

SCHEDULES

SCHEDULE 4

Section 48

PARTNERSHIP ARRANGEMENTS: TRANSFER OF STAFF

The following is the Schedule inserted in the Health Act 1999.

“SCHEDULE 2A

SECTION 31 ARRANGEMENTS: TRANSFER OF STAFF

Application of Schedule

- 1 This Schedule applies where, under any arrangements under regulations under section 31, any functions of a body (“the transferor”) are to be exercised by another body (“the transferee”).

Orders transferring staff

- 2 (1) The Secretary of State may by order transfer to the transferee any specified description of employees of the transferor.
(2) An order may be made under this paragraph only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred.
(3) In sub-paragraph (2) “prescribed requirements” means requirements prescribed for the purposes of that sub-paragraph by regulations made by the Secretary of State.

Effect of order on contracts of employment

- 3 (1) The contract of employment of an employee transferred by an order under paragraph 2—
 - (a) is not terminated by the transfer, and
 - (b) has effect from the date of the transfer as if originally made between the employee and the transferee.
- (2) Without prejudice to sub-paragraph (1)—
 - (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee’s contract of employment shall by virtue of this sub-paragraph be transferred to the transferee, and
 - (b) anything done before the date of the transfer by or in relation to the transferor in respect of the employee or his contract of employment shall be deemed from that date to have been done by or in relation to the transferee.
- (3) Sub-paragraphs (1) and (2) do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the transferor or the transferee that he objects to the transfer.

Status: This is the original version (as it was originally enacted).

- (4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the transferor shall be terminated immediately before the date on which the transfer would occur; but he shall not be treated, for any purpose, as having been dismissed by that body.
- (5) This paragraph is without prejudice to any right of an employee transferred by an order under paragraph 2 to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right shall arise by reason only that, under this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of order on pension rights

- 4 (1) An order under paragraph 2 may provide that, in the case of an employee of any specified description who is transferred by the order, paragraph 3 shall not apply in relation to—
 - (a) so much of the employee’s contract of employment as relates to relevant pension provisions, or
 - (b) any rights, powers, duties or liabilities under or in connection with that contract, or otherwise arising in connection with the employee’s employment, and relating to such provisions.
- (2) If an order under paragraph 2 provides as mentioned in sub-paragraph (1), the order may in relation to any such employee make such provision (if any) as the Secretary of State considers appropriate with respect to all or any of the matters mentioned in paragraphs (a) and (b) of that sub-paragraph.
- (3) The provision which may be made by virtue of sub-paragraph (2) includes provision—
 - (a) for any such employee’s contract of employment with the transferee to have effect with any specified modifications;
 - (b) for relevant pension provisions of any specified description to have effect in the case of any such employee with any such modifications.
- (4) In this paragraph “relevant pension provisions” means the provisions of an occupational pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48), with the exception (if the order under paragraph 2 so provides) of any provisions of such a scheme falling within a description specified in the order.

Divided employments

- 5 (1) Where an employee is to be transferred by an order under paragraph 2 but is to continue to be employed for certain purposes by the transferor, the order may provide that the contract of employment of the employee shall, on the date on which the employee is transferred, be divided so as to constitute two separate contracts of employment between the employee and the transferor and between the employee and the transferee.
- (2) Where an employee’s contract of employment is divided as provided under sub-paragraph (1)—

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- (a) the order shall provide for paragraph 3 to have effect in the case of the employee and his contract of employment subject to appropriate modifications; and
- (b) paragraph 4 shall similarly apply only so far as appropriate in connection with the employee's employment by the transferee."