
STATUTORY INSTRUMENTS

2017 No. 958

NATIONAL HEALTH SERVICE, ENGLAND

**The NHS Counter Fraud Authority (Establishment, Constitution,
and Staff and Other Transfer Provisions) Order 2017**

<i>Made</i>	- - - -	<i>3rd October 2017</i>
<i>Laid before Parliament</i>		<i>4th October 2017</i>
<i>Coming into force</i>	- -	<i>1st November 2017</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 7(1), 28(1), (2), (4), (5) and (8), 29(2), 199(2), (4) and (5), 209(4), 272(7) and (8) and 273(4) of, and paragraphs 3, 5 and 13 of Schedule 6 to the National Health Service Act 2006(1).

Pursuant to section 28(7) of, and paragraph 4 of Schedule 6 to the National Health Service Act 2006, the Secretary of State has consulted those bodies he recognises as representing persons who, in his opinion, are likely to be affected by the provisions of this Order made under that section and under paragraph 3 of that Schedule.

PART 1

Introductory

Citation, commencement and application

1.—(1) This Order may be cited as the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 and comes into force on 1st November 2017.

(2) This Order applies in relation to England only.

(1) [2006 c. 41](#). Section 7 was amended by section 21(1) to (4) of the Health and Social Care Act [2012 \(c. 7\)](#) (“the 2012 Act”). Section 28 was amended by section 55(1) of, and paragraph 13 in Part 2 of Schedule 4 to, the 2012 Act. In relation to the exercise of powers to establish a new special health authority under section 28, see section 28A, which was inserted by section 48(1) of the 2012 Act and requires provision to be made for the abolition of the special health authority in orders made after the coming into force of said section 48. (Section 48 of the 2012 Act was brought into force on 1st April 2013 by [SI 2013/160 \(C.9\)](#).) Section 29 was amended by section 55(1) of, and paragraph 14 in Part 2 of Schedule 4 to, the 2012 Act. In Schedule 6 to the National Health Service Act 2006 (“the 2006 Act”), paragraphs 3 and 13 were amended by section 55(1) of, and paragraph 23 of Part 2 of Schedule 4 to, the 2012 Act; and paragraph 5 in Schedule 6 to the 2006 Act was amended by section 19 of, and paragraphs 9 and 11 of Part 1 of Schedule 3 to, the Health Act 2009. By virtue of section 271 of the 2006 Act, the powers exercised in making this Order are exercisable by the Secretary of State in relation to England only.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Commencement Information

I1 Art. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

Interpretation

2. In this Order—

“the abolition date” means [^{F1}30th October 2023];

“the Authority” means the NHS Counter Fraud Authority established pursuant to article 3;

“the BSA” means the NHS Business Services Authority⁽²⁾;

“changes in the workforce” includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the Employment Rights Act 1996⁽³⁾);

“counter fraud functions” means, in relation to the Authority, the functions the Authority is to exercise pursuant to article 4(1), (3) and (4);

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

“the transfer date” means 1st November 2017;

“the transitional period” means the period beginning on 1st November 2017 and ending immediately before 1st November 2018.

Textual Amendments

F1 Words in [art. 2](#) substituted (30.10.2020) by [The NHS Counter Fraud Authority \(Establishment, Constitution, and Staff and Other Transfer Provisions\) \(Amendment\) Order 2020 \(S.I. 2020/1071\)](#), [arts. 1, 2\(2\)](#)

Commencement Information

I2 Art. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

PART 2

Establishment and Constitution

Establishment

3. The special health authority to be known as the NHS Counter Fraud Authority is established by and in accordance with this Order.

- (2) The NHS Business Services Authority is a Special Health Authority established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005, [SI 2005/2414](#). That Order has effect as if made under section 28 of the National Health Service Act 2006 in relation to England, and section 22 of the National Health Service (Wales) Act 2006 ([c. 42](#)) in relation to Wales, by virtue of section 4 of, and paragraphs 1 and 2 of Part 1 of Schedule 2 to, the National Health Service (Consequential Provisions) Act 2006 ([c. 43](#)).
- (3) [1996 c. 18](#). There are no relevant amendments to section 139.

Commencement Information

I3 Art. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

Functions

4.—(1) The Authority is to exercise the functions of the Secretary of State in respect of counter fraud which are identified in paragraph (2), subject to and in accordance with this article and directions to the Authority given by the Secretary of State.

(2) The counter fraud functions the Authority is to exercise are—

- (a) taking action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities, carried out against or otherwise affecting the health service in England;
- (b) taking action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities against or otherwise affecting the Secretary of State in relation to his responsibilities for the health service in England;
- (c) operational matters relating to the functions described in (a) and (b);
- (d) providing advice to bodies and persons identified in directions given by the Secretary of State to the Authority about matters relevant to counter fraud.

(3) Schedule 1 has effect, providing for directions to the Authority as to the exercise by the Authority and its senior officers of the Secretary of State's functions under sections 197(4) (notice requiring production of documents) and 198 (production of documents) of the NHS Act ("delegated functions") and making further provision pursuant to section 199(4) in connection with the exercise of those delegated functions.

(4) The Authority has the function of assisting and providing information to the Secretary of State when requested in relation to matters relevant to counter fraud.

(5) Nothing in this Order prevents the Authority from undertaking activity in accordance with arrangements made with it by Welsh Ministers pursuant to section 83 of the Government of Wales Act 2006(5).

(6) In this article—

“counter fraud” refers to the actions which may be taken in performance of the Secretary of State's counter fraud functions described in section 195(2) of the NHS Act;

“investigating” has the meaning given in section 195(5) of the NHS Act.

Commencement Information

I4 Art. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

Constitution and Governance

5.—(1) Subject to paragraph (2), the Authority is to consist of—

- (a) a chairperson;

(4) Section 197 was amended by section 55(1) of, and paragraph 105 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012.

(5) 2006 c. 32. Section 83(1)(c) was amended by section 4(2)(a) of the Wales Act 2014 (c. 29).

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (b) in addition to the chairperson, not less than three members who are not officers of the Authority; and
 - (c) at least two but not more than three members who are officers of the Authority, and those officer members must include the persons who for the time being hold the offices of chief executive and director of finance.
- (2) During the transitional period, the Authority need consist only of—
- (a) a chairperson;
 - (b) one other member who is not an officer of the Authority;
 - (c) an officer member appointed to act as chief executive of the Authority;
 - (d) an officer member appointed to act as director of finance of the Authority.

Commencement Information

I5 Art. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

Appointments and tenure, etc

6. Schedule 2 has effect in respect of the appointment and tenure of the chairperson and other members of the Authority, of the appointment and tenure of officers of the Authority, including the making of certain temporary appointments in respect of the transitional period, and as to procedural matters relating to the conduct of the Authority’s business.

Commencement Information

I6 Art. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

PART 3

Transfer of Staff and Property etc from the NHS Business Service Authority and provisions for continuity in relation to the work of NHS Protect and the Authority

Interpretation

- 7.—(1)** In this Part—
- (a) “liabilities” do not include criminal liabilities (other than in paragraph (2));
 - (b) “NHS Protect” means the division within the BSA known as the Counter Fraud and Security Management Service Division, and also known as NHS Protect, maintained by the BSA in accordance with directions of the Secretary of State given on 1st June 2016⁽⁶⁾.
- (2) This Part does not apply to transfer, or provide for continuity in relation to, criminal liabilities of the BSA or proceedings arising from such liabilities.

⁽⁶⁾ The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Directions 2016, a copy of which can be found at: https://www.nhsbsa.nhs.uk/sites/default/files/2017-02/Section_2_-_B1_NHSBSA_Directions_2016.pdf, or may be obtained by writing to the Department of Health Correspondence Unit, Richmond House, 79 Whitehall, London SW1A 2NS.

Commencement Information

17 Art. 7 in force at 1.11.2017, see [art. 1\(1\)](#)

Transfer of officers from the BSA to the Authority

- 8.—**(1) This article applies to any person who—
- (a) immediately before the transfer date is employed by the BSA within NHS Protect; and
 - (b) has been notified in writing by the BSA before the transfer date that they are to be transferred to the employment of the Authority on the transfer date.
- (2) Any person to whom paragraph (1) applies is, on the transfer date, transferred to the employment of the Authority.
- (3) The contract of employment of a person whose employment transfers 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 BSA under, or in connection with, the contract of employment of any person whose employment transfers under paragraph (2), are to transfer to the Authority on the transfer date;
 - (b) any act or omission before the transfer date of or in relation to the BSA, 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 informed the BSA that the person objects 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), this article operates so as to terminate that person's contract of employment with the BSA on the transfer date.
- (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 BSA.
- (8) Where the transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by the employer.
- (9) No damages are to 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.
- (11) Records of the BSA's relating to the employment of officers within NHS Protect whose contracts of employment are to transfer to the Authority pursuant to this article are to transfer to the Authority on the transfer date.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

(12) Where a person whose contract of employment is transferred by this article is dismissed by the Authority, that person is to be treated, for the purposes of Part 10 of the Employment Rights Act 1996(7) (unfair dismissal) as having been unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(13) This paragraph applies where the sole or principal reason for a person's dismissal is an economic, technical or organisational reason entailing changes in the workforce of the Authority after the transfer.

