

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC HEALTH
AUTHORITIES AND PRIMARY CARE TRUSTS AND ADMINISTRATION
ARRANGEMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2008

SI 2008 No. 224

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
- 1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

- 2.1 These Regulations amend the current regulations that allow a Strategic Health Authority (SHA) to procure highly specialised health services, which are listed in a schedule to the current regulations. The Regulations add to the schedule some new services that may be commissioned from 1 April 2008.

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

- 3.1 None.

4. Legislative Background

- 4.1 Under the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (SI 2002/2375), as amended, certain functions of the Secretary of State are delegated to SHAs and Primary Care Trusts (PCTs). These include functions under section 3(1) of the National Health Service Act 1977 for the provision of medical, nursing and certain other services. This section was later re-enacted as section 3(1) of the National Health Service Act 2006. The Regulations allow PCTs to perform these functions generally, and allow SHAs to perform these functions only for the purpose of supporting and managing the performance of PCTs.
- 4.2 In general, the Regulations do not allow SHAs to enter directly into agreements with providers (such as NHS trusts and foundation trusts) for the provision of health care services. But from 1 April 2007, the Regulations were amended, by the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) (Amendment) Regulations 2007 (SI 2007/ 559),

to allow SHAs to undertake procurement of provision for selected and specific highly specialised services under the NHS in England, as specified by Schedule 5 to those Regulations. This new amendment updates the Schedule to reflect new services that are to be added to the portfolio of such services.

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 An independent review of commissioning arrangements for specialised commissioning, requested by the Department of Health and under the chairmanship of Sir David Carter, reported in May 2006. The review consulted widely with stakeholders and covered 32 separate recommendations in its report. Ministers accepted the recommendations made by the review and the key recommendations were incorporated into DH guidance - *Health Reform in England: Update and Commissioning Framework*, published in July 2006. The Department of Health and the NHS have been implementing these recommendations since then.

7.2 Amongst the key recommendations from the review that have now been completed were:

- move the existing national commissioning of highly specialised services, currently undertaken by the NSCAG Commissioning team in the Department of Health, to a Strategic Health Authority within the NHS; and
- establish the National Specialised Commissioning Group (NSCG), and the National Commissioning Group (NCG), which would succeed NSCAG, be hosted in the NHS and serviced by the NSCAG Commissioning team.

7.3 The change to regulations in April 2007 allowed the national commissioning team to continue to commission and contract for highly specialised services, upon its transfer from the Department of Health to London SHA. London SHA has exercised the new specialised services functions on behalf of the other nine SHAs in England.

7.4 On 21 September 2007, Ministers agreed with advice from the NCG & NSCG that two new services should be nationally commissioned as part of the portfolio of highly specialised services. These services are: (i) proton beam therapy service and (ii) islet transplantation service.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is specific only to:
- SHAs, and in particular London SHA, which exercises the SHAs functions, and commissions highly specialised services and holds Service Level Agreements with NHS trusts and contracts with NHS foundation trusts; and
 - providers of highly specialised services at NHS trusts and NHS foundation trusts who contract with the SHA.
- 8.3 The National Commissioning Group (NCG), the National Specialised Commissioning Group (NSCG) and SHA Chief Executives have all considered the merits of nationally commissioning . All of these stakeholders must agree on changes to the portfolio of nationally commissioned highly specialised services before advice is put to Ministers. The NCG and NSCG each have a patient/public involvement representative (appointed by the NHS Appointment Commission, through open competition) as well as NHS commissioners, policy makers and representatives of Royal Colleges and professional bodies. No additional consultation has been undertaken on this proposed amendment beyond the policy process.
- 8.4 The Department of Health remains accountable for policy changes through Ministers and holds the SHA exercising the functions accountable for operational issues.

9. Contact

- 9.1 Steve Pugh at the Department of Health, Tel: 0113 2546206 e-mail: steve.pugh@dh.gsi.gov.uk, who can answer any queries regarding the instrument.