EXPLANATORY MEMORANDUM TO

THE NHS BUSINESS SERVICES AUTHORITY (AWDURDOD GWASANAETHAU BUSNES Y GIG) (TRANSFER OF STAFF TO THE NHS COMMISSIONING BOARD) REGULATIONS 2014

2014 No. 413

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 These Regulations make provision for the transfer of a small number of staff from the Business Services Authority ("BSA") to the NHS Commissioning Board. With their consent currently, these staff members are either employed on a programme of work which transferred from the Department of Health to the NHS Commissioning Board on 1st April 2013, or were re-deployed to work for the NHS Commissioning Board on that date.

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

3.1 None

4. Legislative Context

4.1 The Health and Social Care Act 2012 ("the Act") provided for the transfer of certain functions of the Secretary of State for Health to various bodies as part of the reorganisation of the NHS, and in doing so made provision for staff and property transfer schemes. Various bodies are listed in Schedule 23 to the Act as transferors and permitted transferees of staff under staff transfer schemes.

4.2 The BSA is a Special Health Authority that was established by the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) Order 2005 (S.I.2005/2414) as amended by S.I.2006/632 and 2007/1201). It employed staff on behalf of the Department of Health who were either deployed in functions that transferred under the Act to the NHS Commissioning Board or re-deployed to the NHS Commissioning Board as a result of the reorganisation.]

4.3 However, the NHS Commissioning Board is not listed as a permitted transferee of BSA in Schedule 23 to the 2012 Act.

4.4 The powers conferred by section 28(8) of, and paragraph 3 (8) of schedule 6 to, and sections 272(7) and (8) of the National Health Service Act 2006 enable the Secretary of State to make regulations to transfer the staff of a Special Health Authority to the NHS Commissioning Board. This is the route by which we will effect this transfer.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

- What is being done and why

7.1 The regulations are required to enable the transfer of a group of staff, who are employed by the BSA to the NHS Commissioning Board. The staff identified are employed by the BSA who host the staff for the Department of Health. The transfer is being undertaken with their agreement.

7.2 The BSA staff transferring under these regulations are associated with the Children's and Young Person's Improving Access to Psychological Therapies (IAPT) programme and the Adult IAPT programme that transferred from the Department of Health to the NHS Commissioning Board on 1st April 2013 through powers introduced by the Act, and certain staff who were re-deployed to the NHS Commissioning Board on that date.

7.3 The BSA is a Special Health Authority. Provision was not made in the Act for the NHS Commissioning Board to be a permitted transferee for staff transferred by BSA. Therefore the staff concerned could not be included in a transfer scheme provided for in the Act. An alternative legal vehicle to transfer the staff concerned is required. The NHSA 2006 includes powers for the Secretary of State to make regulations to transfer staff from a Special Health Authority to the NHS Commissioning Board.

7.4 Approximately 16 staff will transfer. The transfer is taking place to ensure both the effective delivery by the NHS Commissioning Board of the functions the transferring BSA staff are employed to deliver, and to ensure the best value for money.

7.5 Without the transfer provided for under the regulations, the staff identified would be served notice by the BSA and made redundant. Simultaneously, and in order to deliver the transferring functions effectively, the NHS Commissioning Board would need to recruit to the posts currently filled by the transferring staff. Transfer under the Regulations eliminates the need for redundancy payments to be made and ensures continuous delivery of the business.

8. Consultation outcome

8.1 Representatives of staff affected by the transfer have been consulted, as required by paragraph 4 of Schedule 6 to the NHS Act 2006, on the proposed transfer. The consultation letter was issued on 20th December 2013. This followed personal letters to staff concerned in March 2013 informing

them of the proposal to transfer them by means of the regulations in due course. A further period of reflection enabled management discussions about the transfer, during which the staff concerned have been kept up to date informally. The consultation period closed on 10th February 2014.

8.2 No comments were received in response to the formal consultation letter.

9. Guidance

9.1 No guidance is required.

10. Impact

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

10.2 The impact on the public sector is a redundancy cost saving of approximately £1,060,500, and the ability to continue smooth delivery of the business.

10.3 An Impact Assessment has not been prepared for this instrument. The impact assessment for the 2012 Act covers the general principles of such transfer orders.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We plan for the transfer of the function to be permanent (as with the other functions transferred from Department of Health to the NHS Commissioning Board on 1st April 2013). We do not expect this transfer to require any further monitoring or review beyond that of any function in the Health and Care system.

13. Contact

Claire Corneille at the Department of Health Tel: 0113 254 6625 or email: Claire.corneille@dh.gsi.gov.uk can answer any queries regarding the instrument.