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STATUTORY INSTRUMENTS

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**2012 No. 901**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service Trust Development  
Authority (Establishment and Constitution) Order 2012**

<i>Made</i>	- - - -	<i>22nd March 2012</i>
<i>Laid before Parliament</i>		<i>27th March 2012</i>
<i>Coming into force</i>	- -	<i>1st June 2012</i>

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 28(1), (2) and (4) and 272(7) and (8) of the National Health Service Act 2006<sup>(1)</sup>.

In accordance with section 28(7) of that Act, the Secretary of State has consulted such bodies as the Secretary of State recognises as representing officers who in the Secretary of State's opinion are likely to be transferred or affected by transfers in pursuance of this Order.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 and comes into force on 1st June 2012.

(2) In this Order—

[<sup>F1</sup>“the 1996 Act” means the Employment Rights Act 1996;]

“the Act” means the National Health Service Act 2006;

“the Authority” means the National Health Service Trust Development Authority established by article 2 of this Order;

“the Commission” means the Appointments Commission established by section 57 of the Health Act 2006<sup>(2)</sup>;

[<sup>F2</sup>“employing authority” means the Secretary of State, a Strategic Health Authority, a Primary Care Trust or the NHS Institute;]

“English NHS trust” means an NHS trust all or most of whose hospitals, facilities and establishments are situated in England;

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(1) 2006 c.41. The powers of the Secretary of State under the provisions of the National Health Service Act 2006 (the Act) under which this Order is made are exercisable only in relation to England by virtue of section 271(1) of the Act.

(2) 2006 c. 28.

**Status:** Point in time view as at 01/04/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Trust Development Authority (Establishment and Constitution) Order 2012. (See end of Document for details)

[<sup>F2</sup>“NHS Institute” means the National Institute for Improvement and Innovation established as a special health authority by the NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005;]

[<sup>F2</sup>“second transfer date” means 1st April 2013;]

“special trustees” has the meaning given in section 212(1) of the Act;

“transfer date” means 1st October 2012.

#### Textual Amendments

**F1** Words in [art. 1\(2\)](#) inserted (1.4.2013) by [The National Health Service Trust Development Authority \(Establishment and Constitution\) Amendment Order 2013 \(S.I. 2013/260\)](#), arts. 1(1), [2\(a\)](#)

**F2** Words in [art. 1\(2\)](#) inserted (1.4.2013) by [The National Health Service Trust Development Authority \(Establishment and Constitution\) Amendment Order 2013 \(S.I. 2013/260\)](#), arts. 1(1), [2\(b\)](#)

#### Commencement Information

**I1** [Art. 1](#) in force at 1.6.2012, see [art. 1\(1\)](#)

### Establishment of the Authority

**2.** There is established a Special Health Authority which is to be known as the National Health Service Trust Development Authority.

#### Commencement Information

**I2** [Art. 2](#) in force at 1.6.2012, see [art. 1\(1\)](#)

### Functions of the Authority

**3.—(1)** The Authority is to exercise—

(a) such functions in connection with—

(i) the management of the performance of English NHS trusts;

(ii) supporting improvements in clinical quality, governance and management of risk in English NHS trusts; and

(iii) the development of the performance of English NHS trusts with the objective of assisting them to become sustainable organisations;

(b) such functions in connection with the appointment of—

(i) the chair and non-executive directors of English NHS trusts;

(ii) special trustees;

(iii) trustees for <sup>F3</sup>... English NHS trusts(3), NHS foundation trusts(4)<sup>F4</sup> and Special Health Authorities]; and

(c) such other functions;

as the Secretary of State may direct(7).

(3) See section 25 of the Act. Trustees are appointed for an NHS trust to hold property on trust pursuant to paragraph 10 of Schedule 4 to the Act.

(4) See section 30 of the Act. Trustees are appointed for an NHS foundation trust to hold property on trust pursuant to section 51 of the Act.

(7) See in particular section 7 of the Act.

(2) The Authority must exercise those functions subject to, and in accordance with, any directions given to it by the Secretary of State<sup>(8)</sup>.

