

**EXPLANATORY MEMORANDUM TO  
THE HEALTH SERVICE COMMISSIONER FOR ENGLAND (SPECIAL  
HEALTH AUTHORITIES) ORDER 2012**

**2012 No. 3072**

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

**2. Purpose of the instrument**

2.1 The Order provides that three newly established Special Health Authorities are subject to investigation by the Health Service Commissioner. This will enable the Health Service Commissioner to investigate complaints arising in relation to these bodies, in particular complaints of a failure in a service provided by the bodies, that the bodies failed to provide a service they have a function to provide or of maladministration in respect of action taken by or on behalf of the bodies.

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

3.1 None

**4. Legislative context**

4.1 This statutory instrument is made under the powers in section 2(5)(b) and (6) of the Health Service Commissioners Act 1993.

4.2 Statutory Instrument 2011/2323 established the Health Research Authority as a Special Health Authority from 1 December 2011.

4.3 Statutory Instrument 2012/1273 established Health Education England as a Special Health Authority from 28 June 2012.

4.4 Statutory Instrument 2012/901 established the National Health Service Trust Development Authority from 1 June 2012.

4.5 This Order in Council will designate these three new Special Health Authorities as coming under the Health Service Commissioner's jurisdiction.

**5. Territorial Extent and application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure, and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 Special Health Authorities are bodies established by the Secretary of State under section 28 of the National Health Service Act 2006 to carry out functions conferred on them by or under that Act. These functions are set out in their establishment orders and in directions given by the Secretary of State.
- 7.2 The Health Research Authority was established to facilitate and promote research relating to the health service, and to establish and appoint members to research ethics committees. Its principal function is to protect and promote the interests of patients and the public in health research.
- 7.3 The establishment of Health Education England is to provide national oversight of effective workforce planning and the provision of high quality education and training to the health care workforce, and to support planned provider led local arrangements for the commissioning and planning of such education and training. It will be responsible for carrying out the Secretary of State's functions to secure an effective system for education and training for healthcare workers.
- 7.4 The establishment of the NHS Trust Development Authority is to provide governance and accountability for National Health Service trusts in England. It will performance manage NHS trusts, support improvements in clinical quality, governance and the management of risk in NHS trusts and support them in their development as sustainable organisations including in achieving authorisation as NHS Foundation Trusts. It also carries out certain appointment functions on behalf of the Secretary of State.
- 7.5 Special Health Authorities are bodies falling within the jurisdiction of the Health Services Commissioner, such that the Health Service Commissioner may investigate complaints against them under the Health Service Commissioners Act 1993, where, in the case of special health authorities established after 1 April 1974, they are designated as such by an Order in Council. This Order in Council so designates these three new bodies as falling under the jurisdiction of the Health Service Commissioner.

## **8. Consultation outcome**

- 8.1 Consultation was undertaken prior to the establishment of the three special health authorities.

In the case of the Health Research Authority, the Department of Health asked the Academy of Medical Sciences to undertake a review of the regulation and governance of medical research, which recommended the establishment of the Authority.

The Department of Health consulted on the principle of establishing Health Education England through the consultation *Liberating the NHS: developing the healthcare workforce* and through the listening exercise on the Government's modernisation plans. The NHS Future Forum endorsed the establishment of Health Education England in its report.

In respect of the NHS Trust Development Authority, the NHS White Paper *Equity and Excellence: Liberating the NHS* set out the Government's vision for a fully autonomous provider landscape and confirmed that all NHS Trusts should continue to work towards NHS foundation trust status by 2014. The follow up command paper *Liberating the NHS: legislative framework and next steps* set out the need to create the NHS Trust Development Authority.

Further detail on consultation prior to the establishment of the three Special Health Authorities can be found in the explanatory memoranda accompanying the relevant establishment orders. No consultation has been carried out in respect of this Order as none is required.

## **9. Guidance**

- 9.1 Not applicable.

## **10. Impact**

- 10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on the private or voluntary sector.
- 10.2 The impact on the public sector is minimal. It simply brings these three new Special Health Authorities within the jurisdiction of the Health Service Commissioner.

## **11. Regulating small businesses**

- 11.1 The legislation does not apply to small businesses.

## **12. Monitoring and review**

- 12.1 The continued need for the NHS Trust Development Authority will be reviewed in 2015. At that time, it will be determined whether there is continued need for this instrument.

12.2 In respect of Health Education England and the Health Research Authority, it is intended that these bodies will be abolished as Special Health Authorities and be established instead as non-departmental public bodies by provisions in the draft Care and Support Bill. At that stage, it is intended that they will be subject to the jurisdiction of the Parliamentary Ombudsman and the need for this instrument will be reviewed then.

### **13. Contact**

David Winks at the Department of Health (tel: 020 7210 6204 or e-mail: david.winks@dh.gsi.gov.uk) can answer any queries regarding the instrument.