

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (FUNCTIONS OF STRATEGIC**  
**HEALTH AUTHORITIES AND PRIMARY CARE TRUSTS AND**  
**ADMINISTRATION ARRANGEMENTS) (ENGLAND) (AMENDMENT)**  
**REGULATIONS 2007**

**SI 2007 No. 559**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

1.2 This explanatory memorandum covers three separate policy objectives, which are served by one set of amendments to the relevant Regulations.

**2. Description**

2.1 These Regulations amend current regulations as follows:

- To allow a Strategic Health Authority (SHA) to procure highly specialised health services. The Regulations specify the services concerned.
- To determine which Primary Care Trust (PCT) is responsible for exercising the functions of the Secretary of State delegated to PCTs for providing or commissioning relevant services where vulnerable children are placed in the area of another PCT.
- To make a minor clarification of existing arrangements to place adults in residential care in another PCT area.

2.2 The power to procure health services under the amendment applies only to the specified services and is not intended as a general power to commission all health services.

2.3 This instrument adds further exceptions to the usual rules so that where a specified child or young person under 18 years is placed out of area by a local authority or a PCT, the originating PCT retains responsibility for commissioning or providing secondary health care type services, such as a particular mental health service or longer term healthcare for children who have complex health needs, which are provided by PCTs under delegated powers. The regulations will apply in respect of a child or young person who:

- Is looked after by a local authority under the Children Act 1989 (the 1989 Act) ( including children placed by local authorities in local authority secure units);
- Is a care leaver up to the age of 18 years;

- Is a pupil with a statement of special educational needs made under the Education Act 1996 who is attending a residential special school as a boarder ;
- Requires accommodation in a care home, children’s home or independent hospital for his/her continuing healthcare needs.

2.4 The regulations will not be retrospective and will only apply to new placements made after the regulations come into force on 1 April 2007. The regulations make transitional provisions for what is to happen where a LA made an arrangement before the coming into force of these regulations but the child needs to be moved from that placement to another after 1 April 2007. The regulations also set out the circumstances in which a PCT retains responsibility for the provision of services where a child with continuing care needs, who has been placed in the area of another Primary Care Trust, attains the age of 18.

2.5 Amendments to the principal Regulations in relation to arrangements made to place adults in residential care in another PCT area came into force on 1 April 2006 (SI 2006/359). This instrument makes an amendment which clarifies that such arrangements (set out in regulation 3(7A) of the principal Regulations) include arrangements made jointly by the placing PCT and a Local Authority.

### **3. Matters of special interest to the joint committee on statutory instruments**

None

### **4. Legislative Background**

4.1 Under the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 SI 2002/2375, as amended (“the principal Regulations”), certain functions of the Secretary of State are delegated to SHAs and Primary Care Trusts (PCTs).

4.2 These include functions under section 3(1) of the National Health Service Act 1977 for the provision of medical, nursing and certain other services. The Regulations allow PCTs to perform these functions generally, and allow Strategic Health Authorities to perform these functions only for the purpose of supporting and managing the performance of PCTs. They do not allow an SHA to enter directly into agreements with providers (such as NHS Trusts and Foundation Trusts) for the provision of health care services.

4.3 The proposed amendment will allow SHAs to undertake procurement of provision for selected and specific highly specialised services under the NHS in England. The amendment will not allow SHAs to undertake procurement of any services outside of this list.

4.4 Under the principal Regulations, the Secretary of State’s functions relating to the provision of certain secondary health care type services have been delegated to PCTs. The PCT responsible for providing or commissioning a patient’s care is mainly determined by GP registration. The purpose of this instrument is to change the PCT responsible for meeting the cost of secondary health care type services where a PCT or Local Authority (in respect of its children’s services functions of social care

or education) arranges residential care in another PCT or Local Health Board area for a child or young person under the age of 18, so that the cost no longer falls solely on the PCT where the accommodation is located.

4.5 Under the principal Regulations, an amendment covering adult continuing care arrangements came into force on 1 April 2006. This amendment added a further exception to the usual rules so that where a PCT has entered into an arrangement to place an adult with long-term care needs in residential care in the area of another PCT, the placing PCT retains responsibility for meeting those needs. The proposed amendment is clarificatory.

## **5. Extent**

This instrument applies to England only.

## **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 An independent review of commissioning arrangements for specialised commissioning, requested by the Department of Health and under the chairmanship of Sir David Carter, reported in May 2006. The review consulted widely with stakeholders and covered 32 separate recommendations in its report. Ministers accepted the recommendations made by the review and the key recommendations were incorporated into DH guidance - Health Reform in England: Update and Commissioning Framework, published in July 2006. The Department of Health has now initiated a project to implement these recommendations.

