
STATUTORY INSTRUMENTS

2012 No. 1641

The NHS Commissioning Board Authority (Abolition and Transfer of Staff, Property and Liabilities) and the Health and Social Care Act 2012 (Consequential Amendments) Order 2012

PART 2

Abolition of the NHS Commissioning Board Authority

Interpretation

2. In this Part—

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

“the Authority” means the NHS Commissioning Board Authority established under article 2 of the NHS Commissioning Board Authority (Establishment and Constitution) Order 2011(1);

“the Board” means the National Health Service Commissioning Board(2); and

“the transfer date” means the date on which this Part comes into force by virtue of article 1(2).

Abolition of the Authority

3. The Authority is abolished.

Transfer of staff to the Board

4.—(1) This paragraph applies to any person who—

(a) immediately before the transfer date is employed by the Authority; and

(b) has been notified in writing by the Authority prior to the transfer date that they are to be transferred to the Board.

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

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

(a) is not terminated by that transfer; and

(b) has effect from the transfer date as if originally made between that person and the Board.

(4) Without prejudice to paragraph (3)—

(1) [S.I. 2011/2237](#).

(2) See section 1H of the National Health Service Act 2006 as inserted by section 9(1) of the Health and Social Care Act 2012 (“the 2012 Act”) from a day to be appointed by Order under section 306 of the 2012 Act.

- (a) all the rights, powers, duties and liabilities of the Authority under, or in connection with, the contract of employment of any person whose employment transferred to the Board on the transfer date under paragraph (2), are to transfer to the Board; and
- (b) any act or omission before the transfer date by, or in relation to, the Authority, 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, the Board.

(5) Paragraphs (2) to (4) do not have effect 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, that contract, if, before the transfer date, that person informs the Authority that they object to becoming employed by the Board.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to the Board as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with the Authority.

(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 Authority.

(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), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed.

(9) No damages are to be payable by the Authority or the Board as a result of a dismissal falling within paragraph (8) in respect of any failure by the Authority or the Board 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.

Transfer of property and liabilities

5.—(1) Any property held by the Authority immediately before the transfer date which is identified in Schedule 1 is to transfer, on the transfer date, to the Board.

(2) Any other property (including assets, whether tangible or intangible) which is held by the Authority immediately before the transfer date which is not referred to in paragraph (1) is to transfer, on the transfer date, to the Board.

(3) All liabilities of the Authority relating to property held by the Authority immediately before the transfer date are to transfer, on the transfer date, to the Board.

(4) Any right relating to property held by the Authority immediately before the transfer date that was enforceable by or against the Authority before the transfer date is, on or after that date, to be enforceable by or against the Board.

Transfer of other liabilities and winding up of affairs

6.—(1) On the transfer date, all liabilities of the Authority not mentioned in articles 4 and 5 are to transfer to the Board.

(2) In paragraph (1) "liabilities"—

(a) includes the obligation of the Authority to prepare—

(i) accounts in accordance with Schedule 15 to the Act in respect of the period beginning 1st April 2012 and ending on the transfer date, and

- (ii) a report to the Secretary of State under regulation 14 of the NHS Commissioning Board Authority Regulations 2011⁽³⁾ in respect of the exercise by the Authority of its functions during that period; and
 - (b) does not include any liability in tort in respect of any claim for damages for death or personal injury caused or alleged to have been caused before the transfer date.
- (3) Any liability in tort in respect of any claim for damages for death or personal injury caused or alleged to have been caused before the transfer date is to transfer, on the transfer date, to the Secretary of State.
- (4) For the purposes of paragraph (2)(a)(ii), regulation 14 of the NHS Commissioning Board Authority Regulations 2011 is to remain in force.
- (5) The Board must take such action as may be necessary for the winding up of the affairs of the Authority.

Supplementary provision

7.—(1) Any act or omission by, or in relation to, the Authority before the transfer date in respect of—

- (a) the exercise of any functions of the Authority⁽⁴⁾;
- (b) under or in connection with any contract or agreement entered into by the Authority; or
- (c) in connection with any property or liabilities of the Authority transferred under this Order,

is deemed to have been an act or omission of, or in relation to, the Board.

(2) Anything (which may include legal proceedings) which, when this Order takes effect, is in the process of being done by, or in relation to, the Authority in respect of, or in connection with—

- (a) the exercise by the Authority of any of its functions; or
- (b) any property or liabilities of the Authority transferred under this Order,

is deemed to have effect as if done by, or in relation to, and may be continued by, or in relation to, the Board.

(3) Any reference to the Authority in any agreement (whether written or not), instrument or other document in connection with any functions of the Authority or any property or liabilities transferred under this Order is to be treated as a reference to the Board.

(4) No right to terminate or vary a contract, arrangement or instrument is to operate or become exercisable, and no provision of any contract, arrangement or instrument is to operate or become exercisable or be contravened, by reason of the transfer of any property and liabilities under or by virtue of this Order.

(5) The transfers of any property, rights and liabilities provided for by this Order are to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise); and
- (b) whether or not they would otherwise be capable of being transferred.

Amendments and revocations consequential on the abolition of the Authority

8. The amendments and revocations in Schedule 2 have effect.

(3) [S.I. 2011/2250](#).

(4) The functions of the Authority are set out in article 3 of [S.I. 2011/2237](#) and in the NHS Commissioning Board Authority (Functions of the Authority) Directions 2011, signed on 31st October 2011, as amended by the NHS Commissioning Board Authority (Functions of the Authority) (Amendment) Directions 2012 signed on 31st May 2012.

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