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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 33**

**The National Health Service (Variation of the Areas of Greater Glasgow and Highland Health Boards) (Scotland) Order 2006**

**PART 3**

**TRANSFER OF EMPLOYEES**

**Scheme for the transfer of employees**

4.—(1) Argyll and Clyde, Greater Glasgow and Highland Health Boards shall, in accordance with the provisions of this Part, use their best endeavours to agree and make a scheme for the transfer of the employment of all persons employed by Argyll and Clyde Health Board to Greater Glasgow or Highland Health Board with effect from 1st April 2006.

(2) The scheme shall, in respect of each employee (whether identified individually or by reference to membership of a class or description of employee) of Argyll and Clyde Health Board, designate to which of Greater Glasgow or Highland Health Boards each such employee's employment shall transfer.

(3) The scheme shall have effect to transfer the employment of persons to whom the scheme applies to the Health Board designated in respect of that person with effect from 1st April 2006.

(4) The scheme shall not have effect to transfer the employment of any person—

- (a) whose contract of employment provides for the termination of that contract on 31st March 2006;
- (b) who is dismissed with effect from 31st March 2006 (unless that person is later reinstated with effect from that date); or
- (c) who terminates their contract of employment as at 31st March 2006.

**Duties in relation to the making of the scheme regarding employees and criteria to be considered**

5.—(1) It shall be the duty of Argyll and Clyde, Greater Glasgow and Highland Health Boards in agreeing and making the scheme under article 4(1) to designate that the employment of an employee employed as respects part of the area of Argyll and Clyde Health Board will transfer to the Health Board which, following the variation in accordance with article 3, is constituted for that area.

(2) Where it appears to Argyll and Clyde, Greater Glasgow and Highland Health Board that the criterion in paragraph (1) is not adequate to designate to which of Greater Glasgow or Highland Health Boards the employment of an employee should transfer, they may apply other criteria in respect of that employee as they think appropriate.

(3) In the absence of agreement between Argyll and Clyde, Greater Glasgow and Highland Health Boards as to which of Greater Glasgow or Highland Health Boards the employment of any employee (whether identified individually or by reference to membership of a class or description of employee)

should transfer, the employment of that employee shall transfer to Greater Glasgow Health Board with effect from 1st April 2006.

(4) It shall be the duty of Argyll and Clyde Health Board to provide Greater Glasgow and Highland Health Boards with all information held by it, or on its behalf which Greater Glasgow and Highland Health Boards require to prepare and implement such scheme.

### **Provision in relation to employees transferred**

6.—(1) Upon the transfer of the employment of an employee in accordance with article 4(3) or article 5(3)–

- (a) a contract of employment shall not be terminated by the transfer but shall have effect as if originally made between the employee transferred and the Health Board to which the employment of the employee is transferred;
- (b) all of the rights, powers, duties and liabilities of Argyll and Clyde Health Board under or in connection with a contract of employment shall transfer to the Health Board to which the employment of the employee is transferred; and
- (c) anything done before the transfer by or in relation to Argyll and Clyde Health Board in respect of any contract of employment or an employee shall be deemed to have been done by or in relation to the Health Board to which the employment of the employee is transferred.

(2) The provisions of this Part are without prejudice to any right of any employee whose employment is transferred in accordance with article 4(3) or article 5(3) to terminate that employee’s contract of employment if a substantial change is made to that employee’s detriment in that employee’s terms and conditions; but no such right shall arise by reason only of the change in employer effected by article 4(3) or article 5(3).

(3) Where at the time of transfer in accordance with article 4(3) or article 5(3) there exists–

- (a) a collective agreement made by or on behalf of Argyll and Clyde Health Board with a trade union recognised by Argyll and Clyde Health Board in respect of an employee whose contract is transferred; or
- (b) a workforce agreement between Argyll and Clyde Health Board and workers employed by Argyll and Clyde Health Board in respect of an employee whose contract is transferred,

then, without prejudice to any rule of law as to the enforceability of such agreements, that agreement in its application to that employee shall, after the transfer, have effect as if made by or on behalf of the Health Board to which the employment of the employee is transferred, and anything done under or in connection with it by or in relation to Argyll and Clyde Health Board before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Health Board to which the employment of the employee is transferred.

(4) In this article–

“collective agreement” has the meaning given to it in section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992(1); and

“workforce agreement” has the meaning given to it in regulation 2 of the Working Time Regulations 1998(2).

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(1) 1992 c. 52.

(2) S.I.1998/1833.