

2013 No. 278

TERMS AND CONDITIONS OF EMPLOYMENT

**The Transfer of Undertakings (Protection of Employment)
(Transfers of Public Health Staff) Regulations 2013**

<i>Made</i> - - - -	<i>10th February 2013</i>
<i>Laid before Parliament</i>	<i>15th February 2013</i>
<i>Coming into force</i> - -	<i>1st April 2013</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 38 of the Employment Relations Act 1999(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transfer of Undertakings (Protection of Employment) (Transfers of Public Health Staff) Regulations 2013 and come into force on 1st April 2013.

(2) In these Regulations—

“the 1996 Act” means the Employment Rights Act 1996(b);

“relevant transferor” means, in relation to a person to whom these Regulations apply, the transferor which employs that person immediately before the transfer date;

“specialist dental public health consultant services” means the provision of services by a specialist dental public health practitioner which—

- (a) are for the purpose of promoting the oral health of the public, and
- (b) involve the assessment of dental health needs and the undertaking of activity to ensure that dental services provided as part of the health service meet those needs;

“transfer date” means 1st April 2013;

“transferor” means a body listed in column (1) of the table in the Schedule;

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(c).

Application of Regulations

2. These Regulations apply to any person who—

- (a) immediately before the transfer date—
 - (i) is employed by a transferor, and

(a) 1999 c. 26.

(b) 1996 c. 18.

(c) S.I. 2006/246; relevant amendments were made by S.I. 2009/592 and 2010/93.

- (ii) assigned to a unit, or engaged in an activity, specified in the entry in column (2) of the table in the Schedule which relates to the transferor; and
- (b) has been notified by that transferor before the transfer date that they are to transfer to the employment of the Secretary of State.

Transfer of employment

3.—(1) Any person to whom these Regulations apply is on the transfer date transferred to the employment of the Secretary of State.

(2) Subject to paragraph (4), the contract of employment of a person whose employment has transferred to the Secretary of State under paragraph (1)—

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

(3) Without prejudice to paragraph (2)—

- (a) all the rights, powers, duties and liabilities of the relevant transferor under, or in connection with, the contract of employment of any person whose employment transfers to the Secretary of State on the transfer date under paragraph (1), are transferred to the Secretary of State; and
- (b) any act or omission before the transfer date by, or in relation to, the relevant transferor, 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 Secretary of State.

(4) Paragraphs (1) to (3) do not operate to transfer the contract of employment of a person to whom these Regulations apply, or any rights, powers, duties and liabilities under or in connection with that contract, if, before the transfer date, the person informs the relevant transferor or the Secretary of State that they object to becoming employed by the Secretary of State.

(5) Where a person to whom these Regulations apply has objected as described in paragraph (4), the transfer operates so as to terminate that person's contract of employment with the relevant transferor.

(6) Subject to paragraph (7), a person whose contract of employment is terminated in accordance with paragraph (5) is not to be treated, for any purpose, as having been dismissed by the relevant transferor.

(7) Where the transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose employment is or would have transferred under paragraph (1), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by that person's employer.

(8) No damages are to be payable by the relevant transferor or the Secretary of State as a result of a dismissal falling within paragraph (7) in respect of any failure by the relevant transferor or the Secretary of State to pay wages to a person in respect of a notice period which the person has failed to work.

(9) Paragraphs (1), (2) and (4) to (7) are without prejudice to any right of a person arising apart from this regulation to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by that person's employer.

Pensions

4. A person whose contract of employment is transferred by regulation 3 is to be treated as if regulation 10 of the TUPE Regulations (pensions) applied in relation to that transfer, with the modification that for the reference to regulations 4 and 5 of TUPE Regulations there were substituted a reference to regulation 3 of these Regulations

Information and consultation

5.—(1) Any transfer effected by regulation 3 is to be treated as a relevant transfer to which regulations 11 to 16 of the TUPE Regulations apply.

(2) Where before the transfer date, a transferor has notified the Secretary of State of employee liability information (within the meaning of the TUPE Regulations) in the form and manner required by regulation 11 of the TUPE Regulations (notification of employee liability information), the transferor shall be treated as having complied with that regulation.

(3) Information provided or consultation undertaken by the transferor or the Secretary of State before the transfer date, if provided or carried out in the form or manner required by regulation 13 of the TUPE Regulations (duty to inform and consult representatives), is to be treated as effective for the purposes of that regulation.

