

2013 No. 1197

NATIONAL HEALTH SERVICE, ENGLAND

**The Health Education England (Establishment and Constitution)
Amendment (No. 2) Order 2013**

<i>Made</i> - - - -	<i>21st May 2013</i>
<i>Laid before Parliament</i>	<i>24th May 2013</i>
<i>Coming into force</i> - -	<i>1st July 2013</i>

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 28(1), (2) and (4)(b), 272(7) and (8) and 273(1) of the National Health Service Act 2006(a).

The Secretary of State has, in accordance with section 28(7) of that Act, consulted such bodies as the Secretary of State has recognised as representing officers who, in the Secretary of State's opinion, are likely to be transferred or affected by transfers, in pursuance of this Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health Education England (Establishment and Constitution) Amendment (No. 2) Order 2013 and comes into force on 1st July 2013.

(2) In this Order, “the Establishment Order” means the Health Education England (Establishment and Constitution) Order 2012(b).

Amendment of the Establishment Order

2. After article 5A (transfer of property), insert the following articles—

“Transfer of officers from NHS Employers to HEE

5B.—(1) This paragraph applies to any person who—

- (a) immediately before the transfer date, is employed by NHS Employers ; and
- (b) has been notified in writing by NHS Employers before the transfer date that they are to be transferred to the employment of HEE on the transfer date.

(2) Any person to whom paragraph (1) applies is, on the transfer date, transferred to the employment of HEE.

(3) The contract of employment of a person whose employment transfers to HEE under paragraph (2)—

(a) 2006 c. 41. The powers exercised in making this Order are exercisable by the Secretary of State only in relation to England, by virtue of section 271(1) of the National Health Service Act 2006.

(b) S.I. 2012/1273, amended by S.I. 2013/647.

- (a) is not terminated by the transfer; and
 - (b) has effect from the transfer date as if originally made between that person and HEE.
- (4) Without prejudice to paragraph (3)—
- (a) all the rights, powers, duties and liabilities of NHS Employers under, or in connection with, the contract of employment of any person whose employment has transferred to HEE on the transfer date under paragraph (2), are to transfer to HEE on the transfer date; and
 - (b) any act or omission before the transfer date of or in relation to NHS Employers, 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 HEE.
- (5) Paragraphs (2) to (4) do not operate 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 HEE or NHS Employers that they object to becoming employed by HEE.
- (6) Where a person to whom paragraph (1) applies has objected to the transfer of that person’s contract of employment to HEE as described in paragraph (5), the transfer operates so as to terminate that person’s contract of employment with NHS Employers.
- (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 NHS Employers.
- (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 transferred under paragraph (1), that person may treat the contract of employment as having been terminated, and that person shall be treated for any purpose as having been dismissed by the employer.
- (9) No damages shall 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) In this article—
- “NHS Employers” means the NHS Confederation (Employers) Company Limited, a company registered at Companies House with company number 05252407; and
 - “the transfer date” means 1st July 2013.

Dismissal of employee because of transfer

5C.—(1) Where a person whose employment has been transferred by article 5B is dismissed by HEE during the period starting with the transfer date as defined in that article and ending on 31st March 2015, that person is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as having been unfairly dismissed if the sole or principal reason for the dismissal is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(2) This paragraph applies where the sole or principal reason for the dismissal is a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce of HEE after the transfer date as defined in article 5B.

(3) Where paragraph (2) applies—

- (a) paragraph (1) does not apply;
- (b) without prejudice to section 98(4) of the 1996 Act (test of fair dismissal), the dismissal shall, for the purposes of sections 98(1) (reason for dismissal) and 135 (right to a redundancy payment) of that Act be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or otherwise for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) Paragraph (1) does not apply in relation to a dismissal of an employee if the application of section 94 of the 1996 Act (the right not to be unfairly dismissed) to the dismissal of the employee is excluded by or under any provisions of the 1996 Act, the Employment Tribunals Act 1996(a) or the Trade Union and Labour Relations (Consolidation) Act 1992(b).

(5) Paragraph (1) does not prevent HEE and a person whose contract of employment has been transferred by virtue of article 5B from agreeing a variation of that contract for a reason specified in that paragraph.

(6) In this article, “the 1996 Act” means the Employment Rights Act 1996(c).

Transfer of property from the University of Nottingham and the Secretary of State

5D.—(1) The property of—

- (a) the University of Nottingham(d) identified as property to transfer to HEE in the document entitled “The University of Nottingham Property to Transfer to the Health Education England Schedule 2013”(e) and signed on behalf of the University of Nottingham on 2nd May 2013, and on behalf of HEE on 2nd May 2013; and
- (b) the Secretary of State identified as property to transfer to HEE in the document entitled “The Department of Health on behalf of the Secretary of State Property to Transfer to the Health Education England Schedule 2013”(f) and signed on behalf of the Secretary of State on 1st May 2013, and on behalf of HEE on 2nd May 2013,
and all liabilities relating to that property, are to be transferred to HEE on the transfer date.

(2) Any right relating to the property listed in the documents referred to in paragraph (1) that was immediately before the transfer date enforceable by or against the University of Nottingham, or the Secretary of State is, on or after the transfer date, to be enforceable by or against HEE.

(3) In this article, “the transfer date” means 1st July 2013.”.

Signed by the authority of the Secretary of State for Health.

21st May 2013

Daniel Poulter
Parliamentary Under-Secretary of State for Health
Department of Health

(a) 1996 c. 17.
(b) 1992 c. 52.
(c) 1996 c. 18. Section 98(4) was amended by regulations 1(1), and 49(1) of, and paragraph 22(5) of Schedule 8 to, The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031).
(d) The University of Nottingham is a corporation formed in 1948 by Royal Charter, *see* www.nottingham.ac.uk
(e) Copies of the Schedule can be obtained on request from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.
(f) Copies of the Schedule can be obtained on request from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Health Education England (Establishment and Constitution) Order 2012 (S.I. 2012/1273) (“the Establishment Order”), which established Health Education England (“HEE”) as a Special Health Authority.

It amends the Establishment Order to provide for the transfer of staff currently employed by NHS Confederation (Employers) Company Limited to HEE on 1st July 2013 (new article 5B) and gives some post transfer protection rights to those transferred (new article 5C).

It also amends the Establishment Order to provide for the transfer to HEE of specified property and liabilities from the University of Nottingham, and from the Secretary of State for Health, on 1st July 2013 (new article 5D).

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