7.2 A number of the key recommendations from the review, which are now Departmental policy, centred on the proposals:

- to move the existing national commissioning of highly specialised services, currently undertaken by the NSCAG Commissioning team in the Department of Health, to a Strategic Health Authority within the NHS; and
- to establish the National Specialised Services Commissioning Group (NSSCG), and the National Commissioning Group (NCG); which would succeed NSCAG, be hosted in the NHS and serviced by the NSCAG Commissioning team.

7.3 The change to regulations is necessary to allow the national commissioning team to continue to commission and contract for highly specialised services, once it

transferred from the Department of Health to London SHA. It is expected that the London SHA will exercise the new specialised services functions on behalf of the other nine SHAs in England.

7.4 Currently, subject to certain exceptions, PCTs must provide health care for the benefit of the patients of GP practices drawn from the area of the trust. PCTs may commission packages of healthcare for children and young people with a diverse range of needs in care homes or independent hospitals in other PCT areas. Local authorities choose to place children and young people for whom they are responsible in residential care placements such as foster care and children's homes or, if there is a statement of special educational needs, in a residential special school. Some of these placements lie outside the children's local authority area of origin.

7.5 Once placed out of PCT area, most children will be registered with a GP in the new PCT area. This imposes difficulties for those PCTs who have an influx of children because they happen to have a concentration in their areas of the establishments described above. The changes made by this instrument will mean that the responsibility for funding secondary healthcare type services will not fall on the receiving PCTs. For the avoidance of doubt, the regulations will provide that the originating PCT will continue to be responsible for such healthcare needs of such children.

7.6 These changes follow a public consultation held between 31 March and 29 June 2005 on the Department of Health's proposals on amending the regulations governing the responsible commissioner for adult continuing care, which included a section on children. Responses broadly favoured the proposed changes. A report on the consultation response has been published on the Department of Health website on [www.dh.gov.uk/consultations](http://www.dh.gov.uk/consultations)

7.7 The changes support the Government's overall aim of ensuring that children are placed locally wherever that is practical and will help to minimise the use of distant out-of-area placements. The changes to the responsible health commissioner for children broadly mirror the position for adult continuing care. Likewise the position in children's social care, where the original "placing" local authority i.e. the "corporate parent," always retains responsibility for funding and supporting all the children it looks after. This is consistent with new children's trust arrangements for partnerships and commissioning placements etc, helping to ensure that all identified needs are effectively and preferably, met as close to home as possible and is also expected to promote good practice in notification and planning between placing and receiving authorities

7.8 When a young person, who has been placed in accommodation in another PCT area to meet his continuing care needs, reaches the age of 18 years, that arrangement will be treated as an arrangement under the adult continuing care provisions if the arrangement satisfies the adult care continuing care provisions. Adults in residential care settings may be liable to meet the social care element of their care charges, which will not have been the case before their 18th birthday. The threshold for PCTs and LAs providing continuing care needs may be higher for adults than it is for children so they will require a reassessment of their health and social care needs. The

Instrument provides for them to continue to receive their health care on an unchanged basis pending this assessment.

7.9 The Department updated its 2003 guidance Establishing the Responsible Commissioner in April 2006 when SI 2006/359 regarding adults came into force. This guidance will be further updated to include the changes relating to children and young people.

## **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.

8.2 The impact on the public sector in relation to the SHA commissioning specialised services is specific only to:

- SHAs, and in particular London SHA, which is expected to exercise the SHAs functions, and will now commission highly specialised services and hold Service Level Agreements with NHS Trusts and contracts with NHS Foundation Trusts; and

- providers of highly specialised services at NHS Trusts and NHS Foundation Trusts who will now contract with the SHA concerned instead of the Department of Health.

8.3 A short consultation has been undertaken with key stakeholders about the proposed change to the specialised commissioning arrangements. These included: NSCAG members, Monitor, NHS Confederation, SHA Chief Executives and the Implementation Project Board. The two week consultation ended on 28 November. A total of 5 replies were received, with no adverse feedback and general support for the proposal. As a result of feedback and discussion, the Department took the view that the schedule should identify the national specialised services but not the designated providers.

8.4 The Department of Health will remain accountable for policy changes through Ministers and will hold the SHA exercising the functions accountable for operational issues.

8.5 In relation to the new arrangements in respect of the responsible commissioner for children's services, the only change to the public sector is to change the distribution of responsibilities between PCTs under the principal regulations but not to the functions or how they are exercised.

## **9. Contact**

Steve Pugh at the Department of Health can answer any queries regarding the procurement of specialised services Tel: 0113 2546206 e-mail [Steve.pugh@dh.gsi.gov.uk](mailto:Steve.pugh@dh.gsi.gov.uk) Pat Nicholls at the Department of Health Tel: 020 7972 4710 or e-mail: [pat.nicholls@dh.gsi.gov.uk](mailto:pat.nicholls@dh.gsi.gov.uk) can answer any queries regarding the responsible commissioner regulations.