

<b>Title:</b> Health Education England <b>IA No:</b> 8040  <b>Lead department or agency:</b> Department of Health <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 15/04/2013
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
	<b>Contact for enquiries:</b> Jonathan Firth

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0m	£0m	No
			In/Out/zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

The education and training of the NHS workforce is crucial to the continuing delivery of high quality services. Health Education England, as the body responsible for providing national leadership for education and training, and with a budget to invest of around £5 billion, needs to be able to operate with independence and autonomy. Health Education England was established in the first instance as a Special Health Authority in June 2012, however, a more sustainable and appropriate statutory basis for a body of this type is to establish it as an Executive Non Departmental Public Body that will be at arms length from the Department of Health, whilst remaining accountable to the Secretary of State.

**What are the policy objectives and the intended effects?**

The policy objective is to ensure that the education and training system can operate safely and effectively as part of a stable health and social care system. Health Education England will continue to drive quality and value for money in the investment in education and training. As a Non Departmental Public Body, it will give the public and stakeholders across the NHS greater confidence that their needs and expectations will be addressed and that investment in education and training will be directed by service and clinical priorities.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Two options are considered.

Option 0 - Do nothing. This would leave Health Education England in place as a Special Health Authority. Whilst it would be able to carry out its education and training functions, this will not allow for the type of independent, permanent and stable system that will be crucial if it is to gain the full confidence of the range of partners involved in the planning, commissioning and delivery of education and training that will be required if it is to succeed in the long term.

Option 1 - Establish Health Education England as an Executive Non Departmental Public Body. This is the preferred option. It would see the roles and responsibilities of Health Education England and the wider education and training system enshrined in primary legislation. There are no cost implications associated with this option as the functions and budget for Health Education England will not change.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b> 0	<b>Non-traded:</b> 0

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister: \_\_\_\_\_ Date: 6 January 2014 Dan Poulter MP

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year n/a	PV Base Year n/a	Time Period Years n/a	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

#### Description and scale of key monetised costs by 'main affected groups'

There are no expected costs associated with this policy.

#### Other key non-monetised costs by 'main affected groups'

There are no expected costs associated with this policy.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

#### Description and scale of key monetised benefits by 'main affected groups'

We are not able to monetise the benefits associated with the policy.

#### Other key non-monetised benefits by 'main affected groups'

We expect the legislation on education and training to provide for a more transparent and sustainable system with improved clarity on roles, responsibilities and accountabilities. The non-monetised benefits are discussed in the evidence base and summarised at paragraph 67.

#### Key assumptions/sensitivities/risks

We assume Health Education England will remain the same size, retain the same structure and have the same skill mix.

Discount rate (%) 3.5

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	Zero net cost
Benefits: 0		
Net: 0		

## Evidence Base (for summary sheets)

### Scope

1. This Impact Assessment focuses solely on the impact of the clauses addressing the establishment of HEE as an Executive NDPB that have been developed as part of the Care Bill.

### Assessing the impact of the education and training reforms

2. A separate Impact Assessment was developed to address the associated costs and benefits associated with the policy decision to establish HEE as a Special Health Authority. This was published in May 2012, and builds on an earlier consultation stage Impact Assessment published in December 2010. It assesses the impact of the introduction of the new system for education and training, including:
  - the establishment of Health Education England (HEE) as a Special Health Authority;
  - the establishment of Local Education and Training Boards (LETBs) as committees of the HEE Special Health Authority;
  - the introduction of an Education Outcomes Framework; and
  - planned reforms to the funding of education and training via the Multi-Professional Education and Training budget.

### Strategic context

3. To meet the challenge of sustaining high quality services and improving health outcomes in the face of demographic and technological change, the Government introduced reforms to create a more autonomous and accountable NHS; with greater clarity about the roles and responsibilities of different organisations for provision and commissioning.
4. This need for change also extended to the way in which the NHS workforce is educated and trained. There are currently 1.3 million people employed in the NHS and there is significant public investment in England in educating and training new health and public health professionals. In 2013/14, the central investment in education and training (the Multi-Professional Education and Training budget – MPET) was £4.9 billion. There are serious consequences for the sustainable delivery of NHS services in the event of any workforce undersupply or if the quality of education and training does not meet the required standards.
5. From 1 April 2013, the Health and Social Care Act 2012 placed a duty on the Secretary of State to ensure there is an effective system in place for planning and delivery of education and training in England. This duty has been delegated to the HEE Special Health Authority (SpHA).
6. These functions include assuring the quality of workforce development plans and strategies, commissioning education and training, contracting with education and training providers to manage the delivery of education and training, and quality assuring the management and delivery of postgraduate medical and dental education programmes. The Strategic Health Authorities (SHAs) hosted the postgraduate deaneries, who were responsible for the management and delivery of postgraduate medical education and training and from April 2013, the Deaneries and their functions transferred to HEE.

