
STATUTORY INSTRUMENTS

2021 No. 975

TERMS AND CONDITIONS OF EMPLOYMENT

**The Transfer of Undertakings (Protection of Employment)
(Transfer of Public Health England Staff) Regulations 2021**

<i>Made</i>	- - - -	<i>1st September 2021</i>
<i>Laid before Parliament</i>		<i>3rd September 2021</i>
<i>Coming into force</i>	- -	<i>1st October 2021</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 38 of the Employment Relations Act 1999⁽¹⁾.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Transfer of Undertakings (Protection of Employment) (Transfer of Public Health England Staff) Regulations 2021 and come into force on 1st October 2021.

(2) These Regulations extend to England and Wales and Scotland.

(3) In these Regulations—

“relevant transferee” is the body specified in column (2) of the table in the Schedule that corresponds to an entry in column (1) of that table;

“transfer date” means 1st October 2021;

“transferor” means the Secretary of State for Health and Social Care;

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽²⁾.

Application of Regulations

2.—(1) These Regulations apply to any person who—

(a) immediately before the transfer date was employed by the transferor within a relevant division in the executive agency of the transferor known as Public Health England; and

⁽¹⁾ 1999 c. 26. Section 38 was amended by S.I. 2019/536; there is another amending instrument which is not relevant.

⁽²⁾ S.I. 2006/246, as amended by S.I. 2009/592, 2010/93, 2014/16, 386 and 853; there are other amending instruments but none is relevant.

(b) was notified by the transferor before the transfer date that they are to transfer to the employment of the relevant transferee.

(2) For the purposes of this regulation and the Schedule “a relevant division” is a division specified in column (1) of the table in the Schedule.

Transfer of employment

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

(2) Subject to paragraph (4), the contract of employment of a person whose employment has transferred 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- (b) has effect from the transfer date as if originally made between that person and the relevant transferee.

(3) Without prejudice to paragraph (2)—

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

(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 transferor or the relevant transferee that they object to becoming employed by the relevant transferee.

(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 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 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 transferor or a relevant transferee as a result of a dismissal falling within paragraph (7) in respect of any failure by the transferor or the relevant transferee 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 the 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, the transferor has notified the relevant transferee 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 relevant transferee 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 authority of the Secretary of State for Health and Social Care.

1st September 2021

Helen Whately
Minister of State,
Department of Health and Social Care

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SCHEDULE

Regulations 1(3) and 2(2)

Relevant Divisions and Relevant Transferees

<i>(1)</i>	<i>(2)</i>
<i>Relevant division</i>	<i>Relevant transferee</i>
Screening Quality Assurance Service	The National Health Service Commissioning Board ⁽³⁾
Local Screening and Immunisation	The National Health Service Commissioning Board
National Healthcare Public Health	The National Health Service Commissioning Board
Regional Healthcare Public Health	The National Health Service Commissioning Board
National Screening: Support for Service Commissioning and Delivery	The National Health Service Commissioning Board
National Disease Registration Service	The Health and Social Care Information Centre ⁽⁴⁾

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the transfer of certain persons employed by Public Health England (an executive agency of the Department for Health and Social Care) to either the National Health Service Commissioning Board or the Health and Social Care Information Centre. The transfers are a consequence of the abolition of 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 (S.I. 2006/246) 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 to pensions as regulation 10 of the 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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- (3) The National Health Service Commissioning Board (known as NHS England) was established under section 1H of the National Health Service Act 2006 (c. 41). Section 1H was inserted by section 9 of the Health and Social Care Act 2012 (c. 17).
- (4) The Health and Social Care Information Centre (known as NHS Digital) is a body corporate established under section 252(1) of the Health and Social Care Act 2012.

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