

EXPLANATORY MEMORANDUM TO
THE NATIONAL TREATMENT AGENCY (ABOLITION) AND
THE HEALTH AND SOCIAL CARE ACT 2012
(CONSEQUENTIAL, TRANSITIONAL AND SAVINGS PROVISIONS)
ORDER 2013

2013 No. 235

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**

The instrument:

- abolishes the National Treatment Agency, a Special Health Authority established under the NHS Act 2006, on 1 April 2013. The Agency's functions are planned to transfer to Public Health England, a new executive agency of the Department of Health;
- amends and revokes secondary legislation in consequence of the Health and Social Care Act 2012, with effect from 1 April 2013. The amendments take account of the abolition of various bodies by the Act and of the assumption of new responsibilities by other bodies (including the NHS Commissioning Board, clinical commissioning groups, local authorities and Public Health England).

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

None.

4. **Legislative Context**

4.1 The instrument provides for abolition of the National Treatment Agency, whose functions are planned to transfer to Public Health England (a new executive agency of the Department of Health).

4.2 The instrument also makes many of the amendments to secondary legislation that are needed in consequence of the Health and Social Care Act 2012. (Others have been made by *The Health and Social Care Act 2012 (Consequential Provision – Social Workers) Order SI 2012/1479*, *The NHS Commissioning Board Authority (Abolition and Transfer of Staff, Property and Liabilities) and the Health and Social Care Act (Consequential Amendments) Order SI 2012/1641*, and *The Health and Social Care Act 2012 (Consequential Amendments – the Professional Standards Authority for Health and Social Care) Order SI 2012/2672*, or are included along with new provision in other instruments made by the

5. Territorial Extent and Application

The order results from changes to the health service in England. It extends to England and Wales only, but amends some secondary legislation that applies to Wales and/or extends to Scotland and Northern Ireland.

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 The instrument abolishes the National Treatment Agency. Its functions will transfer to Public Health England as part of the programme to improve public health through the creation of a locally led public health system supported by a new executive agency.

7.2 As explained in paragraph 6 of the explanatory notes to the Health and Social Care Act 2012:

“The main aims of the Act are to change how NHS care is commissioned through the greater involvement of clinicians and a new NHS Commissioning Board; to improve accountability and patient voice; to give NHS providers new freedoms to improve quality of care; and to establish a provider regulator to promote economic, efficient and effective provision. In addition, the Act will underpin the creation of Public Health England, and take forward measures to reform health public bodies.”

7.3 The instrument makes many of the amendments to secondary legislation that are needed in the light of these aims, in particular:

- removing references to bodies that are abolished by the Act (for example, Strategic Health Authorities, Primary Care Trusts and the Health Protection Agency) and replacing them where appropriate with references to the new bodies created as a result of the Act (including the NHS Commissioning Board, clinical commissioning groups, and Public Health England); and
- inserting references to local authorities where that is necessary to reflect their assumption of public health responsibilities previously held by NHS bodies.

- Consolidation

7.4 The instrument revokes a number of instruments and amends nearly 200 others (of which the majority are the responsibility of other government departments and the devolved administrations). The amendments made to each instrument are generally minor and it is not the Department of Health's intention to consolidate the legislation involved. The provisions which are most extensively amended by the instrument are the National Health Service (Direct Payments) Regulations 2010. These regulations deal with a pilot period and are due to be revoked and re-made when the pilot period comes to an end (planned for later this year).

8. Consultation outcome

8.1 The Department of Health has worked in close partnership with staff interests throughout the transition to Public Health England. Unite, the key union for the National Treatment Agency, has been part of this process. The proposed structure of Public Health England and the People Transition Policy were both published and Unite was involved in discussions of these. In accordance with section 28(7) of the NHS Act 2006 (which applies to special health authorities such as the National Treatment Agency), the Department conducted a further written consultation with representatives of those who might be transferred or affected by transfers as a result of abolition of the National Treatment Agency and the transfer of its functions to Public Health England. This was an opportunity to raise any remaining issues. Given the limited scope of the consultation, the Department agreed with Unite that the consultation period, which started on 13 August 2012, should run for four weeks. No responses were received by the time the consultation closed on 11 September 2012, but a Unite representative submitted oral comments on 18 September. These were that a case-by-case decision should be taken as to whether the staff of Public Health England would be on NHS or civil service contracts and that such decisions should be guided by whether an individual's career path was more likely to be in the NHS or the civil service. While this response was relevant to discussions about the terms of staff transfers, the consultation did not raise any fundamental issues to be considered in relation to abolition of the National Treatment Agency. Ministers therefore re-confirmed their decision to abolish the National Treatment Agency.

8.2 The other provisions in the instrument are consequential on the Health and Social Care Act 2012 and have therefore not been subject to public consultation.

9. Guidance

The instrument does not introduce new obligations, but amends those that currently apply to take account of the Health and Social Care Act 2012 and of the abolition of the National Treatment Agency. Accordingly, the Department

of Health is not publishing guidance on the instrument as a whole, but where necessary, amendments to specific instruments are being drawn to the attention of those affected.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment for the Health and Social Care Act 2012 as a whole is available at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583. (The annexes most relevant to the amendments made by the order are A, on commissioning for patients; E on public bodies; and F on public health). Revised estimates of the figures involved are given in: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121018/wmstext/121018m0001.htm#12101829000017>

11. Regulating small business

- 11.1 For the most part, the instrument does not apply to small business.
- 11.2 In a small number of cases, the instrument amends legislation that applies to bodies that might include small businesses. Even there, however, the instrument does not create new requirements, but modifies that those that currently apply in order to take account of the abolition of various bodies and assumption of their functions by others.

12. Monitoring & review

No monitoring or review of the instrument as such is planned. The Department of Health is however committed to carrying out post-legislative review of the Health and Social Care Act 2012 within three years of Royal Assent (see for example, Lords Hansard 21 December 2011 column 1820).

13. Contact

Jenny Harper at the Department of Health Tel: 020 7210 5963 or email: Jenny.Harper@dh.gsi.gov.uk can answer queries regarding the instrument.