### ***Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery***

7. The Government set out its policy framework for the new education and training system when it published *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* on 10 January 2012.

8. This document set out the Government's vision for the education and training system and builds on an earlier public consultation that closed in March 2011, and addresses recommendations made by the NHS Future Forum in their reports of June 2011 and January 2012.
9. The Health and Social Care Act 2012 places a duty on the Secretary of State to exercise his functions under prescribed enactments to secure an effective system for education and training for persons who are employed (or considering becoming employed) in an activity which involves or is connected with the provision of services as part of the health service in England.
10. The wider reforms to the NHS provided an opportunity to strengthen the arrangements for education and training. The previous education and training system did not offer healthcare providers the right incentives and levers to be involved in the development of their workforce. It focused often on the needs of professional groups in silos and was underpinned by funding arrangements based on historical flows and not the costs of providing education and training.
11. In response, we have established a new education and training system that can produce a more flexible workforce that responds to the changing needs of the new healthcare system. The key ambition of this new system is to give local healthcare providers and healthcare professionals the lead role in the planning and development of their workforce.
12. At the centre of this new system is HEE a new body with responsibility for providing national leadership for education and training for the NHS and public health system. HEE has taken on the education functions of the SHAs, and will, at a national level, ensure that the workforce has the right skills, behaviours and training, and is available in the right numbers, to support the delivery of excellent healthcare and health improvement.
13. HEE will also enable local healthcare providers and professionals to take responsibility for planning and commissioning education and training through Local Education and Training Boards (LETBs), which are committees of HEE.
14. Each LETB will bring together local providers and professionals to identify and agree local priorities for education and training and plan and commission education and training on behalf of the health and public health community.
15. HEE will allocate a proportion of the education and training budget for commissioning purposes to each LETB and will hold them to account for their investment in education and training and for delivery against national education outcomes goals and priorities.
16. From a statutory perspective, each LETB is part of HEE, taking the legal form of a committee of HEE. The LETB operates under formal schemes of delegation from the national HEE body. The LETB represents all the healthcare providers within the geographical area covered by that LETB. This reflects the policy intention of giving local healthcare providers and their healthcare professionals autonomy for planning and commissioning education and training, whilst ensuring robust governance.
17. Each LETB has access to a number of operational staff who will plan, commission and assure the quality of education and training on its behalf. These operational staff are employed by HEE, but accountable to the LETB they are working for.
18. HEE introduced a tariff system from April 2013 to ensure all providers are reimbursed fairly for the education and training they deliver. The Bill will put this system on a statutory footing when HEE becomes an NDPB.

#### **Problem under consideration**

19. HEE is the body responsible for providing national leadership for education and training, with a budget of

around £5 billion. It was established, in the first instance, as a Special Health Authority in June 2012.

20. A more sustainable and appropriate statutory basis for a body of this type is to establish it as an Executive Non Departmental Public Body (NDPB). The new education and training system has been reformed to enable it to be more responsive to the vision of service commissioners and the needs of local healthcare providers. It is important that HEE has the independence and autonomy to enable it balance national workforce priorities with the service needs of local healthcare providers and the quality and education requirements of specific professions.
21. The development of the new policy framework for education and training took place alongside the development of the Health and Social Care Act 2012, so it was not possible to legislate for the new arrangements through that Act. There were, however, several Government amendments made at House of Lords Committee Stage and Report Stage. These amendments included:
  - placing a duty on the Secretary of State to exercise his functions under prescribed enactments to secure that there is an effective system for the planning and delivery of education and training;
  - placing duties on the NHS Commissioning Board and clinical commissioning groups, in exercising their function, to have regard to the need to promote education and training; and
  - ensuring arrangements for the provision of NHS services include arrangements for securing co-operation with the Secretary of State in the discharge of his education and training duty.
22. These amendments to the Act, alongside the establishment of HEE as a Special Health Authority in June 2012, enabled the new education and training system to become fully operational from April 2013.
23. Whilst HEE as a Special Health Authority can carry out its education and training functions, including establishing and supporting LETBs, this does not allow for the type of independent, permanent and stable system that will be crucial if it is to gain the full confidence of the range of partners involved in the planning, commissioning and delivery of education and training that will be required if it is to succeed in the long-term.
24. Maintaining HEE as a Special Health Authority would mean the Secretary of State could instruct or direct HEE at any time. Directions could require HEE to carry out its functions in a particular way whenever the Secretary of State decided that was appropriate. The Secretary of State could also decide to abolish HEE at any time. This would undermine HEE's ability to plan on a long-term and strategic basis at a national level.
25. Maintaining HEE as a Special Health Authority would also go against the broader policy intention of giving providers of NHS healthcare greater operational freedom and independence as it would mean involving NHS providers within a body that was open to the direction of the Secretary of State. Further, the Secretary of State could direct LETBs about how to exercise their functions, given that they are part of HEE. This would mean that LETBs would not have the intended level of autonomy and freedom to commission and plan education and training locally.
26. Ministers have made a commitment to Parliament that they will legislate at the next possible opportunity to put the education and training system on a firmer footing.

