EXPLANATORY MEMORANDUM TO

THE NHS COUNTER FRAUD AUTHORITY (ESTABLISHMENT, CONSTITUTION, AND STAFF AND OTHER TRANSFER PROVISIONS) (AMENDMENT) ORDER 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The NHS Counter Fraud Authority ("NHSCFA") is a special health authority created under section 28 of the National Health Service Act 2006 ("the 2006 Act"), which carries out the Secretary of State's counter fraud functions in respect of the health service in England. The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (SI 2017/958) ("the 2017 Order") currently provides for its abolition on 31 October 2020.

2.2 This instrument extends the abolition date of the NHSCFA by three years to 30 October 2023, in accordance with section 28A of the 2006 Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This instrument applies to England because it applies only to the health service in England.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament, and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because the health services in Northern Ireland, Scotland and Wales are devolved matters.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 Lord Bethell has made the following statement regarding Human Rights:

"In my view the provisions of the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) (Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 28A(2)(b) of the 2006 Act provides that any order made under section 28(1) of that Act to establish a Special Health Authority after the coming into force of section 48 of the Health and Social Care Act 2012[1] must include a provision for the abolition of the Special Health Authority on a specified day. Accordingly, article 13 of the 2017 Order provided for the abolition of the NHSCFA on 31 October 2020.

6.2 Section 28A(4)(a) of the 2006 Act provides that the abolition date may by order be varied to a later (or earlier) day. Subsection (5) provides that the later day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished. Accordingly, this instrument varies the abolition date of the NHSCFA to the latest date within 3 years from the current abolition date, namely to 30 October 2023.

7. Policy background

What is being done and why?

7.1 The Secretary of State is satisfied that the NHSCFA has, since its establishment on 1 November 2017, carried out his counter fraud functions (in Part 10 of the 2006 Act) effectively. As such, the NHSCFA's statutory abolition date is being extended until 30 October 2023, so that it can continue to carry out these functions on its current basis.

7.2 This will allow the NHSCFA to continue to protect the NHS in England from fraud, bribery and corruption, thereby safeguarding taxpayer's money. £296m of savings have already been made in 2017/18 and 2018/19 as a consequence of behavioural change work in the checking of false prescription and dental charge exemption claims and gross income recovered. The NHSCFA has further financial targets in place for 2020-21 of detecting £22m of fraud, recovering £5m and preventing £100m.

7.3 Detailed background to the establishment of the NHSCFA in 2017 can be found in the explanatory memorandum for the 2017 Order (http://www.legislation.gov.uk/uksi/2017/958/memorandum/contents).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

[1] Section 48 of the Health and Social Care Act 2012 was brought into force on 1st April 2013 by SI 2013/160.

9. Consolidation

9.1 This instrument does not consolidate legislation.

10. Consultation outcome

10.1 The Secretary of State considered whether consultation pursuant to section 28(7) of the 2006 Act was necessary or appropriate. He concluded that it was not, because this instrument relates solely to extending the NHSCFA's abolition date, which will ensure that no officers are transferred or affected in pursuance of the order. Officers' terms and conditions will remain unchanged. The authority and its officers have been informed of the proposed extension to the abolition date.

11. Guidance

11.1 A stakeholder engagement plan is in place to communicate with health service stakeholders about the NHSCFA's delivery of its counter-fraud service.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it relates to the maintenance of an existing legislative framework, and no government funding beyond the current level is required.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order provides for the abolition of the NHSCFA on 30 October 2023. It is possible to further extend the abolition date by further order. The effectiveness of the NHSCFA's delivery of the Secretary of State's counter fraud functions will continue to be monitored and reviewed accordingly.

15. Contact

15.1 Jon Arnold at the Department of Health and Social Care, telephone: 0207 972 2338 or email: jon.arnold@dhsc.gov.uk can answer any queries regarding the instrument.

15.2 Paul Golightly, Deputy Director for DHSC Anti-Fraud Unit, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Bethell at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.