EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (SUPERANNUATION SCHEME, INJURY BENEFITS AND COMPENSATION FOR PREMATURE RETIREMENT) (SCOTLAND) AMENDMENT REGULATIONS 2005 SSI/2005/512

The above instrument is made in exercise of the powers conferred by section 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972. These powers have been devolved to the Scottish Ministers by virtue of The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750). The instrument is subject to the negative resolution procedure.

Policy Objectives

The instrument makes a number of changes to the National Health Service Superannuation Scheme (Scotland) Regulations 1995 ("the Superannuation Scheme Regulations"), the National Health Service (Scotland) (Injury Benefits) Regulations 1998 ("the Injury Benefit Regulations") and the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 ("the Premature Retirement Compensation Regulations") (together "the principal regulations").

The main purpose of the instrument is to amend the principal regulations to reflect the changes made to legislation covering the provision of general medical services ("GMS") and primary medical services in Scotland, in the Primary Medical Services (Scotland) Act 2004 (asp 1), the National Health Service Reform (Scotland) Act 2004 (asp 7) and related secondary legislation. Some of the changes introduced by this legislation require to be reflected in the principal regulations, such as the introduction of a new GMS contract for the provision of GMS, arrangements relating to the provision of GMS by out of hours providers ("OOH providers"), the abolition of NHS Trusts and the ending of medical pilot schemes.

In addition, the opportunity is taken in the instrument to make some miscellaneous amendments. The most significant is to clarify the existing practice under the Superannuation Scheme Regulations by introducing forfeiture provisions covering circumstances where a potential beneficiary has been convicted of involvement in the death of the member. The intention of this amendment is to set out clearly within the Superannuation Scheme Regulations the existing approach to such circumstances, which is based on legislation and on the common law.

The main features of the amendments to the Superannuation Scheme Regulations are-

- All references to medical pilot schemes in NHS Scotland are removed. These have been replaced by Primary Medical Services agreements made under section 17C of the National Health Service (Scotland) Act 1978 (c.29).

- Existing definitions are amended and new definitions introduced, including a new definition of pensionable pay, to reflect the arrangements and terms introduced under GMS contracts. Under the new arrangements all general practitioner ("GP") earnings are now superannuable.

- To provide the conditions under which OOH providers can have access to the scheme. Under GMS contracts, GPs no longer have to provide out of hours services. Health Boards are responsible for out of hours services and they are able to sub contract these services to certain bodies corporate.

- To remove all references to NHS Trusts. NHS Trusts were dissolved under the terms of the National Health Service Reform (Scotland) Act 2004.

- To clarify the Scottish Ministers can recover unpaid contributions from the member's benefits should it be in member's best interests, and should they agree to the deduction.

- To provide that in circumstances where certain employing authorities have in the past failed to pay or remit contributions to the scheme, they may be required to have in force a guarantee, bond or indemnity in respect of future contributions.

- To introduce new provisions which provide that the Scottish Ministers may direct that a widow, widower, dependant or nominated person forfeit all or part of the benefits paid by the scheme in respect of the death of a member, should the aforementioned beneficiaries be convicted of the unlawful killing of that member. Where a lump sum on death benefit is forfeited, that lump sum will be paid to the member's personal representative.

- To remove the lump sum limit where a member with a preserved pensions is terminally ill. Where a member is terminally ill, the Scottish Ministers can discharge their pension liability through the payment of a lump sum. The lump sum is presently only subject to an overriding limit in relation to preserved pensions, it having been previously removed in relation to normal retirement pensions.

- To change the scheme valuation cycle from 5 years to 4 years, with the current 4 year cycle running from 31st March 2003.

- To change the way in which GP Practice partners' superannuable remuneration is calculated and to introduce a requirement for certain employing authorities to provide a certificate of pensionable earnings within 2 months of the end of each financial year.

- To amend the scheme to allow non clinical partners in GP practices to have access to the scheme as a consequence of the new GMS contract and arrangements.

The main changes to the Injury Benefits Regulations are:

- Existing definitions are amended and new definitions added, to reflect the GMS arrangements.

- References to Primary Care Trusts are deleted.

The changes to the Premature Retirement Compensation Regulations are to the definition of an "employing authority" and to Regulation 5, to reflect the dissolution of the NHS Trusts.

Consultation

The instrument has been the subject of consultation with representatives of NHS employers and employees and with other Government Departments. As noted, it reflects the new GMS arrangements and the dissolution of NHS Trusts and it will, in the main, implement changes that have already been introduced in NHS Pension Scheme for England and Wales. Some of the changes will have retrospective effect to 1 April 2004. The changes are not contentious and have been welcomed by the employee representatives.

Consolidation

The instrument represents the 11th amendment to the Superannuation Scheme Regulations. We have recognised that with these extensive amendments, users would benefit from a consolidation of the Superannuation Scheme Regulations. We are therefore planning to consolidate the Superannuation Scheme Regulations in a statutory instrument to be laid in the new year, after the latest amendments have been considered by the Parliament. A draft of that statutory instrument will be issued for consultation in either October or November 2005 and copies of the consolidation draft will be available from the SPPA.

Financial effects

The instrument has no financial effects on the Scottish Executive, local government or on business. It has not been necessary to prepare a Regulatory Impact Assessment.

The costs of the GMS arrangements, including superannuation, were accounted for in the increases to the Health Department's funding as part of the spending review to cover the pay modernisation programme.

Scottish Public Pensions Agency
October 2005