STATUTORY INSTRUMENTS

2004 No. 648

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Professionals Special Health Authority (Establishment and Constitution) Amendment Order 2004

Made - - - -	*9th March 2004*
Laid before Parliament	*11th March 2004*
Coming into force - -	*1st April 2004*

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 11(1), (2) and (4) and 126(3) of the National Health Service Act 1977(**a**), and of all other powers enabling him in that behalf, and after consultation with such bodies as he recognises represent officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the Order, hereby makes the following Order:

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the NHS Professionals Special Health Authority (Establishment and Constitution) Amendment Order 2004 and shall come into force on 1st April 2004.

(2) This Order applies to England only.

(3) In this Order "the Establishment Order" means the NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003(**b**).

Amendment of the Establishment Order

2. After article 5 of the Establishment Order (remuneration of members) add—

"Transfer of rights and liabilities

6. All rights and liabilities of a National Health Service trust or a Primary Care Trust listed in Schedule 1 relating to the activity known as NHS Professionals (being the recruitment and use of temporary staff in the health service), are transferred to the Authority and are therefore enforceable by or, as the case may be, against it.

(**a**) 1977 c.49; section 11 was amended by section 2(1) of, and paragraph 2 of Schedule 1 to, the Health Authorities Act 1995 (c.17) ("the 1995 Act") and section 65 of, and paragraphs 4 and 6 of Schedule 4 to, the Health Act 1999 (c.8) ("the 1999 Act"); section 126(3) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19), paragraph 57 of Schedule 1 to the 1995 Act and section 41(10) of, and paragraph 27 of Schedule 2 to, the National Health Service (Primary Care) Act 1997 (c.46). The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see the entry in Schedule 1 for the National Health Service Act 1977 as amended by section 66(4) and (5)(a) of the 1999 Act, section 67(1) of, and paragraph 12(1) and (3) of Schedule 5 to, the Health and Social Care Act 2001 (c.15) and section 196 of, and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) on a date to be appointed.

(**b**) S.I. 2003/3059.

Transfer of property

7. All property of the National Health Service trusts listed in Schedule 2 identified as property transferring to the Authority in the document produced by the Department of Health and entitled "Schedule of property transferring from National Health Service trusts to NHS Professionals Special Health Authority on 1st April 2004" and dated 5th March 2004 is transferred to the Authority.

Transfer of officers

8.—(1) This paragraph applies to an officer of—

(a) a National Health Service trust listed in Schedule 2; or

(b) the Heatherwood and Wexham Park Hospitals' National Health Service Trust(**a**),

who on 31st March 2004 is wholly or mainly engaged in recruitment and use of temporary staff in the health service (being the activity known as NHS Professionals) and who was notified in a letter posted on or before 30th January 2004 that he was to be transferred to the Authority.

(2) Any officer to whom paragraph (1) applies shall, on 1st April 2004, be transferred to the employment of the Authority.

(3) The contract of employment of an officer transferred under paragraph (2)—

(a) is not terminated by the transfer; and

(b) has effect from the time of the transfer as if originally made between the officer and the Authority.

(4) Without prejudice to paragraph (3)—

(a) all the rights, powers, duties and liabilities of the body from which an officer is transferred, under or in connection with its contract of employment with an officer transferred under paragraph (2), shall by virtue of this paragraph be transferred to the Authority; and

(b) anything done before the date of the transfer by or in relation to the body from which that officer is so transferred, in respect of such an officer or his contract of employment, shall be deemed to have been done by or in relation to the Authority.

(5) Paragraphs (2) to (4) do not transfer an officer's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that officer objects to the transfer to the Authority and informs the body from which he would be transferred of that objection by 31st March 2004.

(6) Where an officer objects as mentioned in paragraph (5), his contract of employment with the body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed from that body.

(7) This article is without prejudice to any right of an officer to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this article, the identity of his employer changes unless the officer shows that, in all the circumstances, the change is a significant change and is to his detriment.".

Insertion of Schedules 1 and 2 in the Establishment Order

3. There shall be inserted into the Establishment Order at the appropriate place the Schedules set out in the Schedule to this Order.

Signed by authority of the Secretary of State for Health

John Hutton
Minister of State,
Department of Health

9th March 2004

(**a**) S.I. 1991/2357.

