



Arm's Length Bodies HR Framework

July 2011

Arm's Length Bodies HR Framework

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Foreword

This ALB HR Framework details the processes for delivering transition in the Department of Health's Arms Length Bodies. Its design has been led by the ALBs and I would like to pay tribute to Sarndrah Horsfall, Chief Executive of the NPSA, for her role in leading this work, and the Directors of HR who contributed significantly to this work. The framework includes information about the support that will be available for staff and managers as ALBs work towards their transition either as organisations exiting the system or continuing. It is issued without prejudice to the outcome of current draft legislation and holds good for the changes we need to make, at a minimum, to meet the efficiency challenge set by Government.

This is one of a number of detailed HR Frameworks covering, DH, the NHS and the ALBs. Each of these Frameworks has been developed for staff within a set of shared principles. The HR Transition Framework (Appendix 1) provides guiding standards for the development of separate detailed People Transition Policies (PTPs) for establishing each new body. PTPs will be added as further appendices to this ALB HR Framework as they become available.

I believe the ALB HR Framework is both fair and business focussed, and is written to comply with Cabinet Office protocols. Its development has been informed by input from the ALBs themselves and the Trade Unions working with the Department.

I am relying on Chief Executives and their senior managers and leaders in the ALBs to work within these HR policies and to support their staff during transition. For managers at all levels this may mean offering support when perhaps their own future is uncertain. I do not underestimate how hard this is.

Delivering change is challenging and it is important that we have open communication throughout. I give my personal commitment to tell you what I can, as soon as I can, and to listen to and act on your feedback. The Department through the ALB Transition Team and Sponsors will continue to offer support and guidance.

Richard Douglas

Arm's Length Bodies Human Resources Framework

1.0 Introduction

- 1.1 The current efficiency savings programmes and the proposed changes in organisational functions and structures have significant implications for staff employment – in terms of the overall number of staff employed, where they are employed and in what roles they are employed. This ALB HR Framework identifies the processes and issues, which need to be considered by ALBs and details standards and principles, which will need to be followed.

2.0 Scope

- 2.1 The Arm's Length Bodies (ALBs) Human Resources (HR) Framework is designed to cover the HR changes across the Department of Health's (DH) ALBs resulting from Equity and Excellence; Liberating the NHS and the Report on the ALB Review published by DH in July 2010.
- 2.2 This Framework is designed to offer a set of principles and rules to be applied to groups of staff whose terms and conditions, pay, pensions and local HR arrangements will vary from one organisation to another. It aims to provide clarity as to the respective responsibilities of local bodies and DH at a national level.
- 2.3 Those affected and within the scope of this Framework are staff employed by DH's ALBs.
- 2.4 Wherever possible decisions will be delegated to local level, and local managers who abide by the principles and requirements of this Framework will be free to drive change forward locally in a way that suits their organisation and partner organisations. Existing local HR policies and agreements will carry force unless there is a need to adapt them in light of this Framework and the National HR Transition Framework (Appendix 1). Where more than one organisation is involved then these two frameworks are designed to solve differences and anomalies in a consistent manner.
- 2.5 There will be instances where the nature of the change will mean that affected staff may be covered by more than one HR Framework. In this instance, individually tailored change processes will be agreed between the relevant bodies for the specific change project, e.g. the setting up of the NHS Commissioning Board and Public Health England. These will be developed in line with the overarching HR principles set out in the relevant HR Frameworks and in consultation with trade unions.
- 2.6 This will enable ALB senior staff to manage successful change that is both sensitive to the needs of their own staff as well as being consistent and aligned with change processes in DH and the NHS.

3.0 Transition / Business Planning

- 3.1 Each ALB is required to draw up detailed transition plans in consultation with their DH sponsor as part of this year's business planning round. For 2011/12 and beyond, business plans and transition plans should be produced as single integrated plans (with use of appendices as appropriate).
- 3.2 Each ALB is expected to consult staff and their trade unions about the implementation of the transition plan where this has an impact on staff. This is likely to involve the establishment of formal consultation processes agreed in advance with staff and trade union representatives at a local level.
- 3.3 DH Sponsors are accountable for approval and oversight of their ALB's transition plan. Sponsors will ensure clearance with relevant professional leads in DH (e.g. HR, Finance, Estates, IT) and with the ALB Transition Team.
- 3.4 Each ALB should carry out equality impact assessments for all change / transition plans and these should inform the implementation process.

4.0 HR Principles

- 4.1 Key to supporting the change process are the following HR principles:
 - i. Partnership working with trade unions at a national and organisational level
 - ii. Effective consultation with recognised trade union representatives at organisational level
 - iii. Engaging with staff and making sure that they are kept fully informed and supported during the change process
 - iv. Applying HR processes in a fair, consistent and transparent manner
 - v. Taking all reasonable steps to avoid compulsory redundancy
 - vi. Ensuring the loss of valuable skills and experience is kept to a minimum
 - vii. Ensuring there is an equality impact assessment of the proposed changes and that this incorporates an impact assessment on the workforce, which should inform the employment strategy
 - viii. Preparing staff for future challenges and ensuring ALBs continue to make progress towards creating a representative and diverse workforce
- 4.2 The HR rules and principles have been developed in collaboration with ALBs, DH, the NHS and relevant trade unions. They have at their heart the objective of supporting effective partnership working at organisational level and to provide standards and principles, which support the development of local HR frameworks and management of change processes, which are flexible and responsive to local needs.
- 4.3 The following HR rules are consistent with these principles but are specific to ALBs. It is not anticipated that there will be any significant transfers of functions before the HR frameworks are published and therefore this element is not covered below.

