

2005 No. 2532

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

**The National Blood Authority and United Kingdom Transplant
(Abolition) Order 2005**

<i>Made</i> - - - -	<i>9th September 2005</i>
<i>Laid before Parliament</i>	<i>9th September 2005</i>
<i>Coming into force</i> - -	<i>1st October 2005</i>

The Secretary of State for Health, in exercise of the powers conferred upon her by sections 11(1), (2) and (4) and 126(3) and (4) of the National Health Service Act 1977(a) and after consultation with such bodies as she recognises represent officers who in her opinion are likely to be transferred or affected by transfers in pursuance of the Order(b), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Blood Authority and United Kingdom Transplant (Abolition) Order 2005 and shall come into force on 1st October 2005.

(2) In this Order—

“NBA” means the National Blood Authority established by the National Blood Authority (Establishment and Constitution) Order 1993(c);

“NHSBT” means NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) established by NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG) (Establishment and Constitution) Order 2005(d);

“UKT” means United Kingdom Transplant established by the United Kingdom Transplant (Establishment and Constitution) Order 1991(e).

(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) and section 65 of, and paragraphs 4 and 6 of Schedule 4 to, the Health Act 1999 (c.8) (“the 1999 Act”); section 126(3) was amended by section 41(10) of, and paragraph 27 of Schedule 2 to, the National Health Service (Primary Care) Act 1997 (c.46) and section 65(2) of the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”); section 126(4) was amended by section 65(2) of the 1990 Act, section 65(1) of, and paragraphs 4 and 37(1) and (6) of Schedule 4 to, the 1999 Act, section 67(1) of, and paragraphs 5(1) and (13)(b) of Schedule 5 to, the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), sections 6(3)(c) and 37(1) of, and paragraphs 1 and 10(a) of Schedule 8 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) and section 184 of, and paragraph 38 of Schedule 11 and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 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 (“the Transfer Order”); 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 2001 Act and section 196 of, and Part 4 of Schedule 14 to, the 2003 Act. This Order is made by the Secretary of State in exercise of concurrent powers with the National Assembly for Wales. See article 2(c) of the Transfer Order.

(b) See section 11(5) of the Act.

(c) S.I.1993/585; as amended by S.I.1998/1577.

(d) S.I. 2005/2529

(e) S.I. 1991/407 as amended by S.I 1996/971, 1998/1577 and 2000/1612.

Abolition of the National Blood Authority and United Kingdom Transplant

2. The NBA and UKT are abolished and accordingly the Orders and Regulations in Schedule 1 are revoked.

Consequential amendment of Orders and Regulations

3. The amendments in Schedule 2 are made in consequence of the abolition of the NBA and UKT.

Investigation of complaints by the Health Service Commissioner

4.—(1) A complaint made under the Health Service Commissioners Act 1993(a) to the Health Service Commissioner for England in relation to the NBA or UKT whether made before, on or after the coming into force of this Order, may be investigated by the Commissioner notwithstanding the abolition of those Special Health Authorities.

(2) The Health Commissioner for England, where she conducts such an investigation, shall send a report of the result of her investigation to the Secretary of State for Health.

Enforceability of rights and transfer of liabilities

5.—(1) Any right that was, immediately before 1st October 2005, enforceable by or against the NBA shall, on or after that date, be enforceable by or against NHSBT.

(2) All liabilities of the NBA shall, on 1st October 2005, be transferred to NHSBT.

6.—(1) Any right that was, immediately before 1st October 2005, enforceable by or against UKT shall, on or after that date, be enforceable by or against NHSBT.

(2) All liabilities of UKT shall, on 1st October 2005, be transferred to NHSBT.

Transfer of property

7.—(1) All property of the NBA is transferred to NHSBT on 1st October 2005.

(2) All property of UKT is transferred to NHSBT on 1st October 2005.

Transfer of officers

8.—(1) This paragraph applies in relation to an officer of the NBA who on 30th September 2005 is wholly or mainly engaged in the performance of the functions of the NBA.

(2) Any officer to whom paragraph (1) applies shall, on 1st October 2005, be transferred to the employment of NHSBT.

(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 NHSBT.

(4) Without prejudice to paragraph (3)—

(a) all the rights, powers, duties and liabilities of the NBA 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 NHSBT; and

(b) anything done before the date of the transfer by or in relation to the NBA, in respect of the officer or his contract of employment, shall be deemed to have been done by or in relation to NHSBT.

(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 has objected to the transfer to NHSBT and had informed the NBA of that objection by 30th September 2005.

(a) 1993 c.46 as amended by the Health Service Commissioners (Amendment) Act 1996 (c.5).

(6) Where an officer has objected as mentioned in paragraph (5), his contract of employment with the NBA 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 the NBA.

(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.

9.—(1) This paragraph applies in relation to an officer of UKT who on 30th September 2005 is wholly or mainly engaged in the performance of the functions of UKT.

(2) Any officer to whom paragraph (1) applies shall, on 1st October 2005, be transferred to the employment of NHSBT.

(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 NHSBT.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of UKT, 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 NHSBT; and
- (b) anything done before the date of the transfer by or in relation to UKT, in respect of the officer or his contract of employment, shall be deemed to have been done by or in relation to NHSBT.

(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 has objected to the transfer to NHSBT and has informed UKT of that objection by 30th September 2005.

