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STATUTORY INSTRUMENTS

2014 No. 3090

HEALTH SERVICES SOCIAL CARE

The Health Research Authority (Transfer of Staff, Property and Liabilities) and Care Act 2014 (Consequential Amendments) Order 2014

Made - - - - *18th November 2014*

Coming into force - - *1st January 2015*

The Secretary of State makes this Order in exercise of the powers conferred by sections 109(4), 118 and 125(8) of the Care Act 2014⁽¹⁾.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health Research Authority (Transfer of Staff, Property and Liabilities) and Care Act 2014 (Consequential Amendments) Order 2014 and comes into force on 1st January 2015⁽²⁾.

(2) In this Order—

“the Act” means the Care Act 2014;

“the Authority” means the Special Health Authority known as the Health Research Authority⁽³⁾;

“transfer date” means 1st January 2015.

⁽¹⁾ 2014 c.23.

⁽²⁾ Section 109(4) and 118 are commenced as of 1st October 2014 for the purpose of making orders by articles 4(1)(d) and (2) (b) of the Care Act 2014 (Commencement No. 2) Order 2014 (S.I. 2014/2473).

⁽³⁾ The Health Research Authority was established by article 2 of the Health Research Authority (Establishment and Constitution) Order 2011 (S.I. 2011/2323 as amended by S.I. 2012/1109) and is abolished by section 109(3) of the Care Act 2014 (“the Act”). Section 109(3) of the Act is to come into force on 1st January 2015 (see article 5 of the Care Act 2014 (Commencement No.2) Order 2014, S.I. 2014/2473).

Transfer of staff

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

- (a) immediately before the transfer date is employed by the Authority; and
- (b) has, before the transfer date, been notified in writing by the Authority that they are to be transferred to the HRA⁽⁴⁾ on that date.

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

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

- (a) is not terminated by the transfer; and
- (b) has effect from the transfer date as if originally made between that person and the HRA.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the Authority under, or in connection with, its contract of employment with a person transferred under paragraph (2), are to transfer to the HRA on the transfer date; and
- (b) any act or omission before the transfer date of, or in relation to, the Authority, 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 HRA.

(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 that person informs the HRA or the Authority that they object to becoming employed by the HRA.

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

(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 Authority.

(8) Where the transfer involves or would involve a substantial change in the 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 shall be treated for any purpose as having been dismissed by the employer.

(9) No damages shall be payable by an 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, rights and liabilities

3.—(1) On the transfer date, all the property, rights and liabilities of the Authority, not mentioned in article 2 above, are transferred to the HRA.

(2) The transfer of such property, rights and liabilities is to be made—

- (a) whether or not they would otherwise be capable of being transferred; and
- (b) irrespective of any requirement for consent that would otherwise apply.

(4) Section 109(1) of the Act establishes a body corporate known as the Health Research Authority ("the HRA").

Winding up of affairs of the Authority

4.—(1) The HRA must prepare accounts and audits in respect of the period commencing on 1st April 2014 and ending on 31st December 2014 in accordance with Schedule 15 (accounts and audit) of the National Health Service Act 2006⁽⁵⁾ and must ensure that accounts are kept, audited and transmitted in accordance with that Schedule as if, in that Schedule—

- (a) the reference to financial year were a reference to the period ending on 31st December 2014; and
- (b) references to a Special Health Authority were a reference to the HRA.

(2) Where the Authority has been directed to prepare or present a report in accordance with regulations 7 (reports by the Authority) and 8 (public meeting) of the Health Research Authority Regulations 2011⁽⁶⁾ before the transfer date, the HRA must prepare a report to the Secretary of State and present the report as if—

- (a) those Regulations were still in force, notwithstanding the revocations made in section 109(3)(b) of the Act; and
- (b) the references to the Authority in those Regulations and in any directions⁽⁷⁾ given in accordance with those Regulations were a reference to the HRA.

(3) In respect of property, rights and liabilities of the Authority which have transferred to the HRA on the transfer date, the HRA must take such other steps as may be appropriate and necessary to secure the winding up of the affairs of the Authority.

Investigation by the Health Service Commissioner

5.—(1) A complaint made in relation to the Authority under the Health Service Commissioners Act 1993 to the Health Service Commissioner⁽⁸⁾ whether made before, on or after the transfer date, may be investigated by the Commissioner, notwithstanding the abolition of the Authority, as if it had been made in relation to the HRA.

(2) The Commissioner must send a copy of the report of the investigation referred to in paragraph (1) to the HRA.

Handling of complaints

6.—(1) This paragraph applies to a complaint made in accordance with the provisions of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009⁽⁹⁾ (“the 2009 Regulations”) in relation to the Authority, whether made before, on or after the transfer date.

(2) The HRA must, on or after the transfer date, handle any complaint to which paragraph (1) applies, in accordance with the 2009 Regulations, as if the complaint had been made in relation to it.

Continuity of functions and supplementary provision

7.—(1) Anything done, by, or in relation to, the Authority before the transfer date in connection with—

- (a) any property, rights or liabilities transferred under this Order; or

(5) 2006 c.41.

(6) S.I. 2011/2341 as amended by S.I. 2012/1108.

(7) By way of the Health Research Authority Directions 2013 signed on 28th March 2013, the Secretary of State directed the Authority to prepare and send to the Secretary of State an annual report in relation to its activities by 30th November in the financial year following the financial year to which the report relates; *see* direction 4.

(8) 1993 c.46. The Health Service Commissioner is established by section 1.

(9) S.I. 2009/309 to which relevant amendments have been made by S.I. 2009/1768 and S.I. 2013/235.

