EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME, INJURY BENEFITS AND ADDITIONAL VOLUNTARY CONTRIBUTIONS (AMENDMENT) REGULATIONS 2015

2015 No. 96

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 implements reforms to the 1995 and 2008 Sections of the NHS pension scheme ("the old scheme") including new contribution rates and provisions to support future contractual terms relating to redundancy retirement. It also accommodates the new scheme within the Injury Benefits scheme and Additional Voluntary Contribution (AVC) facility, enables greater flexibility for members in relation to their money purchase AVC benefits and makes a series of technical clarifications.

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 Regulation 10 has retrospective effect from 5 December 2005; regulation 30 from 1 April 2008; regulations 21 and 40 from 1 October 2008; regulations 4 and 20 from 1 April 2014; regulations 14 and 18 from 6 April 2014.

4. Legislative Context

4.1 This instrument forms part of a group of three linked instruments that together implement reforms to pension scheme arrangements for health service workers. The other two linked instruments are:

(a) The National Health Service Pension Scheme 2015 (SI 2015/94) which establishes a new, reformed pension scheme ("the new scheme"), and

(b) The National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95) which implement a series of transitional arrangements for the treatment of pension benefits built up under the old scheme where a person joins the new scheme on or after 1 April 2015. Such arrangements also include protections permitting members close to normal pension age to remain in the old scheme.

4.2 The current NHS Pension Scheme ("the old scheme") is divided into two Sections, each providing entitlement to pension and other benefits calculated in accordance with the provisions of that particular Section. The 1995 Section is established by the National Health Service Pension Scheme Regulations 1995 (SI 1995/300); the 2008 Section by the National Health Service Pension Scheme Regulations 2008 (SI 2008/653).

4.3 The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619) provides a facility through which NHS Pension Scheme members can supplement the value of their pension by making additional contributions.

4.4 Certain payments are made to NHS staff following a work-related illness or injury. The National Health Service (Injury Benefits) Regulations 1995 (SI 1995/866) provide for such payments to be made.

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

7. Policy background

7.1 This instrument amends regulations that establish the old scheme, the AVC facility and the Injury Benefit scheme. The amendments cover a number of areas relating to (i) implementation of member contribution rates fixed for four years, (ii) accommodation of the new scheme within the AVC facility and Injury Benefit scheme (ii) introduction of new provisions to support future contractual terms relating to redundancy retirement, (iii) making technical clarifications or provision to accommodate new tax protection facilities, and (iv) accommodation of new flexibilities on how members may access money purchase AVC benefits.

Scheme contributions

7.2 Members pay a proportion of their pensionable pay or earnings towards meeting the cost of the pension benefits that they build up. The contribution rate that a member must pay are set out in scheme regulations, tiered according to earnings with higher earners paying proportionately more to account for the beneficial effect of tax relief on contributions and the extra value gained per pound contributed. High earners do better under a final salary scheme due to greater career progression (i.e. promotions etc) compared to lower earners.

7.3 The Department published a document, *NHS Pension Scheme for England & Wales 2015: update on scheme reforms* in August 2014 presenting

the draft contribution rates that would apply to member from 1 April 2015. This followed discussions with trade unions and employer representatives which centred on the shared priorities for how future member contribution rates should be structured, these being to include protections for the lower paid, minimise the risk of opt-outs and ensuring that the scheme remains sustainable and a valuable part of an individual's reward package. Following these discussions the Department finalised a set of proposed contribution rates in line with those set out in the PFA save for a small adjustment to the upper limit of tier 4 to account for movement in the higher rate income tax (and therefore relief) threshold. The contribution rate tables are fixed for the duration of the next valuation period – i.e. for four years ending 31 March 2019.

7.4 Amending regulations 5, 15, 22, 24 & 41 insert the new contribution rate tables. The results of the 2012 scheme valuation which assesses the cost of the pension rights being built up concluded that the contribution rate that an employer is required to pay in relation to a member should increase by 0.3% to 14.3%. This is implemented by amending regulations 7(2), 26 & 42.

Injury Benefits scheme

7.5 Until 31 March 2013, the NHS Injury Benefits scheme and regulations (SI 1995/866) applied to certain NHS employees and general practitioners who sustained an injury, disease or other health condition attributable to their employment. From that date, the Injury Benefits scheme arrangements were replaced by contractual payments from NHS employers. However the Injury Benefits scheme regulations can still apply where qualifying NHS injuries occurred before 31 March 2013.

7.6 Certain pay definitions in the old scheme were relevant for the calculation of some Injury Benefit awards, whether or not the claimant was also a member of that pension scheme. Amending regulations 48 to 52 amend the Injury Benefits scheme regulations so that where a qualifying injury is identified after an individual joined the new pension scheme, certain provisions from that scheme are used in the calculation of lost earnings and any benefit payable under the Injury Benefit scheme.

Additional Voluntary Contributions

7.7 The National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (SI 2000/619) provide facilities for NHS Pension Scheme members in pensionable employment to supplement the value of their pension by making money purchase additional voluntary contributions (AVCs) to authorised external pension providers.

7.8 Amending regulations 54 to 65 of amend the AVC regulations to ensure that these accommodate the introduction of the new pension scheme. This will make it possible for new members (and employers) of the new pension scheme to make AVCs to an authorised NHS AVC provider. Individuals who have taken out AVC contracts under the old scheme will be

able to continue with that contract (or begin making further AVCs) upon moving to the new pension scheme.

