EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS AND ADMINISTRATION ARRANGEMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2010

2010 No. 405

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002[1] ("the principal regulations"), which set out the specialised services whose provision is to be secured in England by Strategic Health Authorities (SHAs), rather than Primary Care Trusts (PCTs). The Regulations add seven new services that will be nationally commissioned by SHAs from 1 April 2010 and amend the description of a number of existing services to reflect more accurately the descriptions now used within the health service in England and to correct some spelling errors.

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

3.1 None.

4. Legislative Context

4.1 The principal regulations provide for the functions of the Secretary of State relating to the health service to be exercisable in England by Strategic Health Authorities and Primary Care Trusts These include functions under section 3(1) of the National Health Service Act 1977 for the provision of medical, nursing and certain other services. This section was later re-enacted as section 3(1) of the National Health Service Act 2006.

4.2 In general, the principal regulations do not enable SHAs to enter directly into agreements with providers (such as NHS Trusts and Foundation Trusts) for the provision of health care services. However, from April 2007, the principle regulations were amended, by the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) (Amendment) Regulations 2007[2], to allow SHAs to

[1] SI 2002/2375
[2] SI 2007/559

commission specific highly specialised services in England, as set out in Schedule 5 to the principal Regulations.

4.3 These new regulations will update Schedule 5 to the principal regulations to include an additional seven services whose provision is to be secured by SHAs, and will also amend the definitions of a number of services to provide a more accurate description in keeping with the descriptions used in the health service currently.

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 and does not amend primary legislation, no statement is required.

7. Policy background

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

7.1 Although most services in the NHS are commissioned by PCTs, there are different arrangements for commissioning *specialised* services. Two advisory bodies: The National Commissioning Group (NCG) and National Specialised Commissioning Group (NSCG) oversee the national commissioning function and advise Ministers on which services should be commissioned nationally.

7.2 On 16 December 2009 the Minister of State for Health agreed with advice from the NCG and NSCG that seven new services should be nationally commissioned as part of the portfolio of highly specialised services. These services are:

i. Bardet-Biedl syndrome service
ii. Barth syndrome service
iii. Cryopyrin associated periodic syndrome service
iv. McArdle's disease service
v. Neurofibromatosis type 2 service
vi. Neuromyelitis optica service
vii. Xeroderma pigmentosum service

7.3 In addition it was identified that a number of modifications were needed to services within the existing list in Schedule 5 to update the references and to correct spelling errors. These were –

i. Alström syndrome service (item 1) to correct spelling
ii. Complex neurofibromatosis type 1 service (item 10) to correct spelling
iii. Congenital hyperinsulinism service (item 12) this replaces the previous reference to "persistent hyperinsulinaemic hypoglycaemia of infancy

service" (old item 31) and is regarded as a better description of the service

iv. Cranofacial service (item 13) to remove the reference to surgery (see old item 10) to clarify that this covers the service in the broadest sense

v. Extra corporeal membrane oxygenation service for neonates, infants and children with respiratory failure (item 21) to clarify the wording of old item 18 to ensure the meaning of children applies in the widest sense, and to add the reference to "respiratory failure" to clarify the type of service

vi. Heart and lung transplantation service (including bridge to transplant using mechanical circulatory support) (item 23) to expand the category to include bridge to transplant services rather than needing to list these separately (old item 19 and 50 for children and adults respectively)

vii. Mental health service for deaf children and adolescents (item 28) this description incorporates old item 11 (deaf child and adolescent mental health outreach service (expansion to the existing nationally-commissioned outpatient service)) and old item 25 (mental health service for deaf children: inpatient service) meaning there is no need to list them separately

viii. Ophthalmic pathology service (item 32) to correct spelling

ix. Osteo-odonto-keratoprosthesis service for corneal blindness (item 33) to modify spelling

x. Paroxysmal nocturnal haemoglobinuria service (item 35) to improve the description to include the word "service" to make it more accurate (see old item 30)

xi. Pseudomyxoma peritonei service (item 38) to correct spelling

xii. Reconstructive surgery service for adolescents for congenital malformation of the female genital tract (item 42) to move the word "service" (see old item 38) to make it more accurate

xiii. Secure forensic mental health service for young people (item 44) is now considered to be broad enough to include old item 41 (secure forensic mental health and learning disability service for young people) meaning that this category could be deleted

xiv. Small bowel transplantation service (item 48) to cover both children and adults meaning that two separate entries (old items 45 and 46) are no longer needed

xv. Specialist paediatric liver disease service (item 49) to improve the definition by referring to "paediatric" rather than to "children" (see old item 47).

8. Consultation outcome

8.1 The National Commissioning Group (NCG), the National Specialised Commissioning Group (NSCG) and SHA Chief Executives, through the NHS Operations Board, have all agreed these recommendations. The NCG and NSCG each have a patient/public involvement representative as well as NHS Commissioners, policy makers and representatives of the Royal Colleges and professional bodies. No additional consultation has been undertaken on this proposed amendment beyond the policy process.

9. Guidance

9.1 Once the new regulations have been made, copies will be shared with NHS London (the NHS body which hosts the NCG and NSCG) and the National Specialised Commissioning Team (the team supporting the two groups). An update will also appear in the NHS Chief Executive's bulletin 'The Week' before the end of March 2010, detailing the commissioning arrangements for the new services specified in the schedule. No additional guidance will be issued around the NHS.

10. Impact

10.1 Neither an Impact Assessment nor Equality Impact Assessment has been prepared for this instrument as it has no impact on business, charities, voluntary bodies or specific groups of the population.

10.2 The impact on the public sector is specific only to:

- SHAs, and in particular NHS London, which exercises the SHAs functions and commissions highly specialised services and holds; and
- Providers of highly specialised services at NHS Trusts and NHS Foundation Trusts who contract with NHS London.

11. Regulating small business

11.1 The instrument does not apply to small business.

12. Monitoring and review

12.1 The Department of Health remains accountable for policy changes through Ministers and holds NHS London accountable for operational issues through a Memorandum of Understanding. SHAs are responsible for commissioning specialised services, but have delegated authority to NHS London for the commissioning of services at a national level.

12.2 Decisions about the addition or removal of services from the Schedule are made on an annual basis. Therefore, the Schedule may require further amending in 2011, depending on Ministers' decision about which services should be nationally commissioned from April 2011.

13. Contact

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