5.0 Recruitment During Transition

- 5.1 It is likely that over the course of the change process, ALBs will have vacancies that could seriously impact on business continuity. These posts could be at any level and ALBs will wish to take every reasonable step to ensure that services are delivered to a

high standard during the period of the ALB review. This means that recruitment may be necessary.

- 5.2 As a matter of good practice, and especially in those ALBs undergoing a significant change, such as merger or dissolution, every vacancy should be examined to see if the work could be completed in some other way than by a permanent recruitment. The full range of options should be considered, including secondment, redeployment, short-term temporary contracts, absorption of tasks into other posts, etc.
- 5.3 For all new Chair, Non Executive Director and Executive Director appointments, including CEOs, ALBs should consult their departmental sponsors.

6.0 Redeployment

- 6.1 ALBs are expected to have appropriate legally compliant processes to ensure that those staff 'at risk' of redundancy are effectively supported in securing suitable alternative employment where this is available, to maximise retention of skills, knowledge and experience within the NHS, DH and the ALBs.
- 6.2 ALBs are expected to have robust monitoring processes in place for redeployment activity with the ability to demonstrate efforts made to maximise chances of successful redeployment.
- 6.3 ALBs are expected to engage fully in cross-organisational redeployment to maximise continued employment and minimise redundancy costs across the sector. Any vacancies advertised will be on the basis that prior consideration be given to those 'at risk' across the sector before being more widely advertised.
- 6.4 ALBs should facilitate access to appropriate redeployment pools and networks within the Civil Service and NHS to maximise opportunities for redeployment to associated organisations outside of the ALB sector. There is a general recognition that redeployment opportunities are likely to be greatly reduced because of the significant downsizing exercise across the whole health sector.
- 6.5 Related organisations for the purposes of redeployment will consist of the organisations within the recruitment pool; **ALBs should refer to the HR Transition Framework at Appendix 1, which sets out details of the agreed national pooling arrangements.** It should be noted, however, that terms and conditions vary across organisations and this may impact on whether a role can be classed as suitable alternative employment.
- 6.6 ALBs authorised to advertise vacancies should consider applications in the following order of preference:

Step 1: Consider 'at risk' staff within the same ALB through ALB's own internal process

Step 2: Consider staff not 'at risk' within the same ALB through ALB's own internal process

Step 3 & 4: Refer to the National HR Transition Framework Appendix 1

- 6.7 Steps 1 and 2 are expected to be managed in line with each individual ALB's recruitment and redeployment policies.
- 6.8 'At risk' staff (redeployees) will be given priority status above other candidates who are not 'at risk'. The redeployees must comply with the normal recruitment process, submitting as much information as possible on their application form. ALBs will be responsible for providing named contacts to manage specific redeployment processes between organisations.
- 6.9 Staff will be expected to consider suitable alternative employment within their current employing organisation to mitigate against their redundancy. Employers and employees will be expected to work together to mitigate against obstacles to establishing suitable alternative employment opportunities and suitable alternative roles in organisations across the health sector. These will include issues such as continuity of service, relocation, retraining and other terms and conditions including pensions.
- 6.10 Where a suitable alternative role is identified in another organisation, the handling of trial periods will need to be carefully managed, particularly where an individual is redeployed from an organisation that may no longer exist following the trial period. Prior to commencing the trial period, it is essential that the originating employer agrees with the new employer how any liability for redundancy costs will be underwritten in such circumstances.
- 6.11 Where the trial period is unsuccessful, the redeployee will return to the originating organisation and the search for SAE continues for the remainder of the notice period. If the originating employer has ceased to exist, liability for identifying SAE will transfer to the new employer.

7.0 Transfers

7.1 Purpose

The purpose of this section is to outline clearly outline the principles and responsibilities surrounding employees' transfers in to and out of ALBs.

7.2 Scope

- 7.2.1 This general guidance does not replace any legal advice that may be taken by individual ALBs, any relevant employer or trades unions, on the basis for transfer of functions and employees, and the mechanism for any transfer. This guidance also does not in any way impact on an individual's employment rights under their contract of employment.
- 7.2.2 The general principle, underpinning any transfer of function as part of the ALB transition, should be that if a substantial part of an employee's work transfers then their employment should transfer with their work. It should not however be assumed that all current functions will transfer in their entirety or at all (see 7.8 below).
- 7.2.3 Decisions on whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to any transfers of functions is a matter of law and is not a 'negotiating' point. In circumstances where TUPE does not strictly apply, public sector transfers may be covered by the Cabinet Office 'Staff Transfers in the Public

Sector Statement of Practice' (COSOP), where the transfer is effected on terms that are overall no less favourable than if TUPE had applied. Equally, staff transfer schemes established by the Secretary of State may transfer staff on similar or the same terms as if TUPE had applied. These are sometimes, referred to as 'TUPE-like' terms.

- 7.2.4 In situations where the new organisation chooses to outsource delivery of the transferred functions by contracting with another public, voluntary or private sector organisation, TUPE and/or COSOP may still apply and the staff may be transferred to the outsourced provider of the function.
- 7.2.5 All relevant parties should take legal advice with a view to reaching a consensus on decisions relating to 7.2.2 and 7.2.3 above.

7.3 Legal Context and HR 'Givens'

7.3.1 The legal and policy framework within this section is:

- Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE);
- Cabinet Office Statement of Practice: Staff Transfers in the Public Sector (2008) (COSOP);
- Section 25 NHS Terms & Conditions Handbook. 'Facilities for staff organisations

7.3.2 The application of TUPE will vary across the individual transition workstream projects depending upon the nature of the change-taking place.

7.3.3 While TUPE will apply to some transfers, there may be transfers where TUPE does not apply. Where this is the case, ALBs in discussion with the Department may decide it is appropriate to apply Cabinet Office Statement of Practice: Staff transfers in the public sector (April 2008) (COSOP). COSOP is designed to facilitate public sector change and restructures.

