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STATUTORY INSTRUMENTS

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**2012 No. 1273**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The Health Education England  
(Establishment and Constitution) Order 2012**

<i>Made</i>	- - - -	<i>15th May 2012</i>
<i>Laid before Parliament</i>		<i>18th May 2012</i>
<i>Coming into force</i>	- -	<i>28th June 2012</i>

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

In accordance with section 28(7) of that Act, the Secretary of State has consulted such bodies as the Secretary of State recognises as representing officers who in the Secretary of State's opinion are likely to be transferred or affected by transfers in pursuance of this Order.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Health Education England (Establishment and Constitution) Order 2012 and comes into force on 28th June 2012.

(2) In this Order, "HEE" means Health Education England.

**Establishment of HEE**

2. There is established a Special Health Authority known as Health Education England.

**Functions of HEE**

3.—(1) HEE is to exercise—

- (a) such functions in relation to the planning and delivery both at a national and local level of education and training of persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England;
- (b) such functions relating to ensuring the availability of sufficient numbers of such persons to provide such services; and

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(1) 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.

(c) such other functions,  
as the Secretary of State may direct<sup>(2)</sup>.

(2) HEE must exercise its functions subject to, and in accordance with, such directions as it is given by the Secretary of State<sup>(3)</sup>.

### **Constitution of HEE**

4.—(1) HEE consists of—

- (a) a chairman;
- (b) not more than 5 members who are not officers of HEE in addition to the chairman; and
- (c) not more than 5 members who are officers of HEE, including the person who for the time being holds the office of chief executive of HEE.

(2) The number of members who are officers of HEE must not exceed the number of members who are not such officers.

### **Transfer of officers to HEE**

5.—(1) This paragraph applies to a person who—

- (a) immediately before the transfer date is employed by a predecessor employer;
- (b) is wholly or mainly engaged in carrying out functions relating to education and training of healthcare workers; and
- (c) has, before the transfer date, been notified in writing by the predecessor employer that they are to be transferred to HEE on that date.

(2) A person to whom paragraph (1) applies is, on the transfer date, to be transferred to the employment of HEE.

(3) The contract of employment of a person whose employment has transferred to HEE 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 HEE.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the predecessor employer under or in connection with its contract of employment with a person transferred under paragraph (2) are to transfer to HEE on the transfer date; and
- (b) any act or omission before the transfer date of or in relation to the predecessor employer, in respect of that person or that person's contract of employment, is deemed to have been an act or omission of or in relation to HEE.

(5) Paragraphs (2) to (4) do not operate to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under or in connection with the contract, if before the transfer date, the person informs the predecessor employer or HEE that they object to becoming employed by HEE.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment as described in paragraph (5), that person's contract of employment is terminated on the transfer date.

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(2) See in particular section 7 of the Act.

(3) See in particular section 8 of the Act.

(7) Subject to paragraph (8), 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 predecessor employer.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (2), the person may treat the contract of employment as having been terminated, and the person shall be treated for any purpose as having been dismissed by the employer.

(9) No damages are payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3) and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) In this article—

“healthcare worker” means a person who is employed, or is considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England;

“transfer date” means 1st April 2013;

“predecessor employer” means any of the following to the extent that it exercises functions of a description specified in article 3(1)(a) or (b)—

- (a) the Department of Health;
- (b) a Strategic Health Authority;
- (c) a Primary Care Trust;
- (d) an NHS trust;
- (e) an NHS foundation trust;
- (f) the NHS Business Services Authority<sup>(4)</sup>; and
- (g) a university.

### **Public meetings**

6. The Public Bodies (Admission to Meetings) Act 1960<sup>(5)</sup> is to apply to HEE.

Signed by authority of the Secretary of State for Health.

15th May 2012

*Anne Milton*  
Parliamentary Under-Secretary of State,  
Department of Health

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<sup>(4)</sup> Established by S.I. 2005/2414, amended by S.I. 2006/632 and 2007/1201.

<sup>(5)</sup> 1960 c.67.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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, to be known as Health Education England (“HEE”). HEE is to exercise such of the Secretary of State’s functions in relation to the planning and delivery of education and training of persons who are employed, or are considering becoming employed, in an activity which involves or is connected to the provision of services as part of the health service in England, and ensuring there are sufficient number of such persons available to provide such services, and such other functions, as the Secretary of State may direct.

Article 2 of the Order establishes HEE, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State to HEE. Provision is also made for the constitution of HEE (article 4), for the transfer of staff to HEE (article 5) and for the Public Bodies (Admission to Meetings) Act 1960 to apply to HEE so that its meetings are open to the public (article 6).

An impact assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen.