STATUTORY INSTRUMENTS

2017 No. 374

NATIONAL HEALTH SERVICE, ENGLAND

The South Essex Partnership University NHS Foundation Trust and the North Essex Partnership University NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2017

Made - - - -	*27th March 2017*
Coming into force - -	*1st April 2017*

Monitor makes the following Order in exercise of the powers conferred by sections 57(2) and 64(5)(b) of the National Health Service Act 2006(**1**).

Monitor makes this Order having granted(**2**) the application made by the South Essex Partnership University NHS Foundation Trust and the North Essex Partnership University NHS Foundation Trust under section 56(1) of the National Health Service Act 2006(**3**) for the dissolution of the trusts and the establishment of a new NHS foundation trust known as the Essex Partnership University NHS Foundation Trust.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the South Essex Partnership University NHS Foundation Trust and the North Essex Partnership University NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2017 and comes into force on 1st April 2017.

(2) In this Order—

"the new FT" means the Essex Partnership University NHS Foundation Trust;

"the old FTs" means the South Essex Partnership University NHS Foundation Trust(**4**) and the North Essex Partnership University NHS Foundation Trust(**5**), or either trust as the context requires;

(**1**) 2006 c. 41; section 57(2) was amended by section 172(2) of the Health and Social Care Act 2012 (c.7) ("the 2012 Act"); see section 275(1) for the definition of "the regulator".
(**2**) Monitor has a duty under section 56(4) of the National Health Service Act 2006 ("the 2006 Act") (as substituted by section 168(5) of the 2012 Act) to grant an application to merge made by two trusts if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken.
(**3**) Section 56(1) was amended by section 168(1) of the 2012 Act.
(**4**) Authorised as an NHS foundation trust by Monitor on 1st May 2006 pursuant to section 35 of the 2006 Act.
(**5**) Authorised as an NHS foundation trust by Monitor on 1st October 2007 pursuant to section 35 of the 2006 Act.

"the transfer date" means 1st April 2017; and

"the 2012 Act" means the Health and Social Care Act 2012(**6**).

Dissolution

2. The old FTs are dissolved.

Transfer of property and liabilities

3.—(1) On the transfer date, all the property and liabilities of the old FTs shall be transferred to the new FT.

(2) Paragraph (1) does not include any rights and liabilities under, or in connection with, a contract of employment which transferred to the new FT on the transfer date under the Transfer of Undertakings (Protection of Employment) Regulations 2006(**7**).

(3) In paragraph (1), subject to paragraph (2), "property and liabilities" includes, without limitation—

(a) the obligation to prepare any outstanding accounts of the old FTs and to perform all statutory duties relating to those accounts;

(b) the outstanding public dividend capital of the old FTs, any loans or grants made to them and any other payment obligation;

(c) any criminal liabilities of the old FTs(**8**); and

(d) all of the trust property of the old FTs.

(4) Insofar as this Order provides for the transfer—

(a) of any land held on lease from a third party, or

(b) of any other asset leased or hired from a third party or in which a third party has an interest,

the transfer is binding on the third party notwithstanding that, apart from this paragraph, it would have required the third party's consent or concurrence.

Monitor licence

4.—(1) The licences held by the old FTs under Chapter 3 of Part 3 of the 2012 Act(**9**) do not apply to the new FT.

(2) Any enforcement actions against the old FTs in effect immediately before the transfer date do not apply to the new FT.

(3) In this article, "enforcement action" means—

(a) a discretionary requirement imposed by Monitor under section 105 of the 2012 Act (discretionary requirements) in relation to a breach of a condition of a licence under Chapter 3 of Part 3 of the 2012 Act;

(b) an enforcement undertaking accepted by Monitor under section 106 of the 2012 Act (enforcement undertakings) where Monitor has reasonable grounds to suspect that a condition of such a licence has been breached; or

(c) a licence condition relating to governance included in such a licence under section 111 of the 2012 Act (imposition of licence conditions on NHS foundation trusts).

(**6**) 2012 c.7.
(**7**) S.I. 2006/246.
(**8**) Section 57(4) of the 2006 Act has the effect that the liabilities which may be transferred by an order made under section 57(2) includes criminal liabilities.
(**9**) This chapter confers power on Monitor to license providers of health care services for the purposes of the NHS.