

**2017 No. 960**

**PENSIONS**

**INVESTIGATORY POWERS**

**TERMS AND CONDITIONS OF EMPLOYMENT**

**PROCEEDS OF CRIME, ENGLAND AND WALES**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The NHS Counter Fraud Authority (Investigatory Powers and  
Other Miscellaneous Amendments) Order 2017**

<i>Made</i>	- - - -	<i>3rd October 2017</i>
<i>Laid before Parliament</i>		<i>4th October 2017</i>
<i>Coming into force</i>	- -	<i>1st November 2017</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 43F of the Employment Rights Act 1996(a), by section 30(1) and (3) of the Regulation of Investigatory Powers Act 2000(b), by sections 453 and 459(2) of the Proceeds of Crime Act 2002(c), by sections 86(2)(a) and 200(2)(a) of the Pensions Act 2004(d) and by sections 91, 106, 123 and 272(7) and (8) of the National Health Service Act 2006(e).

Pursuant to sections 86(2) and 200(2) of the Pensions Act 2004, the Secretary of State has consulted, respectively, the Regulator and the Board, as those bodies are defined by that Act.

**Citation, commencement and extent**

- 1.**—(1) This Order may be cited as the NHS Counter Fraud Authority (Investigatory Powers and Other Miscellaneous Amendments) Order 2017 and comes into force on 1st November 2017.
- (2) Article 6 extends to England and Wales only.

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(a) 1996 c. 18. Section 43F was inserted by section 1 of the Public Interest Disclosure Act 1998 (c. 23). Section 43F(1) was amended by section 18(1)(c) of the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) 2000 c. 23.

(c) 2002 c. 29. Section 453(2) was amended by section 81(1)(a) and (b) of the Serious Crime Act 2007 (c. 27).

(d) 2004 c. 35 to which there are no relevant amendments.

(e) 2006 c. 41. Sections 91, 106 and 123 were amended by section 55(1) of, and paragraphs 35, 47 and 60, respectively, of Schedule 4 to, the Health and Social Care Act 2012 (c. 7). By virtue of section 271 of the 2006 Act, the powers in the National Health Service Act 2006 exercised to make these provisions are exercisable only in relation to England.

#### **Amendment to the Pensions Act 2004**

2. In column 1 of the table in each of Schedules 3 and 8 to the Pensions Act 2004 (which relate to permitted disclosures of certain restricted information to facilitate the exercise of functions), for “The Counter Fraud and Security Management Service established under the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 (S.I. 2002/3039)”, substitute—

“A special health authority established under section 28 of the National Health Service Act 2006(a) directed to carry out counter fraud functions of the Secretary of State within the meaning of section 195 of that Act”(b).

#### **Amendment to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010**

3. In the table in Part 2 of the Schedule to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(c), at the first entry, in column 2, for the words “in the Counter Fraud and Security Management Services Division of the NHS Business Services Authority”, substitute “in the exercise of the Secretary of State’s counter fraud functions, within the meaning of section 195 of the National Health Service Act 2006”.

#### **Amendment to the National Health Service (Performers Lists) (England) Regulations 2013**

4.—(1) The National Health Service (Performers Lists) (England) Regulations 2013(d) are amended in accordance with this article.

(2) In regulation 2 (interpretation), after the definition of “NHS Business Services Authority”, insert the following definition—

““NHS Counter Fraud Authority” means the NHS Counter Fraud Authority established as a special health authority under section 28 of the 2006 Act;”.

(3) In regulation 4(5)(j) and (7)(f) (application for inclusion in a performers list), after the words “the NHS Business Services Authority”, insert “or the NHS Counter Fraud Authority”.

(4) In the following provisions, for “NHS Business Services Authority”, substitute “NHS Counter Fraud Authority”—

- (a) regulation 4(5)(k) and (7)(g);
- (b) regulation 5(1)(b);
- (c) regulation 7(2)(d);
- (d) regulation 8(1)(h);
- (e) regulation 9(2)(l);
- (f) regulation 15(3)(c);
- (g) regulation 18(3)(g);
- (h) regulation 21(1)(j);
- (i) paragraph 4(3)(b) of Schedule 1.

#### **Amendment to the Public Interest Disclosure (Prescribed Persons) Order 2014**

5. In the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014(e)—

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- (a) 2006 c. 41. Section 28 of the National Health Service Act 2006 (“the 2006 Act”) was amended by section 55(1) of, and paragraph 13 of Part 2 of Schedule 4 to, the Health and Social Care Act 2012 (“the 2012 Act”). The powers of the Secretary of State to establish special health authorities under section 28 are exercisable in relation to England only, by virtue of section 271 of the National Health Service Act 2006 (c. 41).
  - (b) Section 195 of the 2006 Act was amended by section 55(1) of, and paragraph 103 of Part 9 of Schedule 4 to, the 2012 Act.
  - (c) SI 2010/521, to which there are no relevant amendments.
  - (d) SI 2013/335, to which there are no relevant amendments.
  - (e) 2014/2418, to which relevant amendments are made by SI 2015/1981.

