EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD AND CLINICAL COMMISSIONING GROUPS (RESPONSIBILITIES AND STANDING RULES) (AMENDMENT) REGULATIONS 2026

2026 No. 207

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Stephen Kinnock, Minister of State for Care at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Eleanor Angwin, Deputy Director for the Models of Care Division at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kirsten Parkin, at the Department of Health and Social Care, can be contacted by telephone: 02072105271 or email: fnc@dhsc.gov.uk with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ("the Standing Rules") to increase the rates for NHS-funded Nursing Care (FNC) for the 2026/27 financial year which is payable by the relevant body NHS England (NHSE) or Integrated Care Boards (ICBs).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 FNC is the funding provided by the NHS to care homes with nursing. This funding supports the provision of nursing care by a registered nurse for those assessed as eligible. The process for determining eligibility is set out in regulation 28 of the Standing Rules. The relevant body's responsibility to pay a flat rate contribution to the care home towards registered nursing care costs arises where a relevant body (either NHSE or an ICB) determines that a person is eligible as they have a need for nursing

care and that the person is a resident in a care home or may need to become resident in a care home.

5.2 It is the responsibility of the relevant body (either NHSE or an ICB) to pay FNC as a flat, weekly rate per eligible individual directly to care providers. Accommodation and social care costs are the responsibility of either the local authority and/or the individual (subject to the outcomes of a needs assessment and financial assessment).

5.3 The Department of Health and Social Care reviews and updates the rates paid for FNC, as set out in the Standing Rules, on a yearly basis. The rate changes reflect the costs of delivering nursing care, which include wage inflation for registered nurses who provide FNC.

What was the previous policy, how is this different?

5.4 The FNC rates set out in the Standing Rules for the 2025/26 financial year are £254.06 for the standard flat rate payment and £349.50 for the higher rate payment.

5.5 The Secretary of State for Health and Social Care has decided to increase the FNC rates by 5.4% for the 2026/27 financial year. This accounts for the increase in the cost of care demonstrated by annual wage inflation, based on adult social care data, as well as non-pay factors for the 2026/27 financial year. This instrument therefore amends the rates set out in the Standing Rules to £267.68 per week for the standard flat rate payment and £368.24 for the higher rate payment.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 6E of the National Health Service Act 2006 ("the 2006") Act was first inserted by section 20(1) of the Health and Social Care Act 2012. Under section 6E (as amended by the Health and Care Act 2022), the Secretary of State is under a duty to impose requirements (known as "the Standing Rules") by regulations on NHSE and ICBs when they are exercising their commissioning functions.

6.2 The Standing Rules have been amended several times since they were introduced in 2012, including by updating FNC payment rates annually.

Why was this approach taken to change the law?

6.3 Making regulations that amend the Standing Rules is the only possible approach to make the necessary changes to achieve the policy purposes set out in this Explanatory Memorandum.

7. Consultation

Summary of consultation outcome and methodology

7.1 The provisions related to healthcare commissioning in FNC are specific and do not change current policy or the operation of patient choice of providers in the NHS. Although no public consultation has been undertaken, the Department of Health and Social Care has engaged with relevant experts in making these provisions to ensure the increase in the cost of care demonstrated by annual wage inflation as well as non-pay factors for the 2026/27 financial year have been accounted for.

8. Applicable Guidance

8.1 Guidance on FNC is available in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (2022)[1] and in the NHS-funded Nursing Care Practice Guidance (2022).[2]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no significant impact on business. The benefit of this change is to ensure the FNC rate reflects the costs of delivering nursing care, which includes wage inflation for registered nurses who provide FNC.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies across this instrument.

9.3 The FNC rate is a flat rate of funding covering the provision of nursing care by a registered nurse in a care home with nursing. This funding is provided regardless of the size of the care home or business, helping to minimise the impact of the requirement on small or micro businesses.

9.4 We do not anticipate any significant impacts on public bodies due to the increase in the FNC rate.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 DHSC and NHSE will continue to monitor the policies for healthcare service commissioning on an ongoing basis and consider changes as required.

10.2 The approach to monitoring this legislation is to review the rate annually and, if required, update the rate by amending the legislation.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

[1] DHSC, *National framework for NHS continuing healthcare and NHS-funded nursing care* (2022) *National framework for NHS continuing healthcare and NHS-funded nursing care - GOV.UK https://www.gov.uk/government/publications/nhs-funded-nursing-care-practice*

[2] DHSC, *NHS-funded nursing care practice guidance* (2022) NHS-funded nursing care practice guidance - GOV.UK https://www.gov.uk/government/publications/nhs-funded-nursing-care-practice

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).