(14) Where paragraph (13) applies, paragraph (12) does not apply and, without prejudice to section 98(4) of the Employment Rights Act 1996 (test of fair dismissal)(8), for the purposes of sections 98(1) (reason for dismissal) and 135 (the right to a redundancy payment) of that Act—

- (a) the dismissal is to be regarded as having been for redundancy where section 98(2)(c) of that Act applies; or
- (b) in any other case, the dismissal is to be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position that the employee held.

(15) Paragraph (12) does not apply in relation to a dismissal of an employee if the application of section 94 of the Employment Rights Act 1996 (right not to be unfairly dismissed) to that dismissal is excluded by or under any provision of that Act, the Employment Tribunals Act 1996(9) or the Trade Union and Labour Relations (Consolidation) Act 1992(10).

(16) The following provisions apply only for purposes of giving effect to a transfer under paragraph (2), as read with paragraphs (3) and (4), and are subject to paragraphs (5) to (10) and (12) to (15)—

- (a) anything (including legal proceedings) which, immediately before the transfer date, is in the process of being done by, or in relation to, the BSA in connection with the employment of persons whose employment transfers under paragraph (2) 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;
- (b) any instrument made by, or in relation to, the BSA in connection with the employment of persons whose employment transfers under paragraph (2) continues in force until it is varied or revoked by the Authority;
- (c) any form supplied by NHS Protect in connection with the employment of persons whose employment transfers under paragraph (2) continues to be valid until it is varied or revoked by the Authority and as if any reference in that form to NHS Protect or the BSA (in respect of that employment) were a reference to the Authority;
- (d) any reference to NHS Protect or the BSA in any contract, arrangement, agreement, instrument or other document in connection with the employment of persons whose employment transfers under paragraph (2) is to be treated as a reference to the Authority.

Commencement Information

18 Art. 8 in force at 1.11.2017, see [art. 1\(1\)](#)

(7) 1996 c. 18.

(8) Section 98 was amended by sections 9 and 44 of, and paragraphs 5 and 15 of Schedule 4 and table 2 of Schedule 9 to, the Employment Relations Act 1999 (c. 26); by section 53 of, and paragraphs 24 and 32 of Schedule 7 to, the Employment Act 2002 (c. 22); by section 57(1) of, and paragraph 30 of Schedule 1 to, the Employment Relations Act 2004 (c. 24); and by SI 2006/1031 and 2011/1069.

(9) 1996 c. 17.

(10) 1992 c. 52.

Transfer of property from the BSA to the Authority

9.—(1) Subject to paragraph (4), the items of property of the BSA identified in the document entitled “*The NHS Business Services Authority Transfer of Property to the NHS Counter Fraud Authority Agreement 2017*” and signed on behalf of the BSA and of the Secretary of State on 26th September 2017, are to be transferred to the Authority on the transfer date.

(2) All liabilities (actual or contingent) of the BSA relating to the property referred to in paragraph (1) are to be transferred to the Authority on the transfer date.

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

(4) Paragraph (1)—

(a) does not apply to transfer property taking the form of a contract of employment but does apply to transfer any other form of property listed in the document mentioned in that paragraph, including—

(i) an agreement or contract, including a contract for services;

(ii) a licence to occupy premises;

(iii) intellectual property including case management records and databases;

(b) is without prejudice to any other arrangements the BSA may make with the Authority and any third parties for the transfer of property not transferred by virtue of this Order.

Commencement Information

I9 Art. 9 in force at 1.11.2017, see [art. 1\(1\)](#)

Transfer of data, records and information from the BSA to the Authority

10. So far as not already transferred by virtue of article 8 or 9, any data, record or information held by NHS Protect which, before the transfer date, NHS Protect used for purposes of any of the functions that the Authority is to exercise in accordance with article 4, is to transfer to the Authority.

Commencement Information

I10 Art. 10 in force at 1.11.2017, see [art. 1\(1\)](#)

Transfer of certain BSA liabilities

11.—(1) All liabilities (actual or contingent) of the BSA relating to relevant functions are to transfer to the Authority on the transfer date.

(2) Any right relating to a relevant function that was immediately before the transfer date enforceable by or against the BSA is, on or after the transfer date, to be enforceable by or against the Authority.

(3) In this article, “relevant function” means any function of the Secretary of State which was exercisable by NHS Protect before the transfer date and which the Authority is to exercise pursuant to article 4.

*Status: Point in time view as at 30/10/2020.**Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)***Commencement Information****I11** Art. 11 in force at 1.11.2017, see [art. 1\(1\)](#)**Supplementary provisions****12.**—(1) In this article the following matters are “relevant matters”—

- (a) the relevant functions as defined in article 11(3);
- (b) any property, rights or liabilities transferred by virtue of article 9, 10 or 11; or
- (c) any contract, arrangement or agreement entered into by the BSA in connection with any property, rights or liabilities transferred by virtue of articles 9, 10 or 11.

(2) Any act or omission of, or in relation to, the BSA before the transfer date in connection with the relevant matters is deemed to have been an act or omission of, or in relation to, the Authority.

(3) Anything (including legal proceedings) which, immediately before the transfer date, is in the process of being done by, or in relation to, the BSA in connection with the relevant matters 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.

(4) Any instrument made by, or in relation to, the BSA in connection with the relevant matters continues in force until it is varied or revoked by the Authority.

(5) Any form supplied by NHS Protect in connection with the relevant matters continues to be valid until it is varied or revoked by the Authority and as if any reference in that form to the NHS Protect or the BSA (in respect of the relevant matters) were a reference to the Authority.

(6) Any reference to NHS Protect or the BSA in any contract, arrangement, agreement, instrument or other document in connection with the relevant matters is to be treated as a reference to the Authority.

(7) Where the rights and liabilities under a contract, agreement, arrangement or instrument entered into or agreed by the BSA are transferred as a consequence of this Part, that contract, agreement, arrangement or instrument is to continue to have effect on or after the transfer date as if it were originally entered into by the Authority.

(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 by virtue of article 9, 10 or 11.

Commencement Information**I12** Art. 12 in force at 1.11.2017, see [art. 1\(1\)](#)**PART 4****Abolition of the Authority****Abolition required under section 28A of the NHS Act 2006****13.** Schedule 3 has effect in respect of the abolition of the Authority on the abolition date.

Commencement Information

I13 Art. 13 in force at 1.11.2017, see [art. 1\(1\)](#)

PART 5

Revocation of Regulations

Revocation of Regulations delegating functions under Part 10 of the NHS Act 2006

14. The National Health Service Delegation of Functions to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Counter Fraud and Security Management) Regulations 2008(**11**) are revoked.

Commencement Information

I14 Art. 14 in force at 1.11.2017, see [art. 1\(1\)](#)

Signed by authority of the Secretary of State for Health.

O'Shaughnessy
Parliamentary Under-Secretary of State,
Department of Health

(11) [SI 2008/1148](#), to which no amendment has been made.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

SCHEDULE 1

Article 4(3)

Delegated functions under Part 10 of the NHS Act

Interpretation

1. In this Schedule—

“accredited Counter Fraud Specialist” means a person accredited by the Counter Fraud Professional Accreditation Board⁽¹²⁾ or similar organisation providing counter fraud prevention, detection and investigation accreditation to government departments;

“authorised officer” means officers authorised under paragraph 4(1);

“the delegated functions” means the functions delegated to the Authority under paragraph 2(1);

“designated officer” means an officer designated pursuant to paragraph 3(1) and, in respect of any given authorisation granted to or being considered in relation to a senior officer or authorised officer, “the designated officer concerned” means the designated officer who is considering or who granted that authorisation.

Commencement Information

I15 Sch. 1 para. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

Delegation of functions

2.—(1) The Secretary of State directs pursuant to section 7 of the NHS Act that the functions of the Secretary of State under sections 197⁽¹³⁾ (notice requiring production of documents) and 198 (production of documents) of the NHS Act are to be exercisable by the Authority, subject to the requirements of this Schedule.

(2) The Secretary of State further directs that the delegated functions are to be exercised on behalf of the Authority by its authorised officers, as provided for in this Schedule.

(3) For the purposes of section 199(3) of the NHS Act (which provides for the level of seniority of an officer to be specified in directions), an officer is a senior officer if the officer is of a grade within or above Agenda for Change pay band 7.

Commencement Information

I16 Sch. 1 para. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

Designated officers

3.—(1) The Authority must designate officers to undertake its functions under paragraph 4, and other functions of designated officers under this Schedule.

(2) A designated officer must be an accredited Counter Fraud Specialist.

⁽¹²⁾ The Counter Fraud Professional Accreditation Board is a non-statutory regulatory body financed, and run by representatives from, in particular, the Department of Work and Pensions and its agencies, the Department of Health, certain local government bodies, HM Revenue and Customs, and the UK Passport Agency, and hosted by the University of Portsmouth, with the purposes of ensuring the delivery of professional counter fraud training and academic study and that, once qualified, those who are accredited maintain their professional standards.

