EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS AND ADMINISTRATION ARRANGEMENTS) (ENGLAND) AMENDMENT (No.2) REGULATIONS 2010

2010 No. 2649

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 This instrument amends the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements (England) Regulations 2002 (S.I. 2002/2375) ("the principal Regulations").

2.2 The principal Regulations make provision, amongst other things, for establishing which Primary Care Trust ("PCT") is responsible for exercising the functions of the Secretary of State relating to the health service which are exercisable by PCTs by virtue of those Regulations.

2.3 A previous amendment to the principal Regulations - The National Health Service (Functions Of Strategic Health Authorities And Primary Care Trusts And Administration Arrangements) (England) (Amendment) Regulations 2006 (SI 2006/359) ("the 2006 amendment Regulations") - had added a further exception to the usual rules so that where a PCT ("the placing PCT") entered into an arrangement to place an adult with long-term care needs in residential care in the area of another PCT, the placing PCT retained responsibility for meeting those needs.

2.4 This instrument provides that this responsibility applies whether or not the services provided in connection with the long-term care needs include nursing, except in cases where the only planned service is NHS-funded nursing care.

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

3.1 None.

4. Legislative Context

4.1 Under the principal Regulations, the PCT responsible for providing or commissioning a patient's care is mainly determined by G.P. registration. The 2006 amendment Regulations established the principle that where a PCT arranges long-term residential care in another PCT area, the PCT making the placement (the placing PCT) is responsible for meeting the cost of the care and

accommodation, so that the cost no longer falls on the PCT where the accommodation is located. This principle was established with respect to care homes with nursing.

4.2 The purpose of this instrument is to provide that this responsibility applies whether or not the services provided in connection with the long-term care needs include nursing, except in cases where the only planned service is NHS-funded nursing care.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Currently, PCTs must, subject to certain exceptions, provide health care for the benefit of the patients of G.P. practices drawn from the area of the trust. PCTs and their counterparts in social services frequently commission long-term packages of care for adults with a diverse range of needs in care homes or independent hospitals in other PCT areas. These packages may need to be funded by both the NHS and social services and they tend to be costly packages of care.

7.2 Most patients will register with a G.P in the PCT area where these specialist care homes and independent hospitals are located. PCTs had identified this as an increasing problem where specialist homes are concentrated in the areas of a few PCTs. The intention behind the 2006 amendment Regulations, as set out in its Explanatory Memorandum and the related guidance (”Who Pays? Establishing the Responsible Commissioner” Department of Health; September 2007; Gateway reference: 8448) was to place responsibility for care home and independent hospital placements on the PCT making the placement. However, the 2006 amendment Regulations did not cover care homes where nursing care is not provided. The changes made by this instrument will mean that the principle of the placing PCT retaining responsibility applies whether or not the care home provides nursing care. This will serve to align the legal position with preferred practice. The changes are also intended to promote corporate thinking and to encourage PCTs to consider the local market for placements, as well as promoting closer working between PCTs and local authorities. The Department of Health also believes that they will put commissioning of these packages of care on a basis that will work to the benefit of patients.

7.3 As with the 2006 amendment Regulations, the amended responsibilities will not apply to care packages where the sole planned service, apart from the provision of accommodation, consists of NHS-funded Nursing Care. The present arrangements for this will continue.

- ***Consolidation***

7.5 None.

8. Consultation outcome

8.1 A consultation exercise held between 31 March and 29 June 2005 on the Department of Health's proposals leading to the 2006 amendment Regulations was overwhelmingly in favour of the change provided for by those Regulations, therefore establishing that where the placing PCT has entered into an arrangement to place an adult with long-term care needs in residential care in the area of another PCT, the placing PCT retains responsibility for meeting those needs

8.2 There were 63 consultation responses in total: 56 from PCTs, Strategic Health Authorities and NHS trusts; and 7 from other interested organisations including Age Concern, the Parliamentary and Health Services Ombudsman, the Royal College of Nursing and the Royal College of General Practitioners. The consultation did not attract any media attention. The general view of those who responded was that the proposals would result in easier commissioning of services for those requiring continuing care. In its published response to the consultation exercise, the Department clarified how patients who only receive nursing care from the NHS would be affected by the changes. A report on the consultation response has been published on the Department of Health website and can be viewed at www.dh.gov.uk/Consultations.

8.3 Given that this instrument is consistent with the proposed policy position within this consultation, a further consultation is not considered necessary.

9. Guidance

9.1 "Who Pays? Establishing the Responsible Commissioner" Department of Health; September 2007; Gateway reference: 8448) gives guidance on PCT commissioner responsibilities. It sets out a framework for establishing responsibility for commissioning an individual's care within the NHS, and for determining who pays for a patient's care.

9.2 This guidance will be amended to reflect the changes made by this instrument.

10. Impact

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

10.2 The impact on the public sector is to change the way that PCT functions under the principal Regulations are exercised, but not the services for which PCTs are responsible.

11. Regulating small business

11.1 These Regulations do not apply to small businesses.

12. Monitoring & review

12.1 There are no specific plans to monitor and review the application of the amendment provisions. However, the Department of Health collects quarterly data on the numbers of individuals eligible for NHS continuing healthcare Changes in the numbers eligible in individual PCTs re a result of these amendments would be reflected in the above data.

13. Contact

13.1 Trish O'Gorman at the Department of Health (Tel: 0113 254 6789 or e-mail: trish.o'gorman@dh.gsi.gov.uk) can answer any queries regarding the instrument.