

2004 No. 667

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The NHS Pensions Agency (Asiantaeth Pensiynau'r GIG)
(Establishment and Constitution) Order 2004**

<i>Made</i> - - - -	<i>10th March 2004</i>
<i>Laid before Parliament</i>	<i>10th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Secretary of State for Health in relation to England, and the National Assembly for Wales in relation to Wales, in exercise of the powers conferred by sections 11(1), (2) and (4) of, and paragraph 9(7)(b) of Schedule 5 to, the National Health Service Act 1977(a), and now vested in them and of all other powers enabling them in that behalf, and after consultation with such bodies as they recognise represent officers who in their opinion are likely to be transferred or affected by transfers in pursuance of the Order, hereby make the following Order:

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) (Establishment and Constitution) Order 2004 and shall come into force on 1st April 2004.

(2) This Order applies to England and Wales except for Article 3(b) which applies to England only.

(3) In this Order—

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

“the Agency” means the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) Special Health Authority established by this Order;

“appropriate authority” means—

(a) in relation to England, the Secretary of State for Health, and

(a) 1977 c.49; section 11 was amended by section 2(1) of, and paragraph 2 of Schedule 1 to, the Health Authorities Act 1995 (c.17) (“the 1995 Act”) and section 65 of, and paragraphs 4 and 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 section 1 of, and paragraph 7(2) of Schedule 1 to, the National Health Service and Community Care Act 1990 (c.19) and amended by section 2(1) of, and paragraph 60(b) of Schedule 1 to, the 1995 Act and section 1(3) of, and paragraphs 1, 34(1) and (3)(b) 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, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; see the entry in Schedule 1 for the National Health Service Act 1977 as amended by section 66(4) and (5)(a) of the 1999 Act, section 67(1) of, and paragraph 12(1) and (3) of Schedule 5 to the 2001 Act and section 196 of, and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) on a date to be appointed.

- (b) in relation to Wales, the National Assembly for Wales;
- “the NHS Pension Scheme” means the National Health Service Pension Scheme for England and Wales(a);
- “the 1997 Directions” means the Directions to the Morecambe Bay Health Authority with respect to the calculation of student allowances which came into force on 1st October 1997(b);
- “the 1999 Directions” means the Directions to the Morecambe Bay Health Authority with respect to the calculation of student allowances dated 10 February 1999(c);
- “the 1997 Agreement” means the Agreement which had effect from 1st October 1997 made between Morecambe Bay Health Authority and Blackpool Victoria Hospital National Health Service Trust(d).

Establishment of the Agency

- 2. There is hereby established a Special Health Authority which shall be known—
 - (a) in English as the NHS Pensions Agency; and
 - (b) in Welsh as Asianthaeth Pensiynau'r GIG.

Functions of the Agency

- 3. Subject to and in accordance with such directions as the appropriate authority may give to the Agency(e), the Agency shall perform such functions in connection with—
 - (a) the NHS Pension Scheme;
 - (b) the making of grants, and payment of fees and allowances to persons or bodies with whom arrangements have been made for the provision of instruction under section 63 of the Health Services and Public Health Act 1968(f); and
 - (c) such other functions,

as the appropriate authority may direct.

Constitution of the Agency

- 4. The Agency shall consist of—
 - (a) a chairman;
 - (b) not less than 5 and not more than 7 members who are not officers of the Agency in addition to the chairman; and

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- (a) The National Health Service Pension Scheme Regulations 1995 S.I.1995/300 as amended by S.I. 1997/80,1888, 1998/666, 2216, 2000/605, 2001/1428, 3649, 2002/561, 2469, 2003/631 and 2322; the National Health Service (Injury Benefits) Regulations 1995 S.I.1995/866 as amended by S.I. 1997/646, 1998/667, 2217, 2000/606, 2002/2469, and 2003/631; the National Health Service (Compensation for Premature Retirement) Regulations 1981 S.I. 1981/1263 as amended by S.I. 1982/226, 1985/39, 1659, 1991/584, 1996/971, 2000/605, 2002/1311; the National Health Service (Compensation for Premature Retirement) Regulations 2002 S.I. 2002/1311 as amended by S.I. 2002/2469 and 2003/631 and the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000 S.I.2000/619 as amended by S.I. 2001/1428, 3649 and 2002/610.
 - (b) The 1997 Directions are to be revoked by Directions to take effect from 1st April 2004.
 - (c) See the Health Authorities (Establishment and Abolition)(England) Order 2002./553 for the transfer of functions from the Morecambe Bay Health Authority to Cumbria and Lancashire Health Authority and the Health Authority (Construction of References) Directions 2002 for the change of name to Cumbria and Lancashire Strategic Health Authority. The 1999 Directions are to be revoked by Directions to take effect from 1 April 2004.
 - (d) The Blackpool Victoria Hospital National Health Service Trust (Establishment) Order 1993 S.I. 1993/2598.
 - (e) See, in particular, sections 16D, 17 and 18 of the National Health Service Act 1977 (c.49); section 16D was inserted by section 12(1) of the 1999 Act and amended by sections 1(3), 3(1) and (2) of, and paragraphs 1 and 6(a) of Schedule 1 to, the 2002 Act; section 17 was inserted by section 12(1) of the 1999 Act and amended by section 67(1) of, and paragraph 5(1) and (3) of Schedule 5 to, the Health and Social Care Act 2001 (c.15) and section 1(3) of, and paragraphs 1 and 7 of Schedule 1 to, the 2002 Act; section 18 was amended by sections 2(1), 5(1) and 3(8) of, and paragraph 9(b) and (c)(ii) of Schedule 1 and Schedule 3 to, the 1995 Act, section 12(3) and (4) of the 1999 Act and sections 1(3), 3(1), (5)(a) and (b) and 37(2) of, and paragraphs 1 and 9 of Schedule 1 and Part 1 of Schedule 9 to, the 2002 Act.
 - (f) 1968 c.46.

