EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME REGULATIONS 2015

2015 No. 94

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 establishes a scheme for the payment of pensions and other benefits to, or in respect of, health service workers in England and Wales.

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

3.1 None.

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 (Transitional and Consequential Provisions) Regulations 2015 (SI 2015/95) implement a series of transitional and consequential 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, and

(b) The National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2015 (SI 2015/96) implements reforms and makes technical clarifications to the old scheme including new contribution rates and provisions to support future contractual terms relating to redundancy retirement.

4.2 This instrument implements a reformed pension scheme for health service workers in England and Wales under the powers provided in the Public Service Pensions Act 2013 (the Act).

4.3 The Act was enacted in response to the recommendations of the Independent Public Service Pensions Commission (the Commission) chaired by Lord Hutton of Furness. The Commission published its final report on 10 March 2011. This recommended a series of changes to public service pension arrangements in order to secure long term sustainability of the pension schemes together with a more balanced distribution of costs between scheme members and, via the employer, the taxpayer.

4.4 The Act paved the way for the delivery of these reforms and establishment of new pension schemes for persons in public service. This instrument establishes the reformed scheme for health service workers in England and Wales. The reforms include, as required by the Act, a pension calculated by reference to a member's career average earnings, a normal pension age equal to the state pension age and provisions relating to governance of the scheme.

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 cost of paying public service pensions has increased by a third in the last ten years. This increase in the burden on taxpayers, together with concerns about the fairness and sustainability of these pensions, led to the Government setting up the Commission. This was tasked with undertaking an independent review of public service pensions and to then make recommendations about how such pensions should be reformed so as to be sustainable and affordable in the long term as well as continuing to be fair to employees.

7.2 Following the publication of the final report of the Commission, the Government accepted its recommendations as the basis for discussion with public service workers, trades unions and other member representative bodies. In November 2011, following those discussions, the Treasury set out the Government's preferred pension scheme design as the framework to inform further discussions. Trades unions were invited to suggest changes to this on a workforce-specific basis within the cost ceilings set by Government. This led to the publication of scheme-specific designs for each of the new schemes.

7.3 For health service workers in England and Wales these were published by the Department of Health on 9 March 2012 (the Proposed Final Agreement (PFA)). The PFA described the key provisions of the reformed scheme for health service workers. These include: a defined benefit pension that would be based on the member's career average salary; an accrual rate (the amount of pension built up each year) of 1/54th of pensionable earnings, with previous pension accrual to be increased in line with prices plus 1.5% where the member continues in membership of the scheme (if membership ceases it increases in line with prices only); a Normal Pension Age equal to the member's State Pension Age, but with options for retirement earlier or later than this age.

7.4 While recognising their continued opposition to these reforms, trades unions have actively engaged with the Department in developing the detailed provisions of the reformed scheme following publication of the PFA. Discussions on these detailed provisions and scheme rules began in April 2012 with over 80 meetings since held with trades unions and employer representatives.

7.5 This instrument creates the reformed pension scheme for health service workers in England and Wales, giving effect to the position set out in the PFA and in line with the recommendations of the Commission.

7.6 Part 2 of the instrument sets out the governance and cost control arrangements for the scheme while Parts 3 and 4 describe eligibility for membership and establish requirements relating to member and employer contributions. Part 5 makes provision for retirement benefits, including pensions that are payable upon premature or ill-health retirement and the circumstances in which such pensions are reduced upon return to health service employment (abatement). Part 6 covers benefits payable upon the death of a member. Part 7 makes arrangements for making and receiving transfer payments to and from other pension schemes. Part 8 establishes criteria for certain types of employers (independent providers) and qualifying employees to participate in the scheme.

7.7 Of specific interest may be Schedule 9 which provides for the operation of the career average scheme. This provides for each member to build up a pension each year calculated as 1/54th of their pensionable earnings. This pension is held in a pension account and indexation applied at the start of each scheme year (1 April).

7.8 Indexation is only applied to the account of active members (that is those members who are participating in the scheme and paying contributions). Deferred (members who were an active member but have since stopped participating in the scheme without applying for benefits) and pensioner (members who have drawn their pension) members' pensions are increased each year under the provisions of the Pensions (Increase) Act 1971. The rate of indexation for active members will be equal to the change in prices as provided for in an order made by the Treasury, plus 1.5%.

7.9 In line with section 10 of the Public Service Pensions Act 2013, the normal pension age of the scheme (the age at which a member is entitled to draw their pension without any reduction for early payment) is equal to the member's state pension age.

Consolidation

7.10 These are the first National Health Service Pension Scheme Regulations brought forward under the powers provided by the Public Service Pensions Act 2013. There is no requirement to consolidate these regulations.

8. Consultation outcome

8.1 The Department consulted on the instrument for a period of seven weeks from 17 October 2014 to 5 December 2014. Ahead of this, as noted at paragraph 7.4, the Department held extensive discussions with trades unions and employer representatives through which the detailed elements of the new scheme and transitional arrangements were developed. 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 transitional arrangements for members of the existing scheme. A copy can be found at www.gov.uk/government/publications/nhs-pension-scheme-reforms-and-contribution-rates-update.

8.3 Twenty four responses were received. A number of technical points and observations were made that assisted refinement of the regulations. Comments were in particular received on the policies relating to the structure of member contribution rates, the purchase of early retirement reduction buy-out, and the redundancy retirement provisions. The Department has published a document summarising and replying to the responses received. A copy can be found at www.gov.uk/government/consultations/nhs-pension-scheme-draft-regulations-2015.

9. Guidance

9.1 Details of the new pension scheme, transitional arrangements and contribution rates 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 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 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil. The regulations implement a new pension scheme that replaces previous arrangements for health service workers.

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 The instrument includes 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

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.