EXPLANATORY MEMORANDUM TO

THE NATIONAL PATIENT SAFETY AGENCY (ESTABLISHMENT AND CONSTITUTION) (AMENDMENT) ORDER 2012

2012 No. 1424

AND

THE NATIONAL PATIENT SAFETY AGENCY (AMENDMENT) REGULATIONS 2012

2012 No. 1425

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 instruments

2.1 The National Patient Safety (Establishment and Constitution) (Amendment) Order 2012 changes the constitution and functions of the National Patient Safety Agency (the Agency) established by, and whose constitution and functions are set out in, the National Patient Safety Agency (Establishment and Constitution Order) 2001, S.I. 2001/1743. The National Patient Safety Agency (Amendment) Regulations 2012 change provisions for the membership and procedures of the Agency in the National Patient Safety Agency Regulations 2001 S.I.2001/1742. The amending instruments enable the Agency to cease operation in its current form on 9 July 2012, and prepare for its abolition provided for in the Health and Social Care Act 2012.

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

3.1 None.

4. Legislative Context

4.1 The instruments being amended are the National Patient Safety Agency (Establishment and Constitution Order) 2001, S.I. 2001/1743 (the Order) and the National Patient Safety Agency Regulations 2001, S.I.2001/1742 (the Regulations).

4.2 The Agency is a Special Health Authority established under section 28 of the National Health Service Act 2006 (c.41). The Order establishing the Agency sets out the Agency's functions. The Regulations make provision concerning the membership and procedures of the Agency.

4.3 Section 281 of the Health and Social Care Act 2012 (c. 7) abolishes the Agency and it is the Department's intention to commence this section on 1 October 2012 to coincide with the establishment of the NHS Commissioning Board by commencement of section 9(1) of the 2012 Act. This will allow for any residual liabilities of the Agency on abolition to be transferred to the NHS Commissioning Board by transfer scheme under section 300 of the 2012 Act.

4.4 The intention is that the Agency will close and effectively cease operation on 9 July 2012. The amendments to the Order will replace its existing functions with functions in connection with the abolition of the Agency. The amendments to the Regulations will allow the Secretary of State to appoint and specify the term of office of non-officer members to be responsible for the Agency from its intended July closure until its final abolition. They also allow the Agency to regulate its own procedures.

5. Territorial Extent and Application

5.1 The instruments apply to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 *Liberating the NHS: Report of the arm's-length bodies review*, published in July 2010, recommended that the Agency be abolished, proposing that some functions should be carried out by the NHS Commissioning Board, while others would be supported to continue in other ways. The Health and Social Care Act 2012 provides for the abolition of the Agency in section 281.

7.2 Over time the Agency's functions have been gradually transferred from the Agency as part of a staged plan in a managed transition process towards closure of the Agency by the end of July 2012. For example, the Agency's National Clinical Assessment Service transfer to NICE was effected by S.I 2012/476 in April 2012. The last substantive transfer of existing functions is expected to happen in June 2012. The intention is that the Agency will effectively cease operation on 9 July prior to its final legal abolition on 1 October 2012. From July to abolition, members, likely to be Department of Health officials, would be appointed to be responsible for the Agency until it is abolished. In practice, the Department anticipates that no substantive actions other than in respect of the final report and accounts will be required of the Agency.

7.3 The Department intends that the Agency will be abolished on 1 October by commencement of section 281 of the Health and Social Care Act 2012.

8. Consultation outcome

8.1 Consultation is not required to exercise these powers of amendment. Throughout the Agency's transition process staff have been fully consulted as part of the formal transfer of functions elsewhere.

9. Guidance

9.1 None.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector, because the Agency's functions will have already transferred elsewhere in the healthcare system together with the transfer of relevant staff.

10.3 A separate Impact Assessment on the closure and abolition of the Agency has not been prepared because this formed part of the Impact Assessment that was prepared for the Health and Social Care Bill.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

12.1 None required.

13. Contact

Matthew Fogarty at the Department of Health (Tel: 020 7972 4476 or email matthew.fogarty@dh.gsi.gov.uk) can answer any queries regarding the instrument.