EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (MANDATE REQUIREMENTS) REGULATIONS 2014

2014 No. 3487

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

2. Purpose of the instrument

2.1 The Secretary of State for Health publishes an annual mandate setting out objectives for the National Health Service Commissioning Board (commonly known as NHS England), and any requirements that support those objectives, for the year ahead. These Regulations give effect to requirements in the mandate for the 2015/16 financial year.

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

3.1 None

4. Legislative context

4.1 Section 13A of the National Health Service Act 2005 (the "NHSA 2006") requires the Secretary of State to publish and lay before Parliament a mandate to NHS England before the start of each financial year (which runs from 1 April to the following 31 March).

4.2 The mandate sets out objectives that NHS England must seek to achieve, and any requirements that it must comply with. Under s 13A(9) of the NHS Act 2006, requirements in the mandate have effect only if regulations so provide.

4.3 Amendments to the NHSA 2006 made by the Care Act 2014 make provision for a fund for the integration of health and social care services, and for particular requirements relating to expenditure on integration to be included in the mandate.

4.4 The mandate for 2015/16, published on 11 December 2014, includes objectives and requirements relating to integration of health and social care.

4.5 The mandate for 2015/16 is the first one to include requirements as well as objectives. These regulations give effect to those requirements.

5. Territorial extent and application

5.1 This instrument applies to England.

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

7.1 One of the objectives included in the 2015/16 mandate is that NHS England will work towards more integrated health and social care because there is consensus that this is required in order to best meet the needs of the population and to ensure sustainability of both health and social care services. The Care Act 2014 amendments to the NHS Act 2006 provided for the establishment of a fund (to be known as the Better Care Fund ("BCF")) and a framework for a significant programme of work seeking to integrate health and social care through budgets pooled between Clinical Commissioning Groups ("CCGs") and local authorities, thereby incentivising collaborative working across organisations.

7.2 As NHS England is a key organisation in coordinating the delivery of the BCF, the mandate sets out the objectives and associated requirements on NHS England relating to integration of services. The mandate requires NHS England to:

- ring-fence £3.46bn to be provided to CCGs to be used in the pooled budgets, as set out in the local BCF plans;
- consult Ministers from DH and the Department of Communities and Local Government ("DCLG") before approving local plans; and
- consult DH and DCLG before exercising powers in relation to areas failing to meet previously specified conditions.

7.3 The regulations give effect to those mandate requirements.

- Consolidation

7.2 None

8. Consultation outcome

8.1 There was no consultation on the regulations. The Secretary of State must consult NHS England, Healthwatch England and other bodies he considers appropriate before including objectives and requirements in the mandate. NHS England was consulted on and is content with the requirements.

8.2 Stakeholder events at which the Department explained its proposed approach for the mandate for 2015-16 (including introducing requirements in relation to the BCF) were held in summer 2014 and attended by the Department's arms-length bodies and key stakeholders. The proposed approach to the mandate was welcomed.

9. Guidance

9.1 There is no guidance on the regulations. The mandate is published on the Department of Health section of the Government website: https://www.gov.uk/government/publications/nhs-mandate-2015-to-2016.

9.2 The BCF Policy Framework sets out the agreed approach to the implementation of the BCF: https://www.gov.uk/government/publications/better-care-fund-how-it-will-work-in-2015-to-2016

9.3 Hard copies can be obtained by writing to: Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS.

10. Impact

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

10.2 Regarding the impact on the public sector, NHS England is required to comply with the requirements in the mandate, specifically to ring-fence the funding allocated to CCGs for the BCF, and consult with Ministers or Departments in certain situations. Beyond this, the impact will vary as the plans are locally defined, however the purpose of pooled budgets is to provide greater efficiency in the services provided and encourage conversations between different services in order to integrate care. An impact assessment for the BCF was prepared as the policy was designed and a link is provided below. It should be noted that the impact assessment was written at the outset of the passage of the Care Act through Parliament, and the policy and approach to delivery has been further developed since publication. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275531/Better_Care_Fund.pdf

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The mandate to NHS England is renewed on an annual basis and a new mandate must be laid and published for the next financial year. These Regulations will therefore expire on the 31st March 2016, when the mandate to which they apply expires.

13. Contact

Lucy Witter at the Department of Health, tel: 020 7210 4368 or email: lucy.witter@dh.gsi.gov.uk can answer any queries regarding the instrument.