

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONAL HEALTH SERVICE (FUNCTIONS OF THE FIRST-TIER**  
**TRIBUNAL RELATING TO PRIMARY MEDICAL, DENTAL AND**  
**OPHTHALMIC SERVICES) REGULATIONS 2010**

**SI 2010 No. 76**

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**

To provide that certain functions of the Secretary of State relating to appeals arising under particular provisions of primary services contracts which are currently exercised by the Family Health Services Appeal Authority (FHSAA), are to be exercised by the First-tier Tribunal when that Authority is abolished.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Context**
  - 4.1 The National Health Service (General Medical Services Contracts) Regulations 2004 (“the GMS Regulations”); the National Health Service (Personal Medical Services Agreements) Regulations 2004 (“the PMS Regulations”); the National Health Service (General Dental Services Contracts) Regulations 2005 (“the GDS Regulations”); the National Health Services (Personal Dental Services Agreements) Regulations 2005 (“the PDS Regulations”); and the General Ophthalmic Services Contracts Regulations 2008 (“the GOS Regulations”) make provision for contractors to seek resolution of a dispute arising under particular provisions of those contracts by the Secretary of State.
  - 4.2 Section 169(3) of the National Health Service Act 2006 makes provision for the Secretary of State to direct the Family Health Services Appeal Authority to exercise specified functions on his behalf – these functions are currently delegated by Directions made in writing under the provisions of section 273(4)(c) of the 2006 Act. Section 169(3) as amended by paragraph 121 of Schedule 2 to the Transfer of Tribunal Functions Order enables Directions to be given to the First-tier Tribunal. As a consequence of amendments made to the section 273(4) of the National Health Act by paragraph 126 of Schedule 2 to the Transfer of Tribunal Functions Order 2010, directions made under section 169(3) must now be given by regulations. These Regulations

therefore reflect in regulations, Directions which were previously given the FHSAA in writing.

- 4.3 Section 3 of the Tribunals, Courts and Enforcement Act 2007 established the First-tier Tribunal. Article 3 of the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22) (the Order) abolishes the Family Health Services Appeal Authority. The functions of the FHSAA are transferred to the First Tier Tribunal by Article 2 of the 2010 Order. The FHSAA has functions directly conferred through primary legislation, for example, appeals against removal from a medical performers list. The Secretary of State also has functions which are conferred under the GMS Regulations, PMS Regulations, GDS Regulations, PDS Regulations and GOS Regulations relating to disputes arising under particular provisions of contracts to provide primary care services. In addition, the Secretary of State may direct the FHSAA to exercise any of his functions relating to the determination of appeals to him which are specified in directions, and as from 18<sup>th</sup> January may similarly direct the First-tier Tribunal. As from that date, directions must be given by regulations.
- 4.4 The Transfer of Tribunal Functions Order 2010 which abolishes the FHSSA and makes amendments to the National Health Service Act 2006 comes into force on 18 January 2010.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

- 6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

- 7.1 Appeals to the Secretary of State under primary care regulations are delegated by directions under the provisions of section 273(4)(c) of the NHS Act 2006.
- 7.2 The FHSAA is to be abolished and their functions which are given to them under the National Health Service Act are transferred to the First Tier Tribunal.
- 7.3 JCSI expressed a preference for the functions to be delegated by regulations and therefore subject to parliamentary procedure rather than Directions merely made by an instrument in writing and not subject to parliamentary procedure. As a consequence of amendments

made by the Order to the National Health Service Act 2006, Directions to the First-Tier Tribunal must be given by way of regulations.

- 7.4 The regulations ensure that the existing functions which are been delegated to the FHSAA are delegated to the First-tier Tribunal. The Regulations do not replicate some provisions which are extinct.
- 7.5 These Regulations come into force four weeks after the functions of the FHSAA are transferred to the First-tier Tribunal. However, the FHSAA records have been checked back to January 2006 and there have been no appeals to the FHSAA which involve the FHSAA exercising the functions of the Secretary of State under the Directions.
- 7.6 We do not feel the risk of an appeal being made is significant enough to breach the 21 day rule. Ministry of Justice have confirmed that they are content with this approach.

- ***Consolidation***

- 7.7 These are new Regulations but they update provisions which were previously made in a number of different Directions which were made in writing.

## **8. Consultation outcome**

- 8.1 The Ministry of Justice has consulted the British Medical Association, the General Dental Council and the General Ophthalmic Society on the transfer of the FHSAA and on the procedure rules by which appeals will be processed.
- 8.2 No comments were received from any of these representative bodies.

## **9. Guidance**

- 9.1 Guidance on how to appeal to the First-Tier Tribunal, including how to complete forms, will be placed on the Tribunals Service website for 18 January 2010.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies. The process for handling disputes will remain the same as for appeals to the Family Health Services Appeal Authority.
- 10.2 There is no negative impact on equality issues.
- 10.3 There is no negative impact on the public sector. These changes simply transfer delegated Secretary of State functions from one independent body to another.

10.4 Impact Assessments for the Tribunals, Courts and Enforcement Act 2007 and the Transfer of Functions Order 2010 were prepared by the Ministry of Justice. No revisions to these assessments were made for the Transfer of Functions Order 2010.

**11. Regulating small business**

11.1 The legislation is not expected to generate any significant additional costs to small business. There are no significant effects on the costs of compliance to businesses and no adverse impact on any competition, equality or environmental issues

**12. Monitoring & review**

12.1 The impact of the Transfer of Functions Order 2010 will be monitored and reviewed as part of the annual report of the Tribunals Service, which measures performance against key indicators. In addition, an annual report by the Senior President of Tribunals on all relevant tribunal cases is published. This will include cases heard by the Health, Education and Social Care Chamber of the First-tier Tribunal, where the Senior President considers this appropriate.

**13. Contact**

13.1 Jenny Smith at the Department of Health (tel: 0113 254 5020 or email [jenny.smith@dh.gsi.gov.uk](mailto:jenny.smith@dh.gsi.gov.uk)) can answer any queries regarding the instrument.