EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (STRATEGIC HEALTH AUTHORITIES: FURTHER DUTY TO INVOLVE USERS) REGULATIONS 2010

2010 No. 423

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

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

2. Purpose of the instrument

2.1 The Instrument makes provision requiring Strategic Health Authorities (SHAs) to involve users of health services in the preparation and review of strategic plans, prepared by the SHA or on its behalf, relating to health improvement or the provision of health services within the SHA area.

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

3.1 None.

4. Legislative Context

4.1 The Local Government and Public Involvement in Health Act 2007 amended the provisions of the National Health Service Act 2006 (the NHS Act 2006) which relate to public involvement and consultation.

4.2 Section 242 of the NHS Act 2006 (as amended), requires NHS bodies in England, including Strategic Health Authorities, to make arrangements for health service users to be involved in:

- planning of the provision of services;
- developing and considering proposals for changes in the way services are provided; and
- decisions to be made affecting the operation of services.

The duty is limited to services for which the NHS body is responsible. That is, services that the NHS body provides or commissions.

4.3 Section 242A of the NHS Act 2006 imposes a duty on the Secretary of State to make regulations which place a further duty on Strategic Health Authorities about involving users in the matters set out in the regulations. That duty is in addition to any duty under section 242 and is not limited to services for which the SHA is responsible.

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

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

7.1 The Local Government and Public Involvement in Health Act 2007, amended the provisions of the NHS Act 2006 which relate to involvement of users of health services in planning the provision of services, changes to those services and decisions affecting services.

7.2 This was in response to criticism of the previous provision that it needed to be clarified, and its scope extended to include selective, region- wide activity of SHAs. Some of the key changes introduced by the Local Government and Public Involvement in Health Act 2007 were:

a) to clarify the meaning of the term "involvement" and the circumstances in which the duty would apply; and
b) to impose a further duty on Strategic Health Authorities to involve users in a wider range of activity at a higher, strategic level (i.e., entire reconfigurations, models of care, public health).

7.3 This instrument fulfils the specific policy objective in b) above, as one of a number of measures, and specifically targets SHAs in their role as strategic planners.

7.4 The primary legislation only requires SHAs to involve people in relation to services which it provides or commissions. However, SHAs do not routinely provide and commission services. Their role in the NHS is more strategic than operational and so the policy is to extend the duty in relation to SHAs beyond provision and commissioning arrangements to their strategic role. The Instrument takes this duty further by requiring SHAs to involve people and allow them to provide input into planning at a strategic level.

7.5 The public response to this measure both at the point it was introduced by the Local Government and Public Involvement in Health Act, and to the Regulations, has been positive and without objection.

8. Consultation outcome

8.1 Prior to the introduction of the Local Government and Public Involvement in Health Act, a formal consultation was undertaken on the proposal to introduce this measure and others relating to clarifying and strengthening involvement in the NHS, including in particular a full review undertaken by an Expert Panel on Involvement, composed of all the relevant stakeholders in this area and established for the express purpose of providing a consultation forum and review on the involvement duty.

8.2 The result of that consultation was a recommendation that the duty to involve should be strengthened and extended, to include the reconfiguration of services and significant structural change, which is chiefly a responsibility of SHAs.

8.3 As there had already been a formal consultation in relation to the primary legislation and issues raised taken account of, it was not considered that ongoing engagement and discussion between the Department and key stakeholders about the content and details of what should and should not be included in the regulations would secure the optimum engagement outcomes.

8.4 At the outset of the preparation of these Regulations in April 2009, the key stakeholders were identified to deliberate the finer detail: the SHA managers with lead responsibility for patient and public involvement in each SHA area; and the external stakeholders with a key interest in involvement from the public perspective: the NHS Institute for Innovation and Improvement; Health Link, an independent social enterprise dedicated to improve health and health services through patient and public involvement; and the National Association of LINks Members (LINks are Local Involvement Networks). We are confident that the SHA managers are fully representative of their regional communities.

8.5 The SHA managers were engaged from April 2009 to February 2010, and there was regular engagement with them at each stage of the process throughout the preparation of the regulations. The external stakeholders were consulted during January and February.

8.6 There were four responses from all of the 10 SHAs that were consulted.The responses to the engagement with SHAs resulted in a request for some limitations on the range of SHA activity that should be subject to involvement. They recommended there would need to be a clear differential between strategies which are intended to directly affect service provision, and technical guidance for performance management or delivery, and business planning; and that only strategic plans which would have a direct impact on service commissioning, delivery or development should be subject to involvement.

8.7 Another respondent suggested including activity that SHAs undertake in partnership with other organisations such as local government, regional agencies or other government agencies, and health improvement activity.

8.8 We decided to accept these comments, as the policy intention on involvement has been and still is, to focus on how services are provided and the impact on users, to give them the opportunity to influence service provision and the range of services. Internal business matters such as guidance for NHS staff, or performance management which are about the efficient management and running of the NHS, and are not matters which it would be helpful or productive to share with the wider public and external audiences, apart from being reflected in an SHA's annual report. These matters were never intended to be covered by the regulations, and never have been within the scope of the policy on involvement.

8.9 We decided to include provision about health improvement because that is an area which may be implemented through health services or other means, and is

regarded as an important area in itself for public involvement. This is not a departure from the original policy intention, but a recognition that at SHA level, health improvement plans may go wider than the NHS for implementation.

9. Guidance

9.1 The Secretary of State will issue guidance about these Regulations which, under section 242A (3) of the NHS Act 2006 SHAs are required to have regard to.

9.2 Guidance will be issued to SHAs at the same time that the regulations are produced, and posted on the DH website. It will be in the form of a bulletin to the NHS and targeted at chief executives and managers with responsibility for patient and public involvement and engagement.

9.3 The guidance will explain what the new duty will require of them, the type of activity that the new duty will and will not apply to and describe the range and level of involvement activity that may be undertaken in various circumstances.

9.4 The new regulations and bulletin will be announced to the NHS in the regular newsletter "The Week" which goes out to all NHS organisations via the Department of Health website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is likely to be very limited and minimal as it will be in terms of responding to involvement activity by SHAs which at the most are expected to be no more than five per year in each of the ten SHA regions.

10.2 The impact on the public sector is confined to SHAs. Given the potential incentives for service redesign over the next few years, it has been estimated that nationally there could be around fifty involvement exercises per year. At these levels of activity, it is expected that SHAs shall be able to deliver the requirements of the Regulations within existing levels of resources.

10.3 An Impact Assessment is not required.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The success criteria of this new requirement will be demonstrated through evidence of the impact of people's views and feedback on SHA strategic plans and frameworks. This will be evidenced primarily through the reports on consultation that the SHAs will be required to produce under directions given by the Secretary of State.

13. Contact

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