⁽¹³⁾ Section 197 was amended by section 55(1) of, and paragraph 105 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012.

(3) A designated officer discharging functions of the Authority under paragraph 4 must be of a grade above Agenda for Change pay band 8b.

(4) A designated officer discharging other functions under this Part must be of a grade within or above Agenda for Change pay band 8b.

Commencement Information

I17 Sch. 1 para. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

Authorising senior officers

4.—(1) The Authority is to authorise such of its senior officers meeting the fitness requirement in paragraph 5 as it may require to act on its behalf in the exercise of the delegated functions.

(2) The Authority may revoke such an authorisation if it is satisfied having regard to all relevant circumstances that it is appropriate to do so.

Commencement Information

I18 Sch. 1 para. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

Fitness requirements for authorised officers

5. A senior officer meets the fitness requirement if the officer is an officer—

- (a) whom the designated officer concerned considers has the knowledge, skills and experience necessary to exercise the delegated functions; and
- (b) who is an accredited Counter Fraud Specialist.

Commencement Information

I19 Sch. 1 para. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

Records of authorised officers

6.—(1) The Authority must establish and maintain a record in respect of all authorised officers.

(2) The record referred to in sub-paragraph (1) must include—

- (a) the name of the authorised officer;
- (b) a statement that the authorised officer is an accredited Counter Fraud Specialist;
- (c) the name of the designated officer concerned;
- (d) the date that the authorisation under paragraph 4 was granted; and
- (e) where appropriate, the date on which the authorisation was revoked.

Commencement Information

I20 Sch. 1 para. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Statement of authority

7.—(1) The Authority must issue an authorised officer with a written statement providing evidence of that officer’s authority to act in the exercise of the delegated functions.

(2) The statement issued under sub-paragraph (1) must include—

- (a) the name and business address of the authorised officer;
- (b) a statement that the officer is authorised to act in the exercise of the delegated functions which must include the date on which the officer was authorised to exercise the delegated functions;
- (c) the signature of the designated officer concerned;
- (d) the name and logo of the Authority; and
- (e) a reference to the officer’s authorisation being granted by virtue of Part 10 of the NHS Act.

Commencement Information

I21 Sch. 1 para. 7 in force at 1.11.2017, see [art. 1\(1\)](#)

Production of statement

8. An authorised officer exercising the delegated functions must produce the statement issued to that officer in accordance with paragraph 7, or a copy of it—

- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring the production of documents); or
- (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person’s knowledge and belief, where documents are.

Commencement Information

I22 Sch. 1 para. 8 in force at 1.11.2017, see [art. 1\(1\)](#)

Requirement for specific authorisations in relation to personal records

9.—(1) An authorised officer must obtain a specific authorisation from a designated officer (other than that authorised officer) before acting in the exercise of the delegated functions in relation to personal records⁽¹⁴⁾.

(2) A specific authorisation must be applied for in relation to each personal record or group of personal records sought in any one investigation.

(3) A specific authorisation given under sub-paragraph (1) may apply only to the personal record or group of personal records in respect of which the application for that authorisation was made.

(4) An authorised officer must comply with any conditions imposed by a specific authorisation in relation to personal records.

⁽¹⁴⁾ “Personal records” for these purposes is defined in section 210(1) of the National Health Service Act 2006.

Commencement Information

I23 Sch. 1 para. 9 in force at 1.11.2017, see [art. 1\(1\)](#)

Procedure for specific authorisations

10.—(1) An authorised officer seeking a specific authorisation in relation to personal records must complete a form provided to that authorised officer for that purpose by a designated officer.

(2) A designated officer must consider the application having regard to all relevant matters and in particular—

- (a) the description of the documents sought;
- (b) the reasons for the application;
- (c) whether or not each document sought is necessary for the purposes of the exercise of the delegated functions; and
- (d) the description of the proposed arrangements for the safeguarding of the documents whilst in the possession or under the control of the Authority.

Commencement Information

I24 Sch. 1 para. 10 in force at 1.11.2017, see [art. 1\(1\)](#)

Records of specific authorisations in relation to personal records

11. The Authority must establish and maintain records of all applications for specific authorisations in relation to personal records, including details of whether or not the specific authorisation was granted.

Commencement Information

I25 Sch. 1 para. 11 in force at 1.11.2017, see [art. 1\(1\)](#)

Production of evidence of specific authorisation in relation to personal records

12. Where an authorised officer has a specific authorisation to act in the exercise of the delegated functions in relation to personal records, that authorised officer must, in addition to producing the statement issued to that authorised officer in accordance with paragraph 7, or a copy of it, produce evidence of that specific authorisation—

- (a) at the time of serving a notice under section 197(2) of the NHS Act (notice requiring production of documents); or
- (b) when requiring a person under section 198(6) of the NHS Act (statement required upon failure to produce documents) to state, to the best of that person's knowledge and belief, where documents are.

Commencement Information

I26 Sch. 1 para. 12 in force at 1.11.2017, see [art. 1\(1\)](#)

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Content of notices

13.—(1) A notice to be served under section 197 of the NHS Act by the Authority must in addition to meeting the requirements of section 197(4) to (6) and (9) of the NHS Act, include—

- (a) the name and address of the NHS body, health service provider, NHS contractor, public health service contractor, or statutory health body (as the case may be), whom the Authority has reasonable grounds to suspect has possession or control of the documents sought;
- (b) the job title and, if known, the name of the person who the Authority believes is accountable for the documents;
- (c) a reference to the notice’s being served pursuant to Part 10 of the NHS Act;
- (d) details of the arrangements for the production of the documents including the place at which the documents are to be produced;
- (e) notification of the penalties for failing to comply with a notice;
- (f) the name, business address and signature of the authorised officer serving the notice; and
- (g) the name and the logo of the Authority.

(2) For the purposes of this paragraph, the terms “NHS body”, “health service provider”, “NHS contractor”, “public health service contractor”, and “statutory health body” have the meanings given in subsections (2), (4), (5), (5A) and (6) respectively of section 196(15) of the NHS Act (persons and bodies about which provision is made in Part 10 of that Act).

Commencement Information

I27 Sch. 1 para. 13 in force at 1.11.2017, see [art. 1\(1\)](#)

SCHEDULE 2

Article 6

Appointments, tenure, and conduct of business by the Authority

PART 1

Appointment and tenure of office of chairperson and non-officer members, and provision about interim arrangements

Appointment and tenure of chairperson and non-officer members

1.—(1) The chairperson and members of the Authority who are not officers of the Authority (in this Schedule, “non-officer members”) are to be appointed by the Secretary of State.

(2) Subject to sub-paragraph (3) of this paragraph and to paragraph 3, the term of office of the chairperson and non-officer members is to be for such period as the Secretary of State specifies on making the appointment.

(3) During the transitional period, the Secretary of State may make appointments under sub-paragraph (1) which—

(15) Subsection (2) was amended, and subsection (5A) was inserted, by section 55(1) of and paragraph 104 of Part 9 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). See also amendment made to the definition “NHS body” in section 275(1) of the NHS Act by section 55(1) of, and paragraph 138 of Part 12 of Schedule 4 to, the 2012 Act.

- (a) may be terminated upon written notice by the Secretary of State; and
 - (b) in any event terminate at the end of the transitional period if it not previously terminated.
- (4) Subject to paragraph 3, the chairperson and any non-officer member are, on the termination of their respective terms of appointment, to be eligible for re-appointment.

Commencement Information

I28 Sch. 2 para. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

Appointment and tenure of chief executive and other officers, including interim arrangements

2.—(1) On commencement of this Order, the chairperson must, in consultation with, and with the consent of, the Secretary of State, appoint on such terms as may be approved by the Secretary of State an officer member to act temporarily as chief executive of the Authority during the transitional period and a second officer member to act temporarily as director of finance during the transitional period (“interim appointments”).

(2) The officer member appointed to act temporarily as chief executive under sub-paragraph (1) must have knowledge of operational aspects of the health service and recent experience of heading a body or division within a body with functions in relation to the prevention, detection and investigation of fraud similar to those to be exercised by the Authority.

(3) During the transitional period, the chairperson, may, with the consent of the Secretary of State—

- (a) give to one or both officer members appointed under sub-paragraph (1) notice of termination of appointment; and
- (b) in any circumstances where an interim appointment has ended, make such further interim appointment, on such terms as may be approved by the Secretary of State, as the chairperson thinks fit to ensure the proper discharge of the Authority’s functions.

(4) An interim appointment made under sub-paragraph (1) or (3)(b) must terminate no later than the end of the transitional period, unless, with the consent of the Secretary of State, it is extended temporarily by agreement between the person holding the appointment and the chairperson.

(5) Except where the chairperson is required or chooses to make an interim appointment under sub-paragraph (1) or (3)(b), the chairperson must appoint, on such terms as may be approved by the Secretary of State, an officer member to act as chief executive of the Authority and a second officer member to act as director of finance of the Authority.

