

**EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE BODIES (SUMMARISED
ACCOUNTS) ORDER 2012**

2012 No. 2789

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 Paragraph 7 of Schedule 15 to the National Health Service Act 2006 (“the 2006 Act”) requires the Secretary of State to prepare summarised accounts for certain NHS bodies each financial year. This Order provides that the requirements in paragraph 7 of Schedule 15 to the 2006 Act (“paragraph 7”) do not apply to the bodies listed in the Schedule (“the specified bodies”) for the financial year ending on 31st March 2012 (“2011-12”).
 - 2.2 The specified bodies comprise all the bodies to which the requirement in paragraph 7 would otherwise apply. It follows that the effect of the Order is to disapply the requirement for the Secretary of State to prepare summarised accounts for the financial year 2011-12.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative context**
 - 4.1 In respect of each financial year paragraph 7 requires the Secretary of State to prepare summarised accounts relating to NHS bodies which are not Special Health Authorities and to transmit those accounts to the Comptroller and Auditor General (“C&AG”) no later than the end of the month of November following the financial year to which the accounts relate. The C&AG is required to examine and certify the summarised accounts and lay copies of them and his report on them before both Houses of Parliament.
 - 4.2 Section 14(1) of the Government Resources and Accounts Act 2000 (“the GRAA”) enables the Treasury by order to provide for paragraph 7 not to apply in relation to a specified body for a specified year.
 - 4.3 Section 14(2) of the GRAA provides that the Treasury may only make an order in respect of a body for a year if they consider that the preparation of summarised accounts is unnecessary having regard to information contained or to be contained in a department’s resource

accounts under section 5 of the GRAA or in whole of government accounts under section 9 of that Act.

4.4 Before making an order, section 14(3) of the GRAA requires the Treasury to consult the C&AG.

4.5 Paragraph 7 was repealed by paragraph 125(4) of Schedule 4 to the Health and Social Care Act 2012 and section 14 of the GRAA was amended by paragraph 96 of Schedule 5 to that Act. However, by virtue of article 11 of the Health and Social Care Act 2012 (Commencement No. 2 and Transitional, Savings and Transitory Provisions) Order 2012¹ the repeal and amendments do not apply in respect of accounts relating to any financial year up to and including the financial year ending 31st March 2012.

5. Territorial Extent and Application

5.1 This instrument only applies to NHS bodies within the meaning of paragraph 1 of Schedule 15 to the 2006 Act which are not Special Health Authorities. As a consequence it only applies in relation to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, there is no need to make a statement in this case.

7. Policy background

- *What is being done and why*

7.1 NHS bodies were subject to audit by Audit Commission appointed auditors. But in view of the substantial sums of public money involved, Parliament thought it necessary to have a report by the C&AG on NHS expenditure and the system of summarised accounts of NHS bodies - which were to be audited by the C&AG and laid in Parliament - evolved over the years. This was enshrined under various pieces of legislation, notably section 98(4) of the National Health Service Act 1977 and currently paragraph 7.

7.2 The Treasury's clear line of sight reforms² were introduced for the first time in 2011-12. As a result, the Department of Health's resource

¹ S.I. 2012/1831 (C.71).

² See, in particular, section 43 of the Constitutional Reform and Governance Act 2010 which inserted section 4A (inclusion in departmental estimates of resources used by designated bodies) into the GRAA and amended sections 5(1) and 6(1) of that Act. Section 4A(2) of the GRAA enables the Treasury to direct that an estimate for a government department includes information relating to resources expected to be used by designated bodies. Designated bodies for these purposes are bodies which have been designated by the Treasury by order (see section 4A(3) of the GRAA). The

accounts boundary now includes all NHS bodies and the accounts of the specified bodies will be consolidated within the resource accounts of the Department. In due course they will also be included in the whole of government accounts for the same financial year.

- 7.3 As the accounts of the specified bodies for 2011-12 have been consolidated within the Department of Health's accounts, there is no prejudice to Parliamentary oversight from disapplying paragraph 7 in relation to the specified bodies. Without the Order, the Department would be required to prepare the summarised accounts and the C&AG would be required to audit them. The Order will therefore save administrative costs for both the Department and the C&AG.
- 7.4 Because the Schedule to the Order lists all the bodies to which the requirement in paragraph 7 would otherwise apply, it follows that the Order has the effect of disapplying the requirement for the Secretary of State to prepare summarised accounts for the financial year 2011-12. The Treasury consider that this approach is both lawful and proper, since the requirement in section 14(2) of the GRAA is met for each of the specified bodies and in the same manner.
- 7.5 In other words, no sensible distinction can be made between the specified bodies for the purposes of section 14(2) of the GRAA since all the specified bodies have been designated under section 4A of the GRAA (see footnote 2). In the Treasury's view it follows that either the power in section 14(1) of the GRAA is exercised in relation to all the specified bodies or none of them. Following consultation with the C&AG, the Treasury have decided to exercise the power in section 14(1) of the GRAA in relation to all the specified bodies for the reasons explained in paragraph 7.3 above.
- 7.6 Under section 33 of the 2006 Act an NHS trust may apply to the regulator (Monitor) for authorisation to become an NHS foundation trust. If an NHS trust becomes an NHS foundation trust during a financial year, the requirement for the Secretary of State to prepare summarised accounts for that financial year applies in relation to the NHS trust but not the NHS foundation trust.
- 7.7 A number of NHS trusts became NHS foundation trusts during 2011-12. These NHS trusts are listed in the Schedule to the Order and a footnote to each states the date when the trust became an NHS foundation trust

8. **Consultation outcome**

8.1 No general external consultation was carried out because the Order does not directly affect any of the specified bodies.

8.2 The C&AG was consulted as is required by the enabling power and he is content.

9. **Guidance**

9.1 No guidance is needed or required.

10. **Impact**

10.1 There is no impact on business, charities, or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 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 and review**

12.1 No monitoring or review is necessary.

13. **Contact**

13.1 David Barton at HM Treasury can answer any queries regarding this instrument. (email: david.barton@hmtreasury.gsi.gov.uk).