EXPLANATORY MEMORANDUM TO THE
PUBLIC BENEFIT CORPORATION (REGISTER OF MEMBERS) REGULATIONS
2006 No. 361

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. **Description**

   2.1 This instrument amends the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004/539) so that the circumstances under which details on a register of members of a public benefit corporation are not to be available to the public are made clear.

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

   3.1 The instrument amends SI 2004/539 as recommended by the JCSI in its Fifteenth Report of Session 2003-04.

4. **Legislative Background**

   4.1 Paragraph 20 of Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) requires a public benefit corporation to keep a register of members and their constituencies and paragraph 22(3) requires the corporation to make the register available for inspection by members of the public "except in circumstances prescribed by regulations".

   4.2 SI 2004/539 set out the circumstances in which a register should not be made available for inspection by members of the public as: "(a) where the constitution of the corporation provides for a patients' constituency, any member who belongs to that constituency; or (b) any other member, if he so requests".

5. **Extent**

   5.1 This instrument applies 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**

   7.1 The 2003 Act establishes NHS foundation trusts as a new form of legal body, the public benefit corporation. The governance structure of public benefit corporations is set out in Schedule 1 to the 2003 Act. It includes a membership community, divided into constituencies representing local people, patients and staff. A public benefit corporation's membership is made up of a number of constituencies, including as a minimum:

- One or more public constituencies consisting of people living in a geographical area or areas (defined in terms of local government electoral areas).
- A staff constituency consisting of all the staff members.

A public benefit corporation may also choose to have a patient constituency consisting of patients of the corporation, and their carers.

7.2 The 2003 Act requires public benefit corporations to have a register of members (paragraph 20 of Schedule 1). The register must show, in respect of each member, the constituency to which he belongs, and where there are classes within it, the class to which he belongs. The public benefit corporation is required to make copies of the register of members available to members of the public, except in circumstances prescribed by regulations. This amendment is being made to meet doubts raised by the JCSI in its Fifteenth Report of Session 2003-04 that the prescribed circumstances set out in SI 2004/539 are not within the power to set circumstances as provided by Schedule 1, paragraph 22(3) of the 2003 Act. This amendment will remove that doubt.

8. **Impact**

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

9. **Contact**

9.1 Warren Brown at the Department of Health warren.brown@dh.gsi.gov.uk can answer any queries regarding the instrument.