SCHEDULE

Article 3

"SCHEDULE 1

Article 6

Schedule of National Health Service trusts and Primary Care Trusts

National Health Service trust or Primary Care Trust	*Establishment Order*
Barking, Havering and Redbridge Hospitals National Health Service Trust	S.I. 2000/1413
Buckinghamshire Hospitals National Health Service Trust	S.I. 2002/2419
Buckinghamshire Mental Health National Health Service Trust	S.I. 2001/333
Central Liverpool Primary Care Trust	S.I. 2001/3490
Cherwell Vale Primary Care Trust	S.I. 2001/491
Chiltern and South Bucks Primary Care Trust	S.I. 2001/3295
Christie Hospital National Health Service Trust	S.I. 1990/2407
Dartford and Gravesham National Health Service Trust	S.I. 1993/2642
Dartford, Gravesham and Swanley Primary Care Trust	S.I. 2000/2043
Dudley Group of Hospitals National Health Service Trust	S.I. 1994/168
East Hampshire Primary Care Trust	S.I. 2001/331
East Kent Hospitals National Health Service Trust	S.I. 1999/896
East Lancashire Hospitals National Health Service Trust	S.I. 2002/2073
Epping Forest Primary Care Trust	S.I. 2000/287
George Eliot Hospital National Health Service Trust	S.I. 1993/2551
Harlow Primary Care Trust	S.I. 2000/2820
Heatherwood and Wexham Park Hospitals' National Health Service Trust	S.I. 1991/2357
Lancashire Care National Health Service Trust	S.I. 2001/4118
Leeds Teaching Hospitals National Health Service Trust	S.I. 1998/837
Mid Yorkshire Hospitals National Health Service Trust	S.I. 2002/1341
Milton Keynes Primary Care Trust	S.I. 2000/2015
Milton Keynes General National Health Service Trust	S.I. 1991/2372
North Cheshire Hospitals National Health Service Trust	S.I. 2001/345
North Essex Mental Health Partnership National Health Service Trust	S.I. 2001/324
Nottingham City Hospital National Health Service Trust	S.I. 1991/2380
Nuffield Orthopaedic National Health Service Trust	S.I. 1990/2434
Oxford Radcliffe Hospitals National Health Service Trust	S.I. 1993/2544(**a**)
Oxfordshire Learning Disability National Health Service Trust	S.I. 1992/2574
Oxfordshire Mental Healthcare National Health Service Trust	S.I. 1993/2566
Pennine Acute Hospitals National Health Service Trust	S.I. 2002/308
Portsmouth Hospitals National Health Service Trust	S.I. 1992/2506
Princess Alexandra Hospital National Health Service Trust	S.I. 1994/3179
Queen's Medical Centre, Nottingham, University Hospital National Health Service Trust	S.I. 1992/2478
Royal Berkshire and Battle Hospitals National Health Service Trust	S.I. 1992/2579
Royston, Buntingford and Bishop's Stortford Primary Care Trust	S.I. 2001/390
St Mary's National Health Service Trust	S.I. 1991/2395

(**a**) As amended by S.I. 1994/482 and S.I. 1998/1227.

National Health Service trust or Primary Care Trust	*Establishment Order*
Salford Royal Hospitals National Health Service Trust	S.I. 1994/164(**a**)
Sheffield Teaching Hospitals National Health Service Trust	S.I. 2000/2909
South East Oxfordshire Primary Care Trust	S.I. 2001/523
South Leeds Primary Care Trust	S.I. 2001/3622
South Manchester University Hospitals National Health Service Trust	S.I. 1994/161
South Tees Hospitals National Health Service Trust	S.I. 1991/2402(**b**)
South West London Community National Health Service Trust	S.I. 1999/794
South West Oxfordshire Primary Care Trust	S.I. 2001/525
South Yorkshire Mental Health National Health Service Trust	S.I. 2002/1313
Stockport National Health Service Trust	S.I. 2000/842
Vale of Aylesbury Primary Care Trust	S.I. 2001/268
Walsall Teaching Primary Care Trust	S.I. 2002/894(**c**)
Walton Centre for Neurology and Neurosurgery National Health Service Trust	S.I. 1991/2411
West Yorkshire Metropolitan Ambulance National Health Service Trust	S.I. 1992/2493
Worcestershire Acute Hospitals National Health Service Trust	S.I. 1999/3473
Wycombe Primary Care Trust	S.I. 2001/3296

SCHEDULE 2

Articles 7 and 8

Schedule of National Health Service trusts

National Health Service trust	*Establishment Order*
Barking, Havering and Redbridge Hospitals National Health Service Trust	S.I. 2000/1413
East Kent Hospitals National Health Service Trust	S.I. 1999/896
Hampshire Ambulance Service National Health Service Trust	S.I. 1992/2504
Oxford Radcliffe Hospitals National Health Service Trust	S.I. 1993/2544
Royal Berkshire and Battle Hospitals National Health Service Trust	S.I. 1992/2579
St Mary's National Health Service Trust	S.I. 1991/2395
West Yorkshire Metropolitan Ambulance National Health Service Trust	S.I. 1992/2493"

(**a**) As amended by S.I. 1994/1269.
(**b**) As amended by S.I. 2001/1537.
(**c**) As amended by S.I. 2003/1983.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the NHS Professionals Special Health Authority (Establishment and Constitution) Order 2003 ("the Establishment Order") which established the NHS Professionals Special Health Authority ("the Authority") as a Special Health Authority under section 11 of the National Health Service Act 1977.

Articles 2 and 3 of the Order make provision for the transfer of rights and liabilities to the Authority from the National Health Service trusts and Primary Care Trusts listed in Schedule 1 in the Schedule to the Order, for the transfer of property to the Authority from the National Health Service trusts listed in Schedule 2 in the Schedule to the Order and for the transfer of officers to the Authority from the Heatherwood and Wexham Park Hospitals' National Health Service Trust and the National Health Service trusts listed in Schedule 2 in the Schedule to the Order. A copy of the document referred to in article 7 to be inserted into the Establishment Order is available from the Department of Health, Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UE.

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The NHS Professionals Special Health Authority (Establishment and Constitution) Amendment Order 2004

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.
E0363 3/2004 140363T 19585

ISBN 0-11-048853-9

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