STATUTORY INSTRUMENTS

# 2006 No. 2538

# NATIONAL HEALTH SERVICE, ENGLAND

## The Medway Primary Care Trust (Establishment) Amendment (Consequential Amendments on Variation of Area) Order 2006

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| *Made - - - -* | *20th September 2006* |
| *Coming into force - -* | *1st October 2006* |

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 16A(1), (2) and (3) and section 126(3) and (4) of the National Health Service Act 1977(**a**).

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Medway Primary Care Trust (Establishment) Amendment (Consequential Amendments on Variation of Area) Order 2006 and shall come into force on 1st October 2006.

(2) In this Order "Amendment Order" means the Medway Primary Care Trust (Establishment) Amendment Order 2006(**b**).

**Amendment of the Amendment Order**

**2.**—(1) For article 1(2) of the Amendment Order, there is substituted—

"(2) In this Order—

"2006 Establishment Order" means the Primary Care Trusts (Establishment and Dissolution) (England) Order 2006(**c**);

"Act" means the National Health Service Act 1977;

"Area A" means the parish of Upchurch in the ward of Hartlip, Newington and Upchurch, in the district of Swale, in the county of Kent, being part of the area for which the trust was established immediately before this Order comes into force;

"Area B" means the following areas in the county of Kent—

(a) in the district of Tonbridge and Malling, the ward of Blue Bell Hill and Walderslade; and

(b) in the district of Gravesham, the ward of Higham;

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(**a**) 1977 c.49; section 16A was inserted by section 2(1) of the Health Act 1999 (c.8) ("the 1999 Act") and amended by sections 2(1), (2) and (3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act"); section 126(3) was amended by section 41(10) of, and paragraph 27 of Schedule 2 to, the National Health Service (Primary Care) Act 1997 (c.46) and section 65(2) of the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"); section 126(4) was amended by section 65(2) of the 1990 Act, section 65(1) of, and paragraphs 4 and 37(1) and (6) of Schedule 4 to, the 1999 Act, section 67(1) of, and paragraphs 5(1) and (13)(b) of Schedule 5 to, the Health and Social Care Act 2001 (c.15), sections 6(3)(c) and 37(1) of, and paragraphs 1 and 10(a) of Schedule 8 to, the 2002 Act and sections 184 and 196 of, and paragraphs 7 and 38 of Schedule 11 and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act").

(**b**) S.I. 2006/2073.

(**c**) S.I. 2006/2072.

being part of the area for which the trust was established immediately before this Order comes into force;

"dispensing doctor list" means a list maintained by a Primary Care Trust pursuant to section 43 of the Act(**a**) (persons authorised to provide pharmaceutical services);

"list" means a dispensing doctor list, an ophthalmic list, an ophthalmic supplementary list, a performers list or a pharmaceutical list;

"ongoing matter" has the meaning given in article 9;

"ophthalmic list" means a list maintained by a Primary Care Trust pursuant to section 39 of the Act(**b**) (regulations as to section 38);

"ophthalmic supplementary list" means a list maintained by a Primary Care Trust pursuant to section 43D of the Act(**c**) (supplementary lists);

"performers list" means a list maintained by a Primary Care Trust pursuant to section 28X of the Act(**d**) (persons performing primary medical and primary dental services);

"pharmaceutical list" means a list maintained by a Primary Care Trust pursuant to section 42 of the Act(**e**) (regulations as to pharmaceutical services);

"practitioner" means a person whose name is included in a list;

"Principal Order" means the Medway Primary Care Trust (Establishment) Order 2002(**f**);

"trust" means the Medway Primary Care Trust which was established by the Principal Order;

"transferee A" means the Eastern and Coastal Kent Primary Care Trust which is established on 1st October 2006 by the 2006 Establishment Order; and

"transferee B" means the West Kent Primary Care Trust which is established on 1st October 2006 by the 2006 Establishment Order.".

(2) After article 2 of the Amendment Order, there is inserted—

"**Provision for continuity in the exercise of functions in respect of Area A**

**3.**—(1) Anything done before 1st October 2006 by or in relation to the trust in respect of area A shall be treated on and after that date as if done by or in relation to transferee A.

(2) The reference in paragraph (1) to anything done by or in relation to the trust includes without limitation any applications made, any authorisations, directions or notices given, and any complaints made, to, by or in relation to the trust.

(3) Any instrument made by the trust in relation to Area A continues in force in relation to transferee A in accordance with its terms until it is varied or revoked by transferee A.

(4) Any form supplied by the trust in relation to Area A continues to be a valid form in relation to transferee A until it is cancelled or withdrawn by transferee A, as if any reference contained in that form to the trust were a reference to transferee A.