### **Rationale for intervention**

27. The rationale for intervention is to ensure that the education and training system can operate with the necessary independence from the Department of Health with clearly defined duties and powers enshrined in primary legislation.
28. HEE's range of responsibilities and size of budget make it more appropriate for it to become an Executive NDPB, able to work independently of the Department of Health, but with clearly defined accountability to the Secretary of State and Parliament.

29. As an Executive NDPB, the public, health professions and stakeholders in the service will have greater confidence that their needs and expectations will be addressed by HEE, and that investment in education and training will be directed by service and clinical priorities.
30. Establishing HEE as an NDPB will mean it operates with clearly defined duties and powers enshrined in primary legislation. The primary legislation would give LETBs clearly defined functions in their own right. Further, their functions would be conferred directly by legislation rather than by way of delegation from HEE. Although the Secretary of State will have regulation making powers in respect of HEE's activities, the Secretary of State's exercise of these powers would be subject to parliamentary control, which would make the control measures more transparent.
31. As part of this legislative framework, we will be able to place clearer obligations on providers of NHS services. All contracts to provide NHS services will include arrangements to ensure that a NHS provider, co-operates with the LETB and provides the LETB with such information as it requests.
32. It is important to note that the Department is committed to establishing a stable system architecture whereby if Special Health Authorities are established for specific purposes, they are for a time limited period of three years. Although HEE was established as a Special Health Authority before these powers come into force (and will therefore not be subject to the three-year review provisions), it shows that the clear policy intention is for Special Health Authorities to be time limited bodies rather than long-term bodies. This is because Special Health Authorities are intended to be preparatory vehicles to support a smooth and safe transition of functions to the new body which is to be established at arm's-length of Government. This is exactly what we intend to do by establishing HEE as a Special Health Authority in the first instance, and then as an NDPB.

### Staffing and costs

33. HEE is based in Leeds, with a small representation in London, Birmingham and Cambridge. It employs around 130 staff. Staff are employed on NHS terms and conditions and have access to the NHS pension scheme.
34. There are 13 LETBs with approximately 2000 staff. These staff lead locally on the planning, commissioning and quality assurance functions for each LETB. Staff are employed on NHS terms and conditions and have access to the NHS pension scheme.
35. Education planning and commissioning functions have been challenged to seek efficiencies in associated administrative costs in the current SR period, in line with the requirements on the rest of the system. The Department of Health settlement in Spending Round 2013, covering the period April 2015 to April 2016, reinforces this expectation and includes greater resources for frontline services as a result of 10 per cent real term reductions to administration budgets.
36. Any costs associated with establishing HEE will have been incurred when it was established as a Special Health Authority. Any further costs associated with establishing HEE as an Executive NDPB will be marginal, one-off costs. It is assumed that HEE will remain the same size, will retain the same structure and will carry out the similar functions as it does as a special health authority.
37. Given the policy ambition is to create independent and autonomous partnerships of healthcare providers with responsibility for commissioning education and training, establishing HEE as an NDPB is an efficient way of doing this. Because each LETB will be a committee of HEE, the operational staff within each LETB will be employees of HEE so HR and other key functions can be shared.