7.3.4 Whether or not TUPE applies to a transfer, COSOP may be deemed to apply. There may be some transfers where neither TUPE nor COSOP applies, but ALBs are expected to apply some or all of the principles set out in COSOP through the use of a Transfer Order.

7.3.5 All relevant parties should take legal advice with a view to reaching a consensus on the whether or not TUPE and/or COSOP apply to the transfer.

7.4 Pay and Terms and Conditions of Service

7.4.1 Employees transferring under TUPE will have the right to transfer on their existing pay and terms and conditions of service (excluding pensions) at the time of transfer. Employees transferring under COSOP or a Transfer Order should receive employment protection with Transfer Orders generally providing for the transfer on their existing terms and conditions of service (excluding pensions). In any event COSOP states that "the principles of TUPE should be followed (where possible using legislation to effect the transfer) and that staff involved should be treated no less favourably than had the Regulations applied". This allows for staff to be offered "the opportunity to transfer on terms that are, overall, no less favourable than had TUPE applied".

7.4.2 Where TUPE applies a transferee (new employer) may not, unless the contract of employment allows, unilaterally change the terms and conditions of employment of any transferred employee. An employer should seek legal advice if they are considering making any variations or changes to an employees terms and conditions as a result of the transfer. Nor does TUPE allow a transferee to harmonise terms and conditions with its existing workforce as a direct result of the transfer, but the transferee may be able to change them for other economic, technical, or organisational reasons that are unrelated to the transfer. (See para 7.8), it is possible that employees' contractual terms may be changed or harmonised in some cases where TUPE does not apply, through agreed consultation procedures.

7.4.3 Employees transferring under TUPE have the right to transfer with continuity of service. For employees transferring under COSOP or a Transfer Order, continuity should be preserved by the transferee in accordance with TUPE-like principles. Relevant organisations should seek legal advice when dealing with this matter.

7.5 Pensions

7.5.1 Preservation of pension entitlements, including retirement age, is a key consideration for employees affected by the transition programme, and the Department and relevant employers should take steps to ensure that pension arrangements are a top priority whilst developing their HR transition plans.

7.5.2 Where employees transfer under TUPE and/or COSOP, they currently benefit from the added protection of the Cabinet Office – 'A Fair Deal for Staff Pensions' (HM Treasury, 1999). Fair Deal requires that the new pension must be broadly comparable to the old one.¹ Pension arrangements are complex and can therefore take a considerable period of time to resolve. ALBs and relevant employers should take steps to ensure that this is factored into transition plans to ensure arrangements are in place at the point of transfer.

7.6 Duty to inform and consult

7.6.1 Under TUPE regulations, both the transferor (old employer) and the transferee have obligations to inform and consult with trade union or if there is no recognised trade union with employee representatives, on all matters relating to the transfer of employment. This is in addition to any other consultation obligations (e.g. redundancy). For transfers affected under COSOP or a Transfer Order the same principles should normally be applied.

7.6.2 Both the transferor and transferee should work together therefore to ensure effective consultation with trade union or employee representatives. Where an ALB is the transferee, workstream HR leads and managers responsible for the consultation and communications processes should ensure they get involved from the outset and remain involved throughout the transfer. Where an ALB is the transferor, workstream HR leads and the relevant line managers will work to ensure that the transferee is brought into the consultation and communications process from the outset, including planning stages.

¹ Fair Deal is currently under review and how pensions are managed will depend on the outcome of that review in Summer 2011

7.6.3. Whilst the preceding paragraphs outline the legal duties, as a policy of good employment practice, partnership working with representatives of recognised trade unions guarantee a smoother transition and transfer arrangements.

7.7 Affected and Transferring Employees

7.7.1 When establishing which employees should transfer under TUPE and/or COSOP, the transferor should consider the exact nature of the transfer. All affected employees will be considered. This will also include those on fixed-term contracts, secondments/loans, career breaks, maternity/paternity/adoption leave and long-term sickness absence. Any resulting issues should be dealt with on a case-by-case basis with relevant HR and legal advice.

7.7.2 Where TUPE applies the employees who will transfer will be those who are wholly or mainly engaged in the transferring functions. Where an employee's duties are divided between two or more areas of work, or in the absence of TUPE, a decision on whether the individual should transfer should be taken on a case-by-case basis.

7.7.3 There may be a need ahead of the date of transfer for the existing employer to redesign the roles of employees. This could be necessary to ensure that the business is able to manage continuing work, following functions being transferred out of the ALB and ensure remaining employees are fully deployed and equipped to undertake any new responsibilities. The ALB and/or any relevant employer should seek legal advice, if they are looking to re-organise roles or make changes to terms and conditions in advance of a transfer if these changes are related to that transfer. In any event, where there are changes to roles, terms and conditions, employers should consult with employees and/or their trade union representatives.

7.8 Managing the Transfer Process

7.8.1 The transferor may wish to reorganise structures and effect redundancies prior to a transfer. This is of course possible where there is a legitimate economic, technical or organisational reason to do so which is unrelated to the transfer. Where this is being considered, it is important to consult with trade unions representing staff who may be affected. Independent legal advice should be sought where required. For employees affected the following general principle will apply:

- It is possible that employees may move posts prior to transfer but this should be avoided where at all possible by ensuring there is clarity about the functions that are to transfer and the number of available posts prior to commencing consultation with trade unions and employees.
- There must be a genuine need for the transferor to reorganise/restructure the team or decisions may be challenged.
- Any such re-organisations should be kept to a minimum and should be agreed in advance with the transition leads in both the transferor and transferee (and the relevant Departmental Sponsor(s) where appropriate), working closely with HR and legal advisers.

