

EXPLANATORY MEMORANDUM

The National Health Service Pensions Agency (Asiantaeth Pensiynau'r GIG) (Establishment and Constitution) Order 2004

Summary

This Order which is intended to be made together with the Secretary of State for Health, provides for the establishment and constitution of a Special Health Authority, to be known as the NHS Pensions Agency ("the Agency"), to exercise functions in connection with the NHS Pensions Scheme and the making of grants, and payment of fees and allowances under section 63 of the Health Services and Public Health Act 1968 in England and such other functions as the Secretary of State may direct it to perform.

1. This memorandum is submitted to the Assembly's Business Committee in accordance with agreed practice. Standing Order 23, section 3 applies to the making of the order which is 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 the order will be passed to the Department of Health for signature and laying in Parliament subject to negative resolution procedure.
2. A copy of the Order is submitted with this memorandum.

Enabling Power

3. The power enabling this Order to be made is contained in section 11 of the NHS Act 1977, and has been vested in the National Assembly for Wales by sections 16 and 17 of the NHS Health Act 1977.

Effect

4. The Order establishes, with effect from 1st April 2004, a Special Health Authority to be known as the NHS Pensions Agency which shall become operational with effect from 1st April 2004.
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 Government's policy of devolving responsibility to the NHS. The majority of staff of the Pensions Agency will transfer into the new Special Health Authority where they will become NHS employees. A small number of policy staff dealing with NHS pensions issues will remain in the Department of Health. This is regarded as a transfer of function, and as such the principles of the Transfer of Undertakings (Protection of Employment)

Regulations (“TUPE”) will be followed. The work of the new SHA will remain at the existing Agency headquarters at Fleetwood. There are no employees in Wales affected.

6. Pensions are not devolved and administration of the NHS Pensions scheme for NHS employees and pensioners will not be affected by the change in the Agency’s status.
7. The Order also transfers the administration of payments made under Section 63 of the Health Services and Public Health Act 1968 in England into the SHA. In Wales this function is carried out by Health Promotions Wales and it is not intended for this arrangement to be altered.

Target Implementation

8. It is intended that the proposed instrument in Wales be made on or before 9 March 2004, so that the joint legislation comes 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.
9. The Order could not realistically come into force in England only because responsibility for the details of the pension scheme in regulations made under the Superannuation Act 1972 rests with the Secretary of State and has not been devolved. Whilst the Assembly has no devolved functions regarding superannuation legislation powers to establish such bodies under the NHS Act 1977 have been transferred to it in relation to Wales.

Financial Implications

10. Finance Planning Division has been consulted about this Order and are satisfied that there are no additional financial implications for the Assembly Government arising from this instrument.

Regulatory Appraisal

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

Consultation

With Stakeholders

12. 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 Trade Union side took place on 12 August 2003, as soon as was possible after the decision was announced. 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 16 to 31 December 2003. The

conditions of service that will apply to the transferred staff were agreed with the trade unions on 13 January 2004. Each member of staff will receive a second letter shortly, followed by a further two before 31 March 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

13. 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. 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

14. I recommend that this Instrument proceeds to Plenary without debate, 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

15. 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);

16. I confirm that this Memorandum has been cleared with the Office of the Counsel General and the Assembly Compliance Officer ([ACO clearance ref: JC/02/04/291](#)).

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

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

19. Head of Division is Stephen Redmond, extension 3293.

Jane Hutt AM
Minister for Health and Social Services

February 2004