- (c) not more than 5 members who are officers of the Agency including the persons who for the time being hold the office of Chief Executive and Director of Finance of the Agency.

Remuneration of members

5. The Agency 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 certain Special Health Authorities).

Public meetings

6. The Public Bodies (Admission to Meetings) Act 1960(a) shall apply to the Agency.

Enforceability of rights and transfer of liabilities

7.—(1) Any right that was, immediately before 1st April 2004, enforceable by or against Cumbria and Lancashire Strategic Health Authority in respect of the 1997 and the 1999 Directions is transferred to the Agency and therefore shall, on or after that date, be enforceable by or against the Agency.

(2) All liabilities of Cumbria and Lancashire Strategic Health Authority relating to the exercise of those functions it was directed to exercise under the 1997 and the 1999 Directions shall on 1st April 2004 be transferred to the Agency and are therefore enforceable against it.

(3) Any right that was, immediately before 1st April 2004, enforceable by or against Blackpool, Fylde and Wyre Hospitals National Health Service Trust(b) in respect of the 1997 Agreement shall on 1st April 2004 be transferred to the Agency and be enforceable by or against the Agency.

(4) All liabilities of Blackpool, Fylde and Wyre Hospitals National Health Service Trust in respect of the 1997 Agreement, shall on 1st April 2004 be transferred to the Agency and are therefore enforceable against it.

Transfer of officers

8.—(1) This paragraph applies in relation to an officer of Blackpool, Fylde and Wyre Hospitals National Health Service Trust who on 31st March 2004 is wholly or mainly engaged in the performance of the functions specified in the 1997 Agreement and who was notified in writing on 9th January 2004 that he was to be transferred to the Agency.

(2) Any officer to whom paragraph (1) applies shall, on 1st April 2004, be transferred to the employment of the Agency.

(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 the Agency.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the body from which an officer is transferred, 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 the Agency; and
- (b) anything done before the date of the transfer by or in relation to the body from which that officer is so transferred, in respect of the officer or his contract of employment, shall be deemed to have been done by or in relation to the Agency.

(a) 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.
(b) The Blackpool, Fylde and Wyre Hospitals National Health Service Trust (Establishment) and the Blackpool Victoria Hospital National Health Service Trust (Dissolution) Order 2002 S.I.2002/1243.

(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 the Agency and informs the body from which he would be transferred of that objection by 31st March 2004.

(6) Where an officer objects as mentioned in paragraph (5), his contract of employment with the body from which he would be transferred 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 from that body.

(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.

Signed by authority of the Secretary of State for Health

10th March 2004

John Hutton
Minister of State,
Department of Health

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a)

9th March 2004

John Marek
The Presiding Officer of the National Assembly

(a) 1998 c.38

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 the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) ("the Agency"), to exercise functions, in England and Wales, in connection with the NHS Pension Scheme and, in England, in connection with the making of grants, and payment of fees and allowances under section 63 of the Health Services and Public Health Act 1968 and such other functions as, in relation to England, the Secretary of State and, in relation to Wales, the National Assembly for Wales may direct it to perform.

Article 2 of the Order establishes the Agency, the functions of which are described in article 3 and are to be specified more particularly in directions given by the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales. Provision is also made for the constitution of the Agency (article 4), for the remuneration of its members (article 5), for the admission of the public to meetings (article 6), for the transfer and enforceability of rights and liabilities (article 7) and the transfer of officers (article 8).

STATUTORY INSTRUMENTS

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WALES**

The NHS Pensions Agency (Asiantaeth Pensiynau'r GIG)
(Establishment and Constitution) Order 2004

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