EXPLANATORY MEMORANDUM TO

THE NHS BODIES (TRANSFER OF TRUST PROPERTY) ORDER (No. 2) 2012

2012 No. 2755

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 The purpose of the Order is to transfer property held on trust (in these cases charitable property) between NHS bodies, in particular from the bodies listed as relevant old Trusts in column 1 of the Schedule to the bodies listed as relevant new Trusts in column 2 of the Schedule.

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

3.1 None

4. Legislative context

4.1 The instrument has been made by the Secretary of State under section 213 of the National Health Service Act 2006. That section allows the Secretary of State for Health to transfer trust property between relevant NHS bodies (which are defined in the section) in the circumstances laid down in that section. One of these circumstances is where there is a change or proposed change in the functions of an NHS body (which includes a Primary Care Trust or an NHS Trust).

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 Primary Care trusts are primarily established to commission health services, but also provide some healthcare services such as community health services. Under a policy known as the "transforming community services" programme, Primary Care Trusts are divesting these provider services to improve services and ensure, for example, that that they separate the commissioning of services from their provision. Under the programme, some of these community services have transferred to other NHS bodies. There has therefore been a change in the functions of a number of Primary Care Trusts which are no longer providing these community health services.

7.2 Trust property (in these cases charitable property) has been donated for the benefit of services that were being provided by the relevant Primary Care Trusts, but which have now transferred to other bodies. In some cases, this trust property is held by the Primary Care Trust itself. In others it is held (for reasons of efficiency for example), by other NHS bodies, such as NHS Trusts, under what is known as an "umbrella charity" but remains for the benefit of the community services that were run by the Primary Care Trust concerned. Under both these circumstances, it is considered more appropriate for the new bodies to now hold and administer the trust property related to the services that have transferred and for which the funds have been donated to benefit, i.e. the bodies now providing the services (or their umbrella charity) will hold the charitable funds that have been donated for those services. The nature and purpose of the funds transferred will not be affected. This Order transfers the funds from the body currently holding the funds to the body that will then be the corporate trustees for them. The bodies involved and the reason for the transfers are set out in the table below.

Transferring body	Receiving body	Reason for Transfer
Bolton Teaching Primary Care Trust	**Bolton NHS Foundation Trust**	The community services of Bolton Teaching PCT transferred to the FT on 1 July 2011 under the Transforming Community Services Programme (TCS). There has therefore been a change in the function of the PCT. The transfer of the related charitable funds from the PCT is therefore under section 213 of the National Health Service Act 2006.
Hinchingbrooke Health Care National Health Service Trust	**Cambridgeshire and Peterborough NHS Foundation Trust**	The funds are currently held under the Hinchingbrooke Heath Care NHS Trusts' umbrella charity although the funds relate to Cambridgeshire Primary Care Trust, whose provider arm formed Cambridgeshire Community Services National Health Service Trust in April 2011. As the transfer relates to the transfer of services from the Cambridgeshire PCT to another NHS body (Cambridgeshire Community Services NHS Trust), the transfer is under section 213. The transfer is to the FT however, because it already hold funds related to Cambridgeshire Community Services NHS Trust under its umbrella charity and the bodies concerned wish that all the related funds are kept together for more efficient management.
Northamptonshire Teaching Primary Care Trust	**Northampton General Hospital National Health Service Trust**	Transfer of provider services from Northampton Teaching PCT to Northampton General Hospital NHS Trust under the Transforming Community Services (TCS) programme. As the transfer relates to the transfer of services from a PCT to another NHS body, the transfer is under section 213 as there has been a change in the function of the PCT and of the NHS trust.
North Yorkshire and York Primary Care Trust	**Leeds and York Partnership NHS Foundation Trust**	North Yorkshire and York PCT have now transferred all of their provider services under TCS. These services have been split between

		six other NHS bodies and previous Orders have transferred the related funds to five of those bodies. This transfer from North Yorkshire and York PCT to Leeds and York Partnership NHS Foundation Trust transfers the remaining funds which relate to the services transferred to Leeds and York Partnership NHS Foundation Trust . As such, the transfer is under section 213 as there has been a change in the functions of the PCT.

8. Consultation outcome

8.1 No formal written, public consultation exercise regarding the transfer of the trust property was undertaken as it is not required under legislation. All involved parties have agreed to the transfer. However before any actual services were transferred, the NHS bodies would have had to ensure they complied with their consultation duties, such as any duties to consult the public, stakeholders, staff or local authority committees as appropriate.

9. Guidance

9.1 None

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 None. The accounts of NHS funds held on trust are submitted to the Charity Commission.

13. Contact

13.1 Chris Steele at the Department of Health, Tel 0113 254 5939 or e-mail Chris.Steele@dh.gsi.gov.uk, can answer any queries regarding the instrument.