

EXPLANATORY MEMORANDUM

The NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) Regulations 2004

Summary

These Regulations, which are intended to be made together with the Secretary of State for Health, make provision concerning the membership and procedure of the NHS Pensions Agency ("the Agency"), a Special Health Authority to be established under section 11 of the National Health Service Act 1977 by the NHS Pensions Agency (Establishment and Constitution) Order 2004.

1. This memorandum is submitted to the Assembly's Business Committee in accordance with agreed practice. Standing Order, section 3 applies to the making of these regulations which are intended to be made by the Secretary of State for Health in respect of England and by the Assembly in respect of Wales. If approved and signed on behalf of the Assembly they will be passed to the department of Health for signature and laying in Parliament subject to the negative resolution procedure.
2. A copy of the Regulations is submitted with this memorandum.
3. The powers enabling the Regulations to be made are contained in sections 16(4) and 126(4) of and paragraphs 10,12 and 16 of schedule 5 to the NHS Act 1977.

Effect

4. These Regulations provide for the appointment and tenure of office of the chairman and members of the Agency, for disqualification for appointment, disability on account of conflict of interest and for termination of office. They also provide for the appointment of and exercise of functions by committees of the Agency. In addition they set rules as to the meetings and proceedings of the Agency and make provision for reports and information.
5. The NHS Pensions Agency is currently an arm of the Department of Health administering NHS Pensions on an England and Wales basis. The change in status to become a Special Health Authority (SHA) arises from recommendations made in the Quinquennial Review of the Agency. This is consistent with the UK Government's policy of devolving responsibility to the NHS.

Target Implementation

6. It is intended that the instrument be made by the Assembly on or before 9 March 2004 to allow for subsequent signature by the Secretary of State for Health and laying in Parliament, and for the regulations to come into force on 1st

April 2004. There would be significant implications if the target making and coming into force dates were not met as, subject to the legislation being made, appointments and practical steps are in the process of being taken forward to enable the administration of NHS pensions by the agency to be effected smoothly with effect from the beginning of the new financial year. Responsibility for the details of the NHS pension scheme in regulations made under the Superannuation Act 1972 rests with the Secretary of State and has not been devolved.

Financial Implications

7. The Department of Health administers the NHS Pension Scheme for England and Wales. The costs of setting up the new Special Health Authority will therefore be absorbed by the Department of Health, and as such there are no additional financial implications for the Welsh Assembly arising from this submission. The Finance Planning Division has seen this submission and noted the financial implications.

Regulatory Appraisal

8. A Regulatory Appraisal has been undertaken and is attached.

Consultation

With Stakeholders

9. The only staff whose employment is affected by the establishment of the Pensions Agency are Department of Health employees represented by the PCS trade union. I am informed that the first formal meeting with the Trade Union side took place on 12th August 2003. Monthly meetings followed thereafter. The transfer of staff is being dealt with under the TUPE regulations. The first formal letters to staff were sent out during the period 16th to 31st December 2003. The conditions of service that will apply to transferred staff were agreed with the trade unions on January 13th 2004. Each member of staff will receive a second letter shortly, followed by a further two before March 31st 2004. I have been made aware of the consultation arrangements and am content that the statutory requirements for consultation for staff in England affected by the proposals have been complied with.

With Subject Committee

10. The Chair of the Health and Social Services Committee was made aware of the proposed regulations, the related establishment order and the need for Directions by letter dated 9 February 2004 and I was able to refer members of the committee to the proposals at the meeting of the committee on 12 February 2004. Members were content that they need not scrutinise the instruments but I have ensured that they will receive copies as soon as they become available. The regulations fall for consideration under section 3 of standing order 23.

Recommended Procedure

11. I recommend that this Instrument proceeds to Plenary without debate, and without further reference to Subject Committee. This is because it is necessary

to approve the instruments in time for the making of the order and the regulations so that the NHS Pensions Agency comes into being as a special health authority with effect from 1 April 2004. At its meeting on 12 February the Subject Committee agreed that the draft order and regulations could progress through the approvals process without further scrutiny on their part.

Compliance/Statutory Cross-cutting Theme

12. The legislation will (as far as applicable) :

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
- be compatible with the Assembly's scheme for sustainable development (Section 121);
- be compatible with Community law (Section 106);
- be compatible with the Assembly's human rights legislation (Section 107);
- be compatible with any international obligations binding the UK Government with the Assembly (Section 108);

13. I confirm that this Memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer.

14. Drafting lawyer is Mark Partridge, Office of the Counsel General on 5073.

15. Policy division contact, Gwenda Davies, Employment Policy Branch, Human Resources Division, extension 5231.

16. Head of Division is Stephen Redmond 3203.

Jane Hutt AM
Minister for Health and Social Services

February 2004