EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD AND CLINICAL COMMISSIONING GROUPS (RESPONSIBILITIES AND STANDING RULES) (AMENDMENT) REGULATIONS 2014

2014 No. 91

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 To amend National Health Service Commissioning Board and Clinical Commissioning Group (Responsibilities and Standing Rules) Regulations 2012 (SI 2012/2996) ("the principal Regulations") so that the commissioning of health services in the new Immigration Removal Centre, The Verne, comes within the remit of the NHS Commissioning Board from the 17th February 2014, which is the date it is open to detainees.

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

3.1 None

4. Legislative Context

4.1 The principal Regulations make provision under section 3B of the National Health Service Act 2006, as amended in particular by the Health and Social Care Act 2012, for (amongst other things) the National Health Service Commissioning Board ("the Board") to have responsibility for commissioning health services for persons detained in certain types of accommodation.

4.2 The Board commissions health services in prisons and other prescribed secure accommodation pursuant to regulation 10 of the principal Regulations. Prescribed secure accommodation includes, at Table 2, in Part 2 of Schedule 3 to the principal Regulations, named immigration removal centres.

4.3 The Ministry of Justice have closed HMP Verne, and following the premises' refurbishment, are re-opening it as an immigration removal centre called The Verne Immigration Removal Centre. The Regulations are amended by this statutory instrument to add the name of The Verne Immigration Removal Centre is added to the list of named immigration removal centres for which the Board must commission the health services referred to in regulation 10(1) of the principal Regulations. In accordance with regulation 10, Table 2, Part 2 of Schedule 3 also specifies the date from which the obligation on the Board takes effect, in this case 17th February 2014.

4.4 Prior to making regulations under section 3B of the 2006 Act, the Secretary of State must obtain appropriate advice and must consult the Board. The Secretary of State has consulted with the Board and obtained its advice and the advice of the Home Office as to the desirability of ensuring consistency of health care provision at immigration removal centres, and that such health care should be commissioned as part of the National Health Service. In light of that consultation and advice, the Secretary of State has decided to make these amending Regulations. Making these Regulations is consistent with the Secretary of State's general duties under Part 1 of the National Health Service Act 2006.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The policy intention behind the amendment to the principal Regulations is to give the Board responsibility for commissioning health services for persons detained at the new immigration removal centre, ensuring that health care there is commissioned as part of the National Health Service.

7.2 On 4th September 2013 the Ministry of Justice (MoJ) announced that they "*will convert HMP Verne to an immigration removal centre (IRC), providing around 600 additional places to hold immigration detainees awaiting removal from the country. Existing staff will continue to run the site but the change means that the Home Office will meet the costs of its operation*".

7.3 Following substantial construction work the new facility will be operational from 17th February 2014 and the first detainees are expected to arrive at the new centre.

7.4 Although NHS England has responsibility for commissioning health services in HMP Verne and for other named IRCs, it cannot simply transfer this responsibility to the new establishment. In order for the NHS Commissioning Board to have statutory responsibility for commissioning health services in the new IRC, amendment must be made to the principal Regulations so that the new IRC is specified in the Regulations, together with the effective date from when the Board assumes responsibility for it as an IRC.

7.5 The timing of the re-opening of The Verne Immigration Removal Centre as an IRC has been planned by the Home Office in order to achieve best value for money and it has been matched to the operational capacity profile in terms of

having accommodation spaces available to hold detainees in appropriate secure accommodation.

7.6 Ordinarily, the Department would introduce this amendment with others on 1st April, but the timing of the decision to close HMP Verne and the re-opening of the new immigration removal centre precluded this.

- **Consolidation**

7.7The Department currently has no plans to consolidate the principal Regulations, but will keep this under review in light of future amendments.

8. Consultation outcome

8.1 Under Section 15 of the Health and Social Care Act 2012, the Secretary of State must seek advice appropriate for enabling him to determine which services should be commissioned by the Board, including from people or bodies with appropriate expertise and from the Board itself.

8.2 The Secretary of State sought such advice in relation to the amendments set out in these Regulations; for example, NHS England, the Home Office and Ministry of Justice.

8.3 Before deciding whether to make amendments to the Regulations, the Secretary of State has taken into accounts their comments.

9. Guidance

9.1 The NHS Commissioning Board will be able to issue information on its commissioning of services in the new Immigration Removal Centre.

10. Impact

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

10.2 The impact on the public sector is negligible. The Board was commissioning (and funding) health care at HMP Verne and anticipates similar costs in doing so in respect of The Verne Immigration Removal Centre.

10.3An Impact Assessment has not been prepared for including this new Immigration Removal Centre within the NHS Commissioning Board's remit. In terms of commissioning generally, an Impact Assessment was prepared in relation to the Health and Social Care Bill 2012 which considered costs and costs savings of what is now the current commissioning model, at Annex A (pages 3-29) (to be found at www.dh.gov.uk/prod_consum_dh/group/dh_digitalassets/documents/digitalasset/dh_129917.pdf).

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Secretary of State will keep the Board's performance under review in line with his duty under the NHS Act 2006 as amended by the Health and Social Care Act 2012.

12.2 The standing rules will be reviewed annually and updated as required.

13. Contact

Angela Hawley at the Department of Health (0113 254 6577 or email angela.hawley@dh.gsi.gov.uk) can answer any queries regarding the instrument.