7.9 Right of Objection

- 7.9.1 Employees have a right to object to transferring to another employer but such an objection would usually be regarded as a resignation from their employment. An employee may raise a grievance about any aspect of the transfer of their employment and such grievances should be dealt with in a timely, fair and reasonable manner by the relevant employer.

8.0 Redundancy Authorisation Process

- 8.1 Prior to effecting any redundancy dismissals, funding will need to be identified. Any ALBs seeking additional funding beyond its current allocation to support these, should provide a financial profile (in terms of number and costs) of the proposed redundancy programme before approval will be given ALBs, which require additional funding should liaise directly with the sponsor branch to identify potential funding issues.
- 8.2 DH would expect to authorise any individual redundancy package of £100,000 capitalised costs or more, or 10 or more redundancies irrespective of capitalised costs prior to issuing notices of redundancy to individuals in these categories. The important audit steps required are as follows:
- i. ALB Chief Executives should satisfy themselves that proposals relating to the redundancy programme have been reviewed by their legal advisors and auditors, and any proposed changes have been taken account of;
 - ii. The proposals should then be formally approved by the appropriate forum / committee within each individual ALB. This forum should consist of Non Executive Directors / lay representation. DH Sponsor approval should also be gained at this point;
 - iii. This action should be taken in sufficient time to ensure that staff affected will be able to work their notice period, and will therefore not require any pay in lieu of notice;
 - iv. Once approved by the relevant ALB forum / committee, the proposal should be submitted where appropriate to DH's Governance and Assurance Committee (GAC) for approval. The following are the categories which require GAC approval:
 - Individual redundancies with capitalised costs over £100k
 - ten or more redundancies irrespective of capitalised costs
 - payments in Lieu of Notice (PILON) £50k or above
 - all Special Severance Payments over £20k² (this might include voluntary redundancy payments)
 - all novel, contentious or repercussive cases
 - v. The Governance and Assurance Committee will consider the proposal taking into account compliance with agreed ALB HR policy, the ALB HR framework, national consistency and value for money issues. GAC will also ask ALBs to provide evidence that they have explored relocation opportunities for all redundancy cases that are submitted. ALBs will be notified of GAC decisions in a timely fashion. The decision

² All special severance payments require sponsor support and HMT approval. In accordance with DH delegated limits to ALBs, all such payments in excess of £20k require Sponsor and GAC approval prior to submission to HMT. All business cases for special severance payments should be completed on HMT template (available from Francesca Della Pietra in ALBSU) and sent to ALBSU HR Team (Greg.Gleeson@dh.gsi.gov.uk and francesca.dellapietra@dh.gsi.gov.uk) who will liaise with HMT to seek approval.

making process will be significantly quicker for those ALBs who provide comprehensive information on the GAC business case and financial templates A central record of decisions will be maintained;

- vi. For all individual redundancy packages in excess of £100k, or redundancies of 10 or more, notice to terminate a contract on the grounds of redundancy should not be given to any of the above individuals until the package has received formal GAC approval.
- vii. If DH launches a voluntary scheme or the NHS relaunches a MARS-type scheme the expectation is that similar schemes will be extended to ALBs as appropriate.

Appendix 1

HUMAN RESOURCES TRANSITION FRAMEWORK

1 Purpose

- 1.1 The proposed health and social care reforms will lead to the creation of a number of new key bodies, along with changes to, or the abolition of, other NHS and Arm's Length Body (ALB) employers, as well as changes to the Department of Health (DH). This document outlines the principles applying to the HR and employment processes supporting the potential transfer of functions and roles and appointments to the new and affected bodies, and is part of the ongoing national HR guidance, covering NHS, DH and ALB staff, that we agreed to publish to support the implementation of the reforms.
- 1.2 The HR Transition Framework provides the guiding standards relating to employee movement from "sender" (current) to "receiver" (new or changed) organisations at a national and sub-national level. This document is intended to ensure consistency in the handling of employee matters going forward, and will evolve through the transition process. In addition, receiver organisations will be expected to produce their own People Transition Policies setting out how they will apply the Framework guidance as they establish their new organisations. This Framework primarily affects employees in transition between senders and receivers in the key employer groups; these are the NHS, the ALBs and the DH. A list of the sender and receiver organisations is provided at Annex A.
- 1.3 The scale of the proposed changes offers a real opportunity for employers to ensure that the advancement of equality and fairness lies at the heart of decision-making and to demonstrate their commitment to diversity. The new NHS, DH and ALBs will all require new skills and competencies.
- 1.4 Employers should ensure that all decisions are taken with due regard to relevant employment law, equality legislation and the public sector equality duty to ensure that decisions are fair, transparent, accountable, evidence-based and consider the needs and rights of the workforce.

2 Scope

- 2.1 It is important that employees and their managers are clear about the arrangements that are being set in place to support and engage them at national, regional and local level, how these fit together and how they will be engaged at employer level. This national HR Transition Framework should be used to guide all transfer, selection and appointment activities. It has been developed and agreed (and in the future will be maintained and updated by) the national HR Strategy Group in conjunction with the national HR Transition Partnership Forum¹.

¹The national HR Transition Partnership Forum brings together officials from DH, SHAs, NHS Employers, and trade unions representing staff in the NHS, Arms Length Bodies and the DH.

2.2 Separate employer group frameworks cover employees affected by change within the NHS, DH and across ALBs respectively as follows;

- **For the NHS**, each Strategic Health Authority has a regional HR or Employment Framework in place, developed and overseen by the appropriate regional Social Partnership Forum (SPF). Each of these frameworks has been checked for consistency of approach and will be maintained in place under successor arrangements to be established before the proposed abolition of SHAs in 2013.
- **For the DH and the ALBs**, HR Frameworks have been made available separately.

