

**2003 No. 2772**

**NATIONAL HEALTH SERVICE ENGLAND**

**The NHSU (Establishment and Constitution) Order 2003**

*Made - - - - - 3rd November 2003*

*Laid before Parliament 7th November 2003*

*Coming into force - - 1st December 2003*

The Secretary of State for Health in exercise of powers conferred by sections 11(1), (2) and (4) and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977(a) and of all other powers enabling him in that behalf, and after consultation with such bodies as he recognises represent officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the Order, hereby makes the following Order:

**Citation, commencement, application and interpretation**

1.—(1) This Order which may be cited as the NHSU (Establishment and Constitution) Order 2003 shall come into force on 1st December 2003.

(2) This Order applies to England only.

(3) In this Order—

“the Act” means the National Health Service Act 1977;

“the PPA” means the Prescription Pricing Authority(b);

“the PPA Directions” means directions to the PPA regarding NHSU dated 30th May 2002 including the Protocol for the Provision of Financial Services and Human Resources which was entered into on 30th May 2002.

**Establishment of NHSU**

2. There is hereby established a Special Health Authority which shall be known as NHSU.

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(a) 1977 c. 49; section 11 was amended by paragraph 31 of Schedule 1 to the Health Services Act 1980 (c. 53) and by Schedule 10 to the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”) and by paragraph 2 of Schedule 1 to the Health Authorities Act 1995 (c. 17) (“the 1995 Act”) and by paragraph 6 of Schedule 4 to the Health Act 1999 (c. 8) (“the 1999 Act”); sub-paragraph (7) was inserted in paragraph 9 of Schedule 5 by paragraph 7(2) of Schedule 1 to the 1990 Act and was amended by paragraph 60(b) of Schedule 1 to the 1995 Act and by paragraph 34 of Schedule 1 to the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”).

The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672 as amended by section 66(4) to (6) of the 1999 Act.

(b) See The Prescription Pricing Authority Constitution Order 1990 S.I. 1990/1718.

### **Functions of NHSU**

3. Subject to and in accordance with such directions as the Secretary of State may give to NHSU(a) NHSU shall perform—

- (a) such functions relating to the provision of learning so as to promote or secure the effective provision of services under the Act; and
- (b) such other functions,

as the Secretary of State may direct.

### **Constitution of NHSU**

4. NHSU shall consist of—

- (a) a chairman; and
- (b) not more than 10 members who are not officers of NHSU; and
- (c) 5 members who are officers of NHSU including the chief executive (who is also to have the title of vice chancellor designate), and the director of planning and resources.

### **Remuneration of members**

5. NHSU is hereby specified for the purposes of paragraph 9(7)(b) of Schedule 5 to the Act (definition of “relevant authority” for the purposes of paying remuneration to members of Strategic Health Authorities, Local Health Boards and certain Special Health Authorities).

### **Public meetings**

6. The Public Bodies (Admission to Meetings) Act 1960(b) shall apply to NHSU.

### **Transfer of officers**

7.—(1) This paragraph applies in relation to any officer who on 30th November is employed by the PPA wholly or mainly in the performance of the functions set out in the PPA Directions and who was notified in writing on or before 7th November 2003 that he was to be transferred to NHSU.

(2) Any such officer shall, on 1st December 2003, be transferred to the employment of NHSU.

(3) The contract of employment of an officer transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) has effect from the time of the transfer as if originally made between the officer and NHSU.

(4) Without prejudice to paragraph (3)—

- (a) all rights, powers, duties and liabilities of the PPA under or in connection with its contract of employment with an officer transferred under paragraph (2) shall by virtue of this paragraph be transferred to NHSU; and
- (b) anything done before the date of the transfer by or in relation to PPA in respect of such an officer or his contract of employment shall be deemed to have been done by or in relation to NHSU.

(5) Paragraphs (2) to (4) do not transfer an officer’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that officer objects to the transfer to NHSU and informs the PPA of that objection by 30th November 2003.

(6) Where an officer objects as mentioned in paragraph (5), his contract of employment with the PPA shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed by that body.

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(a) *See*, in particular, sections 16D, 17 and 18 of the National Health Service Act 1977 (c. 49); sections 16D and 17 were inserted by section 12(1) of the 1999 Act and were amended by section 3 of, and paragraphs 1, 6 and 7 of Schedule 1 to, the 2002 Act; subsection (3) of section 17 was substituted by paragraph 5 of Schedule 5 to the Health and Social Care Act 2001 (c. 15). Section 18 was amended by sections 2(1), 5(1) and 3(8) of the 1995 Act, by paragraph 9 of Schedule 1 to and Schedule 9 to, the 2002 Act.

(b) 1960 (c. 67); *see* paragraph 1(g) of the Schedule to the Act, which was inserted by paragraph 91 of Schedule 1 to the 1995 Act.

(7) This article is without prejudice to any right of an officer to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this article, the identity of his employer changes unless the officer shows that, in all the circumstances, the change is a significant change and is to his detriment.

**Enforceability of rights and transfer of property and liabilities of the Prescription Pricing Authority**

8.—(1) Any right that was, immediately before 1st December 2003, enforceable by or against the PPA in respect of the PPA Directions shall, on or after that date be enforceable by or against NHSU.

(2) All property and liabilities of the PPA relating to the exercise of its functions under the PPA Directions shall be transferred on 1st December 2003 to NHSU.

Signed by authority of the Secretary of State for Health

3rd November 2003

*John Hutton*  
Minister of State,  
Department of Health

## EXPLANATORY NOTE

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

This Order provides for the establishment and constitution of a Special Health Authority, to be known as NHSU. NHSU will exercise such functions of the Secretary of State relating to the provision of learning so as to promote or secure the effective provision of services under the National Health Service Act 1977 and such other functions as the Secretary of State may direct.

Article 2 of the Order establishes NHSU, 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 NHSU (article 4), for the remuneration of members of NHSU (article 5), for the admission of the public to meetings (article 6), for the transfer of Officers (article 7) and the transfer of property and liabilities (article 8).

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