

2014 No. 3218

NATIONAL HEALTH SERVICE, ENGLAND

The Health Education England (Transfer of Staff, Property and Liabilities) Order 2014

Made - - - - *3rd December 2014*

Coming into force - - *1st April 2015*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 96(4), 118 and 125(8) of the Care Act 2014(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health Education England (Transfer of Staff, Property and Liabilities) Order 2014 and comes into force on 1st April 2015.

(2) In this Order—

“the Authority” means the Special Health Authority known as Health Education England(b);

“the transfer date” means 1st April 2015.

Transfer of staff

2.—(1) This paragraph applies in relation to any person who—

(a) immediately before the transfer date is employed by the Authority; and

(b) has, before the transfer date, been notified in writing by the Authority that they are to be transferred to HEE(c) on that date.

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

(3) The contract of employment of a person whose employment has transferred to HEE 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(b) has effect from the transfer date as if originally made between that person and HEE.

(4) Without prejudice to paragraph (3)—

(a) all the rights, powers, duties and liabilities of the Authority under, or in connection with, its contract of employment with a person transferred under paragraph (2) are to transfer to HEE on the transfer date; and

(a) 2014 c.23. Section 96(4) was commenced for the purpose of making orders, and section 118 for all purposes, on 1st October 2014 by S.I. 2014/2473.

(b) Health Education England was established by S.I. 2012/1273, as amended by S.I. 2013/647 and 2013/1197, and is abolished by section 96(3) of the Care Act 2014 which is to come into force on 1st April 2015 (see S.I. 2014/3186 (C. 141)).

(c) Section 96(1) of the Care Act 2014 establishes a body corporate known as Health Education England (“HEE”).

(b) any act or omission before the transfer date of, or in relation to, the Authority 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 the Authority 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 the Authority.

(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 the Authority.

(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 (2), 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.

Transfer of property, rights and liabilities and winding up of affairs

3.—(1) On the transfer date, all the property, rights and liabilities of the Authority, not mentioned in article 2 above, are transferred to HEE.

(2) The transfer of such property, rights and liabilities is to be made—

- (a) whether or not they would otherwise be capable of being transferred; and
- (b) irrespective of any requirement for consent that would otherwise apply.

(3) HEE must take such action as may be necessary for the winding up of the affairs of the Authority.

Investigation by the Health Service Commissioner

4.—(1) A complaint made in relation to the Authority under the Health Service Commissioners Act 1993 to the Health Service Commissioner for England^(a) whether made before, on or after the transfer date, may be investigated by the Commissioner, notwithstanding the abolition of the Authority, as if it had been made in relation to HEE.

(2) The Commissioner must send a copy of the report of the investigation referred to in paragraph (1) to HEE.

Handling of complaints

5.—(1) This paragraph applies to a complaint made in accordance with the provisions of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009^(b) ("the 2009 Regulations") in relation to the Authority, whether made before, on or after the transfer date.

(a) 1993 c.46. The Health Service Commissioner for England is established by section 1.

(b) S.I. 2009/309 to which relevant amendments have been made by S.I. 2009/1768 and 2013/235.

(2) HEE must, on or after the transfer date, handle any complaint to which paragraph (1) applies in accordance with the 2009 Regulations as if the complaint had been made in relation to HEE.

Continuity and supplementary provision

6.—(1) Any act or omission by or in relation to the Authority before the transfer date in connection with—

- (a) any property, rights or liabilities transferred under this Order; or
- (b) any contract, arrangement or agreement entered into by the Authority in connection with any property, rights or liabilities transferred under this Order,

is deemed to have been an act or omission of, or in relation to, HEE.

(2) Anything (including legal proceedings) which, when this Order comes into force, is in the process of being done by, or in relation to, the Authority in connection with—

- (a) the exercise by the Authority of any of its functions; or
- (b) any property, rights or liabilities of the Authority transferred under this Order,

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

(3) Any instrument made by, or in relation to, the Authority continues in force until it is varied or revoked by HEE.

(4) Any form supplied by the Authority continues to be valid until it is revoked or varied by HEE and as if any reference in that form to the Authority were a reference to HEE.

(5) Any reference to the Authority in any contract, arrangement, agreement, instrument or other document in connection with any property, rights or liabilities transferred under this Order is to be treated as a reference to HEE.

(6) Where the rights and liabilities under a contract, agreement, arrangement or instrument entered into or agreed by the Authority are transferred under this Order, that contract, agreement, arrangement or instrument is to continue to have effect on and after the transfer date as if it were originally entered into by HEE.

(7) Subject to article 2(8), no right to terminate or vary a contract, agreement, arrangement or instrument is to operate or become exercisable, and no provision of any contract, agreement, arrangement or instrument is to operate or become exercisable or be contravened, by reason of the transfer of any property, rights or liabilities under this Order.

(8) Any appointment made by the Secretary of State in relation to the Special Health Authority before the transfer date is deemed to be an appointment made in relation to HEE.

Signed by authority of the Secretary of State for Health.

Daniel Poulter
Parliamentary Under-Secretary of State
Department of Health

3rd December 2014

EXPLANATORY NOTE

(This note is not part of the Order)

The Special Health Authority known as Health Education England is abolished by section 96(1) of the Care Act 2014 (“the Act”) and replaced by a body corporate to be called Health Education England (“HEE”).

This Order makes provision for the transfer of staff (article 2) and property, rights and liabilities (article 3) from the Special Health Authority to HEE.

Article 4 enables the Health Service Commissioner to investigate any complaint in relation to the Special Health Authority after the transfer date as if the complaint had been made in relation to HEE.

Article 5 makes provision for HEE to handle any complaints in relation to the Special Health Authority after that date as if the complaint had been made in relation to HEE.

Article 6 makes provision for the continuity of things done by, or in relation to, the Special Health Authority.

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full Impact Assessment has been produced in relation to the provisions of the Act including provisions relating to the abolition of the Special Health Authority and establishment of HEE. A copy of this impact assessment is available from the libraries of both Houses of Parliament, and may also be obtained from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS or on the Department of Health's web site at <https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill>.

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£4.25

UK2014120416 12/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/3218>

ISBN 978-0-11-112470-3



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