EXPLANATORY MEMORANDUM TO THE

NATIONAL HEALTH SERVICE APPOINTMENTS COMMISSION (ESTABLISHMENT AND CONSTITUTION) (AMENDMENT) ORDER

2005 No. 2028

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 The purpose of the Statutory Instrument is to delegate the Secretary of State's powers to appoint trustees to hold property on trust for Foundation Trusts to the National Health Service Appointments Commission. This instrument is made under sections 11(1) and 126(3) of the National Health Service Act 1977.

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

3.1 None

4. Legislative Background

4.1 Where NHS bodies hold property on trust, that trust property is usually managed by the Board of the body itself - operating separately from their other functions. However, the Secretary of State can provide for the appointment of separate trustees by order, using powers in section 11 of the NHS Act 1977 (for NHS trusts), section 96B of the NHS Act 1977 (for Primary Care Trusts) and section 22 of the Health and Social Care (Community Health and Standards) Act 2003 (for NHS foundation trusts). Where it is decided that a separate body of trustees is needed for a NHS trust, Primary Care Trust or NHS foundation trust, the Secretary of State will make an order providing that she will appoint those trustees.

For NHS Trusts or Primary Care Trusts, the NHS Appointments Commission has been given the power to exercise the Secretary of State's function of making these trustee appointments on behalf of the Secretary of State in article 3(a)(iv) and (v) of the National Health Service Appointments Commission (Establishment and Constitution) Order 2001. The NHS Appointments Commission does not have the power to make trustee appointments on behalf of the Secretary of State to separate bodies of trustees for NHS foundation trusts. This Statutory Instrument will amend the National Health Service Appointments Commission (Establishment and Constitution) Order 2001 to enable the NHS Appointments Commission to exercise the Secretary of State's function of making these appointments to trustee bodies for NHS foundation trusts.

We do not expect it to be in any way controversial.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The policy objectives are to delegate to the NHS Appointments Commission the Secretary of State's powers to appoint trustees for NHS foundation trusts to hold property on trust for the purposes of the NHS foundation trust or for purposes relating to the health service.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. Contact

Deborah Barnes at the Department of Health, Tel: 020 7972 2979 or e-mail: Deborah.barnes@dh.gsi.gov.uk can answer any queries regarding the instrument.