(6) Where an officer has objected as mentioned in paragraph (5), his contract of employment with UKT 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 UKT.

(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.

Provision for continuity in the exercise of functions

10.—(1) Anything done on or before 30th September 2005 by or in relation to the NBA shall be deemed to have been done by or in relation to NHSBT.

(2) Anything done on or before 30th September 2005 by or in relation to UKT shall be deemed to have been done by or in relation to NHSBT.

Winding up of the affairs of the NBA and UKT

11.—(1) It shall be the duty of NHSBT to take such action as may be necessary for the winding up of the affairs of the NBA, including the preparation of the outstanding accounts of the NBA and the performance of all statutory duties relating to those accounts.

(2) It shall be the duty of NHSBT to take such action as may be necessary for the winding up of the affairs of UKT, including the preparation of the outstanding accounts of UKT and the performance of all statutory duties relating to those accounts.

Signed by authority of the Secretary of State for Health

9th September 2005

Rosie Winterton
Minister of State
Department of Health

SCHEDULE 1

Article 2

INSTRUMENTS REVOKED

The United Kingdom Transplant (Establishment and Constitution) Order 1991
The United Kingdom Transplant Support Service Authority Regulations 1991 **(a)**
The National Blood Authority (Establishment and Constitution) Order 1993
The National Blood Authority Regulations 1993 **(b)**
The National Blood Authority (Transfer of Trust Property) Order 1995**(c)**
The National Blood Authority (Transfer of Trust Property) (No.2) Order 1995**(d)**
The National Blood Authority (Transfer of Trust Property) Order 1996**(e)**
The National Blood Authority (Transfer of Trust Property) (No.2) Order 1996**(f)**.

SCHEDULE 2

Article 3

AMENDMENTS CONSEQUENTIAL ON THE ABOLITION OF THE NBA AND UKT

The Human Organ Transplants (Supply of Information) Regulations 1989

- 1.**—(1) The Human Organ Transplants (Supply of Information) Regulations**(g)** are amended as follows.
- (2) In paragraphs (1) and (2) of regulation 2 (information to be supplied about transplant operations) for “United Kingdom Transplant Support Service Authority” substitute “NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG)”.
- (3) In paragraph 4 of Part II to the Schedule (information to be supplied by registered medical practitioners about transplant operations) for “United Kingdom Transplant Service” substitute “NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG)”.

The National Health Service Trusts (Membership and Procedure) Regulations 1990

- 2.** In regulation 11(5) of the National Health Service Trusts (Membership and Procedure) Regulations 1990**(h)** (disqualification for appointment of chairman and non-executive directors) sub-paragraphs (a) and (f) are deleted.

(a) S.I. 1991/408 as amended by S.I. 1991/1645,1996/707,1996/971,1997/2991 and 2004/696.

(b) S.I. 1993/586 as amended by S.I. 1996/707,1996/971, 1990/1331 and 2000/696.

(c) S.I.1995/2459.

(d) S.I. 1995/3028.

(e) S.I. 1996/33

(f) S.I. 1996/34.

(g) S.I.1989/2108.

(h) S.I. 1990/2024; relevant amending statutory instruments are S.I. 1997/2990, S.I. 2000/2434 and S.I. 2001/2629.

The Health Authorities (Membership and Procedure) Regulations 1996

3. In Schedule 2 to the Health Authorities (Membership and Procedure) Regulations 1996(a) (Special Health Authorities of which the chairman and members are not disqualified under regulation 10(1)(g)) “National Blood Authority”, and “United Kingdom Transplant” are deleted.

The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000

4. In Schedule 1 to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(b) (Special Health Authorities of which the chairman and members are not disqualified under regulation 5(1)(e)) “National Blood Authority”, and “United Kingdom Transplant” are deleted.

The Government Resources and Accounts Act 2000 (Summarised Accounts of Special Health Authorities) Order 2003

5. In the Schedule to the Government Resources and Accounts Act 2000 (Summarised Accounts of Special Health Authorities) Order 2003(c) “UK Transplant” is deleted.

The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2003

6. In Schedule 1 to the Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2003(d) “National Blood Authority” and “UK Transplant” are deleted.

The Blood Safety and Quality Regulations 2005

7. In regulation 1 of the Blood Safety and Quality Regulations 2005(e) (citation, commencement and interpretation) in the definition of “donor carer” for “National Blood Authority” substitute “NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG)”.

(a) S.I. 1996/707; relevant amending statutory instruments are S.I. 1999/946 and S.I. 2000/696.
(b) S.I. 2000/89; relevant amending statutory instrument is S.I. 2002/38.
(c) S.I. 2003/983.
(d) S.I. 2003/1324.
(e) S.I.2005/50.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes on 1st October 2005, the National Blood Authority and United Kingdom Transplant Special Health Authorities established under section 11 of the National Health Service Act 1977.

The Order revokes the Orders and Regulations specified in Schedule 1 (article 2) and makes the consequential amendments referred to in Schedule 2 (article 3).

The Order also makes provision for the transfer of rights, liabilities and property of the abolished Special Health Authorities and the transfer of staff from those Authorities to a Special Health Authority to be known as NHS Blood and Transplant to be established on 1st October 2005.

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£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1334 9/2005 151334T 19585

ISBN 0-11-073350-9



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