### Description of options considered (including do nothing)

#### Option 0 – Do nothing

38. As a Special Health Authority, HEE functions under direction from the Secretary of State.
39. This is not, however, the preferred long-term solution for the reasons discussed earlier. HEE provides a service to the NHS in overseeing workforce planning and education commissioning, but needs to work independently and directly with a wide range of other bodies and sectors to do this effectively including the NHS Commissioning Board, the higher and further education sector, research bodies and professional regulatory bodies.
40. It is the Department's view that this wide-ranging remit and the responsibilities associated with managing the investment of around £5 billion of public funding require the longer-term status of HEE to be an Executive NDPB. This will allow for the roles, responsibilities and accountabilities of HEE and the LETBs to be clearly set out in primary legislation so that there is clarity on accountability to the Secretary of State and to Parliament.

#### Option 1 – Establish HEE as an Executive NDPB

41. The preferred option is to establish HEE as an Executive NDPB.
42. Creating an NDPB is the strongest option as its form would fit the functions required. It would offer a greater level of independence, autonomy and certainty than that provided for by a Special Health Authority, enabling it to maximise its impact by taking a long-term and strategic approach to balancing national workforce priorities with the service needs of local healthcare providers and the quality and education requirements of specific professions. This would be accompanied by the introduction of specific duties to strengthen arrangements for NHS healthcare providers to participate in the new education and training system, something which couldn't be done if HEE wasn't being established as an NDPB.
43. It would mean the Government keeps its commitment of ensuring healthcare education and training functions remain part of the NHS. This would not be the case if the functions were brought within the Department either centrally or at arm's-length through the establishment of an Executive Agency.
44. It would be consistent with the wider policy aim of putting distance between the Department and the NHS, and because the LETB operational staff are part of HEE, is the most efficient way of achieving policy aims of securing local NHS leadership for planning and commissioning education and training.
45. Finally, its status as an NDPB would ensure its operational independence is consistent with other bodies performing key NHS functions, such as the NHS Commissioning Board, the Care Quality Commission and Monitor. Its range of responsibilities and size of budget make it more appropriate for it to become an Executive NDPB, able to work independently of the Department of Health, but with clearly defined accountability to the Secretary of State and Parliament. This is particularly important as Secretary of State is delegating (and therefore retaining) the education and training duty to Health Education England.

#### **Cabinet Office three tests for NDPBs**

46. The chosen option is to establish Health Education England as an NDPB. In recognition of government policy that new NDPBs should only be created as a last resort, the Cabinet Office three tests have been applied in order to assess whether an NDPB is required.

#### ***Is this a technical function which needs external expertise to deliver?***

47. Yes. The planning, commissioning and quality assurance of education and training needs to be undertaken by people who understand the needs of healthcare employers and the specific learning and development requirements for health professionals. It is the view of this Government that local healthcare providers, working in partnership with education providers, the professions, local government and the research sector, are best placed to do this role. Given the broader policy intention is to give local

providers of NHS services greater independence and autonomy, an NDPB is the appropriate vehicle for bringing together local partnerships of providers to plan and commission education and training.

***Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?***

48. Yes. The continued delivery of healthcare services is dependent on the continuing security of supply of health professionals such as doctors, dentists and nurses. The education and training of health professionals can take a long time, for example, it can take 10 to 15 years to fully train doctors to be qualified consultants. It is therefore important that any decisions on the investment in the workforce are based on the best available evidence about future demand and supply, and are not driven by short-term priorities.

***Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity and credibility?***

49. Partly. Whilst HEE will publish information concerning its performance against national outcome goals and priorities, the publication of facts and figures is not a reason in itself for establishing it as an NDPB. However, the functions of HEE and LETBs will rely on the evidence base provided by local NHS healthcare providers. Stakeholders have also given a clear message through consultation that the independence of HEE is crucial if it is to operate with the full confidence of the range of partners involved in the planning, commissioning and delivery of education and training.

**Monetised and non-monetised costs and benefits of each option (including administrative burden)**

50. There are no anticipated costs associated with option 1. HEE will be expected to retain the same operational set up, and its remit and functions are not expected to change in any significant way.
51. There are no monetised benefits associated with option 1.
52. The non-monetised benefit is that stakeholders and the public will have increased confidence in HEE to address their needs and invest money in education and training to support service and clinical priorities. Parliament will have increased reassurance on the accountability of HEE and will support the fact that the Department of Health and Ministers are no longer able to interfere in the day to day operations of HEE.

**Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

53. There is no evidence that the establishment of HEE as an NDPB will increase the costs of the system.
54. HEE's running costs and budget for investment in education and training nationally will be set by the Department of Health and HMT and will be subject to strict financial controls.

**Risks and assumptions**

55. Key assumptions are that:
- i. no further significant reforms are made to the education and training system that could impact on these proposals and the establishment on HEE as a NDPB by May 2015.

**Direct costs and benefits to business calculations (following OIOO methodology)**

56. There are no costs or benefits for businesses.



## **Equality Analysis**

57. The Equality Analysis can be found at Annex A.

## **Summary and preferred option**

58. In summary, the preferred option is to establish HEE as an Executive NDPB (Option 1) for the following reasons.

- i. It offers sufficient levels of independence and political impartiality in terms of structures, reporting lines and decision making, allowing it to operate with the full confidence of the range of partners involved in the planning, commissioning and delivery of education and training.
- ii. It would enable direct reporting to the Secretary of State and Parliament, but ensures no day to day interference in operational functions.
- iii. It allows providers of NHS services and the healthcare professions to bring the necessary skills and expertise to support these functions, and integrates education and training with the funding and provision of services.
- iv. It ensures the Government meets its commitment to the NHS Future Forum to keep the education and training functions part of the NHS
- v. It allows for the introduction of clear duties on HEE and on NHS healthcare providers to strengthen their participation in the new education and training system, something which could not be done if HEE was not being established as an NDPB.
- vi. It is the most efficient method of creating independent and autonomous partnerships of healthcare providers to lead on the commissioning and planning of education and training, and no additional costs are anticipated on top of those required to operate HEE as a Special Health Authority.

## **Annex A – Equality Analysis. Establishing Health Education England as a Non-Departmental Public Body**

### **1. Introduction**

#### **1.1 The Equality Act 2010**

1. The general equality duty set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - foster good relations between people who share a protected characteristic and those who do not.
  
2. The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty. It is up to each organisation to choose the most effective approach for them. The Department of Health uses Equality Analyses as the way of demonstrating how it is giving due regard to the equality duty.

#### **1.2 The Scope of this Equality Analysis**

3. This Equality Analysis assesses the equality implications of establishing Health Education England as a Non-Departmental Public Body. Draft clauses establishing HEE as an Executive NDPB have been developed as part of the Care and Support Bill.

## 2. Health Education England

### 2.1 Policy background

1. Health Education England (HEE) was established as a Special Health Authority (SpHA) in June 2012. It is responsible for providing national leadership and assurance for education and training in England, with a budget of almost £5 billion. From 1 April 2013, HEE will take on its full functions and Local Education and Training Boards (LETBs) will be established, as committees of the SpHA, to plan, commission and quality assure education and training at a local level.

### 2.2 Objectives and Aims

2. Our aim is to establish HEE as a Non-Departmental Public Body (NDPB). This will mean that it is established as an independent and autonomous body as part of the stable health and social care system, with the overarching objective to secure an effective education and training system and a timely supply of health professionals to work in the NHS and public health.
3. The intended effects are to:
  - put HEE at arm's-length from Ministers on a stable, independent footing assured by parliamentary scrutiny;
  - give HEE a stronger basis to plan, commission and quality assure education and training across England;
  - strengthen public confidence by securing transparent decision-making processes for strategic workforce development;
  - give HEE independence so it can put the interests of the patients and users of the NHS and public health system first and be free from political interference; and
  - provide stability for the education and training system.
4. The Government signalled its desire to establish HEE as a NDPB when it published *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* in January 2012.<sup>1</sup> This document sets out the new policy framework for workforce planning and the education and training of the health workforce.

### 2.3 Who will be affected by the policy?

#### Staff in the HEE SpHA

5. As an NDPB, HEE's functions will not materially change from those it has as a SpHA. Following the proposed change, the new body will remain subject to equalities duties in the way it treats its staff and how it carries out its functions.
6. Published in June 2012, a separate Equality Analysis has been developed to assess the equalities impacts of establishing HEE as a SpHA. This builds on wide ranging consultation in 2011 including two reports by the NHS Future Forum. Staff representatives have been consulted on the establishment of the SpHA, in accordance with Section 28(7) of the NHS Act 2006.

