**EXPLANATORY MEMORANDUM TO**

**THE NATIONAL HEALTH SERVICE PENSION SCHEME (AMENDMENT No. 2) REGULATIONS 2014**

**2014 No 1607**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 This instrument amends two statutory instruments (S.I.) relating to pensions and benefits provided for National Health Service staff.

2.2 Two key changes are implemented by this instrument which include;

- changes to two of the pay/earnings bands that are used when determining the contribution rate payable by individual NHS Pension Scheme members and;
- amending pensionable pay controls in relation to salary sacrifice arrangements.

2.3 The instrument also makes a number of other consequential, miscellaneous and technical amendments.

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

3.1 Section 12(1) of the Superannuation Act 1972 confers a power to make regulations having effect from a date earlier than the date of their making.

3.2 The regulations have retrospective effect from 1 April 2014.

## 4. Legislative Context

4.1 **Part 2** of the instrument amends the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) **(the 1995 Section)**.

4.2 **Part 3** of the instrument amends the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) **(the 2008 Section)**.

## 5. Territorial Extent and Application

The instrument applies to England and Wales.

## 6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy Background

### Pay/earnings band uplifts in the 1995 and 2008 regulations

*Increases to two of the pay/earnings bands used to determine contribution rates payable (amending regulations 4, 7, 10, 11 and 14)*

7.1 No general pay uplift has been applied to the NHS AfC pay scales with effect from 1 April 2014 as the Government did not accept the recommendations of the NHS Pay Review Body. However an adjustment was made to AfC spine point 15 from 1 April 2014 to ensure that members progressing to this point received a 1% increase in pay. Without any change to the pay/earnings bands in the NHS Pension Scheme regulations those members at pay spine point 15 (to which the upper limit of the second tier of pension contribution rate is pegged) receiving the 1% pay uplift would move from the second to the third tier. This would have meant that as a result of a 1% pay increase, their pension contribution rate increased by 1.5%. This is clearly not the intended effect of the pay uplift, hence it was appropriate to raise the level at which the top of the second, and bottom of the third, tier of member contributions is set in line with the pay uplift.

7.2 Since 1 April 2008 member contribution rates in the NHS Pension Scheme have been determined by reference to pensionable pay/earnings in a scheme year. Rates range from 5% to 14.5% and members are allocated to a tiered rate according to the band into which their pay falls. The pay/earnings bands are uprated in accordance with increases made to the NHS Agenda for Change (AfC) pay scales.

7.3 The uprated pay/earnings bands are being implemented retrospectively, from 1 April 2014, via this amending instrument. The amendments are wholly beneficial in that they increase the thresholds of pensionable pay/earnings at which member contributions increase.

### Further contributions by employing authorities in the 1995 regulations

*Removal of salary sacrifice arrangements begun before 1 April 2014 from further contributions by employer controls (amending regulation 5(6)(substitution of paragraph 17)*

7.4 From 1 April 2014, regulation D3 of the 1995 regulations only introduced further contribution charges for NHS employers who make pay increases beyond a new pay cap in the three years prior to retirement/termination of membership. The cap applies to pension (but not death) benefits and is equal to the level of the consumer prices index for the February prior to the relevant year + 4.5%. The further employer contribution applies to any pay increase made above this cap, in the final pay year used to calculate scheme benefits. The member's pension benefits are NOT reduced and continue to be calculated on uncapped pay.

7.5 Regulation D3 disregards certain pay increases, for example those made for any reason before 1 April 2014, and those made as a result of a move to a new appointment with a new employer. Amending regulation 5(6) will now also disregard a pay increase made on or after 1 April 2014, where this is due to the ending of a "salary sacrifice" arrangement entered into *before* 1 April 2014.

7.6 Under a "salary sacrifice" arrangement an employee gives up a part of their pay in exchange for a "benefit in kind", for example a car, during a period agreed with their employer. When the salary sacrifice arrangement is brought to an end pay normally resumes its former level. NHS Pension Scheme members pay lower scheme contributions during a salary sacrifice arrangement.

7.7 Salary sacrifices made on or after 1 April 2014 will continue to count towards regulation D3 employer charges. However, the amendment will ensure that no employer charge can arise for a pay increase made on or after 1 April 2014, caused by the ending of a salary sacrifice entered into *before* that date.

**Consequential and technical amendments in the 1995 and 2008 regulations**

*Amending regulations 3 and 9 - consequential*

7.8 These amendments shorten the definition of "consumer prices index" in regulation A2 of the 1995 regulations and regulation 2.A.1 of the 2008 regulations, in consequence of the clarifications made in amending regulation 5(2)(i), (3)(i) and (4), and amending regulation 6.

*Amending regulations 5(2)(i), (3)(i) and (4), and amending regulations 6, 12(3) and 16*

7.9 These amendments clarify the operation of the consumer prices index link.

*Amending regulation 5(5)*

7.10 This amendment corrects a cross-reference.

*Amending regulation 7(3)(a) and (b) and regulation 17*

7.11 These amendments confirm that both the host Board and the Secretary of State require a copy of the relevant contribution estimates.

*Amending regulation 12(2)*

7.12 This amendment corrects a cross-reference.

*Amending regulation 13*

7.13 These amendments add a further cross-reference and make minor textual improvements.

*Amending regulation 15*

7.14 This amendment confirms that arrears of contributions identified when a practitioner member completes the certificate of pensionable earnings referred to in regulation 3.J.14 of the 2008 regulations, are due for payment to the host Board at the same time as that certificate.

**Consolidation**

7.15 Informally consolidated texts of both full sets of NHS Pension Scheme Regulations incorporating all changes implemented up to and including those which came into effect on 1 April 2014 are available on the NHS Pensions website and can be viewed at http://www.nhsbsa.nhs.uk/Pensions/2654.aspx

7.16 Work to formally consolidate both the 1995 and 2008 Regulations has been deferred in light of the significant amendments required following the Public Service Pensions Act 2013, and also in anticipation of a new NHS Pension Scheme in 2015.

## 8. Consultation outcome

8.1 The draft regulations were subject to a 5-week public consultation ending on 28 May 2014. Ahead of this, the proposals were discussed with staff and employer representatives through the Scheme's Governance Group, and plenary meetings with representatives of independent and NHS providers. The shortened consultation period reflected the technical and wholly beneficial nature of the changes.

8.2 Amongst those consulted were: NHS Trades Union representatives, NHS Employers, NHS Pensions (the Scheme Administrators), other public service pension schemes, the Government Actuary's Department, the National Audit Office, the devolved administrations and HM Treasury.

8.3 Four responses were received. Respondents included NHS Employers, the British Dental Association and the Federation of Clinical Scientists. A response was also received from an NHS Foundation Trust. The Department has published a document responding to the comments received at https://www.gov.uk/government/consultations/nhs-pension-scheme-changes

*Changes to pay/earnings bands for the 2014/15 Scheme year*

8.4 Responses were supportive of the changes to the pay/earnings bands to reflect the pay increase. One response did not comment on the proposed changes but reiterated opposition to the general policy of increasing pension contributions for members of public service pension schemes. However, this general policy does not form part of this amending S.I. which is wholly beneficial.

*Further contributions by employing authorities in respect of large pay awards*

8.5 Three respondents commented on amendment regulation 5(6) excluding pre-April 2014 salary sacrifices from regulation D3 employer charges. All were pleased to see the further easement in regulation D3 charging, but reiterated the wider concerns they had raised in response to the 1 April 2014 SI consultation. The

Department's formal response to the April SI consultation, published on 10 March 2014, addressed those wider concerns. This can be viewed here https://www.gov.uk/government/consultations/amendments-to-nhs-pension-scheme-regulations

## 9. Guidance

9.1 Guidance for members and employers on contribution changes is available on the Scheme Administrator's website, along with the leaflet that was issued to all members with their pay slips before 1 April 2014. This can be viewed here http://www.nhsbsa.nhs.uk/pensions/documents/pensions/tiered_conts_payslip_leaflet_yr3_(V1).pdf

9.2 Guidance for employers on final pay controls and employer charging is available on the Scheme Administrator's website; this can be viewed here http://www.nhsbsa.nhs.uk/Pensions/Documents/Pensions/Final_Pay_Control_Factsheet_(V2)MAY_14.pdf

## 10. Impact

10.1 An impact assessment has not been prepared for this routine and wholly beneficial instrument.

## 11. Regulating small business

11.1 The legislation has no impact on small business.

## 12. Monitoring & review

12.1 NHS Pension Scheme changes are discussed, monitored and reviewed in partnership with the NHS Employers organisation and NHS trade unions, in the light of formal and informal consultation procedures. The partners report to a 'Governance Group' representing employers, NHS trades unions and the Department of Health, which in turn make recommendations to the Secretary of State for Health and HM Treasury.

## 13. Contact

Mrs. Joanne Donnelly (joanne.donnelly@dh.gsi.gov.uk) at the Department of Health NHS Pensions Policy Team, Tel: 0113 254 5150 can answer any queries regarding the contributions changes in this instrument.

Mr. Paul Robinson (Paul.Robinson@dh.gsi.gov.uk) at the Department of Health NHS Pensions Policy Team, Tel: 01253 774505 can answer any queries regarding the changes concerning regulation D3, further contributions for employers in respect of excessive pay increases.