



Health and Social Care Act 2012

2012 CHAPTER 7

PART 11

MISCELLANEOUS

Transfer schemes

300 **Transfer schemes**

- (1) The Secretary of State may make a property transfer scheme or a staff transfer scheme in connection with—
 - (a) the establishment or abolition of a body by this Act, or
 - (b) the modification of the functions of a body or other person by or under this Act.
- (2) A property transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 22 of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to a body or other person mentioned in the corresponding entry in the second column.
- (3) A staff transfer scheme is a scheme for the transfer from a body or other person mentioned in the first column of the Table in Schedule 23 of any rights or liabilities under or in connection with a contract of employment to a body or other person mentioned in the corresponding entry in the second column.
- (4) The Secretary of State may direct the Board or a qualifying company to exercise the functions of the Secretary of State in relation to the making of a property transfer scheme or a staff transfer scheme in connection with the abolition of—
 - (a) one or more Primary Care Trusts specified in the direction, or
 - (b) one or more Strategic Health Authorities so specified.

- (5) Where the Secretary of State gives a direction under subsection (4), the Secretary of State may give directions to the Board or (as the case may be) the company about its exercise of the functions.
- (6) For the purposes of this section and section 301—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
 - (b) the terms of the individual's employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (7) In this section and sections 301 and 302 references to the transfer of property include references to the grant of a lease.
- (8) In this section and Schedules 22 and 23, “qualifying company” means—
- (a) a company which is formed under section 223 of the National Health Service Act 2006 and wholly or partly owned by the Secretary of State or the Board, or
 - (b) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State.
- (9) In section 301 and Schedules 22 and 23—
- “local authority” means—
- (a) a county council in England;
 - (b) a district council in England, other than a council for a district in a county for which there is a county council;
 - (c) a London borough council;
 - (d) the Council of the Isles of Scilly;
 - (e) the Common Council of the City of London;
- “public authority” means any body or other person which has functions conferred by or under an Act or by royal charter.

301 Transfer schemes: supplemental

- (1) The things that may be transferred under a property transfer scheme or a staff transfer scheme include—
- (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (c) criminal liabilities but only where the transfer is to a person mentioned in subsection (2).
- (2) Those persons are—
- (a) the National Health Service Commissioning Board;
 - (b) a clinical commissioning group;
 - (c) a local authority;
 - (d) the Care Quality Commission;
 - (e) Monitor;
 - (f) the National Institute for Health and Care Excellence;
 - (g) the Health and Social Care Information Centre;
 - (h) the Health and Care Professions Council;
 - (i) a public authority other than a Minister of the Crown.

- (3) A property transfer scheme or a staff transfer scheme may make supplementary, incidental, transitional and consequential provision and may in particular—
 - (a) create rights, or impose liabilities, in relation to property or rights transferred;
 - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
 - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee.
- (4) A property transfer scheme may make provision for the shared ownership or use of property.
- (5) A staff transfer scheme may make provision which is the same or similar to the TUPE regulations.
- (6) A property transfer scheme or a staff transfer scheme may provide—
 - (a) for the scheme to be modified by agreement after it comes into effect, and
 - (b) for any such modifications to have effect from the date when the original scheme comes into effect.
- (7) Where a Primary Care Trust, a Strategic Health Authority or a Special Health Authority is abolished by this Act, the Secretary of State must exercise the powers conferred by section 300 and this section so as to secure that all the body's liabilities (other than criminal liabilities) are dealt with.
- (8) In this section, “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([SI 2006/246](#)).

302 Subsequent property transfer schemes

- (1) This section applies in relation to any property, rights or liabilities which are transferred under a property transfer scheme under section 300(1) from a Primary Care Trust, a Strategic Health Authority or the Secretary of State to a Special Health Authority or a qualifying company.
- (2) The Secretary of State may make a scheme for the transfer of any such property, rights or liabilities from the Special Health Authority or the qualifying company to any body or other person mentioned in the second column of Schedule 22.
- (3) Subsections (1) to (4) and (6) of section 301 apply in relation to a scheme under subsection (2) as they apply in relation to a property transfer scheme under section 300(1).