EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (COMPLAINTS) AMENDMENT REGULATIONS 2006

2006 No. 2084

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 This Statutory Instrument made under the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") will amend, from 1st September 2006, the National Health Service (Complaints) Regulations 2004 (SI 2004/1768) ("the 2004 Regulations"). The 2004 Regulations prescribe the local level resolution process and the investigative role of the Commission for Healthcare Audit and Inspection ("the Healthcare Commission")in addressing healthcare complaints relating to NHS bodies and NHS foundation trusts. This statutory instrument amends the 2004 Regulations to:

- align part of the complaints process with the Local Authority Social Services Complaints (England) Regulations 2006 (SI 2006/1681). This will enable complaints that are made to an NHS body that either in part, or in whole, relate to a local authority's social services functions to be transferred to the local authority and, where appropriate, for a coordinated response to be given (regulation 4);
- clarify that complaints managers, who are responsible for the handling of NHS body complaints at the local level, need not be employees of the NHS body for which they hold that position and may be such managers for more than one NHS body (regulation 5);
- exclude from the complaints procedure complaints that have already been investigated under it, or are about NHS Injury Benefit or Pension Schemes (regulation 6);
- increase the time limit for an NHS body to respond to a complaint by 5 working days, only enabling extensions of that limit with the agreement of the complainant (regulation 7);
- increase the time limit for a complainant to seek the consideration of his complaint by the Healthcare Commission from 2 to 6 months (regulation 8);
- prevent the Healthcare Commission from considering complaints relating to the NHS Bursary Scheme (regulation 8);
- increase the remit of the Healthcare Commission to complaints from non-patients in respect of NHS foundation trusts (regulation 9);
- make administrative changes to the notification and reporting arrangements between the Healthcare Commission and the Independent Regulator ("Monitor") regarding complaints about NHS foundation trusts (regulations 9 and 12); and

- remove some of the prescription on the Healthcare Commission, around the use by it of independent panels to hear complaints (regulation 10).

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

3.1 None

4. Legislative Background

4.1 Sections 113 and 115 of the 2003 Act enable the Secretary of State to make Regulations about the handling and consideration of complaints relating to the provision of healthcare and related services. The 2004 Regulations made under these provisions, which came into force on 30th July 2004, prescribe a local level complaints procedure relating to English NHS bodies and for a second stage of complaint investigation by the Healthcare Commission in respect of English NHS bodies and NHS foundation trusts. The 2004 Regulations also provide for the passing of complaints, for information purposes, from the Healthcare Commission to Monitor where they are about NHS foundation trusts.

This statutory instrument amends the 2004 regulations.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The changes are designed to improve the way the NHS responds to complaints and give better alignment with the social care complaints procedures. The underlying aim is to make the system more patient focused, strengthening the local resolution phase by allowing more time at local level and bringing the NHS complaints regulations closer to Social Care in advance of the White Paper commitment to an integrated NHS and Social Care complaints procedure by 2009. Objectives of these amendments to the 2004 Regulations are to:

- Place a duty on NHS bodies so that they have to cooperate with local authorities when complaints relate in part to a local authority's functions. This will ensure that patients and service users get a more integrated response when they raise concerns which cover both health and social care.

- Clarify that NHS bodies may appoint complaints managers who are not employees of that body, and allow a complaints manager to be appointed to manage complaints for more than one body. This will give NHS bodies more flexibility and allow them to pool resources

- Extend the time limit for responding to a complaint at the local level from 20 working days to 25 working days to increase the flexibility for NHS bodies to give higher quality and more helpful responses.

- Give individual patients more time to reach a decision about whether to take their complaint to the Healthcare Commission if they are dissatisfied with the local response.

- Exclude from the complaints procedure complaints which have already been investigated, or for which other complaints procedures exist.

- Enable the Healthcare Commission to investigate both patient and non-patient complaints arising from NHS Foundation Trusts. This gives consistency in the type of complaints the Healthcare Commission can investigate across NHS trusts and NHS foundation trusts.

- Remove the obligation on the Healthcare Commission to forward a copy of all complaints relating to NHS foundation trusts to Monitor within two working days and replace it with a requirement to provide reports that provide a breakdown of aggregate data and complaint trends. The regulations will enable Monitor to require the Healthcare Commission to send it any particular types of complaints it is interested in. This will remove an unnecessary administrative burden and replace it with a more focussed and useful set of information being shared with the Monitor.

- Remove most of the prescription which sets out how the Commission must use independent panels to consider complaints, if it exercises its choice to use such panels. This is in keeping with the Commission's role as an independent organisation and with other parts of the Regulations which give significant flexibility to the Commission.

- There is no statutory duty to consult before making these Regulations; however, the Healthcare Commission, NHS complaints managers and Monitor were consulted throughout the making of these regulations.

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.

8.2 The impact on the public sector is an improved complaints procedure and a change in the way the Healthcare Commission and Monitor relate clarifying their individual roles.

9. Contact

Shain Marr at the Department of Health Tel: 0113 2546306 or e-mail: Shain.Marr@dh.gsi.gov.uk can answer any queries regarding the instrument.