

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSFER OF UNDERTAKINGS (PROTECTION OF**  
**EMPLOYMENT) (TRANSFERS OF PUBLIC HEALTH STAFF)**  
**REGULATIONS 2013**

**2013 No. 278**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 These regulations are being made to effect the transfer of public health staff from NHS Trusts, Foundation Trusts and universities into the Department of Health. From 1 April staff performing the functions in the organisations listed in the schedule to the regulations will transfer into Public Health England, a new executive agency of the Department of Health. The purpose of the regulations is to transfer the relevant staff contracts to the Secretary of State, and to provide protection of existing terms and conditions of employment for the staff affected, in line with the treatment of staff who will be transferring into Public Health England from other employers.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 These regulations are part of the programme of secondary legislation which is being made to implement the Health and Social Care Act 2012. The Health and Social Care Act gives the Secretary of State new responsibilities in relation to public health. The Government made clear, during the passage of the primary legislation, that it intended to establish a new executive agency of the Department of Health, Public Health England, to support the Secretary of State in discharging his functions, and that public health staff would transfer into this new body from a range of existing employers. The Government is committed to ensuring that staff should transfer with protection of their current terms and conditions and continuity of service.

4.2 If the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (commonly known as “TUPE”) had applied, the contracts of employment and continuity of service of the staff covered by these regulations would transfer as a matter of law to the Department of Health. However, the Department's view is that TUPE does not apply. In addition, the powers to make transfer staff by schemes under the Health and Social Care Act 2012 do not cover staff employed by NHS Trusts, Foundation Trusts or universities. This instrument is made under section 38 the

Employment Relations Act 1999, to make provision similar to TUPE, so as to ensure that staff are given comparable protections to staff from other organisations moving to Public Health England. In addition to protection for terms and conditions of employment, the TUPE provisions for the provision of information to, and consultation of, staff are applied.

4.3 As with TUPE, the regulations do not transfer contractual occupational pension entitlements (where those entitlements relate to benefits for old age, invalidity or survivors). The Department of Health will ensure that appropriate pension options are available for staff. Those who are in the NHS Pension Scheme will be able to retain their membership of the scheme for two years as a transitional measure.

## **5. Territorial Extent and Application**

5.1 This instrument applies to staff working in the named employers in England. Staff affected who transfer to Public Health England may support work undertaken with or for other parts of the United Kingdom.

## **6. European Convention on Human Rights**

The Parliamentary Under-Secretary of State (Public Health) in the Department of Health has made the following statement regarding Human Rights:

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The White Paper “Healthy Lives, Healthy People: our strategy for public health in England” (CM 7985) published in November 2010 set out the Government's proposals for reforming public health in England. The government proposed to give local government new responsibilities and powers in relation to local public health, and to create a new national public health service - Public Health England - to be a new authoritative national voice and expert service provider.

7.2 Public Health England will provide services to support the public health system as a whole and will work closely with local government, NHS and voluntary sector partners. One of its central functions will be to deliver an integrated information and intelligence service to support effective action, locally and nationally, to promote and protect health and well-being, prevent illness and improve public health outcomes. In order to do this it needs to bring together specialist information, intelligence, evidence and surveillance functions which are currently performed by a wide range of different organisations across the country. Many of these functions have in the past been located for practical purposes in organisations such as universities, or hosted within NHS Trusts. The creation of Public Health England provides the opportunity to draw together the existing complex network of functions performed by multiple organisations into a more coherent form and to make

evidence readily available to all those who need to use it. These regulations are concerned with the transfer of staff from these organisations, along with transfer of some specialist dental public health staff who are currently employed in NHS Trusts or Foundation Trusts and whose functions are also moving to Public Health England as a result of the reforms.

## **8. Consultation outcome**

8.1 Consultation responses to “ Healthy Lives Healthy People indicated broad support for the government's proposals to strengthen delivery of public health services, and to ensure a strong evidence-based approach.

8.2 The Department has not conducted a specific consultation exercise in relation to these regulations, but it has set out its approach to the transfer of staff into Public Health England through the publication of the Public Health England People Transition Policy factsheets (modules 1 and 2), which have been prepared in discussion with union representatives. Existing employers will undertake consultation with individuals transferring, in line with their legal responsibilities.

## **9. Guidance**

9.1 The Department of Health has made available a range of guidance products to support organisations which are transferring staff to Public Health England.

## **10. Impact**

10.1 No direct impact is expected on business, charities or voluntary bodies.

10.2 The impact on the public sector is estimated to be minimal and restricted to those organisations listed in the schedule to the regulations.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 These regulations are being made to secure the initial transition of staff to Public Health England for 1 April. Monitoring and review of Public Health England's effectiveness and consideration of any subsequent need for changes in staffing of functions will take place in the normal course of the agency's business planning cycle, and in line with the Framework Agreement setting out its relationship with the Department of Health.

## **13. Contact**

Janice Shersby at the Department of Health Tel:020 76548085 or [Janice.shersby@dh.gsi.gov.uk](mailto:Janice.shersby@dh.gsi.gov.uk) can answer any queries regarding the instrument.