

SCHEDULES

SCHEDULE 2

TRANSITIONAL PROVISIONS AND SAVINGS

Staff of RHAs, DHAs and FHSAs

- 7 (1) The Secretary of State may—
- (a) by order made in relation to any specified description of relevant health authority employees specify the health service body to which they are to be transferred on 1st April 1996, and
 - (b) by scheme made in relation to relevant health authority employees designated by the scheme (either individually or as members of a class) designate the health service body to which they are to be transferred on 1st April 1996.
- (2) In this paragraph and paragraphs 8 to 10 references to relevant health authority employees are to persons who immediately before 1st April 1996 are employees of—
- (a) a Regional Health Authority,
 - (b) a District Health Authority, or
 - (c) a Family Health Services Authority,
- other than persons to whom sub-paragraph (3) applies.
- (3) This sub-paragraph applies to persons to whom section 6 of the National Health Service and Community Care Act 1990 (transfers of staff to an NHS trust) applies if the operational date of the trust in question (or, in the case of employees within subsection (5) of that section, the date on which they take up employment) is 1st April 1996.
- (4) In this paragraph and paragraphs 8 to 11 references to a health service body are to—
- (a) the Secretary of State,
 - (b) a Health Authority,
 - (c) a Special Health Authority, or
 - (d) an NHS trust.
- (5) The Secretary of State shall exercise the power conferred by this paragraph so as to secure that all relevant health authority employees are dealt with in exercise of the power.
- (6) A scheme may be made under this paragraph only if sub-paragraph (7) is satisfied in relation to each of the employees to be designated by the scheme.
- (7) This sub-paragraph is satisfied in relation to an employee if—
- (a) the employee, or such body as the Secretary of State may recognise as representing the employee, has been consulted about the scheme by the Secretary of State, or

Status: This is the original version (as it was originally enacted).

- (b) the Secretary of State is satisfied that the employee, or such body as the authority from which the employee would be transferred by the scheme may recognise as representing the employee, has been consulted about the scheme by that authority.
- 8 (1) This paragraph applies where, at any time during the period beginning with 1st April 1996 and ending with 30th September 1996, it appears to the Secretary of State appropriate for any relevant health authority employees to be transferred from the health service body to which they were transferred on 1st April 1996 to another health service body.
- (2) The Secretary of State may at any time during that period make, in relation to any of the employees who (in the opinion of the Secretary of State) ought to be transferred and are designated by the scheme (either individually or as members of a class), a scheme designating the body to which they are to be transferred on a date during that period designated by the scheme.
- (3) A scheme may be made under this paragraph only if sub-paragraph (4) is satisfied in relation to each of the employees to be designated by the scheme.
- (4) This sub-paragraph is satisfied in relation to an employee if—
- (a) the employee, or such body as the Secretary of State may recognise as representing the employee, has been consulted about the scheme by the Secretary of State, or
- (b) the Secretary of State is satisfied that the employee, or such body as the body from which the employee would be transferred by the scheme may recognise as representing the employee, has been consulted about the scheme by that body.
- 9 (1) The abolition on 1st April 1996 of the authority by which a relevant health authority employee was employed immediately before that date does not operate to terminate his contract of employment.
- (2) Subject to sub-paragraph (3), the contract of employment of a relevant health authority employee shall have effect on and after that date as if originally made between the employee and the health service body to which he is transferred on that date.
- (3) Where a scheme is made in relation to a relevant health authority employee under paragraph 8 his contract of employment shall have effect on and after the date designated by the scheme as if originally made between the employee and the health service body to which he is transferred on that date.
- (4) Without prejudice to sub-paragraphs (2) and (3)—
- (a) all the rights, powers, duties and liabilities of the authority or body from which an employee is transferred in accordance with an order or scheme made under paragraph 7 or 8 under or in connection with his contract of employment shall by virtue of this sub-paragraph be transferred to the body to which the employee is transferred in accordance with the order or scheme, and
- (b) anything done before the date of the transfer by or in relation to the authority or body from which he is so transferred in respect of the employee or the contract of employment shall be deemed from that date to have been done by or in relation to the body to which he is so transferred.

Status: This is the original version (as it was originally enacted).

- (5) Sub-paragraphs (2) and (4) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the authority or body from which they would be transferred, or the body to which they would be transferred, that he objects to the transfer.
- (6) Where an employee objects as mentioned in sub-paragraph (5) his contract of employment with the authority or body from which he would be transferred shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that authority or body.
- (7) This paragraph is without prejudice to any right of a relevant health authority employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- (8) This paragraph does not apply—
- (a) to so much of a contract of employment as relates to an occupational pension scheme (within the meaning of section 1 of the Pension Schemes Act 1993), or
 - (b) to any rights, powers, duties or liabilities under or in connection with a contract of employment, or otherwise arising in connection with a person's employment, and relating to such a scheme,
- other than any provisions of the scheme which do not relate to benefits for old age, invalidity or survivors.
- 10 (1) A scheme made under paragraph 7 or 8 may provide that the contract of employment of a relevant health authority employee designated by the scheme shall, on 1st April 1996 (in the case of a scheme made under paragraph 7) or the date designated by the scheme (in the case of a scheme made under paragraph 8), be divided so as to constitute two separate contracts of employment with two health service bodies designated by the scheme.
- (2) Where a scheme makes such provision it shall provide for paragraph 9 to have effect in the case of the employee and his contract of employment subject to appropriate modifications.
- 11 Where as a result of the operation of paragraph 9 an employee has both—
- (a) a contractual right against any health service body to benefits in the event of his redundancy, and
 - (b) a statutory right against the body to a redundancy payment,
- any benefits provided to him by virtue of the contractual right shall be taken as satisfying the statutory right.