(b) any contract or agreement entered into by the Authority in connection with any property, rights or liabilities transferred under this Order,

is deemed to have been done by, or in relation to, the HRA.

(2) Anything (including legal proceedings) which, when this Order comes into force, is in the process of being done by, or in relation to, the Authority in connection with—

(a) the exercise by the Authority of any of its functions; or

(b) any property, rights or liabilities of the Authority transferred under this Order,

is deemed to have effect as if done by, or in relation to, the HRA and may be continued by, or in relation to, the HRA.

(3) Any instrument made by, or in relation to, the Authority continues in force until it is varied or revoked by the HRA.

(4) Any form supplied by the Authority continues to be valid until it is revoked or varied by the HRA, and, as if, any reference in that form to the Authority were a reference to the HRA.

(5) Any reference to the Authority in any contract or agreement (whether written or not), instrument or other document which relates to any property, rights or liabilities transferred under this Order is to be treated as a reference to the HRA.

(6) No right to terminate or vary a contract, agreement or instrument is to operate or become exercisable, and no provision of any contract, agreement or instrument is to operate or become exercisable or be contravened, by reason of the transfer of any property, rights or liabilities under this Order.

Amendments and revocations consequential on the abolition of the Authority

8. The consequential amendments and revocations in the Schedule have effect.

Signed by authority of the Secretary of State for Health.

18th November 2014

George Freeman
Parliamentary Under-Secretary of State,
Department of Health

SCHEDULE

Article 8

Amendments and revocations consequential on the abolition of the Authority

Amendments

1. This paragraph makes consequential amendments to the following—
 - (a) In regulation 11(5) of the National Health Service Trusts (Membership and Procedure) Regulations 1990(**10**) (disqualification for appointment of chairman and non-executive directors), omit paragraph (j);
 - (b) In article 1(2) (citation, commencement and interpretation) of the National Health Service Litigation Authority (Establishment and Constitution) Order 1995(**11**), in the definition of “NHS body”, after “clinical commissioning group,” insert “the Health Research Authority.”;
 - (c) In regulation 3(1) (eligible bodies) of the National Health Service (Clinical Negligence Scheme) Regulations 1996(**12**), after sub-paragraph (f), insert—

“(fa) the Health Research Authority.”;
 - (d) In regulation 3 (eligible bodies) of the National Health Service (Liabilities to Third Parties Scheme) Regulations 1999(**13**), after sub-paragraph (c), insert—

“(ca) the Health Research Authority.”;
 - (e) In regulation 3 (eligible bodies) of the National Health Service (Property Expenses Scheme) Regulations 1999(**14**), after sub-paragraph (c), insert—

“(ca) the Health Research Authority.”;
 - (f) In the Equality Act 2010 (Specific Duties) Regulations 2011(**15**), in Schedule 1 (public authorities required to publish information by 31st January 2012), under the heading “Health, social care and social security”, after the entry “The National Institute for Health and Care Excellence” insert “The Health Research Authority.”.

Revocations

2. This paragraph revokes the following—
 - (a) the Health Research Authority (Amendment) Regulations 2012(**16**); and
 - (b) the Health Research Authority (Establishment and Constitution) (Amendment) Order 2012(**17**).

(10) S.I. 1990/2024 to which relevant amendments have been made by S.I. 1997/2990, S.I. 1999/945, S.I. 2000/603, S.I. 2000/2434, S.I. 2001/2629, S.I. 2004/696, S.I. 2005/502, S.I. 2005/1446, S.I. 2005/2529, S.I. 2005/2532, S.I. 2006/635, S.I. 2011/2237, S.I. 2012/1109, S.I. 2012/1641 and S.I. 2013/235.

(11) S.I. 1995/2800 to which relevant amendments have been made by S.I. 2013/295.

(12) S.I. 1996/251 to which relevant amendments have been made by S.I. 1997/527, S.I. 2000/2341, S.I. 2002/1073, S.I. 2002/2469, S.I. 2004/696, S.I. 2005/604, S.I. 2012/1641, S.I. 2013/497 and S.I. 2014/933.

(13) S.I. 1999/873 to which relevant amendments have been made by S.I. 2000/2385, S.I. 2004/696, S.I. 2005/604, S.I. 2012/1641 and S.I. 2013/235.

(14) S.I. 1999/874 to which relevant amendments have been made by S.I. 2000/2342, S.I. 2004/696, S.I. 2005/604, S.I. 2012/1641 and S.I. 2013/235.

(15) S.I. 2011/2260 to which relevant amendments have been made by S.I. 2012/1641 and S.I. 2013/235.

(16) S.I. 2012/1108.

(17) S.I. 2012/1109.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

The Special Health Authority known as the Health Research Authority (“the Special Health Authority”) is abolished by section 109(3) of the Care Act 2014 on 1st January 2015. On the same day, a new body corporate is to be established to be known as the Health Research Authority (“the HRA”). This Order makes provision for the transfer of staff (article 2) and property, rights and liabilities (article 3) from the Special Health Authority to the HRA on that date. Article 4 makes provision for the HRA to take the necessary action in the winding up of the Special Health Authority’s affairs. Article 5 enables the Health Service Commissioner to investigate any complaint in relation to the Special Health Authority after the transfer date. Article 6 makes provision for the HRA to handle any complaints in relation to the Special Health Authority after that date. Article 7 makes provision for the continuity of things done by, or in relation to, the Special Health Authority. Article 8 and the Schedule to the Order make amendments and revocations consequential on the abolition of the Authority.

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the Act including provisions relating to the abolition of the Special Health Authority and establishment of the HRA. A copy of this impact assessment is available from the libraries of both Houses of Parliament and may also be obtained from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS or on the Department of Health’s web site at <https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill>.