

# Public health workforce issues



**Local government transition  
guidance**

January 2012

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## Development and scope of this Guidance

This Guidance has been developed by the Local Government Association in consultation with:

- The Local Government Trade Unions (Unison, Unite and GMB)
- NHS Trade Unions and representative groups including BMA and RCN
- A steering group of local authority representatives
- The Department of Health/NHS Employers

The principles set out in this guidance are designed to be fully in the spirit of the recently published [Public Health Human Resources \(HR\) Concordat](#) which sets out the overarching requirements for conduct of the transfer.

Some of the issues covered here are expected to be subject to further discussion and clarification and further notes may be issued in due course. The Guidance is not intended to be exhaustive – reference is made throughout to other existing guidance documents which should be read in conjunction with this document.

This Guidance uses the term “sender” to refer to employers within the NHS that staff will be transferring from and “receiver” to refer to local authorities and others who will be receiving the transferred employees.

The attention of local authorities is drawn to the **“sender” guidance developed for PCTs**. The intention of the sender guidance is to build on current guidance and to develop advice, toolkits and templates which meet the needs of both sender and receiver organisations. Its focus will be on effective HR processes and systems and elements relevant for local government will be signposted. The sender guidance is being issued in a series of modules from January 2012 onwards

The work of developing further guidance for local authorities on outstanding issues and monitoring the developing situation on a national basis will be carried out by the Concordat Steering Group set up originally to develop the national Public Health Human Resources (HR) Concordat, which includes all the parties responsible for this guidance, as well as DH and NHS Employers.

*Users should be aware that this guidance:*

- Is concerned with the key questions and options in situations where staff are transferring from the NHS to local government with public health functions
- Is intended primarily for HR specialists in local authorities who will be responsible for managing transfers working with PCTs
- Is not the primary record of decisions about which functions and staff are transferring. These decisions are set out in the factsheets published by the Department of Health.

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Links to the factsheets are provided in section 13, though these decisions are referred to in this guidance for ease of reference

- Is not a “how to” guide as councils will naturally build on their own policies and procedures, whilst paying close attention to the basic principles set out here
- Refers to the guidance which sender organisations will be following for other transfers.

*The main principles:*

- All matters relating to the statutory transfer of public health functions and any staff transfers are of course subject to the passage of the Health and Social Care Bill 2011 and royal assent
- Staff identified as working in the public health functions that will transfer to local government on a statutory basis under the Health and Social Care Bill 2011 will do so on a TUPE or TUPE-like basis under COSOP (see section 2.5)
- Local authorities and PCTs are strongly encouraged to work together jointly with relevant trade unions to prepare for the transfer (see sections 1.5 and 3.4)
- Arrangements should be agreed locally to help transferring staff to engage more closely with their eventual new employers in the transition year 2012-13 (see section 3.7)
- However, no staff should transfer employment in advance of the due date of 1<sup>st</sup> April 2013 which is the date the statutory responsibilities transfer
- Councils are strongly encouraged to implement best employment practice, taking account of the need for future recruitment and retention of specialist public health staff (see sections 5 and 13)

*A number of issues have yet to be fully resolved and will be the subject of further clarification from the national Concordat Steering Group, including:*

- A checklist of options for agreed initiatives, including secondments to engage employees more closely with new employers prior to the final transfer
- Proposals for dealing with staff pensions
- Details of a staff commission to be set up under the auspices of ACAS to deal with any problems relating to individual transfers that cannot be dealt with locally.
- The appropriate involvement of NHS trade union officials in local and national discussions post 1 April 2013
- Treatment of current and future trainees

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- Treatment of individuals close to retirement in the NHS, or close to the expiry of a fixed-term contract.
  - Arrangements for future specialist training and development – especially statutory requirements

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## 1. Introduction – the importance of local joint working

