

Explanatory Memorandum to
THE NHS DIRECT SPECIAL HEALTH AUTHORITY ABOLITION ORDER
2007

2007 No. 504

- 1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments. The instrument is made under powers in the NHS Act 1977. This Act will be consolidated with effect from 1st March 2007 before the instrument comes into force, by the NHS Act 2006. The Department has sought to explain in the footnotes the destination of the relevant 1977 Act powers in the 2006 Act.

2 Description

- 2.1 This Order abolishes the NHS Direct Special Health Authority. NHS Direct is to be established as a NHS trust on 1 April 2007.

3 Matters of Special Interest to the Joint Committee on Statutory Instruments

- 3.1 None

4 Legislative Background

- 4.1 This Order abolishes NHS Direct Special Health Authority so that a new organisation, NHS Direct National Health Service Trust, can be established. The new NHS trust will fulfil the same role as the Special Health Authority, and will remain accountable to Parliament through the Secretary of State. This Order is linked to The NHS Direct National Health Service Trust (Establishment) Order 2007 [**DN insert SI number**].
- 4.2 The staff, assets, rights and liabilities of the Special Health Authority will transfer under this Abolition Order to the new NHS Direct NHS Trust. It is intended that the new NHS Trust will apply for foundation trust status in due course.
- 4.3 On 13 Jun 2006 the Minister of State for Health Services replied to a number of written parliamentary questions from Frank Dobson MP (Holborn & St Pancras) about the transformation of NHS Direct to a NHS foundation trust (NHSFT), [Hansard Ref: Column 1168W].

- 4.4 The reply stated that we are developing plans for NHS Direct to become a NHS trust from April 2007 with the aim of becoming a NHS foundation trust (NHSFT). As a NHSFT, NHS Direct would be free from the Secretary of State's powers of direction, but would need to demonstrate accountability to local communities as other NHSFTs do.
- 4.5 The reply also stated that there are no plans to transfer services abroad.

5 Territorial Extent and Application

- 5.1 This instrument applies to England.

6 European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution and does not amend primary legislation, no statement is required.

7 Policy Background

- 7.1 NHS Direct is a national service in England providing telephone, internet and digital TV access to health advice, information and support, 24 hours a day, everyday to the public, patients and carers. The telephone service also has a key role in responding to major health scares and other incidents of national importance.
- 7.2 The service was launched as a pilot scheme in March 1998 and rolled out in phases between 1998 and 1999. It has been available throughout England since the end of October 2000. At its launch, NHS Direct was managed by a central team at the Department of Health.
- 7.3 On 1 April 2004, a special health authority was established under the NHS Direct (Establishment and Constitution) Order 2004 to manage NHS Direct. This brought together NHS Direct services from 22 NHS host organisations.
- 7.4 Special health authorities are set up to provide a national service to the NHS or the public, under Section 11 of the NHS Act 1977. They are separate legal bodies to the Department of Health, but are only able to exercise functions that are delegated to them by the Secretary of State. Most special health authorities are concerned with improving the ability of other parts of the NHS to deliver effective health care. Some, like NHS Direct, provide a frontline service to patients.
- 7.5 The Department of Health's Arms Length Body (ALB) Review was launched in 2004 as part of the wider government aim of

minimising and modernising the bureaucracy of providing public services.

- 7.6 As part of this Review, it was agreed that NHS Direct should move out of the arms length body sector. In order to achieve this, following an options appraisal on the preferred status of NHS Direct, it was decided that NHS Direct should change from a special health authority to a NHS trust and that it should then apply to become a NHSFT.
- 7.7 NHS trusts provide health services within the NHS. They are usually commissioned to provide these services by primary care trusts (PCTs). The change of status to a NHS trust will not mean significant changes for the public, as NHS Direct will continue to provide its core services (telephone, internet services, digital TV) and will continue to work with PCTs to support the delivery of local services to meet local need.
- 7.8 The change meets the requirement of the Arms Length Body Review to move out of the arms length body sector by 1 April 2007 and allows it to go through the application process towards foundation trust status.
- 7.9 The core services provided by NHS Direct will continue to be commissioned by the Department while the Department explores alternative appropriate ways of commissioning these services.
- 7.10 The intention is that NHS Direct will become a foundation trust by 1 April 2008, or as soon as possible thereafter. The final decision on the authorisation of an organisation as a foundation trust lies, however, with Monitor, and NHS Direct will have to go through the same rigorous application process as any other NHS trust. NHS foundation trusts are established in law with a new bespoke form of public ownership as independent public benefit corporations. This means far greater local ownership and involvement of patients, the public and staff rather than control from the Department of Health.
- 7.11 The Secretary of State has consulted the main trade unions representing staff affected by the transition: the Royal College of Nursing (RCN); Unison; and Amicus. All three have responded to say they support the change.
- 7.12 The RCN and Unison also commented that NHS Direct requires the following:
- a period of financial and managerial stability;
 - secure and stable funding and support from the Department of Health;

- an assurance that NHS Direct will be integrated fully into the NHS; and
- an assurance that NHS Direct will be treated as one NHS Trust not a collection of regional NHS Directs.

7.13 On the first two points, we are working with NHS Direct. On the second two points, NHS Direct is a part of the NHS, and the establishment order will establish a single NHS Trust.

Auditing arrangements

7.14 Current policy following the Sharman Review (2001) is for national bodies to be audited by the Comptroller and Auditor General (C&AG). However, section 98 and paragraph 5 Schedule 12B to the NHS Act 1977 (as amended by the Health Act 2006) state that NHS Trusts should have their auditors appointed by the Audit Commission.

7.15 In order to resolve this issue, HMT lawyers will lay an order under Section 25(6) of the Government Resources and Accounts Act 2000 that will enable the C&AG to audit NHS Direct NHS Trust. HMT is aiming to lay the order in time to enable the C&AG to audit NHS Direct NHS Trust with effect from the 2007-08 financial year.

8 **Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9 **Contact**

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