EXPLANATORY MEMORANDUM TO

THE HEALTH EDUCATION ENGLAND (ESTABLISHMENT AND CONSTITUTION) ORDER 2012

2012 No. 1273

AND

THE HEALTH EDUCATION ENGLAND REGULATIONS 2012

2012 No. 1290

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 The Health Education England (Establishment and Constitution) Order 2012 provides for the establishment of a new Special Health Authority called Health Education England (HEE) and makes provision for its constitution. The Health Education England Regulations 2012 make provision about the membership and procedure of HEE as a Special Health Authority. HEE will provide national leadership for the education and training of the health and public health workforce and be responsible for carrying out the Secretary of State's functions to secure an effective system for education and training.

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

3.1 None

4. Legislative Context

4.1 The Secretary of State has powers to make arrangements in relation to the education and training of healthcare workers, which are currently delegated to the Strategic Health Authorities (SHAs). The Health and Social Care Act 2012 (the Act) provides for the abolition of SHAs (and it is intended that these provisions will be commenced on 1 April 2013). The Secretary of State's education and training functions will need to be exercised by a different body once SHAs are abolished and it is intended that these functions will instead be conferred on HEE. In addition, the Act has placed a new duty on the Secretary of State 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 when that section is brought in to force. HEE is a new Special Health Authority established by this Order, which will provide national leadership on planning and developing the health and public health workforce, and allocate education and training resources. HEE will also take on Secretary of State functions in relation to education and training of the healthcare workforce currently carried out by the Department of Health and Medical Education England, which is an Advisory Non-Departmental Body that will be abolished. These instruments deal only with the establishment of HEE and make provision concerning membership and procedure of HEE.

4.2 It is envisaged that, subject to Parliamentary approval, HEE will become an Executive Non-Departmental Public Body, set up by means of primary legislation, in the future.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The role of the Department of Health is changing fundamentally. The Act 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 will be established as a Special Health Authority and be responsible for carrying out the Secretary of State's functions to secure an effective system for education and training. It will take on the education functions of the Strategic Health Authorities when they are abolished in April 2013. It will, at a national level, ensure 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 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 may be transferred to the Authority by April 2013 have also been consulted, under section 28 of the NHS Act 2006, on the proposed functions of the Authority, 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 31 October 2011, however following publication of the detailed policy framework for the new education and training system, *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery*, which sets out more clearly the proposal for HEE, a further consultation letter was issued on the 16 January 2012. The consultation period closed on the 21 February 2012.

8.7 Five responses were received, one from Christina McAnea on behalf of the Social Partnership Forum, one from Janet Davies on behalf on the Royal College of Nurses, one from A Davenport on behalf of the British Medical Association and one from Stephen Welfare of NHS Midlands and East.

8.8 Comments included support for the establishment of HEE as an NHS organisation that allows staff access to NHS pensions and terms and conditions. It was confirmed that the appropriate staff groups had been identified to transfer. These staff should be maintained to ensure that current

skills and expertise are smoothly transferred to the new arrangements. There was support for HEE having direct accountability to the SofS. There was also a desire for HEE to have robust partnerships with its key stakeholders in the health and education sector, the NHS Commissioning Board and Clinical Commission Groups.

8.9 Responses to the consultation and the department's response can be found on the Department of Health website at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_130910

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 these instruments as no impact on the private or voluntary sector is foreseen.

10.3 HEE is being 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 HEE will be established on 28 June 2012. Between the summer and 1st April 2013 it will recruit its senior team and progress the selection and appointment of the independent LETB Chairs. It will put in place robust organisational and operational processes and a robust financial system and governance to allocate and account for NHS education and training resources. HEE will put in place an authorisation process agreed with the Department of Health so that LETBs are assessed against robust criteria as able to operate

effectively and ensure a smooth transition to the new system. The level of local delegation to a LETB will depend upon their capacity to meet the authorisation criteria. HEE will take on its full functions and be fully operational when SHAs are abolished on 1 April 2013.

12.2 The long term plan is to establish 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.

13. Contact

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