- 1.1 The Health and Social Care Bill 2011 provides the statutory basis for the transfer of a number of public health functions currently carried out by the NHS to local government on 1<sup>st</sup> April 2013. It also creates a number of new key bodies, along with changes to, or the abolition of, a number of other NHS and Arm's Length Body (ALB) employers, as well as changes to the Department of Health (DH). This document outlines the general principles applying to the HR and employment processes supporting the transfer of functions and roles and appointments to local government and describes some critical steps and activities for local government and PCTs during the transition phase in the run up to April 2013
- 1.2 The Local Government Association strongly supports the transfer of responsibility for improving the public's health to local authorities. This is consistent with the historic role of local government in health improvement and public health. It also recognises the strategic role of councils in addressing the broader determinants of health and wellbeing to tackle health inequalities.
- 1.3 This new system can only develop fully if the people running the services are seen as and are part of the local government workforce, as well as part of the developing public health professional network. There are some significant workforce and employment challenges associated with this transfer. The guidance in this document is designed to help councils receiving public health staff to manage the transfer as smoothly as possible, with the emphasis on helping staff to thrive quickly in their new working environments.
- 1.4 The principles set out in this guidance are designed to reflect those in the recently published Public Health Human Resources (HR) Concordat (the Concordat) which sets out the overarching requirements for conduct of the transfer. The Concordat was jointly launched by the Local Government Association, Department of Health (DH) and NHS Employers and councils are strongly recommended to read it and act in accordance with the key principles it sets out. The document is available at [\[link\]](#) and extracts from it have been used in this document to demonstrate a consistent approach to key principles.
- 1.5 Getting all this right requires close and effective working between PCT employers and local government in managing the HR processes and ensuring effective consultation with staff and trade unions. We recognise that many employers are already working jointly on transition planning and **one of our strongest recommendations is that local authorities and their local PCTs should establish joint management-union working groups to support this process in order to manage the transfer process.**
- 1.6 These local joint working groups will need to oversee and co-ordinate activity linked to the change management process for public health. The transfer of functions from the

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NHS to local government will be supported by transition plans with associated workforce plans, including the process for any pre-transfer secondments etc and the process for the assignment of employees to the functions that will transfer in April 2013. These plans should be agreed and consulted on by the end of March 2012. During the shadow year PCTs and local government will need to undertake some significant preparation to support the transfer of functions in 2013 – this work will impact on staff as functions and systems are refined and agreed. Meeting this timetable will require close collaboration between councils and PCT's.

- 1.7 The DH is developing sender guidance on a modular basis to fit with the phasing of the transition for PCTs. The sender guidance alongside this local government transition guidance has been developed to help join-up activity in PCTs and local government. We would hope that by setting up a local joint working group, the PCTs, Councils and their constituent trade unions will be able to manage the change process in a more collaborative manner; identifying workforce risks at an early stage; resolving any issues early; and establishing and supporting effective consultative processes, which will result in a smoother transfer process.
- 1.8 All of this activity will require proper consultation with affected staff and their trade unions and while this will primarily be the responsibility of PCTs, they will only be able to manage this process if local authorities are able and willing to work closely with them.
- 1.9 The Government has now issued detail of the new proposed arrangements for public health in a series of factsheets, so planning can proceed and the process for joint working with all stakeholders should be implemented. Some of this material is summarised in section 13 of this guidance. The full documentation can be accessed at [\[link\]](#). However, some critical issues, which will affect staff and receiver employers, such as pension arrangements, are currently being worked on through the Concordat Steering Group and further information on this will be made available.
- 1.10 The organisations responsible for preparing this guidance will therefore continue to monitor developments and may develop further notes as necessary. As part of this on-going process, we will continue to support the exploration of best practice in dealing with the workforce aspects of reforms and seek clarity on any emerging legal issues.

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## 2. Basic principles

*Working in the spirit of the national Public Health Human Resources (HR) Concordat*

- 2.1 This document and further guidance developed is intended to build on the principles outlined in the Public Health HR Concordat.
- 2.2 The HR Transition Principles agreed in the Concordat state that sender and receiver employers should:
- 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
  - highlight necessary 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 and local authorities are supported and treated with dignity and respect
  - use the transition process to enable shared learning and career opportunities between the NHS and local authorities wherever possible.
- 2.3 There is an important point of principle that all transferring staff must be treated fairly and that no unreasonable and/or unlawful distinctions should be made between people with different contracts.