Signed by the authority of the Secretary of State for Health.

Anna Soubry
Parliamentary Under-Secretary of State
Department of Health

10th February 2013

SCHEDULE

Regulations 1(2) and 2

Relevant Transferors and Public Health Units & Activities

<i>Column (1)</i> Transferor	<i>Column (2)</i> Unit to which employee assigned, or activity in which employee is engaged
Barts Health National Health Service Trust	London Cancer Screening Programmes Quality Assurance Reference Centre
Birmingham Women's NHS Foundation Trust	(1) West Midlands Public Health Observatory (2) West Midlands Cancer Screening Quality Assurance Reference Centre (3) West Midlands Cancer Intelligence Unit
Bolton Hospitals NHS Foundation Trust	North West Bowel Cancer Screening Quality Assurance Reference Centre
The Christie NHS Foundation Trust	North West Cancer Intelligence Service
County Durham & Darlington NHS Foundation Trust	Specialist dental public health consultant services
Dartford and Gravesham National Health Service Trust	Specialist dental public health consultant services
Durham University	North East Public Health Observatory
East Sussex Healthcare National Health Service Trust	South East Coast Cancer Screening Quality Assurance Reference Centre
Gloucestershire Hospitals NHS Foundation Trust	(1) UK National Screening Programmes - Diabetic Retinopathy Programme (DRP) (2) UK National Screening Programmes - Abdominal Aortic Aneurysm (AAA) (3) UK National Screening Programmes - Ante Natal and New Born (ANNB)
Great Ormond Street Hospital for Children NHS Foundation Trust	UK Newborn Screening Programme Centre (UKNSPC)
Imperial College Healthcare National Health Service Trust	(1) UK National Screening Committee (2) UK National Screening Programmes -

	Infectious Diseases in Pregnancy
King's College London	(1) Thames Cancer Registry (2) UK National Screening Programmes - NHS Sickle Cell and Thalassaemia Screening Programme (SCT)
The Leeds Teaching Hospitals National Health Service Trust	Northern & Yorkshire Cancer Registry
Liverpool Women's NHS Foundation Trust	North West Cervical Screening Quality Assurance Reference Centre
Liverpool John Moores University	North West Public Health Observatory
The Newcastle upon Tyne Hospitals NHS Foundation Trust	North East Public Health Observatory
North Bristol National Health Service Trust	South West Cervical Screening Quality Assurance Reference Centre
Nottingham University Hospitals National Health Service Trust	East Midlands Breast Screening Quality Assurance Reference Centre
Plymouth University Peninsula Schools of Medicines and Dentistry	Specialist dental public health consultant services
Royal Devon and Exeter NHS Foundation Trust	UK National Screening Programmes - NHS Foetal Anomaly Screening Programme (FASP)
Royal Free London NHS Foundation Trust	(1) UK National Screening Programmes - Newborn Infant Physical Examination (NIPE) (2) UK National Screening Programmes - Newborn Hearing Screening (NHSP)
Sheffield Teaching Hospitals NHS Foundation Trust	(1) Trent Cancer Registry (2) East Midlands Bowel and Cervical Screening Quality Assurance Reference Centre
Tees, Esk and Wear Valleys NHS Foundation Trust	North East Public Health Observatory
University Hospital Southampton NHS Foundation Trust	(1) National End of Life Care Intelligence Network (2) South West Public Health Observatory (3) South West Cervical Screening Quality Assurance Reference Centre (4) South West Cancer Intelligence Service
University of Oxford	National Registry of Childhood Tumours (part of Childhood Cancer Research Group)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the treatment of persons employed by various public bodies in public health activity, who are to transfer to the Department of Health. The transfers are a consequence of the new functions relating to public health conferred on the Secretary of State by the Health & Social Care Act 2012(a), which are to be performed by an executive agency of the Department known as Public Health England. The Regulations provide that the employees will be treated in a similar way to employees to whom the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply ("the TUPE Regulations"). In particular: regulation 3 provides for the effect on contracts of employment, similar to the provision made by regulation 4 of the TUPE Regulations; regulation 4 makes the same provision in relation pensions as regulation 10 of the

(a) 2012 c.7.

TUPE Regulations; and regulation 5 ensures a transfer is treated as a relevant transfer for the purposes of regulations 11 to 16 of the TUPE Regulations (which make provision about notification of liability information to the transferee and about informing and consulting staff representatives).

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.

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STATUTORY INSTRUMENTS

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