EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME (AMENDMENT) REGULATIONS 2009

2009 No. 1298

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

The memorandum contains information for the Joint Committee on Statutory Instruments and for publication on the Office of Public Sector Information website.

2. Purpose of the instrument

2.1 This instrument amends two statutory instruments relating to pensions provided to National Health Service staff.

2.2 The amendments ensure that NHS staff who are seconded to non-NHS organisations for the purpose of performing duties that have been transferred to that organisation (known as the "Retention of Employment" model) may only continue to be members of the NHS Pension Scheme in circumstances where the Secretary of State for Health considers that appropriate.

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

There are no matters of special interest.

4. Legislative Context

4.1 Regulation 2 of the SI amends the National Health Service Pension Scheme Regulations 1995 (SI1995/300). The 1995 Regulations provide for a scheme with a normal retirement age of 60 for members who were in that scheme on 1 April 2008.

4.2 Regulation 3 of the SI amends the National Health Service Pension Scheme Regulations 2008 (SI 2008/653). The 2008 Regulations introduced a scheme with a normal retirement age of 65 covering new entrant NHS staff from 1 April 2008.

4.3 The instrument is being made because the Department is aware that some NHS organisations are contemplating using the Retention of Employment (ROE) model in situations other than the two specific circumstances sanctioned by the Government (see paragraph 7.3). The potential consequence of such actions by NHS organisations would be that the additional costs of further extending scheme access are inappropriately borne by the tax payer.

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

7.1 Retention of Employment (RoE) is a form of secondment that allows staff to object to being subject to a TUPE transfer, to resign and then be re-employed by the NHS. In addition, after the work has transferred, NHS organisations may then recruit new staff specifically for the purpose of seconding those persons to the non NHS organisation responsible for that work.

7.2 The members of staff concerned then work for the (usually) private sector partner whilst remaining employees of the NHS and thereby retaining access to the NHS Pension Scheme.

7.3 Currently, RoE is only approved for use in two specific circumstances: for soft facilities management staff in Private Finance Initiative Schemes and for staff working in Independent Sector Treatment Centres.

7.4 The amendments in this instrument ensure that only staff who meet the approval criteria will have access to or continue to have access to the NHS Pension Scheme from 1 July 2009.

Consolidation

7.5 Resource permitting, this exercise is still on track to start by the end of the 2009-10 financial year. An informal consolidated text of both 1995 and 2008 Regulations incorporating changes up to 1 July 2009 has been made available to NHS Trade Unions and other stakeholders during the consultation period.

Consultation on the draft regulations

7.6 A formal consultation exercise on the amending regulations began on the 5 March 2009 and ended on 13 May 2009.

7.7 Amongst those consulted were: NHS Staff Side representatives, NHS Employers; NHS Pensions[1]; other public service pension schemes; Government Actuary's Department; the National Audit Office; the devolved administrations; and HM Treasury.

[1] The NHS Pensions Division of the NHS Business Services Authority

8. Consultation outcome

One response of a technical nature was received as a result of the consultation exercise and this has been taken into account in the drafting of the final amendments.

9. Guidance

9.1 On 13 January 2009 the Department wrote to all Chief Executives in the NHS to confirm that staff employed under non- approved applications of the RoE model on or after the date of that letter (13 January 2009) would not be eligible for membership of the pension scheme from 1 July 2009.

9.2 This letter may be viewed by following the link: **http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_093213**

10. Impact

10.1 There is no impact on business, charities, voluntary bodies or the public sector.

10.2 This instrument is unlikely to attract high levels of political or media interest.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

The Department will review the use of RoE in the NHS with a view to identifying what uses the arrangement may have in the NHS in the future. As part of this review, the Department will take views from key NHS stakeholders. This review is expected to be completed by Autumn 2009.

13. Contact

Ms Catriona Patterson at the Department of Health Pensions Policy Team, Tel: 0113 254 6036 or e-mail Catriona.Patterson@dh.gsi.gov.uk can answer any queries regarding the instrument.