
STATUTORY INSTRUMENTS

1991 No. 345 (S. 34)

NATIONAL HEALTH SERVICE, SCOTLAND

**The Health Education Board for Scotland
(Transfer of Officers) Regulations 1991**

Made - - - - 25th February 1991
Laid before Parliament 4th March 1991
Coming into force - - 25th March 1991

The Secretary of State, in exercise of the powers conferred on him by sections 105(7) and 108(1) of, and paragraph 7B of Schedule 5 to, the National Health Service (Scotland) Act 1978(1) as read with article 5 of, and Part I of the Schedule to, the Health Education Board for Scotland Order 1990(2) and after consultation, in accordance with paragraph 8B of Schedule 5 to the said Act of 1978(3) with such bodies and organisations as appear to him to be concerned, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health Education Board for Scotland (Transfer of Officers) Regulations 1991 and shall come into force on 25th March 1991.

(2) In these Regulations, unless the context otherwise requires, the following expressions have the meanings given to them in this paragraph:—

“the Act” means the National Health Service (Scotland) Act 1978;

“the Board” means the Health Education Board for Scotland constituted by the Health Education Board for Scotland Order 1990;

“officer” includes “employee”;

“a relevant transfer” has the meaning set out in regulation 2; and

“the transfer date” is 1st April 1991.

(1) 1978 c. 29; section 105(7) which was amended by the Health Services Act 1980 (c. 53); Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 contain provisions relevant to the exercise of the statutory powers under which these Regulations are made; section 108(1) contains a definition of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 7B of Schedule 5 was inserted by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 5, paragraph 11.

(2) S.I. 1990/2639.

(3) 1978 c. 29; paragraph 8B of Schedule 5 was inserted by the 1990 Act, Schedule 5, paragraph 12.

Definition of a relevant transfer

2. For the purposes of these Regulations a relevant transfer is a transfer which takes place on the transfer date whereby an officer of the Agency who is employed in the division of the Agency known as the Scottish Health Education Group in connection with the execution by the Agency of functions in relation to health education, is transferred to the Board under these Regulations.

Transfer of officers from the Agency to the Board

3.—(1) Where a relevant transfer is to take place under these Regulations and the Agency has given notice in writing to any officer who is subject to such a transfer not later than one month before the transfer date or such shorter period as the Agency and the officer may agree, he will transfer to the employment of the Board on the transfer date.

(2) A relevant transfer shall not operate so as to terminate the contract of employment of any person on whom a notice is served under paragraph (1) but such a contract shall have effect after the transfer date as if entered into originally between such a person and the Board.

(3) Without prejudice to the previous paragraphs of this regulation on completion of a relevant transfer—

- (a) all the rights, powers, duties and liabilities of the Agency under or in connection with such a contract shall be transferred by virtue of this regulation to the Board;
- (b) anything done before the transfer is completed by or in relation to the Agency in respect of such a contract shall be deemed to have been done by or in relation to the Board; and
- (c) any right or liability which was enforceable by or against the Agency in respect of the employment by the Agency of any officer who is transferred to the Board by virtue of this regulation shall be enforceable by or against the Board.

(4) Any reference in this regulation to a person employed by or who is an officer of the Agency, is a reference to a person so employed by or who is an officer of, the Agency immediately before the transfer.

Effect of a relevant transfer on collective agreements

4. Where at the time of a relevant transfer there exists a collective agreement made by or on behalf of the Agency with a trade union recognised by the Agency in respect of an officer whose contract of employment is preserved by regulation 3(2), then—

- (a) without prejudice to any rule of law as to the unenforceability of collective agreements, that agreement in its application in relation to that officer shall, after the transfer, have effect as if made by or on behalf of the Board with that trade union, and accordingly anything done under or in connection with it, in its application as aforesaid by or in relation to the Agency before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Board; and
- (b) any order made in respect of that agreement, in its application in relation to the officer, shall, after the transfer, have effect as if the Board were a party to the agreement.

St. Andrew's House,
Edinburgh
25th February 1991

Michael B. Forsyth
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 25th March 1991 provide for the transfer, on 1st April 1991, of those employed by the Common Services Agency for the Scottish Health Service in connection with health education, particularly in the Scottish Health Education Group, to the Health Education Board for Scotland.

Regulations 2 and 3 provide that those contracts transferred shall be transferred with continuation of the contracts and of all rights and liabilities pertaining to the staff transferred immediately before the transfer.

Regulation 4 provides for any collective agreement pertaining to staff employed in the Scottish Health Education Group, to continue to apply in relation to the staff transferring to the Health Education Board for Scotland.