(6) At any time, the chairperson may appoint, on such terms as may be approved by the Secretary of State, an officer member in addition to the chief executive and director of finance.

(7) Before taking any of the actions mentioned in sub-paragraphs (1) and (3) to (6), the chairperson must obtain the written agreement of the non-officer members.

(8) Where for any period the chief executive is suspended from discharging the duties of a chief executive of the Authority—

- (a) the chief executive must also be suspended for that period from performing the functions ordinarily exercised by the chief executive as a member, and
- (b) any person appointed to act in place of the chief executive must also be appointed to perform the functions that the chief executive ordinarily exercised as a member of the Authority for that period.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

(9) The chief executive may appoint further officers who are not members of the Authority, subject, in the case of appointments at Agenda for Change grade 8b or above, to the agreement of the chairperson.

(10) A person appointed under sub-paragraph (1), (3)(b), (5) or (6) is, on the termination of the terms of that appointment, eligible for re-appointment.

Commencement Information

I29 Sch. 2 para. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

Disqualification of persons for appointment (chairperson and non-officer members)

3.—(1) Subject to paragraph 4, a person is disqualified for appointment as the chairperson or as a non-officer member if any of the following apply—

- (a) the person holds a position as chairperson, member, officer, governor or director with, or is employed by, or contracted in any capacity to provide services to—
 - (i) any health service body; or
 - (ii) any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
- (b) the person has—
 - (i) within the previous five years been convicted in the United Kingdom of any criminal offence not mentioned in sub-paragraph (c) or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence not mentioned in sub-paragraph (c);
 - (ii) as a consequence of that conviction, been sentenced to a sentence of imprisonment (whether suspended or not); and
 - (iii) neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal;
- (c) the person has, on or after attaining the age of 18 years, in respect of acts or omissions occurring on or after the person's attaining the age of 18 years—
 - (i) been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence involving fraud, theft or bribery and the conviction has not been quashed on appeal;
 - (ii) been party to an agreement which is the subject of a decision under section 31 (decisions following an investigation) of the Competition Act 1998⁽¹⁶⁾, or subject to directions under section 32 (directions in relation to agreements) or 33 (directions in relation to conduct) arising from such a decision, including interim directions under section 35 (interim measures), of the Competition and Markets Authority in respect of prohibitions in Chapter 1 (agreements preventing, restricting or distorting competition) or Chapter 2 (abuse of dominant position) of Part 1 of the Competition Act 1998 or under Article 101(1) or 102 of the Treaty on the Functioning of the European Union, unless the decision has been successfully appealed under section 46

⁽¹⁶⁾ 1998 c. 41. Chapters 1, 2 and 3 of Part 1 have been amended by section 70 of, and Schedule 2 to, the Criminal Justice and Police Act 2001 (c. 16); section 40 of, and Sched 9 to, the Constitutional Reform Act 2005 (c. 4); sections 198, 203, 207 and 278 of, and Schedules 25 and 26 to, the Enterprise Act 2002 (c. 40); by SI 2004/1261; by SI 2011/1043; by SI 2012/1809; by sections 26(3), 39 to 42, 44, 45 and 57 of, and Schedules 5, 13 and 15 to, the Enterprise and Regulatory Reform Act 2013 (c. 24).

- (appealable decisions) or 49 (further appeals) of the Competition Act 1998⁽¹⁷⁾ and appeal proceedings have concluded; or
- (iii) been subject to, or been party to an agreement which was, the subject of a regulatory or judicial finding or decision, other than one which was successfully reviewed or appealed, in respect of matters similar to those mentioned in para (ii) pursuant to the repealed legislation mentioned in sections 1 and 17 of the Competition Act 1998;
- (d) the person is the subject of a bankruptcy order within the meaning of section 381 of the Insolvency Act 1986⁽¹⁸⁾, or of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽¹⁹⁾, or of a debt relief restrictions order⁽²⁰⁾ or an interim debt relief restrictions order under Schedule 4ZB to that Act, or is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989⁽²¹⁾ or sequestration of the person's estate has been awarded and not recalled, or the person is a debtor who has not been discharged within the meaning of the Bankruptcy (Scotland) Act 2016⁽²²⁾, or is the subject of a bankruptcy restrictions order or interim bankruptcy restrictions order under Part 13 of that Act (bankruptcy restrictions orders etc);
- (e) the person has been dismissed within the previous five years, otherwise than by reason of redundancy, from any paid employment with a health service body or any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
- (f) the tenure of office of the person as the chairperson, a member, a director or a governor of a health service body has been terminated on the grounds—
- (i) that it was not in the interests of the health service body or of the health service that the person should continue to hold the office;
 - (ii) of non-attendance at meetings;
 - (iii) of non-disclosure of a pecuniary interest; or
 - (iv) of misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
- (g) the tenure of office of the person as the chairperson, a member, a director or a governor of any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act has been terminated on the grounds of—
- (i) non-disclosure of a pecuniary interest; or

⁽¹⁷⁾ Section 46 was amended by section 21 of, and paragraphs 1 and 2 of Schedule 5 to, the Enterprise Act 2002 (c. 40); by regulation 4 of, and Schedule 1 to, SI 2004/1261; by article 3(1) of, and Part 1 of the Schedule to, SI 2012/1809; by section 26(3) of, and paragraphs 1 and 26 of Part 1 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 (c. 24). Section 49 was amended by section 21 of, and paragraphs 1 and 4 of Schedule 5 to, the Enterprise Act 2002; by section 81 of, and paragraphs 1 and 9 of Schedule 8 to, the Consumer Rights Act 2015 (c. 15), and by regulation 3 of, and Schedule 2 to, SI 2017/385.

⁽¹⁸⁾ 1986 c. 45.

⁽¹⁹⁾ Schedule 4A to the Insolvency Act 1986 was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c. 40), and amended by section 71(3) of, and paragraph 63 of Schedule 19 to, the Enterprise and Regulatory Reform Act 2013, and by section 135(2) of the Small Business, Enterprise and Employment Act 2013 (c. 26). By virtue of paragraph 8 of Schedule 4A to the Insolvency Act 1986, the reference to a person subject to a bankruptcy restrictions order includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect under that Schedule.

⁽²⁰⁾ Schedule 4ZB to the Insolvency Act 1986 was inserted by section 108(2) of and Schedule 19 to the Tribunals, Courts and Enforcement Act 2007 (c. 15). By virtue of paragraph 8 of Schedule 4ZB to the Insolvency Act 1986, the reference to a person subject to a debt relief restrictions order includes a reference to a person in respect of whom a debt relief restrictions undertaking has effect under that Schedule.

⁽²¹⁾ Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (N.I. 19)) was inserted by article 13(2) of, and Schedule 5 to, the Insolvency (Northern Ireland) Order 2005 (SI 2005/1455 (N.I. 10)).

⁽²²⁾ 2016 asp 21.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (ii) misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
 - (h) the person is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986(23), the Companies (Northern Ireland) Order 1986(24), the Company Directors Disqualification (Northern Ireland) Order 2002(25) or to an order made under section 429(2)(b) of the Insolvency Act 1986(26) (disabilities on revocation of administration order against an individual);
 - (i) the person has been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which was contributed to or facilitated by the person’s conduct; or
 - (ii) disqualified from being a charity trustee in Scotland pursuant to section 69 of the Charities and Trustee Investment (Scotland) Act 2005(27);
 - (j) the person—
 - (i) was refused inclusion in a list maintained pursuant to regulations made under sections 91 (persons providing primary medical services), 103 (persons providing primary dental services), 123 (persons performing primary ophthalmic services) or 147A (performers of pharmaceutical services and assistants) of the NHS Act(28) by reason of any matter concerning the person’s honesty or probity;
 - (ii) was included in such a list but that inclusion is suspended or subject to conditions by reason of any matter concerning the person’s honesty or probity;
 - (iii) was included in such a list but has been removed or contingently removed from that list by reason of any matter concerning the person’s honesty or probity;
 - (iv) is similarly prevented from providing primary medical, dental ophthalmic or pharmaceutical services elsewhere in the United Kingdom in circumstances corresponding to those set out in paragraphs (i) to (iii) in relation to England, and in relation to whether a matter concerns the person’s honesty or probity, the question, in any case that is disputed by the person concerned, is to be determined by the Secretary of State or, where requested by the Secretary of State in cases not concerning the chairperson’s qualification to hold office, the chairperson.
- (2) Subject to sub-paragraph (3), for the purposes of this paragraph, “health service bodies” means—
- (a) the Board(29);

(23) 1986 (c. 46). See in particular section 1A, inserted by section 6 of the Insolvency Act 2000 (c. 39) and since amended by section 111 of, and paragraphs 1 and 3 of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015 (c. 26).

(24) SI 1986/1032 (N.I. 6).

(25) SI 2002/3150 (N.I. 4).

(26) Schedule 16 to the Tribunal, Courts and Enforcement Act 2007 (c. 15) amends section 429 but the amendment is not yet in force.

(27) 2005 asp 10.