2.3 To confirm the scope and relationship between the different current HR Framework documents, the following guiding principles have been agreed:

- The current DH, ALB and regional NHS HR Frameworks deal with the arrangements for handling employees affected by change or at risk of redundancy and potentially in scope for transfer to new roles within sender or receiver organisations. These individual Frameworks should be consulted for more specific guidance, and any queries should be raised with the current employer.
- This national **HR Transition Framework** provides generic guidance covering the employment and HR processes throughout the transition, as well as setting out specific requirements for the receiver organisations listed at Annex A. It is recognised that employees may be affected in different ways depending on the functions within which they are employed and the roles they undertake. This Framework is intended to help provide consistency during the transition as well as encouraging best HR practice throughout.
- Further national guidance may be issued as required to support the transition. For example, a proposed concordat is currently being developed to support the Public Health transition. Any further guidance issued will reflect the standards, principles and key content of this HR Transition Framework.
- For each new receiving organisation, listed in Annex A, People Transition Policies should be produced to set out how affected employees will be incorporated from different senders into the new employer, and the arrangements that should apply to them post-transfer. This will be the responsibility of each of the receiving employers and the People Transition Policies will be published in due course.
- This HR Transition Framework is designed to support and be complementary to regional and local employer policy for dealing with organisational change. In the event of a potential conflict between this HR Transition Framework document and other regional or local policies, it may be necessary to refer the issue to the national HR Transition Partnership Forum for advice on achieving a resolution.

2.4 These changes will be taking place against a background of significant ongoing management and running cost reductions within current organisations. The running costs for all of the new organisations have yet to be confirmed. It is vital that the appropriate and necessary skills are retained wherever possible during transition and that the costs of change are minimised, including the costs of redundancy.

3 Objectives

3.1 This HR Transition Framework has the following objectives:

- To support the successful establishment of the new organisations
- To support business continuity during the transition
- To retain, as well as to support and develop employees, wherever possible
- To outline the generic HR principles and processes required to support consistency and encourage best practice
- To support value for money and minimise redundancy costs
- To advance equality and promote diversity
- To promote effective partnership working with trade unions.

3.2 This Framework provides information for employees, managers, trade unions and HR professionals in each of the following areas, which are covered in the following sections of this document:

- The overarching transitional principles
- The responsibilities of sender and receiver organisations and employees
- The arrangements for determining which business functions and employees are in scope to transfer to the new organisations.
- The arrangements for determining priority pooling arrangements between sender and receiver organisations
- Equality and diversity.

4 Overarching HR Transition Principles

4.1 The agreed HR Transition Principles that should apply throughout are to:

- Consult and engage with employees and their representatives and make sure they are kept fully informed and supported during the change process
- Promote transparency, equitability and fairness in all transfer, selection and appointment processes
- Ensure professional and respectful behaviour towards all employees moving between organisations
- Work with pace to minimise disruption and uncertainty for employees affected by change
- Ensure the consistent treatment of employees at all levels
- Actively promote equality and diversity standards through all transfer, selection and appointment processes
- Promote compliance with relevant employment legislation
- Undertake early engagement with employees and unions to enable effective and sustainable change. There will be partnership working with trade unions at a national, regional and local level
- Ensure that there is an equality impact assessment of the proposed changes
- Ensure that all reasonable steps are taken to avoid redundancies
- Work to ensure that valuable skills and experience are retained
- Ensure that employees who leave the NHS, the DH or ALBs are supported and treated with dignity and respect
- Use the transition process to enable shared learning and career opportunities between the DH, the NHS and the ALBs wherever possible.

4.2 It will be the responsibility of individual employers to ensure that the HR Transition Principles are applied and adhered to, and national monitoring of application and adherence will be overseen by the HR Strategy Group.

5 Responsibilities of Sender and Receiver Organisations and Employees

5.1 **Sender organisations** will be expected to provide practical and timely support to employees throughout the transition period in order to enable them to best prepare and position themselves for opportunities that may arise. In addition, they should:

- Continue to ensure that regular opportunities are provided for employees to discuss the changes and the impact they may have
- Ensure that practical support is provided to employees, as detailed in sections 5.3 to 5.5 below
- Ensure that employees are provided with the necessary time to enable them to access this support
- Ensure that data on their current workforce, and any movement of employees, is collected throughout the transition period
- Ensure that arrangements are in place to support the redeployment as necessary of displaced employees.

5.2 Where functions are transferring, both the receiving and sending organisations have a legal responsibility to inform and consult employees in transfer or potential transfer situations. Equally, in any potential redundancy situation, employers have statutory obligations to inform and consult employees and trade unions. In some cases, these information and consultation duties may take place simultaneously. Each employer should take independent legal advice on these matters.

5.3 Information, support and advice should be provided to employees by sending organisations in an accessible form under three key headings as follows:

‘Taking control’ – helping employees to help themselves

- Using 1:1 meetings, reviews and appraisal to identify key skills that may be in demand
- Personal development – identifying areas of need and opportunities to address these
- Preparing employees for change, including information on pensions and benefits
- Providing opportunities to discuss the guidance to employees and managers outlined in Appendix A to the HR Annex², and providing support to employees to take these forward wherever possible.
- Providing a map of organisational changes, which are likely to impact on employees during transition and into potential new organisations.

5.4 ‘Managing Your Career’

- Developing and using networking arrangements – supporting employees to develop and make use of formal and informal networks
- Developing CVs and successful job applications
- Accessing alternative employment opportunities
- Accessing job search arrangements
- Preparing for interviews.

