EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PENSION SCHEME AND COMPENSATION FOR PREMATURE RETIREMENT) AMENDMENT REGULATIONS 2006

2006 No. 2919

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. Description

2.1 This instrument introduces changes to pension entitlement on redundancy for members of the NHS occupational pension scheme.

2.2 The pension element of the current NHS redundancy package has two components; the early payment of benefits earned up to the date of redundancy and an additional pension and lump sum resulting from entitlement to compensatory membership of up to ten years.

2.3 The instrument removes entitlement to compensatory membership for new members joining from 1 December 2006 and provides transitional arrangements through which entitlement to compensatory membership for existing members will be phased out by 1 October 2011.

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

3.1. None

4. Legislative Background

4.1. This Instrument amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (regulations D2, E3, M5, R2, R3, R4, R5, and inserts new regulations E3A, E3B, E3C and E3D). These regulations provide for the early payment of benefits to qualifying NHS Pension Scheme members on redundancy.

4.2. The National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I. 2002/1311) are also amended (regulations 3 and 5). These regulations provide for additional compensatory years of pension scheme membership to be credited to qualifying members on redundancy.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 Ministers have accepted recommendations made by a joint NHS Employer, NHS Trade Unions review of the redundancy package available to NHS Staff. The review recommended changes to both the severance payment due on redundancy and the pension entitlement for members of the NHS Pension Scheme who are over minimum pension age (currently 50 years). The review took into account The Employment Equality (Age) Regulations that came into force on 1 October 2006 and the Eu Directive prohibiting age discrimination in employment and vocational training.

7.2 Changes to the severance payment have been implemented through a change to NHS terms and conditions. Changes to the pension element will be implemented via this instrument. The NHS employer responsible for the redundancy funds both elements of the package. To cover pension scheme costs, the relevant employer pays additional contributions equal to the cost of paying benefits early and the full cost of paying benefits represented by compensatory membership.

Arrangements for new entrants after 1 December 2006 and all members made redundant on or after 1 October 2011.

7.3 The new package will provide improved severance payments equal to one months pay for each year of continuous qualifying employment, subject to a maximum of two years pay. Pension Scheme members over minimum retirement age will be able to choose between the improved severance payment and the early payment of pension benefits accrued up until the date of redundancy. Compensatory years of membership will no longer be given. Where a pension option is taken, the difference (if any) between the severance payment and the cost of paying benefits early will be paid to the member by the employer.

Transitional pension arrangements for existing and returning members made redundant between 1 December 2006 and 30 June 2007

7.4 The amount of compensatory membership due to this group will be assessed as if the redundancy had happened on 30 September 2006 and frozen. However, in recognition that many in this group will be part of NHS redundancy programmes announced before the outcome of the review was known, the benefits will be protected and compensatory membership will only reduce by the amount of further scheme membership earned from 1 October 2006.

Transitional pension arrangements for existing and returning members made redundant between 1 July 2007 and 30 September 2011

7.5 This group will be subject to the same adjustments outlined above. A further reduction in compensatory membership will be made if on 30 September 2006 it exceeds five years. The amount over five years will reduce by $1/60^{th}$ for each month between 1 October 2006 and the date of redundancy. This means in these cases that entitlement to compensatory membership will cease by 1 October 2011. The method used to reduce the value of enhancements will take account of any periods of part-time membership.

7.6 Alternatively, all members may choose to be subject to the new arrangements if this would be more beneficial.

Consultation Programme

7.7 Key stakeholders were directly involved in the policy development process and all recommendations including those relating to the pension element were the subject of a public consultation exercise lead by NHS Employers. The majority of responses from those representing NHS organisations and from individual members were in favour of the proposals.

7.8 Formal consultation on the draft SI, *needed to effect changes to the pension element only*, ran in parallel for six weeks and formed part of the rolling consultation programme. Those consulted include NHS Trade Union officials and other public service pension schemes. The curtailed period on the SI reflected the comprehensive prior consultation that had already taken place. The Better Regulation Unit at Cabinet Office was informed of this and raised no objections. Two responses were received both of which raised technical points which have been incorporated into the final instrument.

Consolidation and guidance

7.9 Consolidation of regulations is kept under review and will take place as soon as resources permit. The on-going review of the NHS Pension Scheme is expected to lead to a completely new scheme and regulations within two years. In the same timeframe there will also be a significant set of corresponding amendments to the current pension scheme regulations. We will only realistically be in a position to consider consolidation at that stage.

7.10 Guidance on the new redundancy package will be incorporated into the NHS Terms and Conditions Handbook issued by the NHS Employers Organisation and available to all NHS management and staff. NHS Employers have also provided a series of national seminars for NHS Managers. In addition the Pensions Division of the NHS Business Services Authority will provide guidance through their member booklets and website member suite.

8. Impact

8.1 This Instrument has no impact on business, charities or voluntary bodies and no Regulatory Impact Assessment is required.

9. Contact

Mrs Peta Cowan at the Department of Health Pensions Policy Team, Tel: 01253 774921 or e-mail peta.cowan@dh.gsi.gov.uk can answer any queries regarding the instrument.