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<sup>1</sup> <http://gp.dh.gov.uk/2012/02/24/liberating-the-nhs-developing-the-healthcare-workforce/>

7. As a statutory body, listed under Schedule 19 of the Equality Act 2010 and schedule 1 of its regulations, HEE must be fully compliant with the public sector equality duty from the outset. To do this it must demonstrate due regard to the need to:
  - eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act;
  - advance equality of opportunity between groups who share a protected characteristic and those who do not share it; and
  - foster good relations between groups who share a protected characteristic and those who do not share it in the execution of its policies and functions.
8. A People Transition Policy (PTP) for the HEE SpHA was published in the November 2012. This set out how affected employees will be migrated from different sender organisations. Underpinned by the same principles as the HR Framework and HR Transition Framework, it sets out key principles in relation to best practice HR during this period of change and reform. The PTP has been developed in collaboration with and agreed by the HR Transition Partnership Forum comprising employers and union representatives from the NHS, DH and arm's-length bodies (ALBs). The HEE Board will monitor the implementation of the PTP in partnership with the Trades Unions via the HR Transition Partnership Forum.
9. HEE will have a Trades Union recognition agreement with the main unions representing staff working for HEE. HEE will work closely with the Social Partnership Forum and ensure effective engagement and communication on any policies and decisions.
10. HEE has set out its approach to equality and diversity and its equality, diversity and inclusion objectives for 2013/14 setting out the culture and working practices the SpHA intends to develop to address equality, as well as how it will take forward its public duty under the Equality Act 2010. This policy will continue and evolve as HEE's status changes to an NDPB.

## **2.4 Wider impacts**

11. In 2010, the Equality and Human Rights Commission (EHRC) assessed the performance of a sample of SHAs in England in meeting their duties under the Equality Act 2010. The EHRC suggested that in order to meet the new equalities duties, future NHS organisations need to:
  - improve the quality of their equality information and ensure it is routinely used in policy development, commissioning and service delivery;
  - make information more accessible, about both what they are doing and what they are achieving; and
  - commission services based on needs assessments that cover all protected characteristics and move away from process-based objectives to ones that are outcome focused and measurable.
12. In developing HEE and the LETBs, it will be important that they:
  - have equality at their heart and integrated into new arrangements;
  - demonstrate performance through evidence and outcomes, including HEE overseeing LETBs in meeting their obligations in relation to performance on equality;

- have high level leadership to drive sustainable progress in meeting equalities duties; and
- set out clear policies and processes that consider equality outcomes and ensure continuing performance against the duties.

## 2.5 Impact of HEE and LETB functions

13. HEE will be an organisation that values and promotes equality and diversity in the way it conducts its business and the way it treats its staff. As an NHS organisation, it will have an important role in upholding the NHS Constitution and will expect staff to model these values and behaviours in the way it does its business.
14. Stakeholders who are affected by the work of HEE include the following groups:
  - patients and the public;
  - NHS and public health staff;
  - students and trainees who are studying or training for a career in the NHS or public health system;
  - organisations employing staff who will provide NHS and public health services; and
  - organisations that have a role in the provision and quality assurance of education and training, eg professional regulators, medical Royal Colleges, universities.
15. In undertaking its functions, HEE has the potential to influence the way the future workforce is planned and developed. Excellent health and public health services depend on a highly skilled and educated workforce, working together with compassion and respect for people. In building a new framework for planning and developing the healthcare workforce, we want fairness to be at the heart of decision making. Our ambition is for everyone in the NHS to reach their full potential so that they can deliver excellent services and deliver better health outcomes for the public and patients. The needs of patients and service users should directly influence decisions in the education and training system so that we can improve the experience of everyone using the NHS and public health system.
16. We wish to widen participation by supporting diversity and equitable access to services, and education, training and development opportunities. This will require a system where talent flourishes free from discrimination with everyone having fair opportunities to progress.
17. Before the start of each financial year, the Secretary of State will publish a document which specifies the objectives and priorities for that year in relation to the education and training to be provided to healthcare workers. The Secretary of State will also publish an Education Outcomes Framework for the education and training system to set out the strategic outcomes and priorities at a national level for HEE and LETBs. Both documents will reinforce the drive to ensure healthcare staff develop the right values and behaviours, and have the right education and training to provide person centred care. The Education Outcome Framework will also seek to address variations in standards in education and training.

## **2.6 Governance and review**

18. The Board of HEE is responsible for ensuring that as an organisation, it is compliant with the Equality Act 2010 and meets the Public Sector Equality Duty.
19. HEE's strategy and equalities objectives will form part of their business plan and will be monitored through the quarterly sponsorship monitoring arrangements,

### 3. Evidence

1. As an NDPB, HEE will be better placed to protect and promote the interests of patients and the public (including those in the protected groups). Very little evidence has been found showing what effect the change in status of HEE would have on individuals in the protected groups.

