EXPLANATORY MEMORANDUM TO

THE HEALTH SERVICE COMMISSIONER FOR ENGLAND (SPECIAL HEALTH AUTHORITIES) ORDER 2020

2020 No. 1596

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 ("SpHA"), which carries out the Secretary of State's counter fraud functions in respect of the health service in England.

2.2 This Order in Council designates the NHSCFA as a body subject to investigation by the Parliamentary and Health Service Ombudsman ("PHSO").

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 As the instrument is subject to the negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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

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

6. Legislative Context

6.1 Under sections 2(1)(c), (5)(b) and (6) of the Health Service Commissioners Act 1993 ("the 1993 Act"), SpHAs are subject to investigation by the PHSO if they were established after 1 April 1974 only if designated as such by an Order in Council.

6.2 The NHSCFA is a SpHA, established under section 28 of the National Health Service Act 2006 ("the 2006 Act") after 1 April 1974, and is not therefore subject to investigation by the PHSO unless and until it is designated as such by an Order in Council.

7. Policy background

What is being done and why?

7.1 The NHSCFA was established on 1 November 2017 as a SpHA by The NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 (SI 2017/958) ("the 2017 Order") for three years (until 31 October 2020). The NHSCFA has been extended for a further three years (until 30 October 2023) by the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2020 (SI 2020/1071). It was established to carry out the Secretary of State's counter fraud functions (as set out in section 4(2) of the 2017 Order). This instrument designates the NHSCFA as a body subject to investigation by the PHSO, per the provision in the 1993 Act.

7.2 The PHSO's role is to investigate complaints that individuals have sustained injustice or hardship as a result of a failure of or maladministration by a health service body.

7.3 As the body that carries out the Secretary of State's counter fraud functions in respect of the health service in England, the NHSCFA's work must be both transparent and accountable. Allowing the PHSO to investigate any complaints made against the NHSCFA strengthens this transparency and accountability, and ensures that complaints can be investigated independently.

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 or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate legislation.

10. Consultation outcome

10.1 A consultation was not required or considered necessary, as the purpose of the PHSO, and its role in holding health service bodies accountable, are well established.

11. Guidance

11.1 The NHSCFA has been informed that it will be subject to PHSO investigation. The PHSO provides guidance on when and how it conducts investigations.

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.

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 NHSCFA's being subject to investigation by the PHSO will be monitored and reviewed appropriately.

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.