(28) Section 91 was amended by section 55(1) of, and paragraph 35 of Part 4 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 106 was amended by section 55(1) of, and paragraph 47 of Part 5 of Schedule 4 to, the 2012 Act. Section 123 was amended by section 55(1) of, and paragraph 60 of Part 6 of Schedule 4 to, the 2012 Act. Section 147A was inserted by section 208(2) of the 2012 Act. Subsection 3 of section 147A was amended by paragraphs 120 and 123 of Part 7 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9). See also section 147B which was inserted by the same provision in the 2012 Act and makes further provision about regulations under section 147A.

(29) “The Board” is defined in section 275 of the National Health Service Act 2006 (c. 41) (“the 2006 Act”). Relevant amendments to section 275 were made by section 55 of, and paragraph 138 of Part 12 of Schedule 4 to, the 2012 Act. The NHS Commissioning Board was established pursuant to section 1H of that Act. Section 1H was inserted by section 9(1) of the 2012 Act.

- (b) a clinical commissioning group(30);
- (c) an NHS trust(31);
- (d) an NHS foundation trust(32);
- (e) a special health authority;
- (f) Monitor(33);
- (g) a combined authority or local authority in England carrying out functions provided for in the NHS Act, pursuant to regulations under the Local Democracy, Economic Development and Construction Act 2009(34) or, as the case may be, an order under the Cities and Local Government Devolution Act 2016(35), or to arrangements made under section 13Z, 13ZA, 13ZB, 14Z3A or 75 of the NHS Act(36);
- (h) Care Quality Commission(37);
- (i) Health Education England(38);
- (j) Health Research Authority(39)
- (k) Health and Social Care Information Centre(40);
- (l) Human Fertilisation and Embryology Authority(41);
- (m) Human Tissue Authority(42);
- (n) National Institute for Health and Care Excellence(43);
- (o) an executive agency of the Secretary of State for Health [^{F2}and Social Care].

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- (30) Section 14D of the 2006 Act provides for the establishment of clinical commissioning groups. That section was inserted by section 25(1) of the 2012 Act.
- (31) Section 25 of the 2006 Act provides for the establishment by order of NHS Trusts. Repeal of that section is provided for by section 179(2) of the 2012 Act, but no date has been appointed for section 179(2) to come into force.
- (32) See Chapter 5 of Part 2 of the 2006 Act. NHS foundation trusts are public benefit corporations authorised by Monitor under that Chapter. Relevant amendments to Chapter 5 were made by sections 111(11), 150(5), 151(9), 156(5), 159(1 to (3), (5) to (7), 160(1), (2) and (3), 161(1), 178(5) of and paragraphs 8, 9(1) and 10(1) of Schedule 13 to the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), by section 95 of and paragraph 83 of Part 3 of Schedule 5 to the Health and Social Care Act 2008 (c. 14), and by section 241 of and Part 18 of Schedule 18 to the Local Government and Public Involvement in Health Act 2007 (c. 28). Further amendments to the 2006 Act repealing certain relevant provisions in Chapter 5 of Part 2 thereof were made by sections 159(4), 180(1) to (4) of and Schedule 13, paragraphs 8, 9 and 10 of the 2012 Act but no date has been appointed for their commencement.
- (33) Monitor is the body corporate previously known as the Independent Regulator of NHS Foundation Trusts, which was first established by section 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43). That body’s name was changed to Monitor, and its existence continued, by section 61 of the 2012 Act.
- (34) 2009 c. 20. As amended by section 7 of the Cities and Local Government Devolution Act 2016 (c. 1) (“the 2016 Act”), sections 105A and 105B provide, subject to certain tests and limitations, and with certain exceptions, including those set out in section 18 of the 2016 Act in relation to the health service, for orders to be made conferring functions of public authorities upon combined authorities.
- (35) 2016 c. 1. Sections 16 and 17 provide, subject to certain tests and limitations, and with certain exceptions, including those set out in section 18 of the 2016 Act, for regulations to be made conferring functions of public authorities on local authorities.
- (36) Section 13Z was inserted by section 23(1) of the 2012 Act, and sections 13ZA and 13ZB were inserted by section 19 of and Schedule 4 to the 2016 Act. These three provisions permit the NHS Commissioning Board to make arrangements for the exercise of its functions with certain bodies which potentially may include local authorities and combined authorities. Section 14Z3A was inserted by section 19 of and Schedule 4 to the 2016 Act and permits clinical commissioning groups to make arrangements for their functions to be exercised jointly by clinical commissioning groups and a combined authority. Section 75 of the NHS Act was also amended by section 19 of and Schedule 4 to the 2016 Act and provides for regulations to be made permitting partnership arrangements to be made between prescribed health service bodies and prescribed local government bodies which in certain circumstances may include combined authorities.
- (37) The Care Quality Commission was established by section 1 of the Health and Social Care Act 2008 (c. 14).
- (38) Health Education England was established by section 96 of the Care Act 2014 (c. 23).
- (39) The Health Research Authority was established by section 109 of the Care Act 2014.
- (40) The Health and Social Care Information Centre was established by section 252 of the 2012 Act.
- (41) The Human Fertilisation and Embryology Authority was established by section 5 of the Human Fertilisation and Embryology Act 1990 (c. 37).
- (42) The Human Tissue Authority was established by section 13 of the Human Tissue Act 2004 (c. 30).
- (43) The National Institute for Health and Care Excellence was established by section 232 of the 2012 Act.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

(3) For the purposes of sub-paragraph (1)(a), in the case of an appointment of a non-officer member other than the chairperson the first reference in that sub-paragraph to “health service body” does not include reference to an NHS trust or foundation trust.

(4) For the purposes of sub-paragraph (1)(b) and (c), the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted.

(5) In relation to a person who would otherwise be disqualified under sub-paragraph (1)(c), the Secretary of State may in his discretion decide that a conviction for an offence of theft or fraud is not to disqualify a person from office if the offence is one it is appropriate to overlook by reason of the youth of the person at the time of the commission of the offence or the impact of the offence or other mitigating factors.

(6) For the purposes of sub-paragraph (1)(e), a person is not to be treated as having been in paid employment by reason only of having been—

- (a) in the case of an NHS foundation trust, the chairperson, a governor or a non-executive director of the trust;
- (b) in the case of a clinical commissioning group, the chair or a member of the governing body of the group; or
- (c) in the case of any other health service body, the chairperson, a member or a director of the health service body in question.

Textual Amendments

F2 Words in [Sch. 2 para. 3\(2\)\(o\)](#) inserted (11.4.2018) by [The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions \(Commonhold Land\) Order 2018 \(S.I. 2018/378\)](#), [art. 1\(2\)](#), [Sch. para. 21\(v\)](#) (with [art. 14](#))

Commencement Information

I30 Sch. 2 para. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

Cessation of disqualification

4.—(1) Subject to paragraph (2), where a person is disqualified under paragraph 3(1)(e), (f), (g), (i) or (j) that person may, after the expiry of two years beginning on the date of the dismissal, removal, refusal or suspension (as the case may be), apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease.

(2) Where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application, and this sub-paragraph is to apply to any subsequent application.

Commencement Information

I31 Sch. 2 para. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

Termination of tenure of office of chairperson and non-officer members

5.—(1) The chairperson or a non-officer member may resign from that office at any time during the term of that office by giving notice in writing to the Secretary of State.

(2) Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Authority or of the health service that the chairperson or non-officer member should continue to hold office, the Secretary of State may forthwith terminate the chairperson's or non-officer member's tenure of office by giving the chairperson or that member notice in writing to that effect.

(3) If the chairperson or a non-officer member fails to attend three successive meetings of the Authority the Secretary of State must forthwith terminate that person's tenure of office unless satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the person in question will be able to attend meetings of the Authority within such a period as the Secretary of State considers reasonable.

(4) Where a person has been appointed to be the chairperson or a non-officer member, and becomes disqualified for appointment under paragraph 3, the chairperson or that member, as the case may be, must notify the Secretary of State in writing of such disqualification.

(5) Where it comes to the notice of the Secretary of State (whether under sub-paragraph (4) or otherwise) that at the time of a person's appointment or later that person was so disqualified, the Secretary of State must forthwith declare that the person in question was not duly appointed and notify that person in writing to that effect, and upon receipt of any such notification, the person's tenure of office, if any, must be terminated, and the person must cease to act as chairperson or member, as the case may be.

(6) If it appears to the Secretary of State that the chairperson or a non-officer member has failed to comply with paragraph 14 (disability on account of pecuniary interest) the Secretary of State may forthwith terminate that person's tenure of office by giving the person notice in writing to that effect.

Commencement Information

I32 Sch. 2 para. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

Suspension of appointee

6.—(1) The Secretary of State may suspend a chairperson or a non-officer member (“an appointee”) from office while the Secretary of State considers whether—

- (a) to remove the appointee from office under paragraph 5(2), (3) or (6); or
- (b) the appointee has become disqualified for appointment under paragraph 3, or was so disqualified at the time of appointment, and if so, in the case of disqualification under paragraph 3(1)(c), whether discretion should be exercised under paragraph 3(5).