7.9 Provision is also made in Part 5 to accommodate the flexibilities announced by the Treasury in July 2014 and set out in the document *Freedom and choice in pensions: government response to the consultation*. From 6 April 2015, the changes will enable authorised NHS AVC providers to give members a wider range of pension options when taking their AVC benefits upon retirement. Where a particular option is not offered by a provider, then the member may withdraw their AVC investment and take it to a different authorised provider. The freedoms do not extend to benefits payable from either the old or new pension scheme.

Redundancy

7.10 Upon meeting eligibility criteria, members who have reached normal minimum pension age may claim early payment of pension benefits where an employment is terminated on redundancy grounds. Eligibility for this benefit and the terms on which the early payment of benefits are financed is determined by reference to the employment terms and conditions held by the member. Scheme regulations give effect to these arrangements.

7.11 Current redundancy arrangement give eligible members the option to exchange their redundancy payment for immediate payment of an unreduced pension. The employer meets the cost of early payment in full – using first the money that would otherwise be payable to the member as a redundancy payment, and if that is insufficient then paying the shortfall, i.e. 'topping up'.

7.12 Amending regulations 6, 7(3), 7(4), 8, 9, 25, 27, 28 and 29 introduce an alternative entitlement alongside existing redundancy arrangements to support future contractual terms in which the employer 'top up' element is removed. Instead where the redundancy payment is insufficient to meet the cost of early payment, then the member has the option to make an additional contribution to meet the shortfall in full or in part. Where the cost of early payment is not met in full, then the pension is paid with reduction to account for any cost that remains – in the same way that early retirement pensions claimed before normal pension age are paid with a reduction. The intention is to provide affordable and sustainable redundancy packages that are fair to both NHS staff and taxpayers.

Other amendments

7.13 Amending regulations 14 and 18 insert provisions to assist the operation of the Individual Protection 2014 tax facility. This is a transitional measure provided for by the Finance Act 2014 and effective from 6 April 2014 that provides protection to individuals against changes in the lifetime allowance limit.

7.14 Amending regulations 4 and 20 retrospectively insert a further category of payment that is to be excluded from the definition of pensionable pay. The 2014-15 Agenda for Change pay circular implemented a payment for

NHS staff at the top of their payband that was both non-consolidated and non-pensionable. The amendments provide that payments announced as non-consolidated by the Secretary of State are not pensionable.

7.15 Amending regulation 10 retrospectively clarifies the operation of the 1995 Section regulation G1 relating to payment of survivor pensions on re-marriage or civil partnership for same sex couples. This ensures that the Secretary of State can continue payment of an adult survivor pension in circumstances where the new relationship is or was a civil partnership or akin to a civil partnership, and therefore a marriage of a same sex couple or akin to a marriage of a same sex couple.

7.16 Amending regulation 30 retrospectively removes an unintentional restriction that required a spouse or partner at the time of the member's death to have been the spouse or partner of the member on their last day of service in order to qualify for a survivor pension.

7.17 Amending regulations 21 and 40 amend 2008 Section provisions relating to eligibility to join that section of the scheme. Those provisions include a restriction that prevents most 1995 Section pensioners from being eligible to join. However, former members of the 1995 Section who have had a break in service of over five years become eligible to join the 2008 Scheme on return to pensionable service and can claim their 1995 Section pension benefits at normal pension age of 60 even if continuing in employment that qualifies for membership of the 2008 Section. These amendments retrospectively clarify that such pensioner members continue to be eligible for 2008 Section membership after their 1995 Section pension is put into payment.

Consolidation

7.18 The instrument amends both the National Health Service Pension Schemes Regulations 1995 and 2008. The Department has previously advised that work to consolidate those regulations will be undertaken upon completion of the programme to implement long term reforms to NHS pension scheme arrangements, of which this instrument forms part.

8. Consultation outcome

8.1 The Department consulted on the instrument from 14 November 2014 to 15 December 2014. Ahead of this the Department held extensive discussions with trades unions and employer representatives from April 2012 onwards through which the detailed elements of the new scheme were developed, including the new contribution rates. A workshop was held during the consultation period at which the Department presented the draft regulations and explained the effects to NHS trades unions and employer representatives.

8.2 In addition, the Department published a document on 1 August 2014 communicating an update on those discussions and the proposed detailed scheme design and contribution rates. A copy can be found on

www.gov.uk/government/publications/nhs-pension-scheme-reforms-and-contribution-rates-update.

8.3 Eight responses were received. Comments in particular focused on the policies relating to the structure of member contribution rates, the redundancy retirement provisions and the new flexibilities for money purchase AVC benefits. A number of technical points and observations were also made that assisted refinement of the regulations. The Department has published a document summarising and replying to the responses received in relation to this and the other two instruments referred to in paragraph 4.1. A copy can be found on www.gov.uk/government/consultations/nhs-pension-scheme-draft-regulations-2015-part-3.

9. Guidance

9.1 Details of the new contribution rates and reformed pension scheme are available on 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 updated scheme guides. A payslip leaflet will be issued to all members of the current scheme during February and March 2015 highlighting the new contribution rates and reformed pensions scheme arrangements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil. These regulations do not introduce any new requirements for public bodies.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Changes to the NHS Pension Scheme are discussed, monitored and reviewed in partnership with trades unions and employer representatives through a Scheme Advisory Board. The Board makes recommendations to the Secretary of State for Health on the merits of changes to the scheme.

13. Contact

Gareth Probert at the Department of Health Tel: 0113 2545491 or email: gareth.probert@dh.gsi.gov.uk can answer any queries regarding the instrument.