#### Textual Amendments

- F3** Words in art. 3(1)(b)(iii) omitted (1.4.2013) by virtue of [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), **Sch. 2 para. 170(a)**
- F4** Words in art. 3(1)(b)(iii) substituted (1.4.2013) by [The National Treatment Agency \(Abolition\) and the Health and Social Care Act 2012 \(Consequential, Transitional and Saving Provisions\) Order 2013 \(S.I. 2013/235\)](#), art. 1(2), **Sch. 2 para. 170(b)**

#### Commencement Information

- I3** [Art. 3](#) in force at 1.6.2012, see [art. 1\(1\)](#)

### Constitution of the Authority

4. The Authority is to consist of—
- a chairman;
  - not more than five members who are not officers of the Authority in addition to the chairman; and
  - not more than five members who are officers of the Authority including the person who for the time being holds the office of chief executive.

#### Commencement Information

- I4** [Art. 4](#) in force at 1.6.2012, see [art. 1\(1\)](#)

### Transfer of property

5.—(1) The property of the Commission identified as property to transfer to the Authority in the document entitled “The National Health Service Trust Development Authority Property Schedule 2012” and signed by the Commission on 5th March 2012 is to be transferred to the Authority on the transfer date.

(2) All liabilities of the Commission relating to the property listed in the National Health Service Trust Development Authority Property Schedule 2012 are to be transferred to the Authority on the transfer date.

(3) Any right relating to the property listed in the National Health Service Trust Development Authority Property Schedule 2012 that was immediately before the transfer date enforceable by or against the Commission is, on or after the transfer date, to be enforceable by or against the Authority.

#### Commencement Information

- I5** [Art. 5](#) in force at 1.6.2012, see [art. 1\(1\)](#)

<sup>F5</sup>5A.—(1) The property of the Secretary of State identified as property to transfer to the Authority in the document entitled “The Department of Health Property to Transfer to the National

(8) See in particular section 8 of the Act.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Trust Development Authority (Establishment and Constitution) Order 2012. (See end of Document for details)*

Health Service Trust Development Authority Schedule 2013(4)” and signed on behalf of the Department of Health on 5th February 2013, and on behalf of the Authority on 6th February 2013, is to be transferred to the Authority on the second transfer date.

(2) All liabilities of the Secretary of State relating to the property referred to in paragraph (1) are to be transferred to the Authority on the second transfer date.

(3) Any right relating to the property of the Secretary of State referred to in paragraph (1) that was immediately before the second transfer date enforceable by or against the Secretary of State is, on or after the second transfer date, to be enforceable by or against the Authority.]

#### Textual Amendments

**F5** Art. 5A inserted (1.4.2013) by The National Health Service Trust Development Authority (Establishment and Constitution) Amendment Order 2013 (S.I. 2013/260), arts. 1(1), 3

#### Transfer of staff

6.—(1) This paragraph applies in relation to any person who—

- (a) immediately before the transfer date is employed by the Commission and is engaged wholly or mainly in the performance of the functions of making appointments of chairs and non-executive members of English NHS trusts, trustees for English NHS trusts, Primary Care Trusts and NHS foundation trusts, and special trustees; and
- (b) has, before the transfer date, been notified in writing by the Commission that they are to be transferred to the Authority on that date.

(2) Any person to whom paragraph (1) applies is, on the transfer date, to be transferred to the employment of the Authority.

(3) The contract of employment of a person whose employment has transferred to the Authority under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and the Authority.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the Commission, under or in connection with its contract of employment with a person transferred under paragraph (2), are to transfer to the Authority on the transfer date; and
- (b) any act or omission before the transfer date of or in relation to the Commission, in respect of that person or that person’s contract of employment, is deemed to have been an act or omission of or in relation to the Authority.

(5) Paragraphs (2) to (4) do not operate to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs the Authority or the Commission that they object to becoming employed by the Authority.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person’s contract of employment to the Authority as described in paragraph (5), the transfer operates so as to terminate that person’s contract of employment with the Commission.

(4) See section 30 of the Act. Trustees are appointed for an NHS foundation trust to hold property on trust pursuant to section 51 of the Act.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by the Commission.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (1), that person may treat the contract of employment as having been terminated, and that person shall be treated for any purpose as having been dismissed by the employer.

(9) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3) and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

#### Commencement Information

**I6** Art. 6 in force at 1.6.2012, see [art. 1\(1\)](#)

[<sup>F6</sup>**6A.**—(1) This paragraph applies in relation to any person who—

- (a) immediately before the second transfer date, is employed by an employing authority; and
- (b) has, before the second transfer date, been notified in writing by the employing authority that employs that person that they are to be transferred to the Authority on the second transfer date.

(2) Any person to whom paragraph (1) applies is, on the second transfer date, to be transferred to the employment of the Authority.

