

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC
HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS AND
ADMINISTRATION ARRANGEMENTS) (ENGLAND) (AMENDMENT)
REGULATIONS 2009

SI 2009 No. 112

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. Purpose of the instrument

- 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 will be nationally commissioned from 1 April 2009.

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

- 3.1 None.

4. Legislative Context

- 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. Two additional services were added in 2008 by SI 2008/224. This new amendment updates the Schedule to reflect 8 new services that are to be added to the portfolio of such services and to modify two existing services.

5. Territorial 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 since then. [Refer to the 2 additional services added in 2008]

- 7.4 On 29 September 2008, the Minister for Health agreed with advice from the NCG & NSCG that new services should be nationally commissioned as part of the portfolio of highly specialised services. These services are:
- i Ataxia telangiectasia service for children
 - ii Autoimmune paediatric gut syndromes service
 - iii Gender identity development service for children and adolescents
 - iv Chronic pulmonary aspergillosis service
 - vi Complex Ehlers Danlos syndrome service
 - vii Complex Neurofibromatosis type 1 service
 - viii Encapsulating sclerosing peritonitis surgical service
 - x Paroxysmal nocturnal haemoglobinuria (PNH)
- 7.5 In addition, two existing services are being modified:
- Deaf child and adolescent mental health outreach service (expansion to the existing nationally-commissioned outpatient service). This replaces an existing service which was the Mental health service for deaf children consisting of therapy and professional support provided by video-link.
 - Ventricular assist devices as bridge to heart transplant. This has been modified so that it is no longer restricted to adults.
- 7.6 The existing schedule has been replaced by this new amendment to include the above changes and to ensure that all services are in the correct alphabetical place in the schedule. This has the effect of renumbering the existing services.

8. Consultation

- 8.1 The National Commissioning Group (NCG), the National Specialised Commissioning Group (NSCG) and SHA Chief Executives have all considered the merits of nationally commissioning particular services. 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 [make clear not required if appropriate] has been undertaken on this proposed amendment beyond the policy process.
- 8.2 **Guidance**
- 9.1 Once cleared through Parliament, copies of the new Regulations will be shared with NHS London and the National Specialised Commissioning Team. An Update will appear in the NHS Chief Executive Bulletin before the end of March, detailing the commissioning arrangements for the new services specified in the schedule, although this information has already been circulated through the specialised services network. No additional guidance will issued around the NHS.

10. Impact

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

10.2 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.

11. Regulating Small Business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 The Department of Health remains accountable for policy changes through Ministers and holds the SHA exercising the functions accountable for operational issues through a Memorandum of Understanding.

12.2 The schedule may require further updating in 2010, depending on Ministers' acceptance of the NSCG's recommendations about any new services that might require national commissioning from April 2010. These decisions are made on an annual basis in the Autumn.

13. Contact

13.1 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.