

2016 No. 214

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service Trust Development Authority
(Directions and Miscellaneous Amendments etc.) Regulations
2016**

<i>Made</i> - - - -	<i>22nd February 2016</i>
<i>Laid before Parliament</i>	<i>29th February 2016</i>
<i>Coming into force</i> - -	<i>1st April 2016</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 7(1), 28(1), (2) and (4), 272(7) and (8)(a) of, and paragraph 5 of Schedule 6 to, the National Health Service Act 2006(a).

In accordance with section 7(1B) of that Act(b), the Secretary of State has consulted the National Health Service Commissioning Board(c) and 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 amendments to the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012(d).

PART 1

GENERAL PROVISIONS

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 and come into force on 1st April 2016.

(2) In these Regulations—

“the Authority” means the National Health Service Trust Development Authority(e);

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- (a) 2006 c.41. The powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England by virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”). By virtue of section 273(4)(zi) a direction under section 7 of the 2006 Act about a function of a person other than the Secretary of State must be given by regulations. Section 7 was amended by section 21 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Paragraph 5 of Schedule 6 was amended by section 19 of, and paragraph 11 of Schedule 3 to, the Health Act 2009 (c.21).
- (b) Section 7(1B) was inserted by section 21(1) and (2) of the 2012 Act.
- (c) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the 2006 Act. Section 1H is inserted into the 2006 Act by section 9(1) of the 2012 Act.
- (d) S.I. 2012/901, amended by S.I. 2013/235 and 260.
- (e) The National Health Service Trust Development Authority is established by the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012, S.I. 2012/901, amended by S.I. 2013/235 and 260.

“the Board” means the National Health Service Commissioning Board; and
“the Establishment Order” means the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012.

PART 2

DIRECTIONS TO THE AUTHORITY RELATING TO THE BOARD’S SAFETY OF SERVICES FUNCTIONS

Directions to the Authority relating to the Board’s safety of services functions

2.—(1) The Authority is directed to exercise the functions of the Board specified in section 13R (information on safety of services provided by the health service) of the National Health Service Act 2006(a) in respect of—

- (a) the continuation, establishment and operation of systems for collecting and analysing information relating to the safety of the services provided by the health service;
- (b) making information collected by virtue of sub-paragraph (a), and any other information obtained by analysing it, available to such persons as it considers appropriate;
- (c) the provision of advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service; and
- (d) monitoring the effectiveness of the advice and guidance given by it under sub-paragraph (c).

(2) The Secretary of State directs that the Authority must exercise the functions of the Board which the Authority is directed to exercise in accordance with paragraph (1) with a view to securing and improving the safety of services provided by the health service, including the safety of patients.

PART 3

AMENDMENTS TO THE ESTABLISHMENT ORDER

Amendment of article 1 of the Establishment Order

3. In article 1 of the Establishment Order (citation, commencement and interpretation), in paragraph (2), insert in the appropriate alphabetical position—

- ““the Board” means the National Health Service Commissioning Board;”;
- ““third transfer date” means 1st April 2016;”;
- and
- ““the Trust” means the Imperial College Healthcare National Health Service Trust;”(b).

Substitution of article 4 of the Establishment Order

4. For article 4 of the Establishment Order (constitution of the Authority), substitute the following—

“4. Constitution of the Authority

- (1) The Authority is to consist of—
 - (a) a chairman;

(a) Section 13R is inserted into the National Health Service Act 2006 by section 23(1) of the 2012 Act.
(b) The Imperial College Healthcare National Health Service Trust is established by S.I. 2007/2755, amended by S.I. 2012/755 and 2013/593.

- (b) at least 5 members who are not officers of the Authority in addition to the chairman; and
- (c) subject to paragraph (2), a number of other members who are officers of the Authority including the person who for the time being holds the office of chief executive.

(2) The number of officer members must be less than the number of non-officer members.”.