(3) The contract of employment of a person whose employment has transferred to the Authority under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) has effect from the second transfer date as if originally made between that person and the Authority.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the employing authority under, or in connection with, the contract of employment of any person whose employment has transferred to the Authority on the second transfer date under paragraph (2), are to transfer to the Authority on the second transfer date; and
- (b) any act or omission before the second transfer date of or in relation to the employing authority, in respect of that person or that person's contract of employment, is deemed to have been an act or omission of or in relation to the Authority.

(5) Paragraphs (2) to (4) do not operate to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the second transfer date, that person informs the Authority or the employing authority that they object to becoming employed by the Authority.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to the Authority as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with the employing authority.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by the employing authority.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Trust Development Authority (Establishment and Constitution) Order 2012. (See end of Document for details)*

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (1), that person may treat the contract of employment as having been terminated, and that person shall be treated for any purpose as having been dismissed by the employer.

(9) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3) and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.]

#### Textual Amendments

**F6** Arts. 6A-6B inserted (1.4.2013) by The National Health Service Trust Development Authority (Establishment and Constitution) Amendment Order 2013 (S.I. 2013/260), arts. 1(1), 4

#### [<sup>F6</sup>Dismissal of employee because of transfer

**6B.**—(1) Where a person whose employment has been transferred by article 6A is dismissed by the Authority during the period starting with the second transfer date and ending on 31st March 2015, that person is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as having been unfairly dismissed if the sole or principal reason for the dismissal is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(2) This paragraph applies where the sole or principal reason for the dismissal is a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce of the Authority after the second transfer date.

(3) Where paragraph (2) applies—

- (a) paragraph (1) does not apply;
- (b) without prejudice to section 98(4) of the 1996 Act (test of fair dismissal), the dismissal shall, for the purposes of sections 98(1) and 135 of that Act (reason for dismissal), be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or otherwise for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) Paragraph (1) does not apply in relation to a dismissal of an employee if the application of section 94 of the 1996 Act (the right) to the dismissal of the employee is excluded by or under any provisions of the 1996 Act, the Employment Tribunals Act 1996(5) or the Trade Union and Labour Relations (Consolidation) Act 1992(6).

(5) Paragraph (1) does not prevent the Authority and a person whose contract of employment has been transferred by virtue of article 6A from agreeing a variation of that contract for a reason specified in that paragraph.]

(5) See section 28 of the Act. Trustees are appointed for a Special Health Authority to hold property on trust pursuant to paragraph 9 of Schedule 6 to the Act.

(6) See section 13 of the Act. Trustees are appointed for a Strategic Health Authority to hold property on trust pursuant to paragraph 13 of Schedule 2 to the Act.

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### Textual Amendments

- F6** Arts. 6A-6B inserted (1.4.2013) by The National Health Service Trust Development Authority (Establishment and Constitution) Amendment Order 2013 (S.I. 2013/260), arts. 1(1), 4

### Public meetings

7. The Public Bodies (Admission to Meetings) Act 1960<sup>(9)</sup> is to apply to the Authority.

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### Commencement Information

- I7** Art. 7 in force at 1.6.2012, see art. 1(1)

Signed by authority of the Secretary of State for Health.

*Simon Burns*  
Minister of State,  
Department of Health

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(9) 1960 c. 67; see in particular Schedule 1, paragraph 1(g), the current text of which was inserted by the Health Authorities Act 1995 (c.17), section 2(1) and Schedule 1, Part III, paragraph 91.

**Status:** Point in time view as at 01/04/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Trust Development Authority (Establishment and Constitution) Order 2012. (See end of Document for details)

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for the establishment and constitution of a Special Health Authority under section 28 of the National Health Service Act 2006, to be known as the National Health Service Trust Development Authority (“the Authority”), to exercise such of the Secretary of State’s functions in connection with the performance management and development of National Health Service trusts in England, and the making of certain public appointments to NHS bodies in England and of their trustees, and such other functions as the Secretary of State may direct.

Article 2 of the Order establishes the Authority, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State to the Authority.

Article 4 provides for the constitution of the authority.

Article 5 provides for the transfer to the Authority of property necessary for the Authority to carry out its functions, and Article 6 transfers staff of the Appointments Commission to the Authority.

Article 7 provides that the Public Bodies (Admission to Meetings) Act 1960 applies to the Authority so that meetings of the Authority are open to the public.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk)



**Status:**

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