

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE TRUSTS (CONSULTATION ON**  
**ESTABLISHMENT AND DISSOLUTION) REGULATIONS 2010**

**2010 No. 743**

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 These regulations revoke the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996 (the 1996 Regulations) in so far as they relate to England and replace the 1996 Regulations to ensure that they reflect the up to date position on public engagement arrangements.

2.2 In particular, the Regulations-

(i) prescribe the necessary consultation which must take place where an NHS trust is established, dissolved or its establishment order is amended, or an order is made transferring property and liabilities of a dissolving trust,

(ii) disapply the consultation requirements where an establishment or dissolution order is made following and in response to the publication of a final report under section 65I(3) of the National Health Service Act 2006,

(iii) update the duties to consult Community Health Councils with their successor body Local Involvement Networks (LINKs).

**3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]**

3.1 None

**4. Legislative Context**

**Regime for Unsustainable NHS Providers**

4.1 Chapter 1 of Part 2 of the Health Act 2009 amends the National Health Service Act 2006 (the 2006 Act) to make provision for the appointment of Trust Special Administrators (TSAs) to NHS trusts, NHS foundation trusts and Primary Care Trusts in England. These NHS bodies are established under the 2006 Act. The new provisions are intended to form part of a wider process for dealing with the poor performance and failure of such NHS bodies. The appointment of a TSA is likely to be the final stage in this process, where earlier attempts to improve performance have failed and the continuation of the body in its present situation is not considered to be in the interests of the health service.

4.2 In the case of NHS foundation trusts, it is for the regulator (known as Monitor) to initiate the process by giving a notice to the Secretary of State in accordance with the new provisions under the 2006 Act. On receiving such a notice, the Secretary of State must make an order providing that the trust ceases to be a foundation trust and instead becomes an NHS trust (described as “de-authorisation”), and must appoint a TSA.

## **Local Involvement Networks (LINKs)**

4.3 The Local Government and Public Involvement in Health Act 2007 enabled LINKs to be established. The legislation sets out the role and function of LINKs.

4.4 To enable LINKs to carry out their role, the legislation also gives the Secretary of State a power to make regulations imposing duties on commissioners and certain providers of health and social care services to respond to LINKs (to requests for information and to reports and recommendations made to them by a LINK) and to allow entry by LINKs to premises under certain conditions.

4.5 There are also Regulations covering issues such as the transition arrangements a local authority has to take if they have not appointed a LINK host or the Governance of a LINK. These Regulations include-

- [The Local Involvement Networks Regulations 2008](#)
- [The Local Involvement Networks \(Duty of Services-Providers to Allow Entry\) Regulations 2008](#)
- [The Local Involvement Networks \(Miscellaneous Amendments\) Regulations 2008](#)
- [The Local Involvement Networks \(Amendment\) Regulations 2008](#)

## **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## **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**

- *What is being done and why*

### **Regime for Unsustainable NHS Providers**

7.1 ‘Developing an NHS Performance Regime’ published in June 2008, announced the Government’s intention to—

*“establish a failure regime for state-owned providers that reflects the Government's obligations to ensure service continuity and protect public assets.”*

7.2 It detailed the steps that would be taken if an NHS organisation failed, either for clinical or organisational reasons. ‘Developing an NHS Performance Regime’ is available at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085215](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085215).

7.3 In September 2008, the Government published the Consultation on the regime for unsustainable NHS providers, which set out Government proposals and sought views on such a regime. The consultation response document was published in January 2009, alongside the Bill for the Act. The consultation documents for the regime for unsustainable providers are available at [http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH\\_087835](http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_087835).

7.4 Further detail on how the wider performance framework will work for NHS trusts was published in April 2009 and is included in The NHS Performance Framework: Implementation Guide. This document is available at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_098525](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098525).

## **LINKs**

7.5 In July 2006, the Government published a consultation: ‘A stronger local voice: A framework for creating a stronger local voice in the development of health and social care services’, which set out the Government’s intention to establish LINKs. The response to the consultation, ‘A Stronger Local Voice’, was published in December 2006. The consultation documents are available at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4137040](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4137040).

7.6 LINKs guidance was set out in the leaflet by *Help build your local health and social care: your guide to LINKs*, which is available at: [www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_111648](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_111648)

## ***Consolidation***

7.7 There are no plans to consolidate these Regulations.

## **8. Consultation outcome**

8.1 There are no formal requirements to consult on these Regulations.

## **9. Guidance**

9.1 No guidance will be prepared in consequence of these Regulations. However, Statutory Guidance for TSAs will be published on the Department of Health website.

**10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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 impact of the changes will be subject to on-going internal review and will be formally reviewed after 12 months and the legislation may be amended accordingly.

**13. Contact**

James Vallance at the Department of Health email: [James.Vallance@dh.gsi.gov.uk](mailto:James.Vallance@dh.gsi.gov.uk) can answer any queries regarding the instrument.