Transfer of property

5. After article 5A of the Establishment Order (transfer of property), insert—

“5B. Transfer of property and liabilities from the Board

(1) The property of the Board identified as property to transfer to the Authority in the document entitled “The National Health Service Commissioning Board transfer to the National Health Service Trust Development Authority Agreement 2016 in connection with the exercise of safety functions” and signed on behalf of the Board and the Authority on 19th February 2016, is to be transferred to the Authority on the third transfer date.

(2) All liabilities (actual or contingent) of the Board relating to—

- (a) the property referred to in paragraph (1); and
- (b) the functions that the Authority is directed to exercise in accordance with regulation 2 (directions to the Authority relating to the Board’s safety of services functions) of the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 (“the 2016 Regulations”),

are to be transferred to the Authority on the third transfer date.

(3) Any right relating to—

- (a) the property referred to in paragraph (1); and
- (b) the functions that the Authority is directed to exercise in accordance with regulation 2 of the 2016 Regulations,

that was immediately before the third transfer date enforceable by or against the Board is, on or after the third transfer date, to be enforceable by or against the Authority.”.

Transfer of staff

6. After article 6B of the Establishment Order (dismissal of employee because of transfer), insert—

“6C. Transfer of Staff

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

- (a) immediately before the third transfer date is employed by the Board or by the Trust; and
- (b) has, before the third transfer date, been notified in writing by the Board or by the Trust that they are to be transferred to the Authority on that date.

(2) Any person to whom paragraph (1) applies is, on the third 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 third 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 Board or the Trust, as the case may be, under, or in connection with, its contract of employment with a person transferred under paragraph (2) are to transfer to the Authority on the third transfer date; and
- (b) any act or omission before the third transfer date of, or in relation to, the Board or Trust, as the case may be, 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 third transfer date, that person informs whichever of the Board or the Trust employs them or the 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 Board or, as the case may be, the Trust.

(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 Board or, as the case may be, the Trust.

(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 been transferred under paragraph (2), 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.”.

PART 4

AMENDMENTS TO THE NATIONAL HEALTH SERVICE TRUST DEVELOPMENT AUTHORITY REGULATIONS 2012

Amendment of the National Health Service Trust Development Authority Regulations 2012

7.—(1) The National Health Service Trust Development Authority Regulations 2012(a) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2), omit the definition of “NHS Injury Benefits Scheme” and “NHS Pension Scheme”.

(3) In regulation 3 (disqualification for appointment), in paragraph (1), omit sub-paragraph (i).

(4) After regulation 11 (arrangements for the exercise of functions), insert—

“11A. Collaborative arrangements

Subject to such directions as may be given by the Secretary of State, arrangements made by the Authority for the exercise of any of its functions may include collaboration with Monitor or—

(a) S.I. 2012/922; relevant amending instruments are S.I. 2012/1641, 2013/235, 2015/137 and 2015/1559.

- (a) any committees or sub-committees appointed by Monitor in accordance with paragraph 9 (committees) of Schedule 8 (Monitor) to the Health and Social Care Act 2012; or
- (b) any persons or committees or sub-committees exercising functions on behalf of Monitor under arrangements made under paragraph 11(2) (exercise of functions) of Schedule 8 to that Act.”(a).

PART 5

Continuity and Supplementary Provisions

Continuity and supplementary provisions

8.—(1) Any acts or omissions of, or in relation to, the Board before 1st April 2016 in connection with—

- (a) the functions that the Authority has been directed to exercise in accordance with Part 2 of these Regulations;
- (b) any property, rights or liabilities transferred as a consequence of Part 3 of these Regulations; or
- (c) any contract, arrangement or agreement entered into by the Board in connection with any property, rights or liabilities transferred as a consequence of Part 3 of these Regulations,

are deemed to have been an act or omission of, or in relation to, the Authority.