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(**a**) Section 43 was amended by section 2(1) of, and paragraph 31 of Schedule 1 to, the Health Authorities Act 1995 (c. 17) ("the 1995Act"), section 2(5) of, and paragraphs 1 and 17 of Part 1 of Schedule 2 to, the 2002 Act, section 21 of the Health Services Act 1980 (c. 53) ("the 1980 Act"), section 184 of, and paragraphs 7 and 19 of Schedule 11 to, the 2003 Act, sections 29(1) and 41(10) of, and paragraph 14 of Schedule 2 to, the 1997 Act, sections 20(1), (7) and 42(2) of the 2001 Act, section 66(1) of, and paragraph 18(2) of Schedule 9 to, the 1990 Act, and by section 1 of, and paragraph 6 of the Schedule to, the Pharmacists (Fitness to Practise) Act 1997 (c.19).

(**b**) Section 39 was amended by sections 20(1), (5), 23(1) and (4) of the 2001 Act, section 2(5) of, and paragraphs 1 and 12 of Part I of Schedule 2 to, the 2002 Act, section 9(4) of the 1999 Act, sections 1 and 2 of, and paragraph 52 of Part I of Schedule 1 to, the 1980 Act, sections 1 and 24 of, and Part I of Schedule 1 to, and Part I of Schedule 8 to, the Health and Social Security Act 1984 (c. 48), and by section 2(1) of, and paragraph 28 of Schedule 1 to, the 1995 Act.

(**c**) Section 43D was inserted by section 24 of the 2001 Act and amended by section 2(5) of, and paragraphs 1 and 20 of Part I of Schedule 2 to, the 2002 Act, and by sections 184 and 196 of, and paragraphs 7 and 20 of Schedule 11 to, and Part 4 of Schedule 14 to, the 2003 Act.

(**d**) Section 28X was inserted by section 179(1) of the 2003 Act.

(**e**) Section 42 was substituted by section 3(1) of the National Health Service (Amendment) Act 1986 (c.66) and amended by section 2(5) of, and paragraphs 1 and 16 of Part I of Schedule 2 to, the 2002 Act, section 2(1) of, and paragraphs 30(a)(i), (b)(i) and (iii), (c)(i), (iii) and (iv) of Schedule 1 to, the 1995 Act, sections 20(1), (6), 23(1), (5), 40(3), 43(2), (3), (4) and 67(2) of, and Part 1 of Schedule 6 to, the 2001 Act, article 4 of the Pharmaceutical Qualifications (EEC Recognition) Order S.I. 1987/2202, and by section 12(3) of the 1990 Act.

(**f**) S.I. 2002/960, as amended by S.I. 2004/543.

(5) So far as is necessary or appropriate, a reference in an agreement or other instrument to the trust shall, so far as it relates to Area A, be treated on and after the operational date as a reference to transferee A.

(6) If there is any doubt as to whether anything done before 1st October 2006 by or in relation to the trust was done in respect of Area A or not, the trust and transferee A shall resolve the doubt between themselves.

(7) If the trust and transferee A are unable to resolve the doubt referred to in paragraph (6), the South East Coast Strategic Health Authority shall resolve it.

(8) This article is subject to article 10.

**Provision for continuity in the exercise of functions in respect of Area B**

**4.**—(1) Anything done before 1st October 2006 by or in relation to the trust in respect of area B shall be treated on and after that date as if done by or in relation to transferee B.

(2) The reference in paragraph (1) to anything done by or in relation to the trust includes without limitation any applications made, any authorisations, directions or notices given, and any complaints made, to, by or in relation to the trust.

(3) Any instrument made by the trust in relation to Area B continues in force in relation to transferee B in accordance with its terms until it is varied or revoked by transferee B.

(4) Any form supplied by the trust in relation to Area B continues to be a valid form in relation to transferee B until it is cancelled or withdrawn by transferee B, as if any reference contained in that form to the trust were a reference to transferee B.

(5) So far as is necessary or appropriate, a reference in an agreement or other instrument to the trust shall, so far as it relates to Area B, be treated on and after the operational date as a reference to transferee B.

(6) If there is any doubt as to whether anything done before 1st October 2006 by or in relation to the trust was done in respect of Area B or not, the trust and transferee B shall resolve the doubt between themselves.

(7) If the trust and transferee B are unable to resolve the doubt referred to in paragraph (6), the South East Coast Strategic Health Authority shall resolve it.

(8) This article is subject to article 10.

**Allocation of practitioners to lists – performers lists**

**5.** Article 9 applies to a practitioner whose name was included in the trust's performers list immediately before 1st October 2006.

