EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE TRUST DEVELOPMENT AUTHORITY (ESTABLISHMENT AND CONSTITUTION) ORDER 2012

2012 No. 901

AND

THE NATIONAL HEALTH SERVICE TRUST DEVELOPMENT AUTHORITY REGULATIONS 2012

2012 No. 922

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

2. Purpose of the instrument

2.1 The National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 (the "Establishment Order") provides for the establishment and constitution of the National Health Service Trust Development Authority ("the Authority"). The Authority is a Special Health Authority that will exercise functions of the Secretary of State in managing the performance, assuring and improving clinical performance, governance and risk in National Health Service (NHS) trusts and assisting NHS trusts to become foundation trusts ("FT"). It will also carry out the Secretary of State's role in making certain appointments to NHS trusts and appointments of trustees to various bodies established under the National Health Service Act 2006 (the "Act").

2.2 The National Health Service Trust Development Authority Regulations 2012 make provision for the membership and procedure of the Authority.

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

3.1 None

4. Legislative Context

4.1 The Act provides that the Secretary of State may establish special health authorities under section 28. The Authority is such a special health authority and will be known as the National Health Service Trust Development Authority ("NTDA"). These instruments deal with the establishment of the Authority – and make provision concerning the constitution, functions of the Authority, transfer of officers, property, and liabilities, and the membership and procedures of the Authority.

4.2 The Establishment Order sets out the Authority's functions, including that it is to perform the functions as the Secretary of State may direct. Section 7 of the Act provides that the Secretary of State may direct a special health authority to exercise any of his functions relating to the health service as are specified in directions and section 8 provides that the Secretary of State may

direct a special health authority regarding its exercise of any functions. There will be directions to the Authority under section 7 and 8 of the Act directing the Authority how to perform the functions with effect from 1st June 2012. The Establishment Order also sets out the Authority's constitution.

4.3 Section 28 (4)(b) provides that an Order under that section may contain provisions as to the transfer to the body of officers, property and liabilities. This Order provides for the transfer of officers, property and liabilities of the Appointments Commission to it. It also provides that the Public Bodies (Admission to Meetings) Act 1961 will apply to the Authority.

4.4 The National Health Service Trust Development Authority Regulations 2012 set out the membership and procedures of the Authority.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government's vision is for an NHS with fully autonomous and accountable healthcare service providers (hospitals, ambulance services, mental health services and community services). The NTDA is a key enabler to support NHS trusts to become a FT or find another organisational form and will provide essential oversight and performance management for the long term.

7.2 The Department of Health's White Paper, Equity and Excellence: *Legislative framework and next steps* stated that " *This [the NTDA] will provide overall governance, performance manage and support non-FTs until they become FTs*".

7.3 The Authority in the first instance will set directions; establish governance process; and undertake 2012/2013 business planning for the organisation. It will undertake further functions in October 2012 and April 2013. These include managing performance of NHS trusts; development of the performance of NHS trusts to assist them in becoming sustainable organisations; securing improvements in clinical quality, governance and risk in NHS trusts; and functions in connection with the appointment of the chair and non-executive directors of NHS trusts and trustees of certain bodies established under the Act.

7.4 The first staff group and property to transfer as provided for by the Establishment Order will be from the Appointments Commission, October 2012, and will carry out the appointment of chair, non-executive directors of NHS trusts and trustees to various bodies established under the Act.

7.5 In line with other new arm's-length bodies (ALBs), the NTDA will be subject to a review of the continued need for it to remain in existence by the Department of Health, within three years of full operation.

8. Consultation outcome

8.1 The NHS White Paper, *Equity and Excellence: Liberating the NHS* sets out the Government's vision for a fully autonomous provider landscape, tested by the Future Forum's Listening Exercise on the Government's NHS modernisation plans. The report, confirmed that "all NHS trusts should continue to work towards achieving FT status by 2014 as authorisation is about clinical and financial sustainability".

8.2 The follow up Command Paper, *Liberating the NHS: Legislative framework and next steps*, describes how the Government has developed plans in light of the consultation and gives further detail on the NHS reforms and a timetable for implementation. The document also explains how the consultation has shaped the Health and Social Care Bill currently before Parliament, which reaffirms the Government's commitment to reforming the NHS. This sets out the need to create the NTDA (previously called the Provider Development Authority).

8.3 A link to the Command Paper, *Liberating the NHS: Legislative framework and next steps*, can be found on the Department of Health website: http://www.dh.gov.uk/en/Healthcare/LiberatingtheNHS/DH_122624

8.4 Representatives of staff that will be affected by the establishment of the Authority have also been consulted, under section 28 of the NHS Act 2006, on the proposed functions of the Authority, whether appropriate staff have been identified to transfer and the potential implications for those affected by the transfer. The consultation letter was issued on 31 October 2011 and the consultation closed on 31 January 2012.

8.5 One response to the consultation was received, on behalf of colleagues at the East and Midlands Strategic Health Authority, and the establishment was discussed at the Partnership Forum, which includes trade unions and representative bodies.

8.6 The response set out the desire to have alignment of staff recruitment and resources with that of the NHS Commissioning Board (NHS CB). This would give staff more clarity on potential future roles. The comments have been included in the ongoing organisational design work.

8.7 A summary of the consultation can be found on the Department of Health website: http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_130910

9. Guidance

9.1 On 5 January 2012, the DH published a document entitled Building the NTDA to explain the functions and purpose of the Authority. The publication can be found on the Department of Health website: http://www.dh.gov.uk/health/2012/01/nhs-trust-development-authority/

9.2 The People Transition Policy will be published in Spring 2012 and will set out HR guidance for staff transferring or/and potential recruits to the Authority.

10. Impact

10.1 An impact assessment for the establishment of the Authority is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

10.2 The Establishment Order and regulations will have minimal impact on business, charities or voluntary bodies, as they are concerned with implementing existing policy around FTs and continuing the functions of the Appointments Commission in the appointment of chairs, non-executive directors of NHS trusts and trustees of various bodies established under the Act in England.

10.3 The impact assessment identified the benefits of incorporating the functions within one organisation, making it easier to achieve the objective of an all FT provider environment. The proposed functions of the NTDA are inter-dependent and there are best performed by one organisation.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 In line with the Better Regulation Agenda, the instrument will be reviewed by Department of Health in three years time to assess whether there is a continued need for the Authority.

13. Contact

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