

2005 No. 504

NATIONAL HEALTH SERVICE, ENGLAND

**The National Patient Safety Agency (Establishment and
Constitution) Amendment Order 2005**

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| <i>Made</i> - - - - | <i>7th March 2005</i> |
| <i>Laid before Parliament</i> | <i>11th March 2005</i> |
| <i>Coming into force</i> - - | <i>1st April 2005</i> |

The Secretary of State for Health, in exercise of the powers conferred upon him 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 he recognises represent officers who in his 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 National Patient Safety Agency (Establishment and Constitution) Amendment Order 2005 and shall come into force on 1st April 2005.

(2) This Order applies in relation to England.

(3) In this Order “the principal Order” means the National Patient Safety Agency Establishment and Constitution Order 2001(c).

Amendment of article 1 of the principal Order

2.—(1) For paragraph (3) of article 1 of the principal order (citation, commencement, extent and interpretation) there is substituted the following paragraph—

“(3) In this Order—

“the Agency” means the National Patient Safety Agency established by this Order;

(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 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.

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

(c) S.I. 2001/1743.

“the Directions” means the Directions given by the Secretary of State to the Institute on 9th December 1999(a);

“the Institute” means the National Institute for Clinical Excellence(b); and

“the St George’s Healthcare National Health Service Trust Schedule” means the document produced by the St George’s Healthcare National Health Service Trust and entitled “Schedule of property transferring from the St George’s Healthcare National Health Service Trust to the National Patient Safety Agency” and dated 3rd March 2005(c).”.

Amendment of article 3 of the principal Order

3.—(1) Article 3 of the principal Order (functions of the Agency) is amended in accordance with paragraphs (2) and (3).

(2) After sub-paragraph (a) insert—

“(b) such functions in connection with the assessment of the performance and conduct of doctors and dentists engaged in the health service,

(c) such functions in connection with hospital food, hospital cleaning and hospital design, and”.

(3) Re-number sub-paragraph (b) as sub-paragraph (d).

Amendment of article 4 of the principal Order

4.—(1) Article 4 of the principal Order (constitution of the Agency) is amended in accordance with paragraphs (2) and (3).

(2) In sub-paragraph (b)—

(i) for “8” substitute “7”; and

(ii) for “11” substitute “9”.

(3) In sub-paragraph (d) for “three” substitute “up to 5”.

Transfer of officers, property and enforceability of rights and transfer of liabilities

5. After article 6 of the principal Order (public meetings) add—

“Transfer of officers

7.—(1) This paragraph applies in relation to an officer of the St George’s Healthcare National Health Service Trust(d) who on 31st March 2005 is wholly or mainly engaged in the performance of the functions of the Central Office for Research Ethics Committees(e).

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

(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 Agency.

(a) A copy of the directions given by the Secretary of State to the National Institute for Clinical Excellence dated 9th December 1999 is available from the Department of Health, Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UE.

(b) A Special Health Authority established by S.I. 1999/220 as amended by S.I. 1999/2219, S.I. 2002/1760, and S.I. 2005/498.

(c) Available from the Department of Health, Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UE.

(d) Established by S.I. 1993/352.

(e) The Central Office for Research Ethics Committees is a function of the Secretary of State for Health performed by St George’s Healthcare National Health Service Trust under an agreement signed on 2nd and 5th February 2001. A copy of the agreement is available from the Department of Health, Quarry House, Quarry Hill, Leeds, West Yorkshire LS2 7UE.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the body from which the 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 Agency; 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 the officer or his contract of employment, shall be deemed to have been done by or in relation to the Agency.

(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 Agency and has informed the St George's Healthcare National Health Service Trust of that objection by 31st March 2005.

(6) Where an officer objected as mentioned in paragraph (5), his contract of employment with the St George's Healthcare National Health Service Trust 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 St George's Healthcare National Health Service Trust.

(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.

Transfer of Property

8. All property of the St George's Healthcare National Health Service Trust identified as property transferring to the Agency in the St George's Healthcare National Health Service Trust Schedule is transferred to the Agency on 1 April 2005.

Enforceability of rights and transfer of liabilities

9.—(1) Any right relating to the National Confidential Enquiries referred to in the Directions that was, immediately before 1st April 2005, enforceable by or against the Institute is transferred to the Agency and therefore shall, on or after that date, be enforceable by or against the Agency.

(2) All liabilities of the Institute relating to the exercise of those functions it was directed to exercise in relation to the National Confidential Enquiries in the Directions shall on 1st April 2005 be transferred to the Agency and are therefore enforceable against it.”.

Signed by authority of the Secretary of State for Health

7th March 2005

Warner
Parliamentary Under Secretary of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Patient Safety Agency (Establishment and Constitution) Order 2001 to confer on the Agency functions previously carried out by the National Clinical Assessment Authority which is abolished by S.I. 2005/502 and additional functions relating to hospitals. The Order changes the provisions about membership of the Agency. The Order also makes provision for the transfer of officers and property to the Agency from the St George's Healthcare National Health Service Trust and for the enforceability of rights and transfer of liabilities to the Agency in relation to work conducted by the National Institute for Clinical Excellence.

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