

2007 No. 504

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Direct Special Health Authority Abolition Order 2007

Made - - - - *20th February 2007*

Laid before Parliament *2nd March 2007*

Coming into force - - *1st April 2007*

Having consulted 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 (a), the Secretary of State for Health makes the following Order in exercise of the powers conferred on her by sections 11(1), (2), and (4) and 126(3) and (4) of the National Health Service Act 1977(b).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the NHS Direct Special Health Authority Abolition Order 2007 and shall come into force on 1st April 2007.

(2) In this Order—

“NHS Direct SpHA” means NHS Direct Special Health Authority established by the NHS Direct (Establishment and Constitution) Order 2004 (c); and

“NHS Direct NHS Trust” means NHS Direct National Health Service Trust established by the NHS Direct National Health Service Trust (Establishment) Order 2007(d).

(a) See section 11(5) of the National Health Service Act 1977 (c.49), as amended by section 74(2)(b) of the Health Act 2006 (c.28).

(b) 1977 c.49; section 11(1) 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; 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. With effect from 1st March 2007, section 11 of the National Health Service Act 1977 (“the 1977 Act”), will be repealed by section 6 of, and Schedule 4 to, the National Health Service (Consequential Provisions) Act 2006 (c.43) (“the 2006 Consequential Act”), and consolidated in section 28 of the National Health Service Act 2006 (c.41) (“the 2006 Consolidation Act”); section 126(3) will be repealed by section 6 of, and Schedule 4 to, the 2006 Consequential Act, and consolidated by section 273(1) of the 2006 Consolidation Act and section 126(4) will be repealed by section 6 of, and Schedule 4 to, the 2006 Consequential Act, and consolidated by section 272(7) of the 2006 Consolidation Act.

(c) S.I.2004/569.

(d) S.I. 2007[478].

Abolition of NHS Direct SpHA

2. NHS Direct SpHA is abolished and accordingly the Orders and Regulations in Schedule 1 are revoked.

Consequential amendment of Orders

3. The amendment in Schedule 2 is made in consequence of the abolition of NHS Direct SpHA.

Transfer of officers of NHS Direct SpHA

4.—(1) This paragraph applies in relation to any person who, immediately before 1st April 2007, was an officer of NHS Direct SpHA and wholly or mainly engaged in the performance of the functions of NHS Direct SpHA.

(2) Any officer to whom paragraph (1) applies shall, on 1st April 2007, be transferred to the employment of NHS Direct NHS Trust.

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

(a) is not terminated by the transfer; and

(b) shall have effect on and after 1st April 2007 as if originally made between that officer and NHS Direct NHS Trust.

(4) Without prejudice to paragraph (3)—

(a) all the rights, powers, duties and liabilities of NHS Direct SpHA under, or in connection with, a contract to which that paragraph applies shall, by virtue of this paragraph, be transferred to NHS Direct NHS Trust on 1st April 2007; and

(b) anything done before 1st April 2007 by, or in relation to, NHS Direct SpHA in respect of the officer or his contract of employment, shall be deemed to have been done by, or in relation to, NHS Direct NHS Trust.

(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 NHS Direct NHS trust and had informed NHS Direct SpHA of that objection by 31st March 2007.

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

(7) This article is without prejudice to any right of an officer to terminate his contract of employment if a substantial and detrimental change is made to his working conditions; but no such right shall arise by reason only of the change in employer effected by this article.

Enforceability of rights and transfer of liabilities of NHS Direct SpHA

5.—(1) Any right that was, immediately before 1st April 2007, enforceable by or against NHS Direct SpHA shall, on and after 1st April 2007, be enforceable by or against NHS Direct NHS Trust.

(2) All liabilities of NHS Direct SpHA shall on 1st April 2007 be transferred to NHS Direct NHS Trust.

Transfer of property from NHS Direct SpHA

6. All property of NHS Direct SpHA is transferred to NHS Direct NHS Trust on 1st April 2007.

Provision for continuity in the exercise of functions

7.—(1) Anything done before 1st April 2007 by or in relation to NHS Direct SpHA shall be treated on and after 1st April 2007 as if done by or in relation to NHS Direct NHS Trust.

(2) Any instrument made by NHS Direct SpHA continues in force in relation to NHS Direct NHS Trust in accordance with its terms until it is varied or revoked by NHS Direct NHS Trust.

(3) So far as is necessary or appropriate, a reference to NHS Direct SpHA in an agreement or other instrument shall be treated on and after 1st April 2007 as a reference to NHS Direct NHS Trust.

(4) Any form supplied by NHS Direct SpHA, or any form supplied by the Secretary of State in relation to NHS Direct SpHA, continues to be a valid form in relation to NHS Direct NHS Trust until it is cancelled or withdrawn by the Secretary of State or NHS Direct NHS Trust, as if any reference contained in that form to NHS Direct SpHA were a reference to NHS Direct NHS Trust.

Investigation of complaints by the Health Service Commissioner

8.—(1) A complaint made under the Health Service Commissioners Act 1993(a) to the Health Service Commissioner for England in relation to NHS Direct SpHA, whether made before, on or after the 1st April 2007, may be investigated by the Commissioner notwithstanding the abolition of NHS Direct SpHA.

(2) The Health Service 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.

Complaints under the National Health Service (Complaints) Regulations 2004

9. A complaint made in accordance with the provisions of the National Health Service (Complaints) Regulations 2004(b) in relation to NHS Direct SpHA, whether made before, on or after 1st April 2007, shall be treated on and after 1st April 2007 for the purposes of those Regulations, as if the complaint had been made in relation to NHS Direct NHS Trust.

Winding up of affairs of NHS Direct SpHA

10. It shall be the duty of NHS Direct NHS Trust to take such action as may be necessary for the winding up of the affairs of NHS Direct SpHA including the preparation of the outstanding accounts of NHS Direct SpHA and the performance of all statutory duties relating to those accounts.

Signed by authority of the Secretary for Health

20 February 2006

Andy Burnham
Minister of State
Department of Health

(a) 1993 c.46.
(b) S.I. 2004/1768.

SCHEDULE 1

Article 2

Instruments Revoked

The NHS Direct (Establishment and Constitution) Order 2004
The NHS Direct Regulations 2004 (a)
The Children Act 2004 (Designation of NHS Direct) Order 2005 (b)

SCHEDULE 2

Article 3

Amendment Consequential on the Abolition of NHS Direct SpHA

The Health Service Commissioner for England (Special Health Authorities) Order 2005

In the Schedule to the Health Service Commissioner for England (Special Health Authorities) Order 2005**(c)** (Special Health Authorities designated as subject to investigation), “NHS Direct” is omitted.

(a) S.I. 2004/570
(b) S.I. 2005/2411.
(c) S.I. 2005/251.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes on 1st April 2007 NHS Direct, a Special Health Authority 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 amendment referred to in Schedule 2 (article 3).

The Order also makes provision for the transfer of rights, liabilities, and property of NHS Direct Special Health Authority and the transfer of staff from NHS Direct Special Health Authority to NHS Direct National Health Service Trust which is established by S.I. 2007/ 478.

A full regulatory impact assessment has not been produced for this Order as it has no impact on the costs of business, charities or voluntary bodies.

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NATIONAL HEALTH SERVICE, ENGLAND

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