STATUTORY INSTRUMENTS

2005 No. 1781

NATIONAL HEALTH SERVICE, ENGLAND

The NHSU Abolition Order 2005

Made - - - -	*30th June 2005*
Laid before Parliament	*4th July 2005*
Coming into force - -	*1st August 2005*

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

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the NHSU Abolition Order 2005 and shall come into force on 1st August 2005.

(2) This Order applies in relation to England.

(3) In this Order—

"the NHSU" means the Special Health Authority known as NHSU established by the NHSU (Establishment and Constitution) Order 2003(**c**); and

"the Institute" means the NHS Institute for Innovation and Improvement established by the NHS Institute for Innovation and Improvement (Establishment and Constitution) Order 2005(**d**);

(**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) 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 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) ("the 2001 Act"), sections 6(3)(c) and 37(1) of, and paragraphs 1 and 10(a) of Schedule 8 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) and section 184 of, and paragraph 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"). 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 2001 Act and section 196 of, and Part 4 of Schedule 14 to, the 2003 Act.

(**b**) *See* section 11(5) of the National Health Service Act 1977.

(**c**) S.I. 2003/2772.

(**d**) S.I. 2005/1446.

Abolition of NHSU

2. The NHSU is abolished and accordingly the NHSU (Establishment and Constitution) Order 2003(**a**) and the NHSU Regulations 2003(**b**) are revoked.

Consequential amendment of Orders and Regulations

3. The amendments in the Schedule are made in consequence of the abolition of the NHSU.

Investigation of complaints by the Health Service Commissioner

4.—(1) A complaint made under the Health Service Commissioners Act 1993(**c**) to the Health Service Commissioner for England in relation to the NHSU, whether made before, on or after the coming into force of this Order, may be investigated by the Commissioner notwithstanding its abolition.

(2) The Health Service Commissioner for England, where she conducts such an investigation, shall send a report of the result of her investigation to the Secretary of State for Health.

Enforceability of rights and transfer of liabilities of the NHSU

5.—(1) Any right which, immediately before 1st August 2005, was enforceable by or against the NHSU shall, on or after that date, be enforceable by or against the Institute.

(2) All liabilities of the NHSU are transferred to the Institute on 1st August 2005.

Transfer of property from the NHSU

6. All property of the NHSU is transferred to the Institute on 1st August 2005.

Transfer of officers of the NHSU

7.—(1) This paragraph applies in relation to an officer of the NHSU who on 31st July 2005 is wholly or mainly engaged in the performance of the functions of the NHSU.

(2) Any officer to whom paragraph (1) applies shall, on 1st August 2005, be transferred to the employment of the Institute.

(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 Institute.

(4) Without prejudice to paragraph (3)—

(a) all the rights, powers, duties and liabilities of the NHSU, 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 Institute; and

(b) anything done before the date of the transfer by or in relation to the NHSU, in respect of the officer or his contract of employment, shall be deemed to have been done by or in relation to the Institute.

(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 has objected to the transfer to the Institute and has informed the NHSU of that objection by 31st July 2005.

(**a**) S.I. 2003/2772.
(**b**) S.I. 2003/2773.
(**c**) 1993 c.46 as amended by the Health Service Commissioners (Amendment) Act 1996 (c.5).

(6) Where an officer has objected as mentioned in paragraph (5), his contract of employment with the NHSU 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 the NHSU.

(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.

Winding up of affairs of the NHSU

8. It shall be the duty of the Institute to take such action as may be necessary for the winding up of the affairs of the NHSU, including the preparation of the outstanding accounts of the NHSU and the performance of all statutory duties relating to those accounts.

Signed by authority of the Secretary of State for Health

Jane Kennedy
Minister of State,
Department of Health

30th June 2005

SCHEDULE

Article 3

AMENDMENTS CONSEQUENTIAL ON THE ABOLITION OF THE NHSU

The Health Authorities (Membership and Procedure) Regulations 1996

1. In Schedule 2 to the Health Authorities (Membership and Procedure) Regulations 1996(a) (Special Health Authorities of which the chairman and members are not disqualified under regulation 10(1)(g)) delete "NHSU".

The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000

2. Schedule 1 to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(**b**) (Special Health Authorities of which the chairman and members are not disqualified under regulation 5(1)(e)) delete "NHSU".

(**a**) S.I. 1996/707; relevant amending statutory instruments are S.I. 1999/946 and S.I. 2000/696.
(**b**) S.I. 2000/89; relevant amending statutory instrument is S.I. 2002/38.

3. In the Schedule to the Health Service Commissioner for England (Special Health Authorities) Order 2005(**a**) (Special Health Authorities designated as subject to investigation) delete the reference to "NHSU".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes on 1st August 2005, the NHSU, a Special Health Authority established under section 11 of the National Health Service Act 1977. It makes provision for the transfer of rights, liabilities and property of the abolished NHSU and the transfer of its staff to the NHS Institute for Innovation and Improvement.

The Order makes minor consequential amendments to delete references to the NHSU in two instruments governing the membership of certain other NHS bodies and in the Order designating which Special Health Authorities are subject to the jurisdiction of the Health Service Commissioner.

(**a**) S.I. 2005/251.

£3.00

© Crown copyright 2005

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.
E1021 7/2005 151021T 19585

ISBN 0-11-073045-3

9 780110 730455