
STATUTORY INSTRUMENTS

2013 No. 235

**The National Treatment Agency (Abolition) and the
Health and Social Care Act 2012 (Consequential,
Transitional and Saving Provisions) Order 2013**

PART 1

General

Citation, commencement, extent and application

1.—(1) This Order may be cited as the National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013.

(2) This Order comes into force on 1st April 2013.

(3) Subject to paragraphs (4) and (5), this Order extends to England and Wales only.

(4) Any amendment or revocation made by this Order has the same extent as the enactment amended or revoked.

(5) Any transitional or saving provision made by this Order has the same extent as the enactment to which it relates.

(6) Part 2 of this Order applies in relation to England only.

PART 2

Abolition of the National Treatment Agency

Interpretation

2. In this Part—

“the Agency” means the National Treatment Agency established by article 2 of the National Treatment Agency (Establishment and Constitution) Order 2001⁽¹⁾; and

“the transfer date” means 1st April 2013.

Abolition of the Agency

3. The Agency is abolished.

Transfer of staff to the Secretary of State

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

⁽¹⁾ [S.I. 2001/713](#). The relevant amending instrument is [S.I. 2003/1827](#).

- (a) is employed by the Agency immediately before the transfer date; and
 - (b) has been notified in writing by the Agency prior to the transfer date that they are to be transferred to the employment of the Secretary of State.
- (2) Any person to whom paragraph (1) applies is, on the transfer date, transferred to the employment of the Secretary of State.
- (3) The contract of employment of a person whose employment transfers to the Secretary of State under paragraph (2)—
- (a) is not terminated by that transfer; and
 - (b) has effect on and after the transfer date as if originally made between that person and the Secretary of State.
- (4) Without prejudice to paragraph (3)—
- (a) all the rights, powers, duties and liabilities of the Agency under or in connection with the contract of employment of any person whose employment transfers to the Secretary of State under paragraph (2), are transferred to the Secretary of State; and
 - (b) any act or omission before the transfer date by, or in relation to, the Agency, 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 Secretary of State.
- (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 that contract, if, before the transfer date, the person informs the Agency that they object to becoming employed by the Secretary of State.
- (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), the transfer operates so as to terminate that person's contract of employment with the Agency.
- (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 Agency.
- (8) Where the transfer involves or would involve a substantial change in 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 payable by the 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.

Transfer of property and liabilities

- 5.—(1) Any property⁽²⁾ held by the Agency immediately before the transfer date is on the transfer date transferred to the Secretary of State.
- (2) Any criminal liabilities of the Agency are on the transfer date transferred to the National Health Service Litigation Authority⁽³⁾.
- (3) All other liabilities of the Agency are on the transfer date transferred to the Secretary of State.

(2) "Property" includes rights; *see* section 275(1) of the National Health Service Act 2006.

(3) The National Health Service Litigation Authority is a Special Health Authority established by [S.I. 1995/2800](#), to which there are amendments not relevant to this Order.

Continuity and supplementary provision

6.—(1) Any right relating to property held by the Agency immediately before the transfer date that was enforceable by or against the Agency before the transfer date is, on and after that date, enforceable by or against the Secretary of State.

(2) Any act or omission by, or in relation to, the Agency before the transfer date in respect of—

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

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

(3) Subject to article 7, anything (which may include legal proceedings) which, when this Order comes into force, is in the process of being done by, or in relation to, the Agency in respect of, or in connection with—

- (a) the exercise by the Agency of any of its functions; or
- (b) any property or liabilities of the Agency transferred by 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 Secretary of State.

(4) Any reference to the Agency in any agreement (whether written or not), instrument or other document in connection with any of the functions of the Agency or any property or liabilities transferred by this Order is to be treated as a reference to the Secretary of State.

(5) 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 or liabilities under or by virtue of this Order.

(6) The transfer of any property, rights and liabilities by this Order is 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.

Complaints

7.—(1) A complaint made under the Health Service Commissioners Act 1993⁽⁴⁾ to the Health Service Commissioner for England in relation to the Agency may be investigated by the Commissioner notwithstanding the abolition of the Agency, and the Commissioner must send a copy of the report of the result of any such investigation to the Secretary of State.

(2) The Secretary of State shall, in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009⁽⁵⁾, handle any complaint made under those Regulations in relation to the Agency, as if the Secretary of State was a Special Health Authority and the complaint had been made to that Authority.

(3) This article applies to complaints made before, on or after the transfer date.

(4) 1993 c. 46.

(5) S.I. 2009/309. The relevant amending instrument is S.I. 2009/1768.

Winding up of affairs of the Agency

8. The Secretary of State must take such action as may be necessary for the winding up of the affairs of the Agency, including the preparation of the outstanding accounts of the Agency and the performance of all statutory duties relating to those accounts.

Amendments and revocations consequential on the abolition of the Agency

9. The amendments and revocations in Schedule 1 have effect.

PART 3

**The Health and Social Care Act 2012:
consequential, transitional and saving provisions**

Primary medical and dental services

10.—(1) In this article, “relevant Order” means—

- (a) the General Medical Services Transitional and Consequential Provisions Order 2004(6),
- (b) the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004(7),
- (c) the General Medical Services (Transitional Measure Relating to Non-Clinical Partners) Order 2004(8),
- (d) the General Dental Services and Personal Dental Services Transitional Provisions Order 2005(9), or
- (e) the General Dental Services, Personal Dental Services and Abolition of the Dental Practice Board Transitional and Consequential Provisions Order 2006(10).

(2) The abolition of Primary Care Trusts by section 34 of the Health and Social Care Act 2012 does not affect the continuing operation of any provision of a relevant Order which but for that abolition would be capable of having effect after 31st March 2013.

(3) Any provision of a relevant Order—

- (a) which has continuing effect after 31st March 2013, and
- (b) which refers to a Primary Care Trust,

is to be treated, so far as that provision falls to be applied to any act or omission occurring after that date, as if it referred to the National Health Service Commissioning Board.

(4) Any act or omission by or in relation to a Primary Care Trust before 1st April 2013 under or in connection with a provision of a relevant Order which has continuing effect after 31st March 2013 is, where appropriate, to be treated as an act or omission by or in relation to the National Health Service Commissioning Board.

(5) Anything which is in the process of being done by or in relation to a Primary Care Trust immediately before 1st April 2013 under or in connection with a provision of a relevant Order which has continuing effect after 31st March 2013 is, where appropriate, to be treated as done by or in

(6) [S.I. 2004/433](#), to which there is an amendment not relevant to this Order.

(7) [S.I. 2004/865](#), to which there are amendments not relevant to this Order.

(8) [S.I. 2004/1772](#).

(9) [S.I. 2005/3435](#), to which there is an amendment not relevant to this Order.

(10) [S.I. 2006/562](#), to which there are amendments not relevant to this Order.

relation to, and may be continued by or in relation to, the National Health Service Commissioning Board.

Consequential amendments and revocations

11. Schedule 2 (which contains amendments and revocations which are consequential on the Health and Social Care Act 2012) has effect.

Transitional and saving provisions

12. Schedule 3 (transitional and saving provisions) has effect.

Signed by authority of the Secretary of State for Health.

5th February 2013

Anna Soubry
Parliamentary Under-Secretary of State,
Department of Health