

**EXPLANATORY MEMORANDUM TO**  
**THE NHS PROFESSIONALS SPECIAL HEALTH AUTHORITY (ESTABLISHMENT**  
**AND CONSTITUTION) (AMENDMENT) ORDER 2008**

**2008 No. 558**

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

**2. Description**

**2.1** This Statutory Instrument substitutes a new article on the constitution of NHS Professionals Special Health Authority (NHSP), which makes 3 changes:

**(a)** the number of members who are not employees of the body (“non-executive members”) is reduced to 4 or 5;

**(b)** the number of members who are employees of the body (“executive members”) is raised from 3 or 4 (consisting of the Chief Executive, the Director of Finance and 1 or 2 others) to 4 or 5 (the Chief Executive, Director of 2 or 3 others); and

**(c)** the NHSP is prevented from appointing an executive member if it would mean the number of executive members exceed the number of non-executive members.

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

**3.1** None.

**4. Legislative Background**

**4.1** NHSP is a Special Health Authority established by an order made under section 11 of the National Health Service Act 1977 (c.49). That section has been repealed and re-enacted as section 28 of the National Health Service Act 2006 (“the 2006 Act”). This Order has been made by the Secretary of State in exercise of his powers in section 28 of the 2006 Act to make provision as to the membership of the Special Health Authority.

## **5. Extent**

**5.1** This instrument applies to England.

## **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** The NHS Professionals Special Health Authority (NHSP) was established on 1 January 2004 as a nationally branded service to manage temporary staff working in the NHS in England. Its aim was to set common standards for quality and clinical governance and achieve better value for money and control over temporary staffing costs against a background of rapidly increasing expenditure. The business has been under review because it has struggled to reduce its costs to a self-sustaining position. A smaller membership would provide it with more focus and decision making to help it achieve its target of a breakeven position.

**7.2** When set up in 2004 the membership of the body comprised the Chair, 8-10 non-executive members, and 3 or 4 executive members (one of which has to be the Director of Finance and one the Chief Executive). The thinking behind the high number of non-executive members (a normal NHS body has 5, exceptionally a maximum of 7) was to enable NHSP to bring in the required range of skills deemed necessary for its success, i.e. from experience in private sector businesses to NHS professionals.

**7.3** In practice, this arrangement has not worked well. The high number of non-executives means that decision-making is difficult. After discussions with the NHSP, the Department has decided that the NHSP board would be more effective if there were a smaller number of non-executives.

**7.4** The order therefore provides for a reduction in the number of non-executive members from 8-10 to a maximum of 5, similar to other NHS bodies. At the same time increasing the number of executives by one would then provide the correct (i.e. best practice) balance between non-executives and executives. We have also included provision restricting the appointment of executive members, with a view to ensuring that the number of executives does not exceed the number of non-executives.

## **8. Impact**

**8.1** An 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 is that this change removes the expenses and salaries of between 3 to 5 non-executive members (all are remunerated in a £5,000 - £10,000 pay band).

## **9. Contact**

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