EXPLANATORY MEMORANDUM TO

THE HEALTH EDUCATION ENGLAND (ESTABLISHMENT AND CONSTITUTION) AMENDMENT (NO 2) ORDER 2013

2013 No. 1197

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

2. Purpose of the instrument

2.1 This Order amends the Health Education England (Establishment and Constitution) Order 2012 ("the Establishment Order") to make provision for the transfer of property and liabilities, from the Department of Health (specifically a contract related to websites development for the NHS careers service) and the small team of staff, employed by the NHS Confederation (Employers) Company Ltd, who deliver the service. To also provide for the transfer of specified properties and liabilities namely electronic records from the University of Nottingham.

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

3.1 None

4. Legislative Context

4.1 Health Education England ("HEE") is a Special Health Authority established under section 28 of the National Health Service Act 2006 (the "Act") on 28th June 2012 by the Establishment Order, which from 1st April 2013 has been directed by the Secretary of State to provide national leadership on planning and developing the health and public health workforce, and allocate education and training resources.

4.2 The Secretary of State has a duty under section 1F of the Act (inserted by the Health and Social Care Act 2012) to exercise his functions so as to secure an effective system for the planning and delivery of education and training to persons employed in connection with the health service in England. This duty has been delegated to HEE by means of directions given by the Secretary of State from 1st April 2013.

4.3 This Order further amends the Establishment Order to make provision for the transfer, pursuant to section 28(4) of the Act, of a contract related to websites development for the NHS careers service and the small team of staff, currently employed by the NHS Confederation (Employers) Company Ltd who deliver the service and to transfer other property to it on 1st July 2013 to enable it to better carry out its functions.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The role of the Department of Health is changing fundamentally. The Health and Social Care Act 2012 formalises the relationship between the Department and the NHS to improve transparency and increase stability while maintaining appropriate accountability. In the future, the Department will have progressively less direct involvement in the planning and development of the healthcare workforce. An independent and accountable HEE is a key component of the new arrangements for planning and commissioning education and training for the health workforce.

7.2 The Department of Health's consultation *Liberating the NHS: Developing the Healthcare Workforce* set out our intention to establish an autonomous statutory body, HEE, to provide leadership for effective planning and provision of high quality medical education.

7.3 HEE has been established as a Special Health Authority and is responsible for carrying out the Secretary of State's functions in relation to securing an effective system for education and training. At a national level, HEE ensures that the workforce has the right skills, behaviours and training, and is available in the right numbers, to support the delivery of excellent healthcare and health improvement. It will allocate and account for NHS resources dedicated to education and training.

7.4 HEE will also enable healthcare providers and professionals to take responsibility for planning and commissioning education and training locally by establishing and supporting the development of Local Education and Training Boards (LETBs), which will be healthcare provider-led committees of HEE.

7.5 From the 1st April 2013, HEE became the organisation responsible for the NHS careers service, which delivers careers information, advice and guidance for people seeking a career in healthcare, in the NHS and in other settings. This service is currently being delivered by the NHS Confederation (Employers) Company Ltd. under a contract with HEE. The service and the staff delivering the service did not transfer to HEE on 1st April because the Department was carrying out a tender, which commenced in January 2013, to procure a supplier to develop the healthcare careers related websites and the HEE corporate website. The NHS Confederation (Employers) Company Ltd and HEE agreed that the staff and service would transfer to HEE once the tender was finalised. The contract has now been awarded to Reading Room Limited, a digital communications company.

7.6 This Order now makes provision for the transfer of the contract between the Department and Reading Room Limited from the Department, and the staff who deliver the NHS careers service, from the NHS

Confederation (Employers) Company Ltd, to HEE on the 1st July 2013.

7.7 This Order, also provides for the transfer of certain property to HEE from the University of Nottingham that aims to support the efficient functioning of HEE in carrying out its role as described above. Prior to the 1st April 2013, the University of Nottingham hosted the East Midlands Deanery, responsible for the management and delivery of postgraduate medical education and supporting the continuing professional development of doctors and dentists. The East Midlands Deanery was part of the East Midlands Strategic Health Authority (SHA), who transferred its staff and education and training functions to HEE on the 1st April 2013 when SHAs were abolished. The East Midlands Deanery's electronic records, in relation to these functions, were stored on the University of Nottingham's file server. This order provides for the transfer of those electronic records to HEE. Arrangements are currently in place that allow HEE access to these records to enable them to carry out their functions.

7.8 Within the context of the changes described above and the move to create a more autonomous and accountable NHS, the long-term plan is to place HEE on a permanent statutory footing by establishing it as an Executive Non Departmental Public Body, subject to Parliamentary approval, at which time the Special Health Authority would be abolished.

8. Consultation outcome

8.1 The principle of establishing HEE was first set out in the public consultation *Liberating the NHS: Developing the Healthcare Workforce*. The consultation sought views on the functions and detailed proposals of the work of HEE. The Department published a summary of the consultation responses in August 2011.

8.2 A link to the consultation document *Liberating the NHS: Developing the Healthcare Workforce* can be found on the Department of Health's website at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_129428

8.3 The need for an independent HEE, and its functions, was tested further through the Listening Exercise on the Government's NHS modernisation plans. The NHS Future Forum endorsed in their report that HEE should be set up as an independent body to provide strategic oversight and national leadership for education and training of the health workforce.

8.4 A link to the NHS Future Forum's report on Education and Training can be found on the Department of Health's website at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_127543.pdf

8.5 A link to the Government's Response to the NHS Future Forum Report can be found on the Department of Health's website at:

http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_127719.pdf

8.6 Representatives of staff who will transfer or who are likely to be affected by the transfers to HEE on 1st July 2013 have also been consulted, under section 28 of the NHS Act 2006, on the proposed functions of HEE, whether the appropriate staff have been identified to transfer and the potential implications for those affected by the transfer. The consultation letter was issued on the 10th December 2012 advising staff would transfer on 1st April. No comments were received. Due to the transfer date being put back to 1st July, a further consultation letter was issued on the 29th April 2013 to give representatives a further opportunity to comment. This further consultation period closed on 9th May 2013.

8.7 No comments were received to that further consultation letter.

9. Guidance

9.1 The Department published its detailed policy framework for the new education and training system, *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* in January 2011.

9.2 A link to *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* can be found on the Department of Health's website at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132076

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen.

10.3 HEE was established as part of the transitional arrangements for the new system for planning and commissioning education and training of the health workforce. A full Impact Assessment was carried out for this new policy system and this can be found on the Department of Health website at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Regulatoryimpactassessment/index.htm

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 We plan to put HEE on a permanent statutory footing by establishing it as an Executive Non Departmental Public Body, subject to Parliamentary

approval, however in the meantime the Department will continue to review whether there is a need for a body as currently established.

13. Contact

Lindsey Proctor at the Department of Health Tel: 0113 2545811 or email: Lindsey.proctor@dh.gsi.gov.uk can answer any queries regarding the instrument.