#### 3.1 Sources reviewed for evidence

2. In conducting its analysis, the Department has considered evidence from the following sources.

Implementation of Developing the Healthcare Workforce Equality Analysis [Internet]. 2012 [cited 2012 June 28]. Available from: <http://transparency.dh.gov.uk/2012/05/18/ia-no-8008/>

Equality Act 2010 (Section 149; Public Sector Equality Duty) [Internet] 2012. [cited 2012 June 28]. Available from <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

The NHS Constitution for England [Internet] 2012. [cited 2012 June 28]. Available from: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_113613](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113613)

Arms Length Bodies HR Framework – 28<sup>th</sup> July 2011 [Internet] 2011. [cited 2012 June 28]. Available from: [http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_128782.pdf](http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_128782.pdf)

Office for Disability Issues. [Internet] 2012 [cited 2012 June 28]. Available from: <http://odi.dwp.gov.uk/index.php>

Office for National Statistics Labour Force Survey [Internet] 2012 [cited 2012 June 28]. Available from: <http://www.esds.ac.uk/government/lfs/>

Local Area Labour Markets: Statistical Indicators April 2011. [Internet] 2011 [cited 2012 June 28] Available from: <http://www.ons.gov.uk/ons/search/index.html?pageSize=50&newquery=Annual+Local+Area+Labour+Force+Survey%2C+>

Stonewall. [Internet]. 2012 [cited 2012 June 28]. Available from: [http://www.stonewall.org.uk/at\\_home/sexual\\_orientation\\_faqs/2694.asp](http://www.stonewall.org.uk/at_home/sexual_orientation_faqs/2694.asp)

Barriers to employers in developing lesbian, gay, bisexual and transgender friendly workplaces. [Internet] 2012 [cited June 28]. Available from: <http://www.homeoffice.gov.uk/publications/equalities/research/LGBT-barriers-equality-workplace/LGBT-equality-workplace?view=Binary>

ONS Integrated Household Survey, 2010. [Internet] 2010 [cited June 28]. Available from: <http://www.guardian.co.uk/news/datablog/2010/sep/23/gay-britain-ons#data>

Equality and Human Rights Commission briefing paper, Religion or Belief, 2011. [Internet] 2011 [cited June 28]. Available from: [http://www.equalityhumanrights.com/uploaded\\_files/publications/religion\\_or\\_belief\\_briefing\\_paper.pdf](http://www.equalityhumanrights.com/uploaded_files/publications/religion_or_belief_briefing_paper.pdf)

Employment Tribunal and EAT statistics, 2010-2011. [Internet] 2011 [cited June 28]. Available from: <http://www.justice.gov.uk/downloads/statistics/mojstats/employment-trib-stats-april-march-2010-11.pdf>

Equality and Human Rights commission policy report: Beyond Tolerance, 2009. [Internet] 2009 [cited June 28]. Available from:  
[http://www.equalityhumanrights.com/uploaded\\_files/research/beyond\\_tolerance.pdf](http://www.equalityhumanrights.com/uploaded_files/research/beyond_tolerance.pdf)

Equality and Human Rights commission Research report 22: Older people inside and outside the labour market - a review. [Internet] 2012 [cited June 28]. Available from:  
<http://www.equalityhumanrights.com/key-projects/just-ageing/older-people-research/>

Greater Expectations, Summary Report into EOCs investigation into pregnancy discrimination, 2005. [Internet] 2005 [cited June 28]. Available from:  
[http://www.equalityhumanrights.com/uploaded\\_files/eoc\\_pregnancyqfi\\_summary\\_report.pdf](http://www.equalityhumanrights.com/uploaded_files/eoc_pregnancyqfi_summary_report.pdf)

Facts about Carers, Carers UK. [Internet] 2009 [cited June 28]. Available from:  
<http://www.carersuk.org/professionals/resources/briefings/item/404-facts-about-carers-2009>

Facts about Carers Policy briefing, Carers UK, June 2009. [Internet] 2009 [cited June 28] Available from:  
<http://www.carersuk.org/professionals/resources/briefings/item/404-facts-about-carers-2009>

National Minimum Wage: LPC Report. London: The Stationery Office. Low Pay Commission, 2009

