

**EXPLANATORY MEMORANDUM TO**  
**THE NHS BODIES (TRANSFER OF TRUST PROPERTY) ORDER 2013**

**2013 No. 132**

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 The purpose of the Order is to transfer property held on trust (in these cases charitable property) between NHS bodies, in particular from the bodies listed as relevant old Trusts in column 1 of the Schedule to the bodies listed as relevant new Trusts in column 2 of the Schedule.

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

3.1 None

4. **Legislative context**

4.1 The instrument has been made by the Secretary of State under section 213 of the National Health Service Act 2006. That section allows the Secretary of State for Health to transfer trust property between relevant NHS bodies (which are defined in the section) in the circumstances laid down in that section. One of these circumstances is where there is a change or proposed change in the functions of an NHS body other than an NHS Foundation Trust (but which includes a Primary Care Trust or an NHS Trust).

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**

7.1 Primary Care trusts are primarily established to commission health services, but also provide some healthcare services such as community health services. Under a policy known as the “transforming community services” programme, Primary Care Trusts are divesting these provider services to improve services and ensure, for example, that they separate the commissioning of services from their provision. Under the programme, some of these community services have transferred to other NHS bodies. There has therefore been a change in the functions of a number of Primary Care Trusts which are no longer providing these community health services.

7.2 Trust property (in these cases charitable property) has been donated for the benefit of services that were being provided by the relevant Primary Care Trusts, but which have now transferred to other bodies. In some cases, this trust property is held by the Primary Care Trust itself. In others it is held (for reasons of efficiency for example), by other NHS bodies,

such as NHS Trusts, or NHS Foundation Trusts, under what is known as an “umbrella charity” but remains for the benefit of the community services that were run by the Primary Care Trust concerned. Under both these circumstances, it is considered more appropriate for the new bodies to now hold and administer the trust property related to the services that have transferred and for which the funds have been donated to benefit, i.e. the bodies now providing the services (or their umbrella charity) will hold the charitable funds that have been donated for those services. The nature and purpose of the funds transferred will not be affected. This Order transfers the funds from the body currently holding the funds to the body that will then be the corporate trustees for them. The bodies involved and the reason for the transfers are set out in the table below.

Transferring body	Receiving body	Reason for Transfer
Barts Health National Health Service Trust	North East London NHS Foundation Trust	The funds relate to four local PCTs (Barking and Dagenham PCT Havering PCT, Redbridge PCT and Waltham Forest PCT) and the related services transferred to North East London NHS Foundation Trust under the Transforming Community Services programme (TCS). The funds were previously held under the umbrella charity of Whipps Cross Hospital NHS Trust. However, the trust was one of three which merged to form the new Barts Health NHS Trust and the funds now need to transfer to North East London NHS Foundation Trust to be managed by the body who provide the services the funds were donated to support. As the transfer relates to service reconfiguration the transfer is under section 213 of the National Health Service Act 2006.
County Durham Primary Care Trust	County Durham and Darlington NHS Foundation Trust	The funds relate to community services transferred from County Durham PCT to County Durham and Darlington NHS Foundation Trust under TCS. As such, the transfer is under Section 213.
Devon Primary Care Trust	Northern Devon Healthcare National Health Service Trust	The funds relate to services that have transferred under TCS to Northern Devon Healthcare NHS Trust from Devon PCT. As such, the transfer is under Section 213.
East Lancashire Teaching Primary Care Trust	East Lancashire Hospitals National Health Service Trust	The funds relate to services that have transferred under TCS to East Lancashire Hospitals NHS Trust from East Lancashire PCT. As such, the transfer is under Section 213.
Milton Keynes Primary Care Trust	Bedford Hospital National Health Service Trust	Funds relate to community services that have transferred from Milton Keynes Primary Care Trust to Bedford Hospitals NHS Trust under TCS. As such, the transfer is under Section 213

South Essex Partnership University NHS Foundation Trust	North East London NHS Foundation Trust	The funds are related to services that transferred from South West Essex PCT to North East London NHS Foundation Trust. The funds have been held by South Essex Partnership University NHS FT under their umbrella charity and are transferring to be managed by the body who now hosts the services the funds relate to. As such, the transfer is under Section 213.
Surrey Primary Care Trust	Surrey and Borders Partnership NHS Foundation Trust	Surrey PCT held funds relating to services provided by themselves and two other PCTs. These services transferred to Surrey and Borders Partnership NHS Foundation Trust under TCS. As such, the transfer is under Section 213.
Walsall Teaching Primary Care Trust	Walsall Healthcare National Health Service Trust	Walsall Teaching PCT transferred services to Walsall Healthcare NHS Trust and other local providers under TCS. The funds to be transferred relate to those services transferred and the transfer is therefore under Section 213.

## 8. Consultation outcome

8.1 No formal written, public consultation exercise regarding the transfer of the trust property was undertaken as it is not required under legislation. All involved parties have agreed to the transfer. However before any actual services were transferred, the NHS bodies would have had to ensure they complied with their consultation duties, such as any duties to consult the public, stakeholders, staff or local authority committees as appropriate.

## 9. Guidance

9.1 None

## 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.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 None. The accounts of NHS funds held on trust are submitted to the Charity Commission.

## 13. Contact

Chris Steele at the Department of Health, Tel 0113 254 5939 or e-mail Chris.Steele@dh.gsi.gov.uk, can answer any queries regarding the instrument.