EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE ACT 2012 (CONSEQUENTIAL AMENDMENTS) (No. 2) ORDER 2013

2013 No. [XXXX]

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 instrument amends three Acts of Parliament in consequence of the Health and Social Care Act 2012.

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

None.

4. Legislative Context

4.1 Most of the amendments to primary legislation needed in consequence of the Health and Social Care Act 2012 were included in the Act itself. Others were made by the Health and Social Care Act 2012 (Consequential Amendments) Order 2013. This order makes further amendments to three Acts.

5. Territorial Extent and Application

5.1 The instrument has the same extent as the Acts amended: that is, England, Wales and Scotland for the Disabled Persons (Services, Consultation and Representation) Act 1986 and England and Wales for the Community Care (Delayed Discharges etc.) Act 2003 and the National Health Service Act 2006.

6. European Convention on Human Rights

The Secretary of State for Health has made the following statement regarding Human Rights:

In my view the provisions of the Health and Social Care Act 2012 (Consequential Amendments) Order 2013 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 As explained in paragraph 6 of the explanatory notes to the Health and Social Care Act 2012:

> "The main aims of the Act are to change how NHS care is commissioned through the greater involvement of clinicians and a new NHS Commissioning Board; to improve accountability and patient voice; to give NHS providers new freedoms to improve quality of care; and to establish a provider regulator to promote economic, efficient and effective provision. In addition, the Act will underpin the creation of Public Health England, and take forward measures to reform health public bodies."

7.2 The order inserts a reference to the new bodies created by or under the 2012 Act (the NHS Commissioning Board and clinical commissioning groups) into the Community Care (Delayed Discharges etc.) Act 2003. That Act previously referred to Primary Care Trusts (which were abolished by the 2012 Act). The effect of this change is that the Board and clinical commissioning groups will be subject to the duties in the 2003 Act in relation to the safe and timely discharge of patients from hospital. The order also updates the reference to the services to which an assessment under section 7 of the Disabled Persons (Services, Consultation and Representation) Act 1986 must relate – these are assessments of the needs of people who are discharged from hospital after detention under mental health legislation, or after 6 months' inpatient treatment for mental disorder, This change reflects the changes in responsibility for commissioning and provision of health services in England brought about by the 2012 Act, and updates the references to the way in which services are provided in Scotland and Wales. The order also removes a remaining reference to Primary Care Trusts from a section heading in the National Health Service Act 2006.

- Consolidation

7.3 The instrument makes minor amendments to three Acts of Parliament. It is not the Department of Health's intention to consolidate the legislation involved.

8. Consultation outcome

8.1 The provisions in the instrument are consequential on the Health and Social Care Act 2012 and have therefore not been subject to public consultation.

9. Guidance

9.1 No guidance is planned to accompany the instrument, since it makes only minor adjustments to existing arrangements.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment for the Health and Social Care Act 2012 as a whole is available at:
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583
and updated figures have since been published at:
http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121018/wmstext/121018m0001.htm#12101829000017 However, the impact attributable to the changes in the instrument is minimal.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No monitoring or review of the instrument as such is planned. The Department of Health is however committed to carrying out post-legislative review of the Health and Social Care Act 2012 within three years of Royal Assent (see for example, Lords Official Report, 21 December 2011 column 1820).

13. Contact

Lorraine Jackson at the Department of Health, Tel: 0113 25 46242 or email: Lorraine.Jackson@dh.gsi.gov.uk, can answer queries regarding the instrument.