### **3.2 Impact on each of the protected groups**

3. We have considered the impact that the policy proposal to establish HEE as a NDPB may have on each of the protected groups:
  - disability;
  - sex;
  - race;
  - age;
  - gender reassignment (including transgender);
  - sexual orientation;
  - religion or belief;
  - pregnancy and maternity; and
  - carers.
4. Given that the draft legislation is aimed at amending the status of the existing body, and because it does not, in itself, involve any reorganisation and the functions of HEE as a NDPB will not differ from those of the SpHA, the Department does not anticipate that there will be a material impact on any of the protected groups as a result of the policy.
5. As an employer, HEE will ensure that staff can access flexible working opportunities, and will consider any adjustments that need to be made to its premises to improve accessibility or request specialist equipment to enable staff to work effectively.
6. Guidance will be issued to those responsible for panels recruiting senior managers and board members on building equality and diversity into HEE selection processes. Corporate responsibility for equality and diversity will be written into the job descriptions and persons specifications of all director level roles.



7. Once HEE has collected baseline data on the workforce, it will ensure policies are developed and put in place to promote equality and diversity and allow for monitoring with regard to the protected characteristics.
8. A separate Equality Analysis of implementing the *Liberating the NHS: Developing the Healthcare Workforce - From Design to Delivery*<sup>2</sup> considers separately the development of HEE as a Special Health Authority and its functions, and commits HEE to agree and publish equality objectives that need to be achieved in order for the SpHA to fulfil its public sector duty.

### **3.3 Impact on elimination of discrimination, harassment and victimisation, advancing equality of opportunity and promoting good relations between groups**

9. We have considered how the proposal to establish HEE as a NDPB impacts on elimination of discrimination, harassment and victimisation, the advancement of equality of opportunity, and the promotion of good relations between groups.
10. Given that the legislation is aimed at amending the status of the existing body, and because it does not, in itself, involve any reorganisation and the functions of HEE as a NDPB will not differ from those of the SpHA, the Department does not anticipate that there will be a material impact on any of the protected groups as a result of the policy.

### **3.4 Engagement and involvement**

11. The education and training reforms have been subject to a full public consultation in line with Cabinet Office best practice.
12. In developing its policies for education and training, the Department has consulted widely with stakeholders affected by changes to the education and training system, including representatives of patients and users of services, staff and their trades unions representatives and bodies with a role in the provision and quality assurance of education and training.
13. In addition to the public consultation run by the DH in 2011, two reviews have been conducted by the NHS Future Forum on education and training.
14. This Equality Analysis accompanies clauses to establish HEE as a NDPB, which are being published as part of the Care and Support Bill. Stakeholder engagement was carried out throughout the pre-legislative scrutiny process, which gave an opportunity to comment on the Equality Analyses and no further comments and evidence were received.

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<sup>2</sup> <http://gp.dh.gov.uk/2012/02/24/liberating-the-nhs-developing-the-healthcare-workforce/>

## Summary of Analysis

### 4.1 Overall impact

1. Based on the evidence and the fact that the policy is about changing HEE's status rather than changing its functions, the Department does not anticipate an impact on any of the protected groups as a result of the policy. The Department considers that the added independence conferred by the creation of HEE as a NDPB will assist it to fulfil its core functions to plan, commission and quality assure the delivery of education and training.

### 4.2 Action planning for improvement

2. HEE will undertake the following actions:
  - identify relevant actions from the Equality Analysis of the Health and Social Care Act 2012 and EHRC report *The Public Sector Equality Duty: A way forward for the health sector*;
  - implement its programme to develop and embed equality objectives;
  - publish information and data to demonstrate SpHA compliance with the public sector equality duty; and
  - identify responsible leads for equality in HEE and LETBs.

## Annex B – Reports and further information

- *Liberating the NHS: Developing the Healthcare Workforce – A consultation on proposals*
- *Liberating the NHS: Developing the Healthcare Workforce – A summary of consultation responses*  
[http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_122590](http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_122590)
- *Liberating the NHS: Developing the Healthcare Workforce - From Design to Delivery*  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_132076](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_132076)
- *NHS Future Forum: Summary report on proposed changes to the NHS*
- *Education and Training: A report from the NHS Future Forum*  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_127443](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_127443)
- *Government response to the NHS Future Forum report*  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_127444](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_127444)
- *Impact Assessment for the introduction of tariffs for education and training activity*  
<http://www.dh.gov.uk/health/2013/02/implementation-tariffs/>