*The basis of transfers*

- 2.4 Transfers of staff are expected to take place as part of the transfer of functions.
- 2.5 Transfers between sender and receiver organisations will be guided by the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (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 orders if appropriate to do so. These powers support the principle expressed within COSOP of using a transfer order when COSOP applies.

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Any order 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 order.

- 2.6 Councils should therefore take into account the best available advice on good practice in managing TUPE and TUPE-like COSOP based transfers. They must also ensure that they use the very best practice in developing new relationships. Some general guidance on good practice has been set out in the national Concordat and is included in the section above. Councils are advised to read the Concordat and take full account of it in their local processes. The national Concordat Steering Group will be monitoring the on-going situation and will revisit advice on good practice as necessary.
- 2.7 The law relating to transfers is complex. More comprehensive Local Government Association guidance is available in Appendix 1
- 2.8 Each transfer is different and decisions are taken depending on the particular circumstances of the transfer but when a transfer of a function takes place, employees who are substantially performing the duties and services in the function that are to be transferred in the undertaking or business before the transfer, would normally transfer to the new organisation, with their contractual terms, including continuity of service, protected (other than occupational pensions), in line with TUPE/COSOP principles. 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.

*Existing employment terms of transferring staff*

- 2.9 Although the workforces that are likely to transfer to local government have a wide range of jobs, for HR issues they can be identified as belonging to three key groups and one sub-group:
- Staff on Agenda for Change Contracts including consultants, specialists and non-specialist support staff
  - Consultant staff on medical contracts
  - Very senior managers on non-medical contracts
  - A sub-group of trainees which the Concordat Steering Group will be developing guidance on
- 2.10 These groups have some common terms and conditions but separate pay systems. A briefing on the different pay, terms and conditions systems with advice on the underlying grading systems will be produced for employers.

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### 3. Transition: Activity up to 1st April 2013

- 3.1 The 'Creation of the new local public health system: Transition planning for Local Authorities and Primary Care Trusts' states that by the end of March 2012, all PCT clusters should have an integrated plan, including public health transition, which should be assured by SHA clusters, through a process overseen by the Department of Health. The public health transition plan should be agreed with local authorities.
- 3.2 There will be two stages of submissions by SHA clusters, with the first set of submissions in draft format on 27 January 2012 and the second in final format on 5 April 2012. PCT Clusters should produce early draft and final Integrated Plans, including public health, in line with the timetable agreed with their respective SHA Cluster.
- 3.3 These plans will impact on how current services are delivered and will set in train a process of change management, which will result in transfers of functions and staff in April 2013. This will require individual employers to consult with their constituent trade unions.
- 3.4 **In order to support this complex transfer process, we strongly recommend PCTs and councils establish a joint working group, which brings all parties together.** We see these working groups as supporting, rather than replacing existing consultative arrangements within each organisation. We would see the working group's role as allowing each party to raise issues; share information, and develop agreed processes – this might include agreeing appeals mechanisms, which link to the Staff Commission (outlined in Section 8); sharing information on people function mapping (see below); mapping PCT staff and functions against local government people and functions maps; and developing joint communications.
- 3.5 To aid the smooth transfer of staff, "sender" employers within the NHS are mapping current staff to the functions which are due to transfer to local authorities. This will aid PCTs and local government in identifying staff affected by the transfer and will ensure PCTs will be in a position to provide the necessary individual data including the terms and conditions of transferring staff as soon as practicable and not merely within the 2-week requirement under the TUPE Regulations.
- 3.6 Sender and receiver employers will need to cooperate closely on producing their transfer plans and on exchanging information in order to give staff a clear idea of what they can expect as soon as possible. Guidance for sender organisations is being developed by Department of Health working with others. The first part of the sender guidance is due to be issued soon. This guidance reflects some of the key elements of that sender guidance – thus supporting better joined up working between PCTs and local government. It is strongly recommended that councils should read the sender advice as well, when published as part of their planning.

