in conjunction with the accompanying updated good practice guidance, make the recruitment process less prescriptive and easier for Trusts to operate; give the prospective employer greater control over the recruitment process and streamline the process and clarify roles and responsibilities for action to help speed up appointments. The amended good practice guidance sets out in a more user-friendly manner the legal requirements on employers when recruiting to a NHS consultant post and also recommends appropriate procedures which should ensure that the process is fair, open and that equal opportunities requirements are met. The good practice guidance also gives greater clarity on the roles of the medical royal colleges in approving job descriptions and should help prevent unnecessary delays in this part of the recruitment process. This is non-contentious and will be welcomed by the service and the profession.

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

The Minister of State for Health has made the following statement under section 19(1) (a) of the Human Rights Act 1998:

In my view, the provisions of the National Health Service (Appointment of Consultants) Amendment Regulations 2004 are compatible with the Convention rights

7. Policy background

7.1 When the NHS (Appointment of Consultants) Regulations and supporting Good Practice Guidance was last amended in 1996 it was agreed that they should be reviewed after five years. As a result of this a review group was set up in 2002 which comprised of representatives from the Department of Health, British Medical Association, British Dental Association, NHS Confederation, NHS employers and the medical royal colleges. This body came to an agreement on the following amendments to the 1996 Regulations which they feel will improve the appointment process. The added exemptions mean that consultants working in the armed forces can apply for a post in the same location with similar duties which will allow, for example, members of the Armed Forces who are currently working at consultant level in the NHS to transfer seamlessly into a substantive NHS consultant post upon retirement from the Forces. The second added exemption will allow consultants to take early retirement and then return to a similar post in the same body without the need for them to go through a full AAC. This will help the NHS retain experienced staff. Also allowing employers to have one advertisement in electronic format will help reduce the cost of advertising. Overall, the key policy objectives are to streamline the process of recruiting consultants in the NHS. The accompanying guidance helps to achieve these aims through, in particular, increasing the period before obtaining the relevant qualifications that a consultant can be provisionally appointed, clarifying the role of the Royal Colleges and giving the prospective employer greater control over the whole process.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies

8.2 The impact on the public sector is a minor change in the legislative requirements for the appointment of consultants. This will have a positive impact for prospective NHS consultant employers in terms of streamlining the process for the recruitment of consultants.

9. Contact

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