EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME (AMENDMENT) REGULATIONS 2015

2015 No. 581

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

2. Purpose of the instrument

2.1 This instrument amends the statutory instrument (S.I.) which, with effect from 1st April 2015, establishes a new NHS Pension Scheme. That instrument, SI 2015 No 94, was laid before Parliament on 5th February 2015.

2.2 Three changes are implemented by this instrument:

- An amendment to the regulation setting out eligibility for membership of the 2015 NHS Pension Scheme;
- An amendment to the provisions relating to those to whom the NHS Pension Scheme 2015 can be extended under section 25 of the Public Service Pensions Act 2013;
- An amendment ensuring that persons who, in the previous 12 months were in employment in which they were eligible to be a member of the pre-existing NHS Pension Scheme (1995/2008 section), are eligible to receive a determination (a document that extends membership of the Scheme to those persons named within it) under section 25 of the Public Service Pensions Act 2013.

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

3.1 The Department regrets that in order to ensure that the National Health Service Pension Scheme Regulations 2015 operate correctly, and in line with the policy intent, from 1st April 2015, it is necessary to make two technical amendments contained in this instrument. The instrument also contains an amendment which implements new policy in relation to the health sector regulator, Monitor.

4. Legislative Context

4.1 This instrument amends the National Health Service Pension Scheme Regulations 2015, the regulations that create a new pension scheme for health service workers in England and Wales under the powers provided in the Public Service Pensions Act 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Explanatory Memorandum (EM) accompanying the earlier SI (2015/94) provides information on the background to changes to the NHS Pension Scheme and the creation of the NHS Pension Scheme 2015.

7.2 The first amendment relates to regulation 18 of the National Health Service Pension Scheme Regulations 2015 (SI 2015/94). Regulation 18 sets out which persons are eligible to participate in the scheme. The Department is concerned to remove any doubt that individuals who are medical contractors can be members of the scheme, which was the policy intent. The amendment therefore ensures this by specifically referring to individuals who are medical contractors, as well as those who are employed by a medical contractor.

7.3 The second amendment inserts a new sub-paragraph (d) into schedule 6, paragraph 1(2) which makes specific provision for Monitor, the sector regulator for health services, to apply to become an employing authority (by way of a determination) for certain eligible employees. This change has been made as a result of a recommendation from the House of Commons Public Accounts Committee[1] (PAC) that the Department of Health needed to take steps to enable the flow of staff between different parts of the health and social care system. The PAC's report found that "Monitor has struggled to recruit staff with a background in the NHS, particularly for senior roles. NHS staff cannot transfer their accrued pension rights and they lose continuity of service if they join Monitor, as it employs staff on different terms and conditions based on those in the Civil Service".

7.4 This amendment removes a barrier to continued membership of the 2015 NHS Pension Scheme if Monitor and the employee agree that as part of the terms and conditions of employment. Monitor staff will no longer need to be transferred or to take up employment with Monitor within 12 months of leaving employment in which they were eligible to be a member of the 1995/2008 Scheme or the NHS Pension Scheme 2015 in order to qualify for a determination.

7.5 The third amendment is to paragraph 1(3) of Schedule 6. This amendment ensures that persons who are or were in employment in which they were entitled to participate in the 1995 or 2008 section of the NHS Pension Scheme within the preceding 12 months are eligible for a determination for the NHS Pension Scheme 2015 and may become members of that scheme from 1 April 2015.

Consolidation

7.6 These are the first amending regulations to the National Health Service Pension Scheme Regulations 2015 brought forward under the powers provided by the Public Service Pensions Act 2013. An informal consolidation of the

[1] http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/407/40704.htm

text of the National Health Service Pension Scheme Regulations 2015 incorporating these changes will be published on the 'NHS Pensions' section of the NHS Business Services Authority's (the scheme administrator) website.

8. Consultation outcome

8.1 A comprehensive consultation exercise was held on the National Health Service Pension Scheme 2015 Regulations (see the EM accompanying SI 2015/94).

8.2 The Department consulted with relevant stakeholders from 20 February 2015 to 27 February 2015 on these proposed amendments. No responses have been received.

9. Guidance

9.1 Details of the new 2015 Scheme, transitional arrangements and contribution rates are available on the 'NHS Pensions' section of the NHS Business Service Authority's (the scheme administrator) website. This has been continually updated with new material and resources developed through a partnership approach with trade union representatives. Guidance is provided via a range of resources including factsheets, online videos and scheme guides. A payslip leaflet will also be issued to all members of the current scheme during February and March 2015. This will provide an overview of the new arrangements.

9.2 An extensive communication campaign targeting employers is underway, providing supportive resources in the form of Frequently Asked Questions, readiness checklists, communication packs for local use (posters, screensavers etc.), internet seminars and an e-learning package. Employer material is promoted via regular electronic Technical Newsletters and engagement with the scheme's National Pension Managers Forum.

10. Impact

10.1 An Impact Assessment has not been prepared for this wholly beneficial instrument; the impact on business, charities or voluntary bodies is nil.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulations establishing the NHS Pension Scheme 2015 include a requirement for the new pension scheme to be subject to regular actuarial valuations. Provision is made requiring changes to the scheme if the cost of the scheme moves outside fixed parameters.

13. Contact

Joanne Donnelly at the Department of Health Tel: 0113 2545150 or email: joanne.donnelly@dh.gsi.gov.uk can answer any queries regarding the instrument.