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*Working together in advance of transfers*

- 3.7 Although staff cannot transfer employment to their new employers prior to the official date of the statutory transfer of functions, it makes sense for people to become familiar with their new working environments as soon as possible. Initiatives to help people link up with their new employers more closely have begun in many localities.
- 3.8 It is important to remember that any initiatives of this sort require the consent of the individual and so they must be taken forward in a careful, agreed way. The partners involved in the local joint groups recommended by this guidance should meet together as soon as possible to develop suitable local approaches. Checklist guidance on the use of secondments etc will be developed by the Concordat Steering Group as soon as possible
- 3.9 Local authorities will wish to make sure that their local arrangements for bringing staff into closer working arrangements are based on the informed consent of the individuals involved. The Concordat Steering Group will be developing additional guidance as soon as possible.

*Sender Guidance timelines and activities:*

- 3.10 Staff in PCTs will be subject to change with functions transferring to different organisations. The “Sender Guidance” is being developed by a Sender Reference Group in partnership with the HR Transition Partnership Forum (HRTPF). Membership of the Group consists of HR and operational managers from sender and receiver bodies along with union representatives from the HRTPF. The Sender Guidance covers the totality of the changes and will be sent to PCTs shortly. Elements relevant to the transfer to local government will be signposted.
- 3.11 It will be very important for councils to become familiar with the sender guidance and work with PCTs and unions in the local joint working groups recommended in this document to contribute to key processes. For example, reviewing job profile documentation will be important when the lists of potential transferees are developed.
- 3.12 Local authorities have a unique opportunity to define a new Public Health organisational culture and to establish best practice HR arrangements from the outset, paying due regard to legislative requirements. They should work quickly, in partnership with trades unions which represent employees in sending and receiving organisations, to finalise and publish their proposed structures and produce their own policies to cover the relevant new organisational arrangements post-transfer.
- 3.13 These changes, which are likely to impact on staff post transfer should be identified and raised as early as possible with all parties. This document strongly recommends the establishment of a joint working group to facilitate this process. By having early sight of workforce issues and challenges, the joint working group should be in a better position to

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support effective consultation at employer level, thus reducing the risk of any future employment claims or “referrals” to the Staff Commission.

- 3.14 Whilst the NHS has management and employment responsibility for NHS staff to the point of transfer or redundancy, it will be for individual local authorities to finalise their own structural arrangements involving trades unions through their existing consultative processes. They should be able to point to clear statements that show:
- how employees will be handled in accordance with best HR practice post transfer
  - if they are able to offer pre-transfer shadowing arrangements to help staff become familiar with new organisations and colleagues
  - how clear information will be provided to prospective employees on developing issues prior to the transfer
  - transfer arrangements in line with Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and/or the Cabinet Office ‘Staff Transfers in the Public Sector Statement of Practice’ (COSOP) guidance, as appropriate
  - employee and trades union engagement and formal consultation arrangements
  - support for employees going forward
  - grievance and appeal mechanisms
- 3.15 An outline of the sender guidance is below for information. The phasing of establishing new organisations as part of establishing the new Public Health system means that the complete picture of these functional transfers will not be available before the end of May 2012. Staff who are affected by these proposed changes will not have complete clarity of where their functions will move to, or how they will / will not move with them before October 2012. In order to deal effectively with this sequencing the sender guidance is to be published in modules as follows:
- Module 1 – for publication by the end of January 2012**  
The people transition process flow; data requirements; frequently asked questions; guidance on local consultation processes; template role specification profiles
- Module 2 – for publication by April 2012**  
Function descriptor template, template job descriptions; staff support – interview skills / CV writing
- Module 3 – for publication by end May 2012**  
Job matching; HR Practitioners’ guide on transfers; role of the Department of Health Transition Resourcing Team (TRT) & selection processes; staff support – redeployment
- Module 4 – by end September 2012**  
Staff support – conversation about individual ‘choices’; redeployment / exits.

