

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PENSION SCHEME, INJURY BENEFITS,
ADDITIONAL VOLUNTARY CONTRIBUTIONS AND COMPENSATION FOR
PREMATURE RETIREMENT) AMENDMENT REGULATIONS 2007

2007 No. 3280

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. **Description**

2.1 This instrument amends various statutory instruments relating to pensions and benefits provided to National Health Service staff to take account of consolidation of legislation relating to the National Health Service (i.e. the National Health Service Act 2006 (c.41) and National Health Service (Wales) Act 2006 (c.42)), to clarify the working of certain regulations, and to effect changes identified as part of an operational review undertaken by the NHS Business Services Authority.

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

3.1 Certain of the amendments introduced by this instrument are expressed to take effect from a date earlier than the commencement of the instrument (pursuant to powers in section 12(1) of the Superannuation Act 1972 (c.11)) so as to provide benefits from that earlier date to categories of Scheme members who would otherwise have been excluded from, or received reduced, benefits.

4. **Legislative Background**

4.1 This Instrument amends the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (regulation 2), the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (regulation 3), the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) (regulation 4) and the National Health Service (Compensation for Premature Retirement) Regulations 2002 (S.I. 2002/1311) (regulation 5) in accordance with powers in sections 10, 12 and 24 of, and Schedule 3 to, the Superannuation Act 1972 (c.11).

4.2 In addition to making changes consequential on the passage of the National Health Service Act 2006 and National Health Service (Wales) Act 2006, this instrument makes necessary changes identified as part of an operational review undertaken by the NHS Business Services Authority and the Department (the results of which were reported to the House in a Written Ministerial Statement on 8 October 2007). It also removes references to “the Government Actuary”, implementing the recommendation of the Morris Review of the Actuarial Profession, in March 2005, that legislative requirements

for the Government Actuary to provide actuarial advice to public service pension schemes should be removed.

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 amendments to these Regulations made by this Instrument are needed to take account of changes in four key areas. These are to reflect the passage of the National Health Service Act 2006 and the National Health Service (Wales) Act 2006; to remove references to the Government Actuary; to clarify the rules on the payment of interest; and to clarify the rules for the assessment of temporary injury allowance. There are also some minor areas of change to clarify the effect of certain regulations.

7.2 Various amendments are needed throughout the four sets of Regulations following the consolidation of legislation relating to the National Health Service in the National Health Service Act 2006 and the National Health Service (Wales) Act 2006. The Regulations are currently peppered with references to the old National Health Service 1977 Act which need to be amended to either (or both) of the two 2006 Acts.

7.3 Amendments are needed to remove all references to the Government Actuary. Following the report of the Morris Review of the Actuarial Profession in March 2005, HM Treasury Ministers accepted the recommendation that Government should remove the legislative requirements for the Government Actuary to provide actuarial advice to public service schemes. HM Treasury accept that government departments should be allowed a choice of actuarial advisors. The Regulations introduce this change.

7.4 The third area of change concerns the payment of interest. Regulation T8 in the main Pension Scheme, which came into force from 1 April 2000, introduced a general provision for the NHS Pension Scheme to pay interest automatically, where the whole or any part of a qualifying payment under the Regulations was not paid by the end of period of one month beginning with the due date. The policy intention was to pay interest where decisions on claims for retirement on ill-health grounds were unavoidably delayed, usually in areas where developments in medical knowledge were still taking place, (e.g. Chronic Fatigue Syndrome).

7.5 Although the intention was not to pay interest on the balance between the final agreed award and any lower “safe” temporary award, the original policy instructions did not include this requirement and, therefore, regulations were expressed to apply generally to all delayed pension benefits. The proposed change to T8 corrects this oversight by excluding from payment of interest those cases where a “safe” rate of benefit has been paid and this rate is subsequently revised. It also simplifies the calculation by amending the definition of the base rate to make use of the Bank of England Official Bank Rate. This amendment should result in savings to the scheme.

7.6 The fourth area concerns changes to the NHS Injury Benefit Scheme identified as part of the operational review undertaken by the NHS Business Services Authority and the Department. This review identified, amongst other issues, that no authority exists for employers to determine claims for Temporary Injury Allowance (TIA), nor for the Business Services Authority's medical advisors to accept or reject applications for benefits on the death of an injured person, or determine TIA applications. These matters are remedied by this Instrument.

7.7 Consultation has been undertaken in accordance with section 10(4) of the Superannuation Act 1972 with such representatives of persons likely to be affected by the proposed regulations as appear to the Secretary of State to be appropriate. Amongst those consulted were: NHS Staff Side representatives, NHS Employers; the NHS Business Services Authority Pensions Division; other public service pension schemes; Government Actuary's Department; the Pensions Regulator; the National Audit Office; the devolved administrations; and HM Treasury. Comments have been received from the Government Actuary's Department, Pensions Division and HM Treasury.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Mrs Jan Parkin at the Department of Health, Pensions Policy Branch, Tel: 0113 254 6324 or e-mail: jan.parkin@dh.gsi.gov.uk can answer any queries regarding the instrument.