(2) The Secretary of State must give notice in writing to the appointee of the decision to suspend and the suspension takes effect on receipt of such notification.

(3) A notice under sub-paragraph (2) may be—

- (a) delivered in person, in which case the appointee is treated as receiving it when it is delivered; or
- (b) sent by first class post to the appointee's last known address, in which case the appointee is treated as receiving it on the third day after the day on which it was posted.

(4) The initial period of suspension must not exceed 6 months.

(5) The Secretary of State may review the appointee's suspension at any time.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

(6) The Secretary of State must review the appointee's suspension if requested in writing by the appointee to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.

(7) A review must take into account any representations made by the appointee.

(8) Following a review, the Secretary of State may—

(a) revoke the suspension; or

(b) suspend the appointee for another period of not more than 6 months from the expiry of the current period.

(9) The Secretary of State must revoke the suspension if at any time the Secretary of State decides that—

(a) there are no grounds to remove the chairperson or non-officer member from office under paragraph 5(2), (3) or (6);

(b) there are such grounds but the Secretary of State does not remove the appointee from office as chairperson or non-officer member, as the case may be, under these provisions; or

(c) the appointee is not disqualified for appointment under paragraph 3.

Commencement Information

I33 Sch. 2 para. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

Suspension of chairperson: appointment of vice-chairperson

7.—(1) This paragraph applies where the chairperson is suspended under paragraph 6.

(2) If a vice-chairperson has been appointed under paragraph 8(1) that appointment is to cease to have effect.

(3) The Secretary of State may re-appoint the person mentioned in sub-paragraph (2) or appoint another non-officer member to be the vice-chairperson.

(4) The appointment of a vice-chairperson under sub-paragraph (3) is to be for a period, not exceeding the shorter of—

(a) the period for which the chairperson is suspended; and

(b) the remainder of the non-officer member's term as a member of the Authority.

(5) When the period for which a person is appointed as vice-chairperson expires, the Secretary of State may re-appoint that person, or appoint another non-officer member as vice-chairperson.

(6) Any person appointed under sub-paragraph (3) or (5) may at any time resign from the office of vice-chairperson by giving notice in writing to the Secretary of State.

(7) A notice given under sub-paragraph (6) is to take effect—

(a) where a date is specified in the notice as that on which the resignation is to take effect, on that date; or

(b) in any other case, on the date that the notice is received by the Secretary of State.

(8) The Secretary of State may terminate a person's appointment as vice-chairperson under sub-paragraph (3) or (5) if the Secretary of State is of the opinion that it would be in the best interests of the Authority for another non-officer member of the Authority to be vice-chairperson.

(9) If—

(a) a person resigns from the office of vice-chairperson under sub-paragraph (6); or

(b) the Secretary of State terminates a person's appointment as vice-chairperson under subparagraph (8),
the Secretary of State may appoint another non-officer member as vice-chairperson.

Commencement Information

I34 Sch. 2 para. 7 in force at 1.11.2017, see [art. 1\(1\)](#)

Appointment of vice-chairperson

8.—(1) The chairperson and members may appoint one of the non-officer members to be vice-chairperson for such period, not exceeding the remainder of that non-officer member's term as a member, as they may specify on making the appointment.

(2) Any member so appointed may at any time resign from the office of vice-chairperson by giving notice in writing to the chairperson.

(3) This paragraph does not apply where paragraph 7 applies.

Commencement Information

I35 Sch. 2 para. 8 in force at 1.11.2017, see [art. 1\(1\)](#)

Powers of vice-chairperson

9.—(1) This paragraph applies where—

- (a) the chairperson of the Authority is suspended under paragraph 6 and a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 7; or
- (b) a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 8, and the chairperson of the Authority—
 - (i) has died or has ceased to hold office; or
 - (ii) is unable to perform the chairperson's duties owing to illness, absence from England or any other cause.

(2) Where this paragraph applies—

- (a) the vice-chairperson is to act as chairperson until a new chairperson is appointed or the existing chairperson resumes the chairperson's duties, as the case may be; and
- (b) the references to the chairperson of the Authority in this Order are, so long as there is no chairperson able to perform the chairperson's duties, to be taken to include references to the vice-chairperson.

Commencement Information

I36 Sch. 2 para. 9 in force at 1.11.2017, see [art. 1\(1\)](#)

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

PART 2

Committees etc and the conduct of business by the Authority

Appointment of committees and sub-committees

10.—(1) Subject to such directions as may be given by the Secretary of State, the Authority may, and if so directed by the Secretary of State, must, appoint committees of the Authority consisting wholly or partly of members of the Authority or wholly of persons who are not members of the Authority.

(2) A committee appointed under this paragraph may, subject to such directions as may be given by the Secretary of State to the Authority or by the Authority to that committee, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are members of the Authority) or wholly of persons who are not members of the Authority or the committee.

(3) Subject to such directions as may be given by the Secretary of State, paragraphs 3 and 4 (disqualification and cessation of disqualification) apply to the appointment of members of committees and sub-committees appointed under this paragraph as they apply to the appointment of non-officer members of the Authority.

Commencement Information

I37 Sch. 2 para. 10 in force at 1.11.2017, see [art. 1\(1\)](#)

Arrangements for the exercise of functions

11. Subject to such directions as may be given by the Secretary of State, the Authority may make arrangements for the exercise, on behalf of the Authority, of any of its functions by a committee or sub-committee appointed by virtue of paragraph 10 or by an officer of the Authority, in each case subject to such restrictions and conditions as the Authority thinks fit.

Commencement Information

I38 Sch. 2 para. 11 in force at 1.11.2017, see [art. 1\(1\)](#)

Meetings and proceedings

12.—(1) The meetings and proceedings of the Authority must be conducted in accordance with the procedural requirements in paragraph 13 and with standing orders made under sub-paragraph (2).

(2) Subject to the procedural requirements in paragraph 13, to paragraph 14 and to such directions as may be given by the Secretary of State, the Authority must make, and may vary or revoke, standing orders for the regulation of its proceedings and business, including provision for the suspension of all or any of the standing orders, and such standing orders may permit attendance at meetings by video or other televisual link subject to the chairperson being satisfied that the member so attending is clearly identifiable during the meeting.

(3) Subject to such directions as may be given by the Secretary of State, the Authority may make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Authority, but subject to such standing orders, the quorum, proceedings and place of meeting are to be such as the committee or sub-committee may determine.

Commencement Information

I39 Sch. 2 para. 12 in force at 1.11.2017, see [art. 1\(1\)](#)

Procedural requirements for meetings and proceedings of the Authority

13.—(1) The first meeting of the Authority is to be held on such day and at such place as may be fixed by the chairperson, who is to have responsibility for convening the meeting.

(2) The chairperson may call a meeting of the Authority at any time.

(3) If a requisition for a meeting, signed by at least two members or one third of the total number of members, whichever is the greater number, is presented to the chairperson, and the chairperson either—

(a) refuses to call a meeting; or

(b) without so refusing, does not within 21 days after the requisition has been presented call a meeting,

those members may forthwith call a meeting.

(4) Before each meeting of the Authority, a notice of the meeting which—

(a) specifies the principal business proposed to be transacted at it; and

(b) is signed by the chairperson or by an officer of the Authority authorised by the chairperson to sign on the chairperson's behalf,

must be delivered to each member, or sent by post to the member's last known address, at least seven clear days before the day of the meeting.

(5) The proceedings of any meeting are not invalidated by a failure to deliver such notice to any member.

(6) In the case of a meeting called under sub-paragraph (3) by members, the notice must be signed by those members and no business other than that specified in the notice is to be transacted at the meeting.

(7) At any meeting of the Authority the chairperson or, in the chairperson's absence, the vice-chairperson (if there is one and the vice-chairperson is present) is to preside.

(8) If the chairperson and any vice-chairperson are absent, such other non-officer member present as the other members present choose for the purpose is to preside.

(9) Every question at a meeting is to be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the person presiding at the meeting is to have a second or casting vote.

(10) No business is to be transacted at any meeting unless at least three of the members or one third of the membership, whichever is the greater number (the chairperson being included for this purpose in the reckoning), is present.

(11) Minutes of the proceedings of a meeting must be prepared recording the names of the members present at that meeting, and signed at the next ensuing meeting by the person presiding at that next meeting.

Commencement Information

I40 Sch. 2 para. 13 in force at 1.11.2017, see [art. 1\(1\)](#)

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Disability of chairperson and members in proceedings on account of pecuniary interest

14.—(1) Subject to the following provisions of this paragraph, if the chairperson or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at any meeting of the Authority to which the contract, proposed contract or other matter is the subject of consideration, the chairperson or that member must at the meeting and as soon as practicable after its commencement, disclose that interest and must not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it.

(2) The Secretary of State may, subject to such conditions as the Secretary of State considers appropriate to impose, remove any disability imposed by this paragraph in any case in which it appears to the Secretary of State to be in the interests of the health service that the disability should be removed.

