

Status: Point in time view as at 01/04/2008.

Changes to legislation: National Health Service Act 2006, SCHEDULE 18 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 18

Section 75

SECTION 75 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

- 1 This Schedule applies where, under any arrangements under regulations under section 75, any functions of a body (“the transferor”) will be exercised by another body (“the transferee”).

Orders transferring staff

- 2 (1) The Secretary of State may by order transfer to the transferee any specified description of employees of the transferor.
- (2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.

Effect of order on contracts of employment

- 3 (1) The contract of employment of an employee transferred by an order under paragraph 2—
- (a) is not terminated by the transfer, and
 - (b) has effect from the date of the transfer as if originally made between the employee and the transferee.
- (2) In particular—
- (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this sub-paragraph transferred to the transferee, and
 - (b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment is deemed from that date to have been done by or in relation to the transferee.
- (3) Sub-paragraphs (1) and (2) 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 transferor or the transferee that he objects to the transfer.
- (4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor is terminated immediately before the date on which the transfer would occur; but he must not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph does not affect any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only

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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.

Effect of order on pension rights

- 4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 does not apply in relation to—
- (a) so much of the employee's contract of employment as relates to relevant pension provisions, or
 - (b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee's employment, and relating to such provisions.
- (2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Secretary of State considers appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.
- (3) The provision which may be made by virtue of sub-paragraph (2) includes provision—
- (a) for any such employee's contract of employment with the transferee to have effect with any specified modifications,
 - (b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.
- (4) In this paragraph “relevant pension provisions” means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

- 5 (1) Where an employee will be transferred by an order under paragraph 2 but will continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee is, on the date on which the employee is transferred, divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.
- (2) Where an employee's contract of employment is divided as provided under sub-paragraph (1)—
- (a) the order must provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications, and
 - (b) paragraph 4 similarly applies only so far as appropriate in connection with the employee's employment by the transferee.

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