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## 4. Consultation

- 4.1 The Concordat notes that, where functions are transferring, both the receiving and sending organisations have a legal responsibility under TUPE to inform and consult representatives of employees and employees affected by transfer or potential transfer situations and the organisations will need to co-operate fully to ensure that the responsibilities can be complied with in full. Equally, in any potential redundancy situations, employers have obligations (in some cases statutory) to inform and consult employees and trades unions. In some cases, these information and consultation duties may take place simultaneously. Each employer should take independent legal advice on these matters.
- 4.2 Effective joint working between PCTs and local authorities and recognised trade unions will be important to ensure delivery of high quality services to the public through the transition period and beyond
- 4.3 Where consultation arrangements are not already in place they should be introduced without delay. The procedures should allow for full consultation on all aspects of public health transition and affecting terms and conditions of employees. They should cover consultation not just between individual employers and trade unions but also between PCTs and local authorities. This should involve joint consultation machinery at local level.
- 4.4 Consultation should cover; transfer arrangements; appointment procedures; local appeal procedures; the application of the severance schemes; pay and grading structures; new structures and transition plans; any locally agreed procedures and conditions of service. Sufficient information must be shared with trade unions to allow them to formulate a view on proposals
- 4.5 Throughout the transition period, employees, with support from their managers, will be expected to avail themselves of opportunities to prepare and develop for the future, and to request such support when it is not immediately available.
- 4.6 Although this is largely a local process, implementation of workforce issues can be supported by local joint working groups and will be monitored by the Concordat Steering Group at a national level. This Group includes local authority representatives, trades unions and the LGA.

## 5. Best practice considerations for councils as new employers

### *Induction*

- 5.1 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

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required. In due course, these should be finalised to form the basis on which appraisal and regular 1:1 discussions should be conducted. They will be dealt with under the employer's arrangements for all staff, as appropriate.

#### *Staff who are close to retirement*

5.2 There will be cases where individuals are close to retirement in the NHS, or close to the expiry of a fixed-term contract. The national Concordat Steering Group is examining possible options for the fair treatment of staff in these situations and will develop guidance as soon as possible.

#### *Senior staff appointments*

5.3 It should be noted that there are already a number of jointly appointed senior staff in place and that the processes for appointing them have worked well.

5.4 Guidance on appropriate processes for appointments of Directors of Public Health has been issued by the Department of Health in a joint letter issued with the LGA, which is included as Appendix 2. The advice covers appointments prior to the full transfer of functions to local government. Councils are strongly advised to follow this advice when required. Further guidance on appointments after 1<sup>st</sup> April 2013 is also being developed

5.5 The option for local authorities to appoint their DPH and Public Health Consultants in a way that corresponds to the relevant NHS grade in order to strengthen their position in their dealings with the NHS is clearly available to be used when individual councils feel it would be useful. Whilst local authorities may appoint at the appropriate NHS grade, the decision to exercise this option will be for local determination. Councils will need to examine any equal pay considerations.

5.6 The advice makes clear that in future, Directors of Public Health and Public Health Consultants should continue to be appointed with the advice of the Faculty of Public Health through a formal appointments process. DPHs come from a range of clinical backgrounds; they need not be medically trained but must have appropriate public health qualifications and should be subject at least to the same requirements of continuous professional development as other local authority chief officers and professional regulatory bodies as appropriate.

## **6. Trainees**

6.1 It is recognised that there are some groups of trainee public health specialists who will need to be involved in various placements to complete their training. Further advice will need to be issued on how best to manage this. The Concordat Steering Group will work closely with the Faculty of Public Health and deaneries in developing this guidance.

