
WELSH STATUTORY INSTRUMENTS

2018 No. 981

The Health Education and Improvement Wales (Transfer of Staff, Property, Liabilities) (Wales) Order 2018

Title and commencement

1.—(1) The title of this Order is the Health Education and Improvement Wales (Transfer of Staff, Property, Liabilities) (Wales) Order 2018.

(2) This Order comes into force on 1 October 2018.

Interpretation

2. In this Order—

“the Act” (“y Ddeddf”) means the National Health Service (Wales) Act 2006;

“HEIW” (“*AaGIC*”) means Health Education Improvement Wales established by article 2 of the Health Education and Improvement Wales (Establishment and Constitution) Order 2017(1);

“HEIW’s functions” (“*swyddogaethau AaGIC*”) means the functions set out in article 3 of the Health Education and Improvement Wales (Establishment and Constitution) Order 2017;

“the transfer date” (“y dyddiad trosglwyddo”) means 1 October 2018;

“Velindre NHS Trust” (“*Ymddiriedolaeth GIG Felindre*”) means the NHS Trust established by the Velindre National Health Service Trust (Establishment) Order 1993(2);

“WEDS” (“*GGAD*”) means the Workforce, Education and Development Service in Velindre NHS Trust.

Transfer of staff to HEIW

3.—(1) This article applies to any person who—

(a) immediately before the transfer date is employed by Velindre NHS Trust in connection with the functions of WEDS; and

(b) has been notified in writing by their employer prior to the transfer date that they are to be transferred to HEIW.

(2) The contract of employment of any person to whom paragraph (1) applies is, on the transfer date, to be transferred to HEIW.

(3) The contract of employment of a person whose employment has transferred to HEIW under paragraph (2)—

(a) is not terminated by the transfer; and

(b) has effect from the transfer date as if originally made between that person and HEIW.

(1) S.I. 2017/913 (W. 224).

(2) S.I. 1993/2838 as amended by S.I. 1999/826; S.I. 2002/442 (W. 57); S.I. 2002/2199 (W. 219); S.I. 2009/2059 (W. 178); S.I. 2012/1262 (W. 157); S.I. 2017/912 (W. 223) and S.I. 2018/887 (W. 176).

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of Velindre NHS Trust under, or in connection with, the contract of employment of any person whose employment transferred to HEIW on the transfer date under paragraph (2), are to transfer to HEIW; and
- (b) any act or omission before the transfer date by, or in relation to, Velindre NHS Trust, 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, HEIW.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs Velindre NHS Trust that they object to becoming employed by HEIW.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to HEIW as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with Velindre NHS Trust.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with paragraph (6) is not to be treated, for any purpose, as having been dismissed by their employer.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have been transferred under paragraph (2), 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 their employer.

(9) No damages are to be payable by an employer as a result of a dismissal falling within paragraph (8) in respect of any failure by the employer to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3), and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Records of Velindre NHS Trust relating to the employment of those persons to whom paragraph (1) applies whose contracts of employment are to transfer to HEIW pursuant to this article are to transfer to HEIW on the transfer date.

Transfer of property and liabilities

4.—(1) Any property or land held by Velindre NHS Trust immediately before the transfer date which is identified in the Schedule is to transfer, on the transfer date, to HEIW.

(2) With effect from the transfer date the contents in or on the property or land identified in the Schedule and all other property, rights and liabilities and records relating thereto to which Velindre NHS Trust is entitled or subject, will be transferred to HEIW.

(3) All liabilities of Velindre NHS Trust relating to the property which is identified in the Schedule are to transfer, on the transfer date, to HEIW.

(4) Any right relating to land or property which is identified in the Schedule that was enforceable by or against Velindre NHS Trust before the transfer date is, on or after that date, to be enforceable by or against HEIW.

(5) Any property, interests, rights or liabilities of Velindre NHS Trust other than those listed in the Schedule which are used or held by Velindre NHS Trust solely or mainly—

- (a) for the performance of functions of WEDS; or
- (b) in connection with the performance of the functions of WEDS;

will transfer to HEIW on the transfer date.

Transfer of data, records and information

5. So far as not already transferred by virtue of article 4, any data, record or information held by Velindre NHS Trust which, before the transfer date, Velindre NHS Trust used for purposes of any of HEIW's functions, is to transfer to HEIW.

Supplementary provisions

6.—(1) Anything done by or in relation to Velindre NHS Trust for the purposes of, or otherwise in connection with the property, rights or liabilities transferred under this Order is to have effect as if done in relation to HEIW.

(2) Anything (which may include legal proceedings) which, when this Order takes effect, is in the process of being done by or in relation to Velindre NHS Trust in connection with

- (a) the exercise by Velindre NHS Trust in connection with the functions of WEDS; or
- (b) any of the property, rights or liabilities transferred under this Order,

is to have effect as if done by or in relation to, and may be continued by or in relation to, HEIW.

(3) Any reference to Velindre NHS Trust or WEDS in any agreement (whether written or not), instrument or other document in connection with any property, rights or liabilities transferred under this Order, is to be treated as a reference to HEIW.

(4) Subject to article 3(8), no right to terminate or vary a contract, arrangement or instrument is to operate or become exercisable, and no provision of any contract, arrangement or instrument is to operate or become exercisable or be contravened, by reason of any transfer under or other operation of this Order.

(5) The transfers provided for by this Order are to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise); and
- (b) whether or nor they would otherwise be capable of being transferred; and
- (c) regardless of any provision (of whatever nature) which would otherwise prevent or restrict those transfers.

6 September 2018

Vaughan Gething
Cabinet Secretary for Health and Social
Services, one of the Welsh Ministers