- (a) in the first column, for “NHS Business Services Authority”, substitute “NHS Counter Fraud Authority (being a special health authority established under section 28 of the National Health Service Act 2006)”;
- (b) at the same entry, for the words appearing in the second column, substitute—  
“Matters relating to fraud, corruption or other such unlawful activity in relation to the health service in England.”.

**Amendment to the Proceeds of Crime Act Order 2015**

**6.** In the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015(a)—

- (a) in article 2(1) (interpretation), after the definition of “NCA”, insert the following definition—  
““NHS Counter Fraud Authority” means the NHS Counter Fraud Authority established as a special health authority under section 28 of the National Health Service Act 2006 exercising functions in relation to England.”;
- (b) in the Schedule, for “the Counter Fraud and Security Management Service” where it appears (six times), substitute “the NHS Counter Fraud Authority”.

Signed by authority of the Secretary of State for Health.

*O’Shaughnessy*  
Parliamentary Under-Secretary of State,  
Department of Health

3rd October 2017

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends a number of instruments upon the establishment of the special health authority, the NHS Counter Fraud Authority, pursuant to section 28 of the National Health Service Act 2006 (“the 2006 Act”). The Order comes into force on 1st November 2017. Article 3 extends to Great Britain and Northern Ireland, articles 4 and 6 extend to England and Wales, and article 6 extends to England and Wales. Other amendments extend to Great Britain. With effect from 1st November 2017, the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017 provides for the establishment of the new special health authority to exercise the statutory functions of the Secretary of State in relation to the prevention, detection and investigation of fraud against or affecting the health service in England. Before 1st November 2017, these functions, together with the security management functions of the Secretary of State in relation to the health service, were exercisable by a division (“the counter fraud division”) of the NHS Business Services Authority (“the NHS BSA”), also a special health authority, established pursuant to powers in the National Health Service 1977 which are consolidated in section 28 of the 2006 Act. The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution) (Amendment) Order 2017 removes both counter fraud and security management functions from the NHS BSA.

Article 2 amends entries in Schedules 3 and 8 to the Pensions Act 2004 which list persons to whom disclosure may be made, subject to certain criteria, by (respectively) the Pensions Regulator and the Pensions Board (the Board of the Pension Protection Fund), of restricted information within the meaning of that Act, so that such disclosures may be made to the new special health authority.

Article 3 amends provision in the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”) made under the Regulation of

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(a) SI 2015/1853, to which relevant amendments are made by SI 2017/74.

Investigatory Powers Act 2000 (“the 2000 Act”) in relation to the prescribed offices, positions and ranks in column 2 of Part 2 of Schedule 1 to the 2000 Act. Part 2 of Schedule 1 to the 2000 Act concerns the authorisation by certain designated officers of the carrying out of directed surveillance, subject to certain tests being met, pursuant to section 28 of the 2000 Act. This Order amends the 2010 Order so as to omit reference to the counter fraud division of the NHS BSA in the entry relating to special health authorities at column 2 of Part 2 of Schedule 1 to the 2000 Act, instead prescribing office holders by reference to the specific functions they exercise.

Article 4 amends the National Health Service (Performers Lists) (England) Regulations 2013 (SI 2013/335) to substitute for reference to the NHS BSA reference to the new special health authority. (Two references to the NHS BSA in respect of historical matters remain.)

Article 5 amends the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014 (SI 2014/2418) which lists bodies to whom disclosures qualifying for protection under Part 4A of the Employment Rights Act 1996 may be made. The entry relating to the NHS BSA is replaced by a new entry for the new special authority and its functions.

Article 6 amendments relate to persons who are to be regarded as accredited financial investigators for the purposes of exercising certain powers under the Proceeds of Crime Act 2002 (“the 2002 Act”). Descriptions of such persons are specified in the Proceeds of Crime Act 2002 (References to Financial Investigators) (England and Wales) Order 2015 (SI 2015/1853) by reference to the provisions of the 2002 Act. Article 6 amends six entries in that Order with the effect that certain officers of the NHS Counter Fraud Authority may be regarded as accredited financial investigators.

An impact assessment has not been prepared for this instrument as no impact on the costs of business or the voluntary sector is foreseen.

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