**Allocation of practitioners to lists – ophthalmic, pharmaceutical and dispensing doctor lists**

**6.**—(1) Paragraph (3) applies to a practitioner whose name was included in the trust's ophthalmic list or pharmaceutical list immediately before 1st October 2006—

(a) who undertakes to provide general ophthalmic services or pharmaceutical services, as the case may be, from premises in Area A; or

(b) in the case of a mobile ophthalmic practice, who regularly provides mobile ophthalmic services at premises in Area A.

(2) Paragraph (3) applies to a practitioner whose name was included in the trust's dispensing doctor list immediately before 1st October 2006 and who has premises approval under Part 5 (Provision of Pharmaceutical Services by Doctors) of the National Health Service (Pharmaceutical Services) Regulations 2005(**a**) in relation to premises in Area A.

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(**a**) S.I. 2005/641, as amended by S.I. 2005/1015, 2005/1501, 2005/3315, 2005/3491, 2006/552, 2006/562, 2006/913, 2006/1056 and 2006/1501.

(3) Where this paragraph applies, the practitioner's name shall be—

(a) included in transferee A's ophthalmic, pharmaceutical or dispensing doctor list, as the case may be; or

(b) if, by virtue of article 8 of the 2006 Establishment Order, his name is already included in transferee A's ophthalmic, pharmaceutical or dispensing doctor list, his entry in that list shall be amended as necessary.

(4) Paragraph (6) applies to a practitioner—

(a) whose name was included in the trust's ophthalmic list or pharmaceutical list immediately before 1st October 2006;

(b) who undertakes to provide general ophthalmic services or pharmaceutical services, as the case may be, from premises in Area B; or

(c) in the case of a mobile ophthalmic practice, who regularly provides mobile ophthalmic services at premises in Area B.

(5) Paragraph (6) applies to a practitioner whose name was included in the trust's dispensing doctor list immediately before 1st October 2006 and who has premises approval under Part 5 (Provision of Pharmaceutical Services by Doctors) of the National Health Service (Pharmaceutical Services) Regulations 2005 in relation to premises in Area B.

(6) Where this paragraph applies, the practitioner's name shall be—

(a) included in transferee B's ophthalmic, pharmaceutical or dispensing doctor list, as the case may be; or

(b) if, by virtue of article 8 of the 2006 Establishment Order, his name is already included in transferee B's ophthalmic, pharmaceutical or dispensing doctor list, his entry in that list shall be amended as necessary.

(7) Where paragraph (3) or (6) applies in relation to a practitioner whose name is included in an ophthalmic list, if the practitioner does not provide general ophthalmic services from, or does not regularly provide mobile ophthalmic services at, premises in the county of Medway, his name shall be removed from the trust's ophthalmic list.

(8) Where paragraph (3) or (6) applies in relation to a practitioner whose name is included in a pharmaceutical list, if the practitioner does not provide general pharmaceutical services from premises in the county of Medway, his name shall be removed from the trust's pharmaceutical list.

(9) Where paragraph (3) or (6) applies in relation to a practitioner whose name is included in a dispensing doctor list, if the practitioner does not have premises approval as described in paragraph (2) in relation to premises in the county of Medway, his name shall be removed from the trust's dispensing doctor list.

**Allocation of practitioners to lists – ophthalmic supplementary lists**

**7.** Article 9 applies to a practitioner whose name was included in the trust's ophthalmic supplementary list immediately before 1st October 2006.

**Applications for inclusion in lists**

**8.**—(1) Paragraph (2) applies in relation to an application to the trust for inclusion in a performers list—

(a) which was made before 1st October 2006;

(b) in relation to which the person making the application is, or will be, party to a contract for the provision of primary medical services or primary dental services; and

(c) which has not been finally determined by the trust by that date.

(2) The application shall be determined by whichever of the trust, transferee A or transferee B is, or is to be, party to the contract for primary medical services or primary dental services.

(3) In relation to a person who has, before 1st October 2006, made an application to the trust for inclusion in an ophthalmic list, a pharmaceutical list or a dispensing doctor list which has not been finally determined by the trust by that date, the application shall be determined by—

(a) transferee A if the premises to which the application relates are in Area A;

(b) transferee B if the premises to which the application relates are in Area B; or

(c) the trust if the premises to which the application relates are in the county of Medway.

(4) In relation to a person who has, before 1st October 2006, made an application to the trust for inclusion in a list to which neither paragraph (1) nor paragraph (3) applies, the application shall be determined by the trust.

**Allocation to lists by the transferee and the trust**

**9.**—(1) Where this article applies, the trust, transferee A and transferee B shall agree between themselves, after considering any representations from the practitioner, as to which of their lists shall include the practitioner's name.