(2) Anything (including legal proceedings) which, immediately before 1st April 2016, is in the process of being done by, or in relation to, the Board in connection with—

- (a) the functions that the Authority has been directed to exercise in accordance with Part 2 of these Regulations; or
- (b) any property, rights or liabilities of the Board transferred as a consequence of Part 3 of these Regulations,

is deemed to have effect as if done by, or in relation to, the Authority, and may be continued by, or in relation to, the Authority.

(3) Any instrument made by, or in relation to, the Board in connection with the matters referred to in paragraph (1) continues in force until it is varied or revoked by the Authority.

(4) Any form supplied by the Board in connection with the matters referred to in paragraph (1) continues to be valid until it is varied or revoked by the Authority and as if any reference in that form to the Board were a reference to the Authority.

(5) Any reference to the Board in any contract, arrangement, agreement, instrument or other document in connection with any property, rights or liabilities transferred as a consequence of Part 3 of these Regulations is to be treated as a reference to the Authority.

(6) Where the rights and liabilities under a contract, agreement, arrangement or instrument entered into or agreed by the Board are transferred as a consequence of Part 3 of these Regulations, that contract, agreement, arrangement or instrument is to continue to have effect on or after the 1st April 2016 as if it were originally entered into by the Authority.

(7) Subject to paragraph (8), no right to terminate or vary a contract, agreement, arrangement or instrument is to operate or become exercisable, and no provision of any contract, agreement, arrangement or instrument is to operate or become exercisable or be contravened, by reason of the transfer of any property, rights or liabilities as a consequence of Part 3 of these Regulations.

(8) Where a transfer pursuant to regulation 6 of these Regulations involves or would involve a substantial change in the working conditions to the material detriment of a person whose

(a) Monitor is the body which is continued in existence by section 61(1) of the 2012 Act.

employment with the Board or, as the case may be, with the Imperial College Healthcare National Health Service Trust, is or would have been transferred in accordance with that regulation—

- (a) paragraph (7) does not apply; and
- (b) that person may treat the contract of employment as having been terminated and shall be treated for any purpose as having been dismissed by the employer.

Signed by authority of the Secretary of State for Health.

Prior
Parliamentary Under-Secretary of State,
Department of Health

22nd February 2016

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision directing the National Health Service Trust Development Authority (“the Authority”) to exercise safety functions, amends the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (S.I. 2012/901) (“the Order”) and the National Health Service Trust Development Authority Regulations 2012 (S.I. 2012/922) (“the 2012 Regulations”).

Part 2 of these Regulations makes provision relating to the exercise of the safety functions of the National Health Service Commissioning Board (“the Board”). Regulation 2(1) specifies the safety functions which the Authority is to exercise. Regulation 2(2) directs the Authority to exercise the safety functions of the Board with a view to securing and improving the safety of services provided by the health service.

Part 3 amends the Order. Regulation 4 substitutes a new article 4 (constitution of the Authority) to enable the Authority to consist of at least 5 non-officers members and a number of officer members which must be less than the number of non-officers members. Regulations 5 and 6 respectively make provision in respect of the transfer of property and staff in connection with the directions to the Authority to exercise the Board’s safety functions. Regulation 3 inserts new definitions into article 1 of the Order as a consequence of the provisions in regulation 5 and 6.

Part 4 amends the 2012 Regulations. Regulation 7(3) removes the disqualification provision which applies to prevent a person who is a member contributing to an NHS Pension Schemes made under the Superannuation Act 1972 from being a non-officer member of the Authority. Regulation 7(2) makes consequential amendments in respect of the removal of the disqualification provision. Regulation 7(4) provides that the Authority’s arrangements in exercising its functions may include entering into collaborative arrangements with Monitor.

Part 5 makes continuity and supplementary provisions in respect of the Authority exercising the safety functions of the Board from 1st April 2016 and the transfer of staff and property on that date.

An impact assessment has not been produced for this instrument as no significant cost impact on the private or voluntary sector is foreseen.

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