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## 7. Equality and diversity

- 7.1 Employers must comply with all relevant employment and equalities 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.
- 7.2 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, and that all opportunities to advance equality have been maximised throughout the process. 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.
- 7.3 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.
- 7.4 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 as part of the established public sector duty.
- 7.5 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. 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.
- 7.6 The National Joint Council for Local Government Services, which is responsible for the so-called "Green Book" national terms and conditions for local government staff, has published guidance for periodic assessments on equalities issues, which will be relevant in these circumstances.

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## 8. Appeals relating to transfers

- 8.1 Most transfers of this sort are routinely handled in a fair and satisfactory way for all concerned. The LGA believes strongly that the transfer of public health staff can be accomplished without problems if the key principles set out here and in the Public Health Concordat HR are followed. However, there may sometimes be unfortunate cases where matters break down and risk becoming irretrievable. To help deal with situations of this sort, the Concordat Steering Group is making arrangements through ACAS for an appeals process via a Staff Commission that will be available in situations where no satisfactory solution can be found locally. The LGA will work with the trade unions to ensure that there is appropriate representation of NHS trade unions through this process.
- 8.2 Any appeals will be expected to relate to issues arising as an immediate result of the transfer. The process and terms of reference for appeals will be published as soon as possible.

## 9. Pensions

- 9.1 The Concordat Steering Group has identified pensions as a key priority and is working with experts from the NHS and Local Government to discuss options, which will be available for transferring staff. The outcomes of these discussions will be shared with employers and staff, as soon as decisions are made.

## 10. The question of changes to public health services and roles post transfer

- 10.1 NHS staff transferring from PCTs to local authorities as part of a TUPE and/or COSOP transfer will receive protection of NHS pay, terms and conditions in line with the principles in TUPE and or COSOP. Transferring employees will transfer on their current pay, terms and conditions of employment. Any subsequent transfer-related changes, which impact on their pay terms and conditions, can only be made if they follow TUPE principles. This means that change can only occur where it meets the test of being the result of an economic, technical or organisational reason resulting in changes in the workforce
- 10.2 In reaching decisions about the appropriate way forward, employers should have proper consultations with the staff and trade unions involved, Councils will want to take account of a number of factors that may influence their thinking in different ways:

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- The need to retain staff with specialist skills and also recruit new staff as needed, which means taking account of the existing market for public health specialists and providing people with career development opportunities
  - Fairness to existing employees as well as new transferees
  - The general tight budgetary situation in the current CSR period
  - Potential equal pay risks
    - It is normally a defence to an equal pay claim if different rates of pay are due to the need to protect TUPE transferred terms and conditions. The causal link with TUPE will be broken if the council starts to change terms and conditions

## 11. Professional development

- 11.1 In addition to the information on senior staff appointments in Section 5, a public health workforce strategy, describing the priorities for on-going training and development of existing and future public health staff is under development and is being consulted on in early 2012. Councils are recommended to read the strategy when published. This will help in developing the important partnerships needed through Local Education and Training Boards for example and in wider strategic workforce planning.
- 11.2 One important specific example of continued development issues that needs to be taken into account is the revalidation of professional qualifications. Further advice may be issued on how to ensure that the required specialist training is to be provided.

## 12. Trade unions

- 12.1 It is important that all the issues outlined here should be dealt with in dialogue with relevant trade unions. There are a number of unions and professional bodies that currently represent NHS staff whose views need to be taken into account. Discussions about the best way to take these views into account post 1 April 2013 will take place at a national level. The outcome will be communicated in due course.

## 13. Local government's new public health functions

- 13.1 The Department of Health has published a number of factsheets, detailing the roles and responsibilities of local authorities in the new public health system, including local authority public health functions and commissioning responsibilities. These can be found at:

[Public Health in Local Government \(all factsheets\)](#)  
[Local government's new public health functions](#)  
[Commissioning responsibilities](#)

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## 14. Timeline for transition

14.1 The following is an indicative timeline for the transition PCT Public Health commissioning activity and functions to local authorities (subject to agreement at the DH and Local Government Programme Board