STATUTORY INSTRUMENTS

# 2016 No. 214

# NATIONAL HEALTH SERVICE, ENGLAND

## The National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016

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| *Made - - - -* | *22nd February 2016* |
| *Laid before Parliament* | *29th February 2016* |
| *Coming into force - -* | *1st April 2016* |

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 7(1), 28(1), (2) and (4), 272(7) and (8)(a) of, and paragraph 5 of Schedule 6 to, the National Health Service Act 2006(**1**).

In accordance with section 7(1B) of that Act(**2**), the Secretary of State has consulted the National Health Service Commissioning Board(**3**) and in accordance with section 28(7) of that Act, the Secretary of State has consulted such bodies as the Secretary of State recognises as representing officers who in the Secretary of State's opinion are likely to be transferred or affected by transfers in pursuance of amendments to the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012(**4**).

(**1**) 2006 c.41. The powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England by virtue of section 271(1) of the National Health Service Act 2006 ("the 2006 Act"). By virtue of section 273(4)(zi) a direction under section 7 of the 2006 Act about a function of a person other than the Secretary of State must be given by regulations. Section 7 was amended by section 21 of the Health and Social Care Act 2012 (c.7) ("the 2012 Act"). Paragraph 5 of Schedule 6 was amended by section 19 of, and paragraph 11 of Schedule 3 to, the Health Act 2009 (c.21).

(**2**) Section 7(1B) was inserted by section 21(1) and (2) of the 2012 Act.

(**3**) The National Health Service Commissioning Board (known as "NHS England") was established by section 1H of the 2006 Act. Section 1H is inserted into the 2006 Act by section 9(1) of the 2012 Act.

(**4**) S.I. 2012/901, amended by S.I. 2013/235 and 260.

# PART 1

## GENERAL PROVISIONS

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 and come into force on 1st April 2016.

(2) In these Regulations—

"the Authority" means the National Health Service Trust Development Authority(**5**);

"the Board" means the National Health Service Commissioning Board; and

"the Establishment Order" means the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012.

# PART 2

## DIRECTIONS TO THE AUTHORITY RELATING TO THE BOARD'S SAFETY OF SERVICES FUNCTIONS

### Directions to the Authority relating to the Board's safety of services functions

**2.**—(1) The Authority is directed to exercise the functions of the Board specified in section 13R (information on safety of services provided by the health service) of the National Health Service Act 2006(**6**) in respect of–

(a) the continuation, establishment and operation of systems for collecting and analysing information relating to the safety of the services provided by the health service;

(b) making information collected by virtue of sub-paragraph (a), and any other information obtained by analysing it, available to such persons as it considers appropriate;

(c) the provision of advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service; and

(d) monitoring the effectiveness of the advice and guidance given by it under sub-paragraph (c).

(2) The Secretary of State directs that the Authority must exercise the functions of the Board which the Authority is directed to exercise in accordance with paragraph (1) with a view to securing and improving the safety of services provided by the health service, including the safety of patients.

(**5**) The National Health Service Trust Development Authority is established by the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012, S.I. 2012/901, amended by S.I. 2013/235 and 260.

(**6**) Section 13R is inserted into the National Health Service Act 2006 by section 23(1) of the 2012 Act.

# PART 3

## AMENDMENTS TO THE ESTABLISHMENT ORDER

### Amendment of article 1 of the Establishment Order

**3.** In article 1 of the Establishment Order (citation, commencement and interpretation), in paragraph (2), insert in the appropriate alphabetical position—

""the Board" means the National Health Service Commissioning Board;";

""third transfer date" means 1st April 2016;"; and

""the Trust" means the Imperial College Healthcare National Health Service Trust;"(**7**).

### Substitution of article 4 of the Establishment Order

**4.** For article 4 of the Establishment Order (constitution of the Authority), substitute the following—

"**4 Constitution of the Authority**

(1) The Authority is to consist of–

(a) a chairman;

(b) at least 5 members who are not officers of the Authority in addition to the chairman; and

(c) subject to paragraph (2), a number of other members who are officers of the Authority including the person who for the time being holds the office of chief executive.

(2) The number of officer members must be less than the number of non-officer members.".

### Transfer of property

**5.** After article 5A of the Establishment Order (transfer of property), insert—

"**5B Transfer of property and liabilities from the Board**

(1) The property of the Board identified as property to transfer to the Authority in the document entitled "The National Health Service Commissioning Board transfer to the National Health Service Trust Development Authority Agreement 2016 in connection with the exercise of safety functions" and signed on behalf of the Board and the Authority on 19th February 2016, is to be transferred to the Authority on the third transfer date.

(2) All liabilities (actual or contingent) of the Board relating to–

(a) the property referred to in paragraph (1); and

(b) the functions that the Authority is directed to exercise in accordance with regulation 2 (directions to the Authority relating to the Board's safety of services functions) of the National Health Service Trust Development Authority (Directions and Miscellaneous Amendments etc.) Regulations 2016 ("the 2016 Regulations"),

(**7**) The Imperial College Healthcare National Health Service Trust is established by S.I. 2007/2755, amended by S.I. 2012/755 and 2013/593.

are to be transferred to the Authority on the third transfer date.

(3) Any right relating to–

(a) the property referred to in paragraph (1); and

(b) the functions that the Authority is directed to exercise in accordance with regulation 2 of the 2016 Regulations,

that was immediately before the third transfer date enforceable by or against the Board is, on or after the third transfer date, to be enforceable by or against the Authority.".

**Transfer of staff**

**6.** After article 6B of the Establishment Order (dismissal of employee because of transfer), insert—

"**6C Transfer of Staff**

(1) This paragraph applies in relation to any person who–

(a) immediately before the third transfer date is employed by the Board or by the Trust; and

(b) has, before the third transfer date, been notified in writing by the Board or by the Trust that they are to be transferred to the Authority on that date.

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

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

(a) is not terminated by the transfer; and

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

(4) Without prejudice to paragraph (3)–

(a) all the rights, powers, duties and liabilities of the Board or the Trust, as the case may be, under, or in connection with, its contract of employment with a person transferred under paragraph (2) are to transfer to the Authority on the third transfer date; and

(b) any act or omission before the third transfer date of, or in relation to, the Board or Trust, as the case may be, 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 Authority.

(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 third transfer date, that person informs whichever of the Board or the Trust employs them or the Authority that they object to becoming employed by the Authority.

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

(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 Board or, as the case may be, the Trust.