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STATUTORY INSTRUMENTS

2010 No. 425

NATIONAL HEALTH SERVICE, ENGLAND

**The NHS Professionals Special Health Authority (Abolition)
Order 2010**

<i>Made</i>	- - - -	<i>22nd February 2010</i>
<i>Laid before Parliament</i>		<i>1st March 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2010</i>

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 28(1), (2) and (5), 272(7) and (8) and 273(1) of the National Health Service Act 2006(a).

The Secretary of State makes this Order following completion of the consultation required by section 28(7) of the National Health Service Act 2006.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the NHS Professionals Special Health Authority (Abolition) Order 2010 and shall come into force on 1st April 2010.

(2) In this Order, “NHS Professionals” means the NHS Professionals Special Health Authority established by the NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003(b).

Abolition of NHS Professionals

2. NHS Professionals is abolished and accordingly the orders, regulations and directions in Schedule 1 are revoked to the extent specified in that Schedule.

Amendment of Orders

3. Schedule 2 (which makes amendments in consequence of the abolition of NHS Professionals and other minor amendments) has effect.

Transfer of officers of NHS Professionals

4.—(1) This paragraph applies in relation to any person who, immediately before 1st April 2010, was an officer of NHS Professionals.

(a) 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006, the powers exercised by the Secretary of State to make these Regulations are exercisable only in relation to England.
(b) S.I. 2003/3059, amended by S.I. 2004/648 and 951 and 2008/558.

(2) Any officer to whom paragraph (1) applies shall, on 1st April 2010, be transferred to the employment of the Secretary of State.

(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- (b) shall have effect on and after 1st April 2010 as if originally made between that officer and the Secretary of State.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of NHS Professionals under, or in connection with, a contract to which that paragraph applies shall, by virtue of this paragraph, be transferred to the Secretary of State on 1st April 2010; and
- (b) anything done before 1st April 2010 by, or in relation to, NHS Professionals in respect of the officer or the contract of employment of that officer, shall be deemed to have been done by, or in relation to, the Secretary of State.

(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 the Secretary of State and had informed NHS Professionals of that objection on or before 31st March 2010.

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

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

Transfer of property and liabilities of NHS Professionals

5.—(1) All property of NHS Professionals is transferred to the Secretary of State on 1st April 2010.

(2) All criminal liabilities of NHS Professionals are, on 1st April 2010, transferred to the National Health Service Litigation Authority^(a).

(3) All other liabilities of NHS Professionals are, on 1st April 2010, transferred to the Secretary of State.

Provision for continuity in the exercise of functions

6.—(1) Anything done before 1st April 2010 by or in relation to NHS Professionals shall be treated on and after 1st April 2010 as if done by or in relation to the Secretary of State.

(2) Any instrument made by NHS Professionals continues in force in relation to the Secretary of State in accordance with its terms until it is varied or revoked by the Secretary of State.

(3) So far as is necessary or appropriate, a reference to NHS Professionals in an agreement or other instrument shall be treated on and after 1st April 2010 as a reference to the Secretary of State.

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

(a) Established by S.I. 1995/2800, to which there are amendments not relevant to this Order.

Investigation by the Health Service Commissioner and the Care Quality Commission

7.—(1) A complaint made under the Health Service Commissioners Act 1993(a) to the Health Service Commissioner for England in relation to NHS Professionals, whether made before, on or after 1st April 2010, may be investigated by the Commissioner notwithstanding the abolition of NHS Professionals, and the Commissioner must send a copy of the report of the result of the investigation to the Secretary of State for Health.

(2) A review or investigation in relation to NHS Professionals by the Care Quality Commission, whether begun before, on or after 1st April 2010, may be conducted by the Care Quality Commission notwithstanding the abolition of NHS Professionals, and the Care Quality Commission must send a copy of the report of any review or investigation to the Secretary of State for Health.

Handling of complaints relating to NHS Professionals

8.—(1) This paragraph applies to a complaint made in accordance with the provisions of the National Health Service (Complaints) Regulations 2004(b) (“the 2004 Regulations”) or the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009(c) (“the 2009 Regulations”) in relation to NHS Professionals, whether made before, on or after 1st April 2010.

(2) The Secretary of State shall, on or after 1st April 2010, handle any complaint to which paragraph (1) applies, in accordance with the 2004 Regulations or, as the case may be, the 2009 Regulations, as if the Secretary of State was a Special Health Authority and the complaint has been made in relation to that Authority.

Winding up of affairs of NHS Professionals

9. It shall be the duty of the Secretary of State to take such action as may be necessary for the winding up of the affairs of NHS Professionals including the preparation of the outstanding accounts of NHS Professionals and the performance of all statutory duties relating to those accounts.

Signed by authority of the Secretary of State for Health

22nd February 2010

Mike O'Brien
Minister of State,
Department of Health

SCHEDULE 1

Article 2

Instruments Revoked

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
The NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003	S.I. 2003/3059(d)	The whole Regulations

(a) 1993 c.46.

