

## 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](http://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.

**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.

**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.