EXPLANATORY MEMORANDUM TO

THE NHS FOUNDATION TRUSTS AND PRIMARY CARE TRUSTS (TRANSFER OF TRUST PROPERTY) ORDER 2011

2011 No. 1552

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 (charitable property) from the NHS foundations Trusts and Primary Care Trusts to other NHS bodies.

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).

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 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 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 Foundation 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. All of the transfers on this order relate to Primary Care Trusts, whose provider services that have transferred from Primary Care Trusts to other NHS bodies. 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 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.

Transfers to come into effect on 20 July 2011

	Transferring body	Receiving body	Reason for Transfer
1	**Calderdale and Huddersfield NHS Foundation Trust**	**South West Yorkshire Partnership NHS Foundation Trust**	The funds relate to the transfer of services from Calderdale PCT to South West Yorkshire Partnership NHS FT under the Transforming Community Services (TCS) programme. The funds are currently managed by Calderdale and Huddersfield FT under their umbrella charity.
2	**Camden Primary Care Trust**	**Barnet, Enfield And Haringey Mental Health NHS Trust**	The funds are held under Camden Primary Care Trusts umbrella charity and are related to Enfield PCT, whose provider function has transferred to the receiving trust under TCS
3	**Camden Primary Care Trust**	**Whittington Hospital NHS Trust**	The funds relate to Islington PCT and Haringey PCT who have transferred their provider function to Whittington Hospital NHS Trust. The funds are currently held under Camden PCT's umbrella charity.
4	**Derbyshire Healthcare NHS Foundation Trust**	**Derbyshire Community Health Services National Health Service Trust**	These funds relate to Derbyshire County PCT functions transferred to the receiving body under TCS. They have previously been managed under Derbyshire Healthcare NHS FT's umbrella charity.

5	**Doncaster Primary Care Trust**	**Rotherham Doncaster and South Humber NHS Foundation Trust**	The funds relate to Rotherham PCT whose provider function has now transferred to Rotherham, Doncaster and South Humber NHS Foundation Trust under the TCS programme. The funds were held by Doncaster Primary Care Trust.
6	**North East Essex Primary Care Trust**	**Colchester Hospital University NHS Foundation Trust**	The funds relate to North East Essex PCT and are being transferred because of the transfer of provider services from North East Essex PCT to Colchester Hospital University NHS FT under the TCS programme
7	**North East Essex Primary Care Trust**	**Mid Essex Hospital Services National Health Service Trust**	The funds are held by NE Essex PCT but relate to West Essex PCT and Mid Essex PCT whose provider services have now transferred under TCS. Mid Essex Hospital Services NHS Trust will now manage the funds under their umbrella charity.
8	**North Yorkshire and York Primary Care Trust**	**Airedale NHS Foundation Trust**	North Yorkshire and York PCT has split its provider function between six NHS bodies, both NHS Trusts and Foundation Trusts under the TCS programme. The funds relate to the services transferred from North Yorkshire and York PCT to Airedale NHS Foundation Trust under TCS. Three transfers are taking place on this order. The remaining other transfers will be done at a later date.
9	**North Yorkshire and York Primary Care Trust**	**South Tees Hospitals NHS Foundation Trust**	The funds relate to the services transferred from North Yorkshire and York PCT to South Tees Hospitals NHS Foundation Trust under TCS.
10	**North Yorkshire and York Primary Care Trust**	**York Teaching Hospital NHS Foundation Trust**	These funds relate to the services transferred to York Teaching Hospital NHS FT.
11	**Oxfordshire Primary Care Trust**	**Oxford Health NHS Foundation Trust**	The funds relate to Oxfordshire Primary Care Trust, whose provider arm has transferred to Oxford Health NHS FT under TCS.

12	**South West Yorkshire Partnership NHS Foundation Trust**	**Mid Yorkshire Hospitals National Health Service Trust** 1	The funds relate to Wakefield PCT and are held under the umbrella of the South West Yorkshire Partnership FT. Wakefield PCT's provider services are transferring to Mid Yorks Hospitals NHS Trust under TCS.

To come into effect on 1 August 2011

	Transferring body	Receiving body	Reason for Transfer
1	**Wolverhampton City Primary Care Trust**	**Black Country Partnership NHS Foundation Trust (formerly Sandwell Mental Health and Social Care NHS Foundation Trust)**	Wolverhampton PCT is transferring some of its provider services to Black Country Partnership NHS Foundation Trust under TCS on 1 August. This transfer relates to those services and will come into effect on that date.

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 the actual services were transferred from the Primary Care trusts concerned, 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

9. Guidance

9.1 None

10. Impact

10.1 An 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

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.