EXPLANATORY MEMORANDUM TO

THE MENTAL HEALTH (HOSPITAL, GUARDIANSHIP AND TREATMENT) (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 2560

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 These Regulations make a number of amendments to The Mental Health (Hospital, Guardianship and Treatment) Regulations 2008 (No. 1184) ("the HGT Regulations"). The amendments are to put right some minor errors and inconsistencies which have been discovered since those regulations were laid in May 2008.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 The amendment made by regulation [2(2)(a)] is to correct a drafting error reported by the Joint Committee on Statutory Instruments in the HGT Regulations in its Twenty-first Report of the Session 2007-2008.

4. Legislative Background

4.1 The HGT Regulations are part of the implementation of the Mental Health Act 2007 ("the 2007 Act"), which amends the Mental Health Act 1983 ("the 1983 Act"). The HGT regulations replace, for England, the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 (No. 893). They are, in effect, a consolidated and up-dated version of those Regulations, revised in the light of amendments to the 1983 Act made by the 2007 Act and a review of the Regulations as a whole.

4.2 These amending Regulations make a number of minor changes to the HGT regulations to ensure that they are fit for purpose when they come into effect on 3 November 2008.

5. Territorial Extent and Application

5.1 This Instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Policy

7.1 The 1983 Act provides, amongst other things, for certain compulsory measures to be taken in respect of people with mental disorders where those measures are justified by the risk posed by their mental disorder. The compulsory measures include detention in hospital for assessment or treatment, being placed under the guardianship of a local social services authority (or an individual approved by such an authority), or being discharged from hospital onto supervised community treatment (SCT), subject to the possibility of being recalled to hospital if necessary.

7.2 The 1983 Act itself establishes the legal framework within which decisions about detention, guardianship and SCT are to be made. The HGT Regulations deal mainly with related procedural matters.

7.3 These amending Regulations are to put right some minor errors and inconsistencies which have been discovered in the provisions of the HGT Regulations relating to:

- the assignment of responsibility for SCT patients between hospitals; and
- information to be given to patients' nearest relatives when certain decisions are taken under the 1983 Act.

7.4 They also put right some minor errors in Forms A7, A9, H2, CTO8 and CTO11 in Schedule 1 to the Regulations.

Guidance

7.5 These amending Regulations will be drawn to the attention of NHS bodies, local authorities and independent hospitals through the Department of Health's normal communication channels. The Department has already published a revised Code of Practice to the Mental Health Act 1983 and a summary of the main differences between the HGT Regulations and the Regulations which they will replace. Neither needs to be changed in the light of these amending Regulations. The Department is also planning to publish a Reference Guide to the 1983 Act (and the related secondary legislation) which will explain the requirements of the legislation.

Consultation

7.6 The Department of Health consulted publicly on a draft of the HGT Regulations, as part of a wider consultation on various pieces of draft secondary legislation arising from the 2007 Act. The consultation ran from 25 October 2007 to 24 January 2008.

Consolidation

7.7 As these Regulations make only a few changes to the HGT Regulations, the Department has no current plans to consolidate the HGT Regulations (which were themselves in large part a consolidation of earlier regulations). The link to the HGT Regulations on the Department's website will be annotated to alert readers to the existence of the amending Regulations.

8. Impact

8.1 No assessment has been prepared for these Regulations as they are not thought to have a significant impact on the private or voluntary sector.

9. Contact

Richard Rook at the Department of Health (tel. 020 7972 4648 or e-mail: Richard.Rook@dh.gsi.gov.uk) can answer any queries about the instrument.