

**2011 No. 2237**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The NHS Commissioning Board Authority (Establishment and  
Constitution) Order 2011**

|                               |         |                            |
|-------------------------------|---------|----------------------------|
| <i>Made</i>                   | - - - - | <i>12th September 2011</i> |
| <i>Laid before Parliament</i> |         | <i>15th September 2011</i> |
| <i>Coming into force</i>      | - -     | <i>31st October 2011</i>   |

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 28(1), (2) and (4) and 272(7) and (8) of the National Health Service Act 2006(a).

The Secretary of State has consulted such bodies as the Secretary of State has recognised for this purpose as representing officers who, in the Secretary of State's opinion, are likely to be transferred, or affected by transfer, in pursuance of this Order(b).

**Citation, commencement, application and interpretation**

1.—(1) This Order may be cited as the NHS Commissioning Board Authority (Establishment and Constitution) Order 2011 and comes into force on 31st October 2011.

(2) This Order applies in relation to England only.

(3) In this Order—

“the Act” means the National Health Service Act 2006;

“the Appointments Commission” means the Appointments Commission established by section 57 of the Health Act 2006(c);

“the Authority” means the NHS Commissioning Board Authority established by article 2 of this Order;

“clinical commissioning group” means a body consisting of persons who are providers of primary medical services(d) and which has the function of arranging for the provision of services referred to in section 3 of the Act and such other services as it considers appropriate for the purposes of the health service;

“employing authority” means the Secretary of State, a Strategic Health Authority, a Primary Care Trust or the Appointments Commission.

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(a) 2006 c.41; the powers exercised in making this Order are exercisable by the Secretary of State only in relation to England, by virtue of section 271(1) of the National Health Service Act 2006.

(b) See section 28(7) of the National Health Service Act 2006 for the requirement on the Secretary of State to consult.

(c) 2006 c.28.

(d) See sections 83 and 276 of the National Health Service Act 2006 for the meaning of “primary medical services”.

### **Establishment of the Authority**

2. There is to be established a Special Health Authority known as the NHS Commissioning Board Authority.

### **Functions of the Authority**

3.—(1) The Authority is to exercise—

- (a) such functions in connection with preparing for the establishment and operation of a National Health Service Commissioning Board responsible for—
  - (i) arranging the provision of services for the purposes of the health service, and
  - (ii) exercising functions in relation to clinical commissioning groups; and
- (b) such other functions,

as the Secretary of State may direct<sup>(a)</sup>.

(2) The Authority must exercise those functions subject to, and in accordance with, any directions given to it by the Secretary of State<sup>(b)</sup>.

### **Constitution of the Authority**

4.—(1) The Authority is to consist of—

- (a) a chairman;
- (b) members who are officers of the Authority, including the Chief Executive; and
- (c) at least five other members who are not officers of the Authority in addition to the chairman.

(2) The number of members who are officers of the Authority must be less than the numbers of members who are not such officers.

### **Transfer of officers from the Secretary of State, a Strategic Health Authority, a Primary Care Trust or the Appointments Commission**

5.—(1) This article applies in relation to any person—

- (a) who, immediately before 31st October 2011, is employed by an employing authority; and
- (b) who has, before 31st October 2011, been notified in writing by the employing authority that employs that person that they are to be transferred to the Authority on that date.

(2) Any person to whom paragraph (1) applies is, on 31st October 2011 (“the transfer date”), to be transferred to the employment of the Authority.

(3) The contract of employment of a person whose employment has transferred to the Authority under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and the Authority.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the employing authority under, or in connection with, the contract of employment of any person whose employment transferred to the Authority on the transfer date under paragraph (2), is to transfer to the Authority on that date; and

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(a) See in particular section 7 of the National Health Service Act 2006.

(b) See in particular section 8 of the National Health Service Act 2006.

(b) anything done before the transfer date by, or in relation to, the employing authority, in respect of that person or that person’s contract of employment, is deemed to have been done by or in relation to the Authority.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom this article applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person has objected to the transfer to the Authority and has informed the employing authority of that objection.

(6) Where a person to whom this article applies has objected to the transfer of that person’s contract of employment to the Authority as described in paragraph (5), that contract of employment is to terminate immediately before the date on which it would otherwise have transferred to the Authority.

(7) A person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated for any purpose as having been dismissed by the employing authority.

(8) This article is without prejudice to any right of a person whose employment is transferred to the Authority to terminate that person’s contract of employment if a substantial change is made to that person’s detriment in that person’s working conditions.

(9) No right mentioned in paragraph (8) shall arise by reason only that, under this article, the identity of the person’s employer changes unless that person shows that, in all the circumstances, the change is a significant change and is to that person’s detriment.

#### **Consequential amendment of regulations**

6. The amendments contained in the Schedule have effect.

Signed by authority of the Secretary of State for Health.

12th September 2011

*Simon Burns*  
Minister of State,  
Department of Health

## SCHEDULE

Article 6

### AMENDMENTS CONSEQUENTIAL ON THE ESTABLISHMENT OF THE NHS COMMISSIONING BOARD AUTHORITY

#### **The National Health Service Trusts (Membership and Procedure) Regulations 1990**

1. In regulation 11(5) of the National Health Service Trusts (Membership and Procedure) Regulations 1990(a) (disqualification for appointment of chairman and non-executive directors), after sub-paragraph (h) insert—

“(i) the NHS Commissioning Board Authority.”.

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

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(a) S.I. 1990/2024; regulation 11(5) was substituted by S.I. 1997/2990 and was amended by S.I. 1999/945, 2000/2434, 2001/2629, 2005/497, 502, 1446 and 2532, and 2006/635.

2. In Schedule 1 to the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(a) (Special Health Authorities of which the chairman and members are not disqualified under regulation 5(1)(e)), after the reference to “NHS Blood and Transplant” insert “NHS Commissioning Board Authority”.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order provides for the establishment and constitution of a Special Health Authority under section 28 of the National Health Service Act 2006 (c.41), to be known as the NHS Commissioning Board Authority (“the Authority”) to exercise such of the Secretary of State’s functions in connection with preparing for the establishment and operation of a National Health Service Commissioning Board and such other functions as the Secretary of State may direct.

Article 2 of the Order establishes the Authority, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State. Provision is also made for the constitution of the Authority (article 4), for the transfer of staff to the Authority (article 5) and for amendments consequential on the establishment of the Authority (article 6 and the Schedule).

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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(a) S.I. 2000/89; Schedule 1 was substituted by S.I. 2002/38 and was amended by S.I. 2005/1446 and 2529.

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