EXPLANATORY MEMORANDUM TO

THE LOCAL AUDIT AND ACCOUNTABILITY ACT 2014 (SPECIAL TRUSTEES) AMENDMENT REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Local Audit and Accountability Act 2014 ("the 2014 Act") replaced existing centralised arrangements set out in the Audit Commission Act 1998 for appointing auditors to health service bodies and permits them to appoint their own auditors. This instrument amends the Act so that it applies to Special Trustees only where they act as trustees in relation to non-charitable matters, as their charitable fund accounts are already covered by the Charities Act 2011.

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

3.1 None

4. Legislative Context

4.1 The 2014 Act applies to "Relevant Authorities" which is defined in section 2(1) of that Act to include a person listed in Schedule 2. Paragraph 24 of Schedule 2 to the 2014 Act lists Special Trustees for a hospital as a body which is a "Relevant Authority" for the purposes of that Act. These Regulations amend paragraph 24 of Schedule 2 so that the 2014 Act will apply to Special Trustees only where they act as trustees in relation to non-charitable matters.

4.2 The 2014 Act does not apply to Special Trustees in respect of all their accounts. This is because the combined effect of section 4(5) of the 2014 Act as read with paragraphs 3 and 8(3) of Schedule 15 to the National Health Service Act 2006 is that if Special Trustees are trustees of a charitable trust, their accounts are not subject to audit under the 2014 Act. Section 149 of the Charities Act 2011 ("the 2011 Act") makes provision for the audit of the accounts of an "English NHS Charity". Special Trustees are included in the definition of an "English NHS Charity" in section 149 of the 2011 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

Earl Howe, Parliamentary Under-Secretary of State for Health (Quality) has made the following statement regarding Human Rights:

In my view the provisions of the Local Audit and Accountability Act 2014 (Special Trustees) Amendment Regulations 2015 are compatible with the Convention rights

7. Policy background

- What is being done and why

7.1 Special Trustees for a hospital are included in the list of "Relevant Authorities" (the organisations) to which the 2014 Act applies. Special Trustees are one of three models of individual trusteeship and are established by the Secretary of State for Health. They replaced Boards of Governors as trustees at some of the larger teaching hospitals, although in recent years no such bodies have been created. Currently there are only three such hospitals which are all foundation trusts who have Special Trustees. Special Trustees are appointed under section 212 of the National Health Service Act 2006 to hold property on trusts for particular hospitals, such as charitable funds for an NHS trusts. The accounts of charitable fund held by Special Trustees however are subject to the 2011 Act, rather than the 2014 Act.

7.2 The 2014 Act applies generally to Special Trustees in matters which do not relate to their accounts. So for example section 9 of that Act requires that each Relevant Authority must have an auditor panel to exercise functions conferred on the auditor panels under the Act. The policy intention is that the 2014 Act should only apply to Special Trustees if the trust of which they are trustees is not a charitable trust. These Regulations amend the definition of Relevant Authorities in Schedule 2 to the 2014 Act so as to restrict the application of the Act to instances where the trustees are dealing with non-charitable matters. The effect would be that the requirement to have auditor panels would only apply where the Special Trustees are dealing with non-charitable matters.

7.2 At present, there are no Special Trustees who hold non-charitable property, so in practice all the current Special Trustees would not be subject to the 2014 Act. However, as the 2014 Act currently applies generally to Special trustees in matters not relating to their accounts regardless of whether they deal with non-charitable property, these Regulations amend the 2014 Act so as

to deal with the future possibility of Special Trustees dealing with non-charitable matters.

8. Consultation outcome

8.1 No separate consultation exercise was conducted as these Regulations make minor and technical amendments to the 2014 Act so as to reflect the policy intention. The consultation exercise conducted when preparing the 2014 Act can be found at https://www.gov.uk/government/consultations/future-of-local-audit-consultation-on-secondary-legislation
A hard copy can be obtained by writing to the Accounts Branch, Department of Health, Quarry House, Leeds LS2 7UE.

9. Guidance

9.1 No separate guidance is needed to accompany these Regulations as the provisions are minor and technical.

10. Impact

10.1 These Regulations have no impact on charities or voluntary sectors.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No specific review is intended for these Regulations.

12.2 For the 2014 Act, as part of the Government's commitment to review the implementation of new legislation within three to five years of receiving Royal Assent, the Government has set out some general principles towards developing a possible approach to such a review and assessing the impacts/outcomes associated with the Government's reforms to local audit. The Government is in the process of finalising proposals on the approach to be adopted.

13. Contacts

Keith Morton (Tel: 0113 254 5428, keith.r.morton@dh.gsi.gov.uk) or Heather Suckling at the Department of Health (Tel 0113 254 5963,

heather.suckling@dh.gsi.gov.uk) can answer any queries regarding the instrument.