

EXPLANATORY MEMORANDUM TO
THE NHS PROFESSIONALS SPECIAL HEALTH AUTHORITY
(ABOLITION) ORDER 2010

2010 No. 425

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To abolish NHS Professionals Special Health Authority and transfer all property and liabilities to the Secretary of State, with the exception of past criminal liabilities which will be transferred to the NHS Litigation Authority, on 1 April 2010.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The National Health Service Act 2006 provides for the National Health Service in England and makes provision for the establishment and abolition of NHS bodies to exercise functions under the Act. Section 28 of the Act provides for the establishment of Special Health Authorities to exercise functions conferred by or under the Act.
 - 4.2 This Order abolishes on 1 April 2010, the NHS Professionals Special Health Authority established under section 11 of the National Health Service Act 1977 (section 11 has been replaced and re-enacted as section 28 of the National Health Service Act 2006). The Order revokes secondary legislation relating to the Special Health Authority and makes consequential amendments.
 - 4.3 Section 28(5) makes clear that criminal liabilities of a dissolving Special Health Authority cannot be transferred to the Secretary of State. The Department's policy is that such liabilities should not be left to wither away. Accordingly Article 5(2) provides for the transfer of criminal liabilities of the abolished Special Health Authority to another NHS body, the NHS Litigation Authority.
5. **Territorial Extent and Application**
 - 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

- *What is being done and why*

- 7.1 NHS Professionals (“NHSP”) was established as a Special Health Authority in April 2004. It provides temporary staff in the NHS, with the aim of minimising the cost to the NHS by reducing reliance on high cost temporary staff from private sector staff agencies.
- 7.2 The NHS spends around £2 billion a year on pay and commissions for flexible workers and NHS Trusts are exploring ways of reducing the cost and risk of their workforce, partly by better use of flexible workers. NHSP offers the NHS value for money in its use of flexible workers and helps the NHS save a lot of money.
- 7.3 NHSP has the potential to be made into a profitable and successful business. In the past, it has been a considerable liability to the department both in terms of service quality and financial performance. It has required subsidies of around £20 million a year and there were significant problems with record keeping, compliance with HR policies and inappropriate manual systems.
- 7.4 Following a review it was recommended and approved that NHSP should be reconstituted as a limited liability company with shares wholly owned by the Secretary of State for Health. This would give NHSP greater commercial freedom, which it could use for the benefit of the NHS organisations it serves, and better prepare it for sale.
- 7.5 The key benefits of the limited liability company option include:
- greater freedom to invest in programmes to reduce operational cost or enhance service;
 - more efficient use of cash resources to plan over business cycles;
 - more efficient use of recruitment and remuneration procedures e.g. reducing the high number of interim managers;
 - more transparency within a competitive market; and
 - the adoption of a more suitable pension policy for new staff whilst retaining rights already accrued for current workers.
- 7.6 In order to transfer all property and liabilities of NHSP it needs to be abolished (pursuant to this Order) and all property and liabilities (with the exception of criminal liabilities which will be transferred to another NHS body, the NHS Litigation Authority), transferred to Secretary of State for Health. There will be an immediate subsequent transfer of property and liabilities by the Secretary of State to the limited liability company (wholly owned by the Secretary of State for Health) via a transfer document.

8. Consultation outcome

- 8.1 The consultation process was designed to meet two requirements:
- The obligation on NHS Professionals to consult pursuant to TUPE; and
 - The statutory obligation on Secretary of State to consult under section 28(7) (see 8.1 above).
- 8.2 The process itself involved structured meetings with Union officials of Unison and the Royal College of Nursing. Given the number and geographical spread of the staff impacted, the engagement with staff included both a series of national road-shows to the main locations and the use of the established IT communication processes.
- 8.3 The key topics for discussion and subjects for questions raised were:
- Pensions
 - Agenda for Change
 - Continuity of NHS Service
 - Allied Benefits
- 8.4 As the transfer process is based around the use of a closed direction for those staff who currently have the right to an NHS Pension, the major concern was already addressed as part of the design of the transfer process.
- 8.5 All parties to the consultation are satisfied that the proceedings have successfully been completed in December 2009. The consultation process took place over a 12 week period.

9. Guidance

- 9.1 Not applicable

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies..
- 10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 In its new status NHSP will have to become a going concern through its commercial operations. No new departmental funding would be supplied to NHSP in the future for its day to day operations.

13. Contact

Peter Coates, Commercial Director, Procurement, Investment and Commercial Division at the Department of Health Tel: 0207 633 4234 or email: peter.coates@dh.gsi.gov.uk can answer any queries regarding the instrument.