5.5 ‘Dealing with Change’

- Understanding personal responses to change
- Identifying future opportunities (see 5.3 above)
- Grievance and appeal arrangements.

5.6 The new **receiver organisations** have a unique opportunity to define a new organisational culture and to establish best practice HR arrangements from the outset, paying due regard to legislative requirements. All of the receiving organisations should work quickly, in partnership with trade unions, which represent employees in sending and receiving organisations, to finalise and publish their proposed structures and produce their own People Transition Policies to cover the new organisational arrangements post-transfer. These activities will be conducted under the auspices of the HR Transition Partnership Forum. Each document should cover the following key areas:

² Additional Annex to Sir David Nicholson’s letter on ‘Equity and Excellence: Liberating the NHS’ – Managing the transition and the 2011/12 Operating Framework, 15 December 2010. Gateway Reference 15383. “Appendix A: Influencing your own future”

- Setting out how employees will be handled in accordance with best HR practice post transfer
- Transfer arrangements in line with TUPE/COSOP (see 6.4 below) as appropriate
- Pooling arrangements, selection standards, appointments processes and timetables, including consultation on TUPE/COSOP and the provision of information in respect of any measures it envisages taking post-transfer
- Employee and trade union engagement and formal consultation arrangements
- Supporting employees going forward
- Arrangements for the redeployment of any employees displaced as a result of the transfer
- Grievance and appeal mechanisms.

5.7 Upon commencement with the receiving organisation, employees should receive an appropriate induction to the new organisation, which should include a discussion on their initial objectives and development needs, along with any reasonable adjustments required. In due course, these should be finalised to form the basis on which appraisal and regular 1:1 discussions should be conducted.

5.8 Throughout the transition period, employees, with support from their managers, will be expected to avail themselves of opportunities to prepare and develop themselves for the future, and to request such support when it is not immediately available.

6 Determining which Functions are in Scope

- 6.1 The basis for determining which functions and employees are in scope to move between organisations will depend on the degree of fit between current and future functions and roles.
- 6.2 At a high level, the Functions and People Mapping exercise undertaken by employers will be used to inform the planning process and establish where current functions, roles and employees lie within sending organisations to help to identify the pattern of movement from sending to receiving organisations. The geographical location of current employees and organisations will also be provided in the mapping exercise with implications for employees identified.
- 6.3 Detailed scoping between sender and receiver organisations will be used to finalise the transfer of functions and employees.

TUPE and COSOP

- 6.4 Transfers between sender and receiver organisations will be guided by the legal requirements of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and/or the Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' (COSOP) guidance. It should be noted that the Health and Social Care Bill contains general powers to effect transfer schemes if appropriate to do so. These powers support the principle expressed within COSOP of using a transfer scheme when COSOP applies. Any scheme would not displace the appropriate application of the TUPE Regulations and both sender and receiver organisations would likely be involved in the development of any scheme. It should be noted that, other than in transfers covered by TUPE/COSOP and for accredited ALBs, limited competition for Civil Service posts at all levels is not available to staff on non-Civil Service terms, except through external open competition.
- 6.5 The law relating to transfers is complex. Each transfer is different and decisions are taken depending on the particular circumstances of the transfer. The broad legal principle underpinning transfers is that TUPE applies when there is a 'relevant transfer'. This may include:
- A transfer of an undertaking, business or part of an undertaking or business; or
 - A service provision change, where a contractor takes on a contract to provide a service for a client from another contractor.
- 6.6 When such a transfer or service provision change takes place, employees who are substantially performing the duties that are to be transferred in the undertaking or business, or delivering the service immediately before the transfer, would normally transfer to the new organisation, with their contractual terms, including continuity of service, protected (other than occupational pensions). Each employer should take independent legal advice as to the nature and scope of the possible application of TUPE and/or COSOP for each potential transfer that may occur.

6.7 Transfers should normally be managed as follows:

- Identification of a direct mapping opportunity using the Functions and People map. This will determine potentially the extent of the functions and employees to transfer.
- Confirmation by receiver and sender organisations that the functions are substantively the same and therefore potentially in scope for a TUPE or TUPE-related transfer.
- Timely notification of the employees affected and consultation with the relevant trade unions at the earliest opportunity
- Notification of transfer dates and new reporting arrangements.

7 Pooling Arrangements

7.1 This section outlines the proposed pooling arrangements for:

- Employees designated as at risk post-transfer
- Employees at risk, affected by change or affected by the DH Business Shared Services Transition Programme or
- The filling of unfilled vacancies by employees currently employed in DH, ALBs, SHAs or PCTs.

It provides the guiding principles, qualifying criteria and process steps relating to employee movement from sender to receiver organisations at national and sub-national level.

7.2 For the sake of clarity, the following steps are presented in sequential order. It is recognised that in some situations, these processes may be running at different stages within an organisation at the same time, depending on the precise timing of the overall change programme, although every effort should be made to align job opportunities to organisational change. It is the view of all parties to this Framework that effective consultation and partnership working with trade unions, using relevant partnership arrangements, will help sending and receiving organisations to manage the sometimes complex change processes more effectively.

7.3 In addition, there may be exceptional circumstances in which it is necessary to proceed to external recruitment for some posts before all of the stages below have been exhausted. Such exceptional circumstances will occur where there is clear evidence that the skills and knowledge required for new posts is not available in the existing pools. In such cases, agreement to proceed on this basis should be sought in advance through the relevant partnership forum.

7.4 Step 1 – Transfers.

This section covers employees whose functions and posts are transferring into the receiving organisation.

