

2004 No. 569

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Direct (Establishment and Constitution) Order 2004

Made - - - - 28th February 2004
Laid before Parliament 9th March 2004
Coming into force - - 1st April 2004

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 11(1), (2) and (4) of, and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977(a), and of all other powers enabling him in that behalf, and after consultation with such bodies as he recognises represent officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the Order, hereby makes the following Order:

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the NHS Direct (Establishment and Constitution) Order 2004 and shall come into force on 1st April 2004.

(2) This Order applies to England only.

(3) In this Order—

“the Act” means the National Health Service Act 1977;

“the Authority” means the NHS Direct Special Health Authority established by this Order; and

“NHS Direct services” means services relating to the provision of health related information and advice to the public under the name NHS Direct before 1st April 2004.

Establishment of the Authority

2. There is hereby established a Special Health Authority which shall be known as NHS Direct.

(a) 1977 c.49; section 11 was amended by section 2(1) of, and paragraph 2 of Schedule 1 to, the Health Authorities Act 1995 (c.17) (“the 1995 Act”) and section 65 of, and paragraphs 4 and 6 of Schedule 4 to, the Health Act 1999 (c.8) (“the 1999 Act”); sub-paragraph (7) was inserted in paragraph 9 of Schedule 5 by section 1 of, and paragraph 7(2) of Schedule 1 to, the National Health Service and Community Care Act 1990 (c.19) and amended by section 2(1) of, and paragraph 60(b) of Schedule 1 to, the 1995 Act and section 1(3) of, and paragraphs 1, 34(1) and (3)(b) of Schedule 1 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”). The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see the entry in Schedule 1 for the National Health Service Act 1977 as amended by section 66(4) and (5)(a) of the 1999 Act, section 67(1) of, and paragraph 12(1) and (3) of Schedule 5 to the Health and Social Care Act 2001 (c.15) (“the 2001 Act”) and section 196 of, and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) on a date to be appointed.

Functions of the Authority

3.—(1) Subject to and in accordance with such directions as the Secretary of State may give to the Authority(a), the Authority shall perform—

- (a) such functions in connection with the provision of health related information and advice; and
- (b) such other functions,

as the Secretary of State may direct.

Constitution of the Authority

4. The Authority shall consist of—

- (a) a chairman;
- (b) 5 members who are not officers of the Authority; and
- (c) 5 officers of the Authority including the persons who for the time being hold the office of Chief Executive, Director of Finance and Clinical Director of the Authority.

Remuneration of members

5. The Authority is hereby specified for the purposes of paragraph 9(7)(b) of Schedule 5 to the Act (definition of “relevant authority” for the purposes of paying remuneration to members of certain Special Health Authorities).

Public meetings

6. The Public Bodies (Admission to Meetings) Act 1960(b) shall apply to the Authority.

Transfer of rights and liabilities

7. All rights and liabilities of a National Health Service trust or Primary Care Trust listed in Schedule 1 relating to NHS Direct services are transferred to the Authority and are therefore enforceable by or, as the case may be, against it.

Transfer of property

8. All property of the National Health Service trusts and Primary Care Trusts listed in Schedule 1 identified as property transferring to the Authority in the document produced by the Department of Health and entitled “Schedule of property transferring from National Health Service trusts and Primary Care Trusts to NHS Direct on 1st April 2004” and dated 18th February 2004 is transferred to the Authority.

Transfer of officers

9.—(1) This paragraph applies to an officer of—

- (a) a National Health Service trust or Primary Care Trust listed in Schedule 1,
- (b) a National Health Service trust listed in Schedule 2, or
- (c) the Prescription Pricing Authority(c),

(a) See, in particular, sections 16D, 17 and 18 of the National Health Service Act 1977 (c.49); section 16D was inserted by section 12(1) of the 1999 Act and amended by sections 1(3), 3(1) and (2) of, and paragraphs 1 and 6(a) of Schedule 1 to, the 2002 Act; section 17 was inserted by section 12(1) of the 1999 Act and amended by section 67(1) of, and paragraph 5(1) and (3) of Schedule 5 to, the 2001 Act and section 1(3) of, and paragraphs 1 and 7 of Schedule 1 to, the 2002 Act; section 18 was amended by sections 2(1), 5(1) and 3(8) of, and paragraph 9(b) and (c)(ii) of Schedule 1 and Schedule 3 to, the 1995 Act, section 12(3) and (4) of the 1999 Act and sections 1(3), 3(1), (5)(a) and (b) and 37(2) of, and paragraphs 1 and 9 of Schedule 1 and Part 1 of Schedule 9 to, the 2002 Act.

(b) 1960 c.67; see paragraph 1(g) of the Schedule to the Act, which was inserted by paragraph 91 of Schedule 1 to the 1995 Act.