(2) If the trust, transferee A and transferee B are unable to agree in accordance with paragraph (1), the South East Coast Strategic Health Authority shall determine the matter.

**Matters consequential on allocation to lists**

**10.**—(1) In this Order, "ongoing matter" means any matter, question or proceeding in respect of a practitioner in relation to his inclusion in a list under—

(a) the National Health Service (General Ophthalmic Services) Regulations 1986(**a**);

(b) the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005(**b**);

(c) the National Health Service (Performers Lists) Regulations 2004(**c**);

(d) the National Health Service (Pharmaceutical Services) Regulations 2005; or

(e) the National Health Service (Service Committees and Tribunal) Regulations 1992(**d**)

which has not been finally determined or dealt with by the trust before 1st October 2006.

(2) The definition of "ongoing matter" in paragraph (1) does not include the functions of a home Primary Care Trust under regulation 69A (Home Primary Care Trusts) of, paragraph 31 of Schedule 1 (Home Primary Care Trusts of bodies corporate) to, and paragraph 18 of Schedule 3 (Home Primary Care Trusts of bodies corporate) to the National Health Service (Pharmaceutical Services) Regulations 2005.

(3) In any case where there is an ongoing matter in relation to a practitioner whose name is included, by virtue of articles 5 to 7 or 9, in a list maintained by transferee A—

(a) transferee A shall be responsible for dealing with or determining the matter;

(b) any acts done by the trust in relation to that matter before the operational date shall, on and after that date, be deemed to have been done by transferee A; and

(c) any decision or determination binding on the trust that relates to an ongoing matter shall be binding on transferee A.

(4) In any case where there is an ongoing matter in relation to a practitioner whose name is included, by virtue of articles 5 to 7 or 9, in a list maintained by transferee B—

(a) transferee B shall be responsible for dealing with or determining the matter;

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(**a**) S.I. 1986/975, as amended by S.I. 1996/705, 2001/3739, 2002/601, 2002/2469, 2004/85, 2005/480, 2005/1481 and 2005/3491.
(**b**) S.I. 2005/480, as amended by S.I. 2005/502, 2005/1481, 2005/3491, 2006/635 and 2006/1550.
(**c**) S.I. 2004/585, as amended by S.I. 2004/2649, 2005/502, 2005/893 and 2005/3491.
(**d**) S.I. 1992/664; relevant amending instruments are S.I. 1996/703, 2002/2469, 2004/865.

(b) any acts done by the trust in relation to that matter before the operational date shall, on and after that date, be deemed to have been done by transferee B; and

(c) any decision or determination binding on the trust that relates to an ongoing matter shall be binding on transferee B.

(5) If—

(a) a list maintained by the trust contained, in relation to a practitioner whose name was included in the list, any condition or contingent removal, or if the practitioner was suspended from the list; and

(b) the practitioner's name is included, by virtue of articles 5 to 7 or 9, in a list maintained by transferee A;

that condition, contingent removal or suspension shall apply to transferee A's list in which the practitioner's name is included.

(6) If—

(a) a list maintained by the trust contained, in relation to a practitioner whose name was included in the list, any condition or contingent removal, or if the practitioner was suspended from the list; and

(b) the practitioner's name is included, by virtue of articles 5 to 7 or 9, in a list maintained by transferee B;

that condition, contingent removal or suspension shall apply to transferee B's list in which the practitioner's name is included.".

Signed by authority of the Secretary of State for Health

*Norman Warner*
Minister of State
Department of Health

20th September 2006

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order contains amendments to the Medway Primary Care Trust (Establishment) Amendment Order 2006 (S.I. 2006/2073). S.I. 2006/2073 reduces the area of the Medway Primary Care Trust ("the trust") so that it covers the county of Medway with effect from 1st October 2006. The areas which will no longer covered by the trust ("transferred areas") are to be covered by the Eastern and Coastal Kent Primary Care Trust and the West Kent Primary Care Trust, which are to be established on 1st October 2006 by the Primary Care Trusts (Establishment and Dissolution) (England) Order 2006 (S.I. 2006/2072). This Order inserts into S.I. 2006/2073 provisions which are consequential on the variation of the area of the trust in connection with continuity of functions in relation to the transferred areas and allocation of practitioners to lists.

A full regulatory impact assessment has not been produced for this Order as it has no impact on the costs of business, charities or voluntary bodies.

STATUTORY INSTRUMENTS

# 2006 No. 2538

# NATIONAL HEALTH SERVICE, ENGLAND

## The Medway Primary Care Trust (Establishment) Amendment (Consequential Amendments on Variation of Area) Order 2006

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