

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE TRUST DEVELOPMENT
AUTHORITY (ESTABLISHMENT AND CONSTITUTION) AMENDMENT
ORDER 2013

2013 No. 260

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 National Health Service Trust Development Authority: (Establishment and Constitution) Amendment Order 2013 provides for the transfer of staff from the Department of Health, Strategic Health Authorities, Primary Care Trusts and the NHS Institute for Improvement and Innovation to the National Health Service Trust Development Authority (“the Authority”). It also provides for the transfer of specific property and liabilities from the Department of Health to the Authority.

2.2. The Authority is a Special Health Authority established under section 28 of the National Health Service Act 2006 (the “Act”) that will exercise functions of the Secretary of State, primarily in managing the performance, assuring and improving clinical performance, governance and risk in National Health Service (NHS) trusts and assisting NHS trusts to become foundation trusts (“FTs”). It also carries out the Secretary of State’s role in making certain appointments to NHS trusts and appointments of trustees to various bodies established under the Act.

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

3.1 None

4. Legislative Context

4.1 The Act provides that the Secretary of State may establish bodies known as special health authorities under section 28. The Authority is such a special health authority. It was established by means of the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (SI 2012/901) (the Establishment Order).

4.2 The Establishment Order sets out the Authority’s functions, including that it is to perform the functions as the Secretary of State may direct. Section 7 of the Act provides that the Secretary of State may direct a special health authority to exercise any of his functions relating to the health service as are specified in directions and section 8 provides that the Secretary of State may direct a special health authority regarding its exercise of any functions.

4.3 The Secretary of State directed the Authority to take on some of its functions on 1 June 2012 . The Authority assumed further functions on 1 October 2012 by means of further directions directing it to take over certain functions previously carried out by the Department of Health, Strategic Health Authorities and the Appointments Commission. The Authority will assume its

full functions on 1 April 2013 and the Secretary of State will issue further directions to come into force on that date.

4.3 Section 28 (4)(b) provides that an Order under that section may contain provisions as to the transfer to the body of officers, property and liabilities. This Amendment Order amends the Establishment Order to provide for the transfer of officers of the Department of Health, Strategic Health Authorities, Primary Care Trusts and the NHS Institute for Improvement and Innovation to the Authority, to enable it to carry out its full functions. It also provides for the transfer of specific property and liabilities from the Department of Health to the Authority. .

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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

7.1 The Government's vision is for an NHS with fully autonomous and accountable healthcare service providers (hospitals, ambulance services, mental health services and community services). The Authority is a key enabler to support NHS trusts to become a FT or find another organisational form and will provide essential oversight and performance management while NHS trusts remain.

7.2 The Department of Health's White Paper, *Equity and Excellence: Legislative framework and next steps* stated that “ *This [the NTDA] will provide overall governance, performance manage and support non-FTs until they become FTs*”.

7.3 The Authority in the first instance developed systems and guidance for NHS trusts on carrying out its functions; established governance processes; and undertook 2012/2013 business planning for the organisation. It undertook further functions in October 2012 and will undertake the remainder of its functions in April 2013. These include overseeing the performance of NHS trusts; development of the performance of NHS trusts to assist them in becoming sustainable organisations; and securing improvements in clinical quality, governance and risk in NHS trusts. In order that the Authority can carry out these functions effectively from 1st April 2013 it needs to have suitably trained and experienced staff of an appropriate calibre. There is also a need to ensure the fair treatment of staff under the transitional arrangement while the new healthcare system is established. These two objectives are most likely to be achieved by facilitating the legal transfer of staff from the Department of Health, Strategic Health Authorities, Primary Care Trusts and the NHS Institute for Improvement and Innovation. In addition there is a need for existing property (including data) to be available to the Authority to inform its decisions and processes.

7.4 In line with other new arm's-length bodies (ALBs), the Authority will be subject to a review of the continued need for it to remain in existence by the Department of Health, within three years of full operation.

8. Consultation outcome

8.1 Prior to the establishment of the Authority, the Secretary of State undertook a consultation under section 28(7) of the Act with bodies representing officers who in the opinion of the Secretary of State were likely to be transferred or affected by transfers made under the Establishment Order, and by further transfers planned for 1st April 2013. This consultation envisaged that staff of the Department of Health, Primary Care Trusts, Strategic Health Authorities and the Appointments Commission, working on the functions the Authority would take on, would transfer. This consultation was issued on 31 October 2011 and closed on 31 January 2012. One response was received regarding the alignment of staff recruitment and resources with that of the NHS Commissioning Board (NHS CB), and the comment was included in the organisational design work.

8.2 Once the Authority was established in June 2012 and senior posts were filled, plans were developed and more work done to determine how the Authority would deliver its responsibilities. As a result there were some changes to the original proposal regarding the subsequent transfer of staff in April 2013 (which is now the subject of this Amendment Order). Accordingly, the Secretary of State carried out a further consultation under section 28(7) of the Act with bodies representing officers of the Department of Health, Primary Care Trusts, Strategic Health Authorities and of the National Institute for Improvement and Innovation, who may be transferred or affected by transfers made under the Amendment Order. This consultation ran from 20 December 2012 and concluded on 25th January 2013.

No responses were received to this consultation.

9. Guidance

9.1 On 5 January 2012, the DH published a document entitled Building the National Health Service Trust Development Authority to explain the functions and purpose of the Authority. The publication can be found on the Department of Health website:

<http://www.dh.gov.uk/health/2012/01/nhs-trust-development-authority/>

9.2 The **Policy and Process on Filling of Posts in Receiving Organisations** was published in July 2012 and sets out HR guidance for staff transferring or/and potential recruits to the Authority. The full document can be found at:

<http://www.hrtransition.co.uk/policy-and-process/national-policy-and-process-on-filling-of-posts-in-receiving-organisations>

10. Impact

10.1 An impact assessment was prepared for the establishment of the Authority and can be found at:

<https://www.wp.dh.gov.uk/transparency/files/2012/05/IA-2037-Establishment-of-the-NHS-Trust-Development-Authority-NTDA-PDF-128K.pdf>

10.2 Because this Amendment Order provides for the transfer of staff and property between the Department of Health and various NHS public bodies only, there is no impact on business, charities or voluntary bodies.

10.3 The impact assessment identified the benefits of incorporating the functions within one organisation, making it easier to achieve the objective of an all FT provider environment. The proposed functions of the Authority are inter-dependent and there are best performed by one organisation.

10.4 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 In line with the Better Regulation Agenda, the instrument will be reviewed by Department of Health in three years time to assess whether there is a continued need for the Authority.

13. Contact

Rosalind Mead at the Department of Health, Tel: 0113 254 6129 or 0207 210 6241 or email: Rosalind.Mead@dh.gsi.gov.uk can answer any queries regarding the instrument.