(c) The Prescription Pricing Authority is a Special Health Authority established under section 11 of the Act. See S.I. 1990/1718.

who on 31st March 2004 is wholly or mainly engaged in NHS Direct services and who was notified in a letter posted on or before 9th January 2004 that he was to be transferred to the Authority.

(2) Any officer to whom paragraph (1) applies shall, on 1st April 2004, be transferred to the employment of the Authority.

(3) The contract of employment of an officer transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) has effect from the time of the transfer as if originally made between the officer and the Authority.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the body from which an officer is transferred, under or in connection with its contract of employment with an officer transferred under paragraph (2), shall by virtue of this paragraph be transferred to the Authority; and
- (b) anything done before the date of the transfer by or in relation to the body from which that officer is so transferred, in respect of the officer or his contract of employment, shall be deemed to have been done by or in relation to the Authority.

(5) Paragraphs (2) to (4) do not transfer an officer's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that officer objects to the transfer to the Authority and informs the body from which he would be transferred of that objection by 31st March 2004.

(6) Where an officer objects as mentioned in paragraph (5), his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed from that body.

(7) This article is without prejudice to any right of an officer to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this article, the identity of his employer changes unless the officer shows that, in all the circumstances, the change is a significant change and is to his detriment.

Signed by authority of the Secretary of State for Health

Rosie Winterton
Minister of State,
Department of Health

28th February 2004

SCHEDULE 1

Articles 7, 8, 9

Schedule of National Health Service trusts and Primary Care Trusts

<i>National Health Service trust or Primary Care Trust</i>	<i>Establishment Order</i>
Avon Ambulance Service National Health Service Trust	S.I. 1991/2320
Bedfordshire and Hertfordshire Ambulance and Paramedic Service National Health Service Trust	S.I. 1992/2538
Cambridgeshire and Peterborough Mental Health Partnership National Health Service Trust	S.I. 2002/647(a)
Essex Ambulance Service National Health Service Trust	S.I. 1991/2345
Greater Manchester Ambulance Service National Health Service Trust	S.I. 1993/2600
Hampshire Ambulance Service National Health Service Trust	S.I. 1992/2504
Hillingdon Primary Care Trust	S.I. 2000/209
Kensington and Chelsea Primary Care Trust	S.I. 2002/1004
Lancashire Ambulance Service National Health Service Trust	S.I. 1993/2601
Mayday Healthcare National Health Service Trust	S.I. 1993/27
Mid-Staffordshire General Hospitals National Health Service Trust	S.I. 1992/2558
Newham Primary Care Trust	S.I. 2001/350
North East Ambulance Service National Health Service Trust	S.I. 1999/797
Nottingham City Primary Care Trust	S.I. 2001/181
Sheffield Children's National Health Service Trust	S.I. 1991/2399(b)
Southwark Primary Care Trust	S.I. 2002/1003
Surrey Oaklands National Health Service Trust	S.I. 1998/653
Tees, East and North Yorkshire Ambulance Service National Health Service Trust	S.I. 1999/798
Two Shires Ambulance National Health Service Trust	S.I. 1992/2577
West Midlands Ambulance Service National Health Service Trust	S.I. 1993/29
West Yorkshire Metropolitan Ambulance Service National Health Service Trust	S.I. 1992/2493
West Country Ambulance Service National Health Service Trust	S.I. 1993/814

SCHEDULE 2

Article 9

Schedule of National Health Service trusts

<i>National Health Service trust</i>	<i>Establishment Order</i>
Bedford Hospital National Health Service Trust	S.I. 1991/2329
Plymouth Hospitals National Health Service Trust	S.I. 1993/2568

(a) As amended by S.I. 2002/1690.

(b) As amended by S.I. 2002/1297.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the establishment and constitution of a Special Health Authority, to be known as NHS Direct (“the Authority”), to exercise functions in connection with the provision of health related information and advice and such other functions as the Secretary of State may direct it to perform. The functions of the Authority have previously been carried out by the Department of Health and 22 National Health Service trusts under the name of NHS Direct.

Article 2 of the Order establishes the Authority, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State. Provision is also made for the constitution of the Authority (article 4), for the remuneration of its members (article 5), for the admission of the public to meetings (article 6), for the transfer of rights and liabilities (article 7) and the transfer of property (article 8) and officers (article 9). A copy of the document referred to in article 8 is available from the Department of Health, Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UE.

STATUTORY INSTRUMENTS

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The NHS Direct (Establishment and Constitution) Order 2004

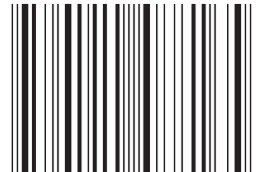
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