(3) The Authority may, by standing orders made under paragraph 12(2), provide for the exclusion of the chairperson or a member from a meeting of the Authority while any contract, proposed contract or other matter in which the chairperson or that member has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to the chairperson or a member by virtue of paragraph 2 to Schedule 6 of the NHS Act (pay and allowances) is not to be treated as a pecuniary interest for the purpose of this paragraph.

(5) Subject to sub-paragraphs (2) and (6), the chairperson or member (in this paragraph, the “appointee”) is to be treated for the purpose of this paragraph as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) the appointee, or a nominee of the appointee, is a director of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) the appointee is a business partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration,

and in the case of two persons living together as a couple (whether or not they are spouses or civil partners) the interest of one is, if known to the other, to be deemed for the purpose of this paragraph to be an interest of the other.

(6) An appointee is not to be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) of the appointee’s membership of a company or other body if the appointee has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which the appointee is connected as mentioned in sub-paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the appointee in the consideration or discussion of, or voting on, any question with respect to that contract, proposed contract or other matter.

(7) Where an appointee has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

- (a) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the lesser; and
- (b) if the share capital is of more than one class, the total nominal value of shares of any one class in which the appointee has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this paragraph does not prohibit the appointee from taking part in the consideration or discussion of the contract, proposed contract or other matter, or from voting on any question with respect to it but in such circumstances the appointee must nonetheless disclose the appointee’s interest.

(8) This paragraph applies to a committee or sub-committee as it applies to the Authority and applies to a member of any such committee or sub-committee (whether or not the member of the committee or sub-committee is also a member of the Authority) as it applies to a member of the Authority.

(9) In this paragraph—

“securities” means—

- (a) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights or interests in any share or such debenture; or
- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any building society or society, other than a society registered as a credit union, which is—
 - (i) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014⁽⁴⁴⁾; or
 - (ii) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969⁽⁴⁵⁾;

“shares” means shares in the share capital of a company or other body or the stock of a company or other body.

Commencement Information

I41 Sch. 2 para. 14 in force at 1.11.2017, see [art. 1\(1\)](#)

Reports by the Authority

15. The Authority must make such reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and must furnish to the Secretary of State such information as the Secretary of State may from time to time require.

Commencement Information

I42 Sch. 2 para. 15 in force at 1.11.2017, see [art. 1\(1\)](#)

Public meeting

16. Where under paragraph 15 the Authority makes an annual report to the Secretary of State which directions mentioned in that paragraph require to be published, the Authority must present the report at a public meeting held not later than 30 days after the date on which the report was made.

Commencement Information

I43 Sch. 2 para. 16 in force at 1.11.2017, see [art. 1\(1\)](#)

⁽⁴⁴⁾ 2014 c. 14.

⁽⁴⁵⁾ 1969 c. 24. The Act is subject to amendments yet to be brought into force in relation to section 1 (societies which may be registered) and as to the title of the Act, pursuant to section 8 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16). The prospective amended title of the 1969 Act is the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

SCHEDULE 3

Article 13

Abolition of the Authority

Abolition of the Authority and Interpretation of this Schedule

- 1.—(1) The Authority is to be abolished on the abolition date.
- (2) In this Schedule, except in sub-paragraph (3), “liabilities” do not include criminal liabilities.
- (3) This Schedule does not apply to transfer, or provide for continuity in relation to, criminal liabilities of the Authority or proceedings arising from such liabilities.

Commencement Information

I44 Sch. 3 para. 1 in force at 1.11.2017, see [art. 1\(1\)](#)

Provision for the transfer of officers upon abolition of the Authority

- 2.—(1) This paragraph applies to any person who immediately before the abolition date is employed by the Authority.
- (2) Any person to whom sub-paragraph (1) applies is, on the abolition date, transferred to the employment of the Secretary of State.
- (3) The contract of employment of a person whose employment transfers to the Secretary of State under sub-paragraph (2)—
 - (a) is not terminated by the transfer; and
 - (b) has effect from the abolition date as if originally made between that person and the Secretary of State.
- (4) Without prejudice to sub-paragraph (3)—
 - (a) all the rights, powers, duties and liabilities of the Authority under, or in connection with, the contract of employment of any person whose employment transfers under paragraph (2), are to transfer to the Secretary of State on the abolition date; and
 - (b) any act or omission before the abolition date of or in relation to the 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 Secretary of State.
- (5) Sub-paragraphs (2) to (4) do not operate to transfer the contract of employment of a person to whom sub-paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with that contract, if, before the abolition date, that person informs the Authority or the Secretary of State that the person objects to becoming employed by the Secretary of State.
- (6) Where a person to whom sub-paragraph (1) applies has objected to the transfer of that person’s contract of employment to the Secretary of State as described in sub-paragraph (5), this paragraph operates so as to terminate that person’s contract of employment with the Authority on the abolition date.
- (7) Subject to sub-paragraph (8), a person whose contract of employment is terminated in accordance with sub-paragraph (6) is not to be treated, for any purpose, as having been dismissed by the Authority.
- (8) Where the transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose employment is or would have transferred under sub-paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by the employer.

(9) No damages are to be payable by an employer as a result of a dismissal falling within sub-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) Sub-paragraphs (2), (3) and (5) to (8) are without prejudice to any right of a person arising apart from this Schedule to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Subject to sub-paragraphs (12) and (14), any purported variation of a contract of employment to which this paragraph applies is void if the sole or principal reason for the variation of that contract is the transfer.

(12) Sub-paragraph (11) does not prevent a variation of the contract if—

- (a) the sole or principal reason for the variation is an economic, technical, or organisational reason entailing changes in the workforce, provided that the employer and employee agree that variation; or
- (b) the terms of that contract of employment permit the employer to make such a variation.

(13) Where a contract of employment, which is transferred by sub-paragraph (2), incorporates provisions of collective agreements as may be agreed from time to time, sub-paragraph (4) does not transfer any rights, powers, duties and liabilities in relation to any provision of a collective agreement if the following conditions are met—

- (a) the provision of the collective agreement is agreed after the date of the transfer; and
- (b) the Secretary of State is not a participant in the collective bargaining for that provision.

(14) Sub-paragraph (11) does not apply in respect of a variation of the contract of employment in so far as it varies a term or condition incorporated from a collective agreement, provided that—

- (a) the variation of the contract takes effect on a date more than one year after the date of the transfer; and
- (b) following that variation, the rights and obligations in the employee's contract, when considered together, are no less favourable to the employee than those which applied immediately before the variation.

(15) Records of the Authority relating to the employment of its officers whose contracts of employment are to transfer to the Secretary of State pursuant to article 13 and this Schedule are to transfer to the Secretary of State on the transfer date.

(16) The following provisions apply only for purposes of giving effect to a transfer under sub-paragraph (2), as read with sub-paragraphs (3) and (4), and are subject to sub-paragraphs (5) to (14), and paragraphs 3 and 4—

- (a) anything (including legal proceedings) which, immediately before the transfer date, is in the process of being done by, or in relation to, the Authority in connection with the employment of persons whose employment transfers under sub-paragraph (2) is deemed to have effect as if done by, or in relation to, the Secretary of State, and may be continued by, or in relation to, the Secretary of State;
- (b) any instrument made by, or in relation to, the Authority in connection with the employment of persons whose employment transfers under sub-paragraph (2) continues in force until it is varied or revoked by the Secretary of State;
- (c) any form supplied by the Authority in connection with the employment of persons whose employment transfers under sub-paragraph (2) continues to be valid until it is varied or revoked by the Secretary of State and as if any reference in that form to the Authority (in respect of that employment) were a reference to the Secretary of State;

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

- (d) any reference to the Authority in any contract, arrangement, agreement, instrument or other document in connection with the employment of persons whose employment transfers under sub-paragraph (2) is to be treated as a reference to the Secretary of State.

Commencement Information

I45 Sch. 3 para. 2 in force at 1.11.2017, see [art. 1\(1\)](#)

Dismissal of employee because of transfer

3.—(1) Where a person whose contract of employment is transferred by this Schedule is dismissed by the Secretary of State, that person is to be treated, for the purposes of Part 10 of the Employment Rights Act 1996(**46**) (unfair dismissal) as having been unfairly dismissed if the sole or principal reason for the dismissal is the transfer itself.

(2) This sub-paragraph applies where the sole or principal reason for a person’s dismissal is an economic, technical or organisational reason entailing changes in the workforce of the Secretary of State after the transfer.

(3) Where sub-paragraph (2) applies, sub-paragraph (1) does not apply and, without prejudice to section 98(4) of the Employment Rights Act 1996 (test of fair dismissal)(**47**), for the purposes of sections 98(1) (reason for dismissal) and 135 (the right to a redundancy payment) of that Act—

- (a) the dismissal is to be regarded as having been for redundancy where section 98(2)(c) of that Act applies; or
- (b) in any other case, the dismissal is to be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position that the employee held.

