EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME (AMENDMENT) REGULATIONS 2013

2013 No. 1414

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.

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 The purpose of the instrument is to implement increases to the earnings/pay bands that are used when determining the contribution rate payable by individual NHS Pension Scheme members.

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

3.1 Section 12(1) of the Superannuation Act 1972 (c.11) provides authority for the regulations to take effect from a date earlier than the making of these regulations.

3.2 The regulations have retrospective effect from 1 April 2013.

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 - What is being done and why

7.1 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 13.3% 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.

7.2 Following two years in which there has been no general increase in NHS pay, an annual uplift of 1% has been applied to the NHS AfC pay scales with effect from 1 April 2013. This uplift is in accordance with the recommendations of the Pay Review Body. The uprated pay/earnings bands are being implemented retrospectively, from 1 April 2013, via this amending instrument. The amendments are wholly beneficial in that they increase the thresholds of pensionable pay/earnings at which member contributions increase.

Final Salary Section Members other than Practitioners and non-GP Providers

7.3 Amending regulation 3 amends 1995 Regulation D1 (contributions by members);
Amending regulations 6 and 7 amend 2008 Regulations 2.C.2 (contribution rate for members other than non-GP providers) and 2.C.3 (determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP providers) respectively.

7.4 **Members who were in employment with the same employer at the end of the last scheme year and the beginning of the current scheme year.**

The contribution rate for any scheme year for members in these circumstances is assessed using pay and pay bands for the previous scheme year. For 2013/14, the rates are set using pay and pay bands for 2012/13. This means that no change is required to the table that applies to these members.

7.5 **Members who have started a new job in the current scheme year or whose rate of pay for an existing job has changed (except if unplanned or unlikely to last for 12 months or more) from 1 April in the current scheme year**

The contribution rate for members in these circumstances is assessed using the latest pay and pay bands available for the current scheme year. From 1 April 2013, these are the newly uplifted pay bands described in paragraph 7.2 above.

7.6 A new table containing the uprated pay bands for the 2013/14 scheme year, effective from 1 April 2013, is inserted at 1995 Regulation D1(1B) and at 2008 Regulation 2.C.2(2A).

7.7 Consequential amendments are also made to 1995 Regulations D1(2), (2Q), (2R) and (2V) and to 2008 Regulations 2.C.2(3) and 2.C.3(16), (17) and (21).

Career Average Section Practitioner and non-GP Provider Members

7.8 Amending regulation 4 amends paragraph 10 (contributions to this Section of the scheme) of Schedule 2 to the 1995 Regulations;
Amending regulations 8 and 9 amend 2008 Regulations 2.C.4 (contribution rate and determination of pensionable earnings for non-GP Providers) and 3.C.2 (members' contribution rate) respectively.

7.9 Practitioner and non-GP provider earnings can only be finalised following the end of any scheme year and so the tiered rates for these members are first set on a provisional basis, using a 'best estimate' of expected earnings and the latest contribution tables available. Once the earnings for a scheme year are confirmed, the tiering is finalised and, if necessary, the contributions made on a provisional basis, adjusted.

7.10 This amending instrument reflects the increase in NHS AfC pay scales at 7.2 above by uprating the table for the 2013/14 scheme year at paragraph 10(1A) of Schedule 2 to the 1995 Regulations and at 2008 Regulations 2.C.4(15) and 3.C.2(17).

Consolidation

7.11 Informally consolidated texts of both sets of NHS Pension Scheme regulations incorporating all the changes implemented up to and including those which came into effect on 1 April 2013 are available on the NHS Pensions website and may be viewed here http://www.nhsbsa.nhs.uk/Pensions/2963.aspx

7.12 Work to formally consolidate both the 1995 and 2008 Regulations has been deferred in light of the Public Service Pensions Act 2013 (c.25), which will require further significant amendments to these instruments.

8. Consultation outcome

8.1 A formal consultation exercise on the amending regulations began on 2 April 2013 and ended on 14 May 2013**.** This 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 Just one response, from the Federation of Clinical Scientists, was received. The Federation supported the proposed amendments but recommended that it be made very clear to pension scheme members that the new tier bandings are backdated to 1 April 2013.

9. Guidance (for NHS Staff and NHS employers)

Guidance for members and employers on contribution changes is available on NHS Pensions' (the scheme administrator) website and can be viewed at www.nhsbsa.nhs.uk/Pensions/2520.aspx.

10. Impact

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

11. Regulating small business

The changes do not affect small business.

12. Monitoring & review

NHS Pension Scheme changes are discussed, monitored and reviewed in partnership with the NHS Employers organisation and NHS trades 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 makes recommendations to the Secretary of State for Health and HM Treasury.

13. Contact

Mrs. Sue Palfree (Sue.Palfree@dh.gsi.gov.uk) at the Department of Health NHS Pensions Policy Team or tel: 01253 774583, can answer any queries regarding the instrument.