- i. Where the functions and associated roles are substantively the same and where the overall number of posts at each level is unchanged, employees should be

- transferred into posts in the receiving organisation and their employment should transfer at the agreed transfer date.
- ii. Where the function transfer is confirmed under 6.1 – 6.3 above, but where the overall number of posts in the receiving organisation is lower, employees should transfer at the agreed transfer date and it will be the responsibility of the receiving employer, in accordance with any statutory requirements and best practice guidance, to determine the new structures and the specific appointment arrangements that will apply to the employees that have transferred in these circumstances (see the respective People Transition Policies). These employees may then be ring-fenced to compete for the limited posts as available within the receiving organisation. Where there are existing employees in the receiving organisation who are at risk of redundancy and performing the same functions, they may also be included within the ring-fence for these posts.
 - iii. Transferred employees who are unsuccessful through the process referred to above should be given prior consideration for any suitable remaining vacancies (at their grade or equivalent) in the receiving organisation alongside any existing employees of the organisation who have already been placed 'at risk'.

7.5 Step 2 – Limited ring-fencing

This section covers the appointment arrangements for any outstanding vacant roles in the receiving organisations, after Step 1 above has been completed. The vacancies remaining should be offered to the following groups of employees in the following priority order, which are subject to the restrictions outlined in 6.4 (for example, please refer to the Cabinet Office “Efficiency and relocation support programme” – the protocol for handling surplus staff situations);

- i. Employees who are formally at risk of redundancy from the NHS, DH or ALBs for whom the post may offer suitable alternative employment.
- ii. Any remaining vacancies should be made available to other NHS, DH or ALB employees who are affected by change.

7.6 Step 3 – Wider ring-fencing.

Any outstanding vacancies not filled through the steps set out in 7.4 and 7.5 above should be ring-fenced for all other employees in the DH, ALBs and the NHS to apply for through the agreed employer selection process. This will ensure that such potential opportunities for progression or development are brought to the attention of other DH, ALB and NHS staff before open competition takes place.

7.7 Step 4 – Open competition.

Any posts that subsequently remain vacant after the steps set out in 7.4 to 7.6 above are exhausted should be advertised through the normal external recruitment processes of the organisation concerned.

- 7.8 As stated earlier, there may be exceptional circumstances in which it is necessary to proceed to external recruitment for some posts before all of the stages set out above have been exhausted, and this could occur at any of the four stages listed.

8 Equality and Diversity

- 8.1 As stated earlier in 1.3, employers must comply with all relevant employment and equality legislation, and be expected to follow best employment practice when implementing the proposed changes. Any decisions in respect of appointments to jobs, identification of employees as 'affected by change' or 'at risk' and selection for redundancy must be fair, transparent and made with reference to justifiable, objective criteria.
- 8.2 Procedures should be designed to support diversity and pay due regard to equality legislation and ensure that there is no unlawful direct or indirect discrimination, victimisation or harassment against any particular individual or group of employees. All proposed changes should be accompanied by an analysis on the impact on equality, which should include an analysis of the equality and rights impact any changes will have on the workforce.
- 8.3 All key decision-makers, including interview panel members and senior managers, should have received training in diversity on equality considerations, including related current legislation and best practice. In the run up to the proposed changes, employers should ensure that senior managers have received refresher training if necessary.
- 8.4 Where changes occur, employers must keep records of decisions they take during this period which affect the employment of groups and individuals. Employers should use these records to monitor the decisions being made to ensure that they were not directly or indirectly discriminatory and to report on those decisions.

9 Further advice and information

- 9.1 As explained earlier in this document, the current DH, ALB and regional NHS HR Frameworks deal with the arrangements for handling employees affected by change or at risk of redundancy and potentially in scope for transfer to new roles within sender or receiver organisations. These individual documents should be consulted for more specific guidance. In addition, any queries from employees about the application of this HR Transition Framework should be raised with their employer or Trade Union representative.

1 July 2011

Annex A

Current sender and receiver organisations created or affected by the Health and Social Care Bill 2011

Senders:

Strategic Health Authorities

Primary Care Trusts

Department of Health

Arms Length Bodies

Receivers*

NHS Commissioning Board

Monitor

Health Education England

Health Research Authority

NHS Trust Development Authority

Care Quality Commission

National Institute for Health and Clinical Excellence (NICE)

Public Health England (Executive Agency of the Department of Health)

Healthwatch England (as part of the CQC)

Department of Health

**This Receivers list will be amended if and when new bodies are established that will be covered by this HR Transition Framework.*

**ALB HR Framework
FREQUENTLY ASKED QUESTIONS
July 2011**

Questions	Answers
Programme Principles & Objectives	
1. How will the HR processes affecting staff in the ALBs be managed?	The Department has worked jointly with all the organisations affected, trade unions and key stakeholders to produce an ALB HR Framework and HR Transition Framework that promote consistency of practice whilst being sensitive to the needs of individual organisations. There is also an HR framework for affected organisations in the NHS and another for DH. There will be instances where the nature of the change will mean that affected staff may be covered by more than one HR Framework. In this instance, individually tailored People Transition Policies (PTP) will be agreed between the relevant bodies for the specific change project, e.g. the setting up of the NHS Commissioning Board and Public Health England. These will be developed in line with the relevant HR Frameworks and in consultation with trade unions.
2. What will this mean in practice?	The ALB HR Framework, HR Transition Framework and PTPs set out key high-level policies and processes on redeployment, restructuring, and transfers so that opportunities for displaced staff can be maximised during the period of the review. The Department has also worked with the Appointments Commission to ensure that there are proper outplacement support mechanisms in place for staff and managers.
3. How will ALBs ensure communications with staff and Trade Union bodies are timely and consistent?	Each ALB will be responsible for the effective consultation and communication with its staff, trade unions and stakeholders. Where ALBs are coming together, the new management must work closely with the old to ensure that staff see a smooth transition of roles and responsibilities. Key principles on consultation and communications are set out in the ALB HR framework, HR Transition Framework and PTPs. DH, the NHS and ALBs are working closely with trade unions through the Transition Partnership Forum to consult on nationally agreed change policies and processes, including the PTPs.

