EXPLANATORY MEMORANDUM TO

THE SPECIAL HEALTH AUTHORITIES (ESTABLISHMENT AND CONSTITUTION ORDERS) AMENDMENT ORDER 2012

2012 No. 476

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 This Order makes the necessary provision to transfer the National Clinical Assessment Service (NCAS), currently part of the National Patient Safety Agency (NPSA), to the National Institute for Health and Clinical Excellence (NICE) on 1 April 2012. In doing so, it removes the NCAS functions (as to which see paragraph 4.1) from NPSA's responsibility and also provides for staff, property and liabilities relating to the NCAS functions to transfer from NPSA to NICE.

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

3.1 None

4. Legislative Context

4.1 The NPSA and NICE are both Special Health Authorities established under section 28 of the National Health Service Act 2006 (the "Act"). The Order establishing the NPSA under section 28 sets out the NPSA's functions, including that it is to perform such functions in connection with the assessment of the performance and conduct of doctors and dentists engaged in the health service as the Secretary of State directs. There are directions made by the Secretary of State under section 7 and 8 of the Act directing NPSA to perform these functions, and to perform the function of assessing the performance of pharmacists engaged in the health service, which together are referred to as the "NCAS functions". The NCAS functions are no longer to be carried out by NPSA. Therefore this Order removes the NCAS functions relating to doctors and dentists from the NPSA Establishment Order, and the directions to NPSA will also be amended to remove the NCAS functions, so that the NPSA is no longer required to carry them out. The NCAS function will then revert to the Secretary of State.

4.2 The NCAS functions are from 1 April 2012 to be carried out by NICE. The Establishment Order establishing NICE provides that NICE is to perform a number of specific functions set out in the Order as well as "such other 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. The Secretary of State will issue directions to NICE to carry out the NCAS functions with effect from 1st April 2012.

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 associated with the NCAS functions from NPSA to NICE.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does 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 National Patient Safety 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.

7.2 It proposed that the NCAS division of the NPSA would, over the next few years, become a self-funded service and the Department of Health would agree a date with the service for achieving self-sufficiency.

7.3 Subject to the passage of the Health and Social Care Bill, the NPSA will be abolished by the end of July 2012. NICE has been identified as an interim host for the NCAS functions from 1 April 2012 for a period of one year, during which time work will continue to identify a new business model for NCAS. We do not expect NICE to be directed to carry out the NCAS functions beyond 31st March 2013.

8. Consultation outcome

8.1 A joint consultation was undertaken by the Secretary of State under section 28(7) of the Act with bodies representing officers who, in the opinion of the Secretary of State, were likely to be transferred or affected by transfers under this Order, and by the National Patient Safety Agency under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), on the proposal by the Secretary of State to transfer the functions of NCAS (and related staff) from NPSA to NICE.

8.2 The consultation period lasted from 12th December 2011 to 27th January 2012. Although less than 12 weeks, the period was considered reasonable given that staff were already well informed about the proposed transfer to NICE, and there had been communications with staff from mid September onwards.

8.3 There will be no significant change to the NCAS organisation structure as a result of the transfer because NCAS will transfer as a distinct operating division of NPSA to a similar arrangement within NICE.

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, as the NCAS functions will be carried out by the same staff as currently carry them out, and will continue to be carried out by a Special Health Authority in the same way as they are carried out now, but with the identity of the Special Health Authority having changed so that it is NICE rather than the NPSA.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The carrying out of the NCAS functions by NICE will be reviewed at quarterly monitoring meetings the Department of Health holds with NICE. Subject to the passage of the Health and Social Care Bill, it is intended that the NPSA will be abolished in July 2012. The Department is working with NCAS to consider the longer term options and business model for NCAS post April 2013.

13. Contact

Melanie Peffer at the Department of Health (Tel 020 7972 1284 or email Melanie.peffer@dh.gsi.gov.uk) can answer any queries regarding the instrument.