(b) 2004/1768, revoked by S.I. 2009/309 as of 1st April 2009.

(c) S.I. 2009/309 was amended by S.I. 2009/1768.

(d) Amended by S.I. 2004/648 and 951 and 2008/558.

The NHS Professionals Special Health Authority Regulations 2003	S.I. 2003/3060(a)	The whole Regulations
The NHS Professionals Special Health Authority (Establishment and Constitution) Revocation and Amendment Order 2004	S.I. 2004/951	The whole Regulations
The NHS Professionals Special Health Authority (Establishment and Constitution) (Amendment) Order 2008	S.I. 2008/558	The whole Regulations
The NHS Professionals Special Health Authority Directions 2003	Given by the Secretary of State on 22nd December 2003(b)	The whole Directions
The NHS Professionals Special Health Authority Directions 2004	Given by the Secretary of State on 31 st March 2004(c)	The whole Directions
The NHS Professionals Special Health Authority Directions (No. 2) 2004	Given by the Secretary of State on 13th April 2004(d)	The whole Directions
The Health and Social Care (Community Health and Standards) Act 2003 (Supplementary and Consequential Provision) (NHS Foundation Trusts) Order 2004	S.I. 2004/696(e)	Paragraph 51 of Schedule 1 and the entries in relation to the NHS Professionals Special Health Authority Regulations 2003 in the tables in Schedules 3, 12, 15 and 16
The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004	S.I. 2004/865(f)	Paragraph 42 of Schedule 1
The Health and Social Care (Community Health and Standards Act) 2003 (Public Health Laboratory Service Board) (Consequential Provisions) Order 2005	S.I. 2005/1622	The entry in Schedule 1 in relation to the NHS Professionals Special Health Authority Regulations 2003
The National Health Service (Performers Lists) Amendment Regulations 2005	S.I. 2005/3491	Regulation 12(7)

(a) Amended by S.I. 2004/664, 696, and 865, 2005/1622, 2114 and 3491 and 2008/2250.

(b) A copy can be obtained from 5th floor, Department of Health, New King's Beam House, 22 Upper Ground, London, SE1 9BW.

(c) A copy can be obtained from 5th floor, Department of Health, New King's Beam House, 22 Upper Ground, London, SE1 9BW.

(d) A copy can be obtained from 5th floor, Department of Health, New King's Beam House, 22 Upper Ground, London, SE1 9BW.

(e) To which there are amendments not relevant to this Order.

(f) To which there are amendments not relevant to this Order.

SCHEDULE 2

Article 3

Consequential and minor amendments

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

1. In regulation 11 (disqualification for appointment of chairman and non-executive directors) of the National Health Service Trusts (Membership and Procedure) Regulations 1990(a), omit paragraph (5B).

The Health Authorities (Membership and Procedure) Regulations 1996

2. In Schedule 2 (Special Health Authorities of which the chairman and members are not disqualified under regulation 10(1)(g)) to the Health Authorities (Membership and Procedure) Regulations 1996(b), omit “NHS Professionals Special Health Authority”.

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

3. In Schedule 1 (Special Health Authorities of which the chairman and members are not disqualified under regulation 5(1)(e)) to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(c), omit “NHS Professionals Special Health Authority”.

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

4. In the Schedule (Special Health Authorities designated as subject to investigation) to the Health Service Commissioner for England (Special Health Authorities) Order 2005(d), omit the entry for the NHS Professionals Special Health Authority.

The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) and NHS Professionals Special Health Authority (Contact Centre) Directions 2009

5. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) and NHS Professionals Special Health Authority (Contact Centre) Directions 2009(e), are amended as follows—

- (a) in direction 1(2) omit “and NHS Professionals Special Health Authority”; and
- (b) in direction 1(3) omit “or NHS Professionals Special Health Authority”.

(a) S.I. 1990/2024, relevant amending instrument is S.I. 2004/19.

(b) S.I. 1996/707, relevant amending instrument is S.I. 2004/17.

(c) S.I. 2000/89, relevant amending instrument is S.I. 2004/18.

(d) S.I. 2005/251, to which there are amendments not relevant to this Order.

(e) Given by the Secretary of State on 29 June 2009. A copy can be obtained from 5th floor, Department of Health, New King’s Beam House, 22 Upper Ground, London, SE1 9BW.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes on 1 April 2010 the NHS Professionals Special Health Authority established under section 11 of the National Health Service Act 1977 (now section 28 of the National Health Service Act 2006).

The Order revokes the orders, regulations and directions specified in Schedule 1 (article 2) and makes the minor and consequential amendments referred to in Schedule 2 (article 3).

The Order makes provision for the transfer of property and liabilities of the abolished Special Health Authority and the transfer of staff from it to the Secretary of State (articles 4, 5 and 6).

The Order also makes provision for dealing with investigations, reviews or complaints in relation to the Special Health Authority (articles 7 and 8), and the winding up of the affairs of the Authority (article 9).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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Corrected reprint

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