ALB HR Framework

Transfer of Employment	
4. If work is transferring then presumably TUPE will apply for all staff?	<p>Decisions on whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to any transfers of functions are a matter of law and this is not a 'negotiating' point. In circumstances where TUPE does not strictly apply, public sector transfers may be covered by the Cabinet Office 'Staff Transfers in the Public Sector Statement of Practice' (COSOP), where the transfer is effected on terms that are overall no less favourable than if TUPE had applied. Equally, staff transfer schemes established by the Secretary of State may transfer staff on similar or the same terms as if TUPE had applied. These are sometimes, referred to as 'TUPE-like' terms.</p> <p>Where employees transfer under TUPE and/or COSOP, they currently benefit from the added protection of the Cabinet Office – 'A Fair Deal for Staff Pensions' (HM Treasury, 1999). Fair Deal requires that the new pension must be broadly comparable to the old one. Fair Deal is currently under review and how pensions are managed will depend on the outcome of that review in Summer 2011.</p>
5. What will happen to staff who transfer, where there is duplication of roles; a reorganisation, which results in the transferring role disappearing?	<p>Receiver organisations need to work with sender organisations and their staff to ensure that they get best possible outcome through the transfer process with the underlying aims of minimising redundancies and unnecessary transfers. To this end, we will work with trade unions and individual staff to help them make informed choices about their future by keeping them fully informed about where they are in the process and the options available at all times. These options will include:</p> <ul style="list-style-type: none"> ➤ Where at all possible undertaking selection processes prior to transfer. ➤ Allowing staff to opt out of transfers where there is no identifiable post in the receiver organisation without resigning. ➤ Giving staff who are unsuccessful in securing a post through job matching prior consideration for posts in the receiver organisation through redeployment processes. ➤ Being open to relocating posts or allowing flexible working arrangements.

ALB HR Framework

<p>6. What is the process to follow if an individual wants to object to the transfer of their employment?</p>	<p>Staff affected by a transfer have the right to object.</p> <ul style="list-style-type: none"> • Where a decision relating to their transfer has been made by the current employer, the objection should be handled through the current employer's relevant appeals or grievance process ▪ If your complaint is about the administration of the appointments process this is likely to be managed by the relevant body handling the appointments process ▪ Where a decision relating to a transfer has been made by the receiving organisation (for example about the designation to transfer or appointment or non-appointment to a role) this will be heard through the receiver organisation's appeals process, which is set out in the relevant PTP
<p>Redeployment and Staff Support</p>	
<p>7. How will staff who lose their roles as a consequence of this review be supported?</p>	<p>An outplacement service has been agreed for ALBs and will be delivered through the Appointments Commission. ALB CEOs and HR Leads have been given the details of this service. Where the Appointments Commission does not have the required capacity or where specialised outplacement support services are needed these will be subject to separate discussion and support options.</p> <p>In addition, ALBs should ensure that managers involved in redeployment decisions have been fully trained and/or briefed on agreed processes, their responsibilities in managing the staff processes and building their understanding of the types of reactions they may encounter from affected staff, and how to manage these reactions effectively and supportively.</p> <p>Redeployment pools and associated processes have been detailed in the HR Transition Framework, and these will be applied through the relevant PTPs.</p>
<p>8. Will there be a National Clearing House?</p>	<p>There will not be a central clearing house for the purposes of redeployment. The Transition Resourcing Team will provide a central resourcing unit for the establishment of the NHS CB.</p>
<p>9. Will ALBs be expected to appoint displaced staff where suitable alternative employment is identified?</p>	<p>ALBs will be expected to ensure that they are taking every step to maximise opportunities available for displaced staff from other organisations who may have been affected by the Transition Programme. Further detail about pooling arrangements is set out in the HR Transition Framework.</p>
<p>10. Will there be a centrally negotiated deal with an Outplacement Provider across the whole ALB sector?</p>	<p>Yes. This will be delivered by the Appointments Commission.</p>

ALB HR Framework

Redundancy	
11. What will the voluntary (and compulsory) redundancy packages be?	<p>All employers have a duty to try to avoid redundancies and this key principle will underpin the processes that are developed to manage the change. There are a number of ways of ensuring this happens and the Department expects organisations to work together to ensure that redeployment processes are in place to match displaced people to available posts wherever possible.</p> <p>Where redundancies do take place, staff will be entitled to the packages and notice periods that are relevant to their contracts of employment at the time the redundancy is affected.</p>
12. How will redundancies be minimised?	The ALB HR framework sets out a checklist of key processes to help organisations identify the practices they should follow to ensure that compulsory redundancies are minimised.
13. How is DH ensuring that ALB boards do not award themselves or their staff excessively large redundancy payouts?	All decisions should be ratified by the relevant committee in individual organisations to ensure financial probity. In addition, DH would expect to authorise any individual redundancy package of £100,000 capitalised costs or more, or 10 or more redundancies irrespective of capitalised costs prior to issuing notices of redundancy to individuals in these categories.
14. Will existing arrangements for managing redundancy costs be replaced by the new provisions set out in the framework?	No. The sign-off for redundancies in excess of £100,000 capitalised costs or more, or 10 or more redundancies irrespective of capitalised costs is an additional governance process, which will be managed through the Governance and Assurance Committee (GAC). ALBs will still need to discuss all funding for redundancies below that amount with their DH Sponsor
Emerging FAQs	A process for collecting emerging questions relating to the ALB Review will be agreed with ALB HR Directors and national trade unions.