(4) Sub-paragraph (1) does not apply in relation to a dismissal of an employee if the application of section 94 of the Employment Rights Act 1996 (right not to be unfairly dismissed) to that dismissal is excluded by or under any provision of that Act, the Employment Tribunals Act 1996(**48**) or the Trade Union and Labour Relations (Consolidation) Act 1992(**49**).

Commencement Information

I46 Sch. 3 para. 3 in force at 1.11.2017, see [art. 1\(1\)](#)

Pensions

4.—(1) Paragraph 2(1) to (4) does not apply—

- (a) to so much of a person’s contract of employment or collective agreement as relates to an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 (categories of pension schemes)(**50**); and

(46) 1996 c. 18.

(47) Section 98 was amended by sections 9 and 44 of, paragraphs 5 and 15 of Schedule 4 to, and table 2 of Schedule 9 to, the Employment Relations Act 1999 (c. 26); by section 53 of, and paragraphs 24 and 32 of Schedule 7 to, the Employment Act 2002 (c. 22); by section 57(1) of, and paragraph 30 of Schedule 1 to, the Employment Relations Act 2004 (c. 24); and by SI 2006/1031 and 2011/1069.

(48) 1996 c. 17.

(49) 1992 c. 52.

(50) 1993 c. 48. The definition of “occupational pension scheme” was substituted by section 239(1) and (3) of the Pensions Act 2004 (c. 35).

(b) to any rights, powers, duties or liabilities under or in connection with any such contract or subsisting by virtue of any such agreement and relating to such a scheme or otherwise arising in connection with that person's employment and relating to such a scheme.

(2) For the purposes of sub-paragraphs (1) and (3), any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors are not to be treated as part of that scheme.

(3) Any person whose contract of employment is transferred by paragraph 2 is not entitled to bring a claim against the Authority for—

(a) breach of contract; or

(b) constructive unfair dismissal by virtue of section 95(1)(c) of the Employment Rights Act 1996 (circumstances in which an employee is dismissed)⁽⁵¹⁾,

arising out of a loss or reduction in rights under an occupational pension scheme in consequence of the transfer, save insofar as the alleged breach of contract or dismissal (as the case may be) occurred prior to the transfer.

Commencement Information

I47 Sch. 3 para. 4 in force at 1.11.2017, see [art. 1\(1\)](#)

Provisions for the transfer of property and liabilities upon abolition of the Authority

5.—(1) Any property of the Authority held immediately before the abolition date is to be transferred to the Secretary of State on the abolition date.

(2) Any liability (actual or contingent) of the Authority relating to—

(a) the property referred to in sub-paragraph (1);

(b) any employment contract entered into by the Authority that ended before the abolition date; and

(c) the functions that the Authority exercises in accordance with article 4,

that was immediately before the abolition date enforceable by or in relation to the Authority is to be transferred to the Secretary of State on that date.

(3) Any right relating to—

(a) the property referred to in sub-paragraph (1);

(b) any employment contract entered into by the Authority that ended before the abolition date; and

(c) the functions that the Authority exercises in accordance with article 4,

that was immediately before the abolition date enforceable by or against the Authority is, on or after the abolition date, to be enforceable by or against the Secretary of State.

(4) In this paragraph, “property” includes a contract, agreement or other arrangement, intellectual property and records generated in the conduct of the Authority's functions, and a licence to occupy premises.

⁽⁵¹⁾ Section 95(1) was amended by section 57 of, and paragraph 29 of Schedule 1 to, and Schedule 2 to, the Employment Relations Act 2004.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Commencement Information

I48 Sch. 3 para. 5 in force at 1.11.2017, see [art. 1\(1\)](#)

Continuity and supplementary provisions

6.—(1) Any act or omission of, or in relation to, the Authority before the abolition date in connection with—

- (a) the functions that the Authority exercises in accordance with article 4;
- (b) any property, rights or liabilities transferred as a consequence of paragraph 5 of this Schedule; or
- (c) any contract, arrangement or agreement entered into by the Authority in connection with any property, rights or liabilities transferred as a consequence of paragraph 5 of this Schedule,

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

(2) Anything (including legal proceedings) which, immediately before the abolition date, is in the process of being done by, or in relation to, the Authority in connection with any of the matters mentioned in sub-paragraph (1) is deemed to have effect as if done by, or in relation to, the Secretary of State, and may be continued by, or in relation to, the Secretary of State.

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

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

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

(6) Where the rights and liabilities under a contract, agreement, arrangement or instrument entered into or agreed by the Authority are transferred as a consequence of paragraph 5, that contract, agreement, arrangement or instrument is to continue to have effect on or after the abolition date as if it were originally entered into by the Secretary of State.

(7) 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 paragraph 5.

Commencement Information

I49 Sch. 3 para. 6 in force at 1.11.2017, see [art. 1\(1\)](#)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order establishes in relation to England, with effect on 1st November 2017, a special health authority to be known as the NHS Counter Fraud Authority, pursuant to section 28 of the National Health Service Act 2006 (“the 2006 Act”). The new Authority is to exercise counter fraud functions of the Secretary of State in relation to the health service. Such functions were exercised by the NHS Business Services Authority (“the BSA”) until 1st November 2017: the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) (Amendment) Order 2017, which is to come into force on 1st November 2017 removes these functions from the BSA’s statutory remit. Provision is also made in the NHS Counter Fraud Authority (Investigatory Powers and Other Miscellaneous Amendments) Order 2017 in respect of various powers and functions that the new Authority is to hold, in place of the BSA, for the purposes of exercising the Secretary of State’s counter fraud functions in relation to the health service in England. That further Order also comes into force on 1st November 2017.

In Part 2 of this Order, articles 3 and 4 provide, respectively, for the new authority’s establishment and its functions, which are to be exercised subject to and in accordance with Directions given by the Secretary of State (which will be accessible via the Government public sector information website, GOV.UK, at www.gov.uk or on request from the Department of Health Correspondence Unit, Richmond House, 79 Whitehall, London SW1A 2NS). Article 4 introduces Schedule 1, which provides for delegation of the Secretary of State’s powers set out in Part 10 of the 2006 Act to require production of documents in the exercise of his counter fraud functions.

Article 5 sets out constitutional requirements, including provision for membership of the Authority and offices which must be held during the transitional period. The transitional period is provided for in article 2 (interpretation) to last until immediately before 1st November 2018. Article 6 introduces Schedule 2, which makes further provision in respect of the Authority’s composition and governance, including the conduct of Authority’s business. Schedule 2 also includes a number of restrictions in respect of persons who may hold the office of chairperson or non-officer member.

In Part 3 of this Order, article 8 makes provision for the transfer to the new Authority of certain staff members of the BSA working within the BSA’s division (“NHS Protect”) which, prior to 1st November 2017, exercised the Secretary of State’s counter fraud functions in relation to England. NHS Protect was established and maintained by the BSA on the direction of the Secretary of State in relation to England only, the most recent directions having been given in 2016 under section 7 of the 2006 Act. Article 8 also makes supplementary provision in relation to the staff transfers, including provision for the transfer of staff records and as to continuity, in particular, at paragraphs (3), (4), (11) and (16). The position of staff not wishing to transfer is provided for at paragraphs (5) to (7).

Articles 9 to 11 make provision for the transfer of: property and associated rights and liabilities; records, data, etc, not otherwise covered; and liabilities (other than criminal liabilities) arising from the Secretary of State’s counter fraud functions previously discharged by the BSA which are to be conferred by this Order on the new Authority. Article 12 makes supplementary provision in relation to the transfers in articles 9 to 11, including provision for continuity.

In Part 4 of this Order, article 13 introduces Schedule 3, which makes provision required by section 28A of the 2006 Act for the abolition of the new Authority on 31st October 2020. Section 28A requires provision to be made as to the transfer of staff, property and liabilities from the new Authority upon its abolition, and section 70 of that Act requires the Secretary of State to deal with all liabilities other than criminal liabilities by transferring them to specified bodies or persons.

Status: Point in time view as at 30/10/2020.

Changes to legislation: There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017. (See end of Document for details)

Schedule 3 provides for transfers of staff, property and liabilities (other than criminal liabilities) to transfer to the Secretary of State. (Section 28A permits the life of the Authority to be extended by Order requiring approval of both Houses of Parliament. Provision in Schedule 3 as to the transfers of staff, property, and liabilities may also be amended by order subject to annulment by resolution of either House of Parliament if needed.)

In Part 5 of this Order, article 14 provides for the revocation of Regulations ([SI 2008/1148](#)) delegating to the BSA and certain senior officers powers of the Secretary of State to require production of documents under Part 10 of the 2006 Act. These Regulations are effectively replaced by the provisions of Schedule 1. Schedule 1 includes directions to the Authority as to the exercise of functions under Part 10 of the 2006 Act, and other provision as to the designation of officers empowered to authorise senior officers to exercise powers to require production of documents under that Part, as well as provision for the process for authorising such senior officers.

No impact assessment has been prepared in respect of this Order as no impact on the costs of charities, voluntary organisations or businesses is envisaged.

Status:

Point in time view as at 30/10/2020.

Changes to legislation:

There are currently no known outstanding effects for the The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017.