

## SCHEDULES

### SCHEDULE 3

#### NHS TRUSTS ESTABLISHED UNDER SECTION 18

##### PART 1

##### CONSTITUTION, ESTABLISHMENT, ETC

##### *Transfer of staff to NHS trusts*

- 8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or
  - (b) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority, Primary Care Trust or Local Health Board specified as mentioned in paragraph 5(1)(f).
- (2) Sub-paragraph (1) is subject to sub-paragraph (6).
- (3) A scheme under this paragraph does not have effect unless approved by the Welsh Ministers.
- (4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority, Primary Care Trust or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.
- (5) In particular—
- (a) all the rights, powers, duties and liabilities of the Special Health Authority, Primary Care Trust or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and
  - (b) anything done before that date by or in relation to the Special Health Authority, Primary Care Trust or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.
- (6) In any case where—
- (a) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,

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*Status: This is the original version (as it was originally enacted).*

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- (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and
- (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,

sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.

- (7) Sub-paragraphs (4) and (5) do not affect any right of an employee 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 of the change in employer effected by this paragraph.
- (8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.
- (9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his "original contract") must be treated, in accordance with the scheme, as divided so as to constitute—
  - (a) a contract of employment with the NHS trust, and
  - (b) a contract of employment with the Special Health Authority, Primary Care Trust or Local Health Board by whom he was employed before that date (the "transferor authority").
- (10) Where a scheme makes provision as mentioned in sub-paragraph (9)—
  - (a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,
  - (b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and
  - (c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.
- (11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—
  - (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
  - (b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),

any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.