EXPLANATORY MEMORANDUM TO

THE CIVIL CONTIGENCIES ACT 2004 (AMENDMENT OF LIST OF RESPONDERS) ORDER 2008

2008 No.

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends the Civil Contingencies Act 2004 ("CCA") to ensure that NHS trusts which provide ambulance services ("ambulance trusts"), will remain as "Category 1 responders" under the CCA if they attain foundation trust status.

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

3.1 None.

4. Legislative Background

4.1 Duties of Category 1 responders include assessing the risk of an emergency occurring and maintaining plans for the purposes of responding to an emergency. Under Schedule 1 to the CCA, NHS trusts are "Category 1 responders" if they provide: (a) ambulance services, or (b) hospital accommodation and services in relation to accidents and emergencies. Foundation Trusts are only Category 1 responders if they "provide hospital accommodation and services in relation to accidents and emergencies" and the Department's view is that separate provision now needs to be made to cover Foundation Trusts providing ambulance services. Therefore, an amendment to Schedule 1 is required so that ambulance trusts that successfully apply to become foundation trusts are still Category 1 responders under the CCA.

5. Territorial Extent and Application

5.1 Foundation Trusts are England-only bodies and therefore this order applies to England only.

6. European Convention on Human Rights

6.1 The Minister of State for Health Services, Ben Bradshaw, has made the following statement regarding Human Rights:

"In my view, the provisions of the Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2008 are compatible with the Convention rights."

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7. Policy background

7.1 The first NHS Foundation Trusts were established in 2004. Foundation Trusts are parts of the NHS that have been established as independent public benefit corporations, free from central government control, and accountable to local people, who can become members and governors. Foundation Trusts are authorised and monitored by Monitor, the independent regulator of NHS Foundation Trusts.

7.2 When the foundation trust legislation was introduced, it was designed with acute trusts only in mind (followed shortly by mental health trusts). The Minister for Health subsequently announced, however, in June 2007, that ambulance trusts should, once deemed fit and ready, be able to apply for foundation trust status from April 2009. The amendment to Schedule 1 of the CCA described above is needed to ensure that foundation trusts providing ambulance services ("ambulance foundation trusts") have the same responsibilities under the CCA as NHS trusts providing ambulance services.

7.3 If ambulance foundation trusts were Category 1 responders, they would be subject to all the duties in relation to emergency planning that apply to Category 1 responders and would be subject to the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (and any Guidance issued by a Minister of the Crown under section 3 of the CCA) which make further and more detailed provision about the extent of the duties and the manner in which they are to be performed.

In addition, a Category 1 responder can be required by order to:

- perform one of its functions to prevent an emergency,
- to reduce, control or mitigate the effects of an emergency or
- to take other action in connection with an emergency.

7.4 No formal consultation was undertaken on this order because the change merely maintains the existing position. It is not anticipated that there will be significant public interest in the substance of the Order as it simply ensures that ambulance trusts will continue to have obligations as Category 1 responders if they become foundation trusts. No formal consultation was undertaken on ambulance trusts being able to apply for FT status because the change sought merely to maintain the existing position in terms of ambulance trusts' responsibilities as Category 1 Responders. A full public consultation was held prior to the introduction of the 2003 legislation which brought Foundation Trusts into being.

8. Impact

8.1 No Impact Assessment was undertaken because there is no regulatory or equality impact on any part of the public, private or voluntary sector. Any impact would be as a result of not implementing the Order. Equally, there are no implications for the Exchequer by making the Order as its effect is to maintain the existing arrangements.

9. Contact

9.1 Nick Crowther at the Department of Health Tel: 0207 633 4065 or e-mail: [nick.crowther@dh.gsi.gov.uk] can answer any queries regarding the instrument.