EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE LITIGATION AUTHORITY (AMENDMENT) REGULATIONS 2017

2017 No. 150

1. Introduction

1.1 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 constitution of the NHS Litigation Authority ("the Authority"). They amend the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 so that the Authority is to consist of a chairman, between three and five non-officer members, and between three and five officer members.

2.2 These Regulations also amend the National Health Service Litigation Authority Regulations 1995 by adding a requirement that at least one officer member must be present at any meeting of the Authority in order for that meeting to be quorate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Regulations rely on section 105 of the Deregulation Act 2015 to make amendments to an Order and to Regulations in a single instrument.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Authority was established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 (SI 1995/2800). The National Health Service Litigation Authority Regulations 1995 (SI 1995/2801), which these Regulations amend, make provision for the governance of the Authority.

5. Extent and Territorial Application

5.1 These Regulations extend to England and Wales.

5.2 These Regulations apply to England and Wales.

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

What is being done and why

7.1 The Authority is a Special Health Authority, formed in 1995. Its main function is to manage a number of schemes that provide an indemnity mainly for liabilities of NHS trusts (including foundation trusts) and to share the learning from claims to help improve safety in the NHS. The schemes cover clinical negligence and public and professional liabilities. It is also responsible via the Family Health Services Appeal Unit for resolving contract disputes arising from primary care practitioners about decisions made by healthcare commissioners which affect their contracts with the NHS, and for helping to resolve concerns about the professional practice of doctors, dentists and pharmacists in the UK via the National Clinical Assessment Service.

7.2 As with all public bodies, the chairman and non-officer members play an important role in adding value and expertise to the Authority, as well as scrutinising the work of the officer members. It is important for the efficacy of the Authority that its board has a sufficient range of skills and experience and that there is a sufficiently large pool of suitably knowledgeable persons from which appointments to the posts of chairman and non-officer member may be made. The Department considers that the Authority's effectiveness can be further enhanced by providing some flexibility in the number of non-officer and officer members that the Authority may have which includes increasing the maximum number of officer and non-officers that the Authority may have.

7.3 The Regulations also introduce a requirement for an officer member of the Authority to be present at any meeting of the Authority in order for there to be a quorum.

Consolidation

7.4 There are currently no immediate plans to consolidate the instruments amended by these Regulations but this is being kept under review.

8. Consultation outcome

8.1 No separate consultation exercise was conducted, as this instrument widens the scope of the benefits to all, thereby enhancing the Authority's capability.

9. Guidance

9.1 Guidance will be provided in the relevant recruitment materials, as and when the role of Chairman or a non-officer member of the Authority becomes vacant.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Successful implementation of this instrument will be assessed using qualitative and quantitative evaluation, following any such recruitment exercise for the role of Chairman or a non-officer member of the NHS Litigation Authority.

13. Contact

13.1 Alison Ismail, senior civil servant at the Department of Health, telephone: 020 7972 4335 or email: Alison.Ismail@dh.gsi.gov.uk, can answer any queries regarding the instrument.