EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS AND ADMINISTRATION ARRANGEMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No. 503

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 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 eight new services that will be nationally commissioned by SHAs from 1 April 2011.

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 principal 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 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 eight services whose provision is to be secured by SHAs.

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

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 Although most services in the NHS are commissioned by PCTs, there are different arrangements for commissioning *specialised* services at a national level. The Advisory Group for National Specialised Services (AGNSS) advises Ministers on which services should be commissioned nationally.

7.2 On 25 January 2011, the Secretary of State for Health and the Parliamentary Under Secretary of State for Quality (Lords) agreed with advice from AGNSS that eight new services should be nationally commissioned as part of the portfolio of highly specialised services. These services are:

i. Autologous intestinal reconstruction in adult patients
ii. Complex childhood osteogenesis imperfecta
iii. Insulin-resistant diabetes services
iv. Lymphangioleiomyomatosis
v. Paediatric intestinal pseudo-obstructive disorders
vi. Stickler syndrome diagnostic service
vii. Veterans' post-traumatic stress disorder programme
viii. Wolfram syndrome

8. Consultation Outcome

8.1 The recommendations were all agreed by AGNSS. The membership of AGNSS includes patient/public involvement representatives as well as NHS Commissioners, policy makers and representatives of the Royal Colleges and professional bodies. No additional consultation has been undertaken on these proposed additions to the national specialised commissioning portfolio beyond the policy process.

9. Guidance

9.1 Once the new regulations have been made, copies will be shared with the National Specialised Commissioning Team (the team which supports AGNSS). An update will also appear in the NHS Chief Executive's bulletin 'The Week' before the end of March 2011, detailing the commissioning arrangements for the new services specified in the schedule.

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, or voluntary bodies.

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
- Providers of highly specialised services at NHS Trusts and NHS Foundation Trusts who contract with NHS London.

11. Regulating Small Business

11. 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 2012, depending on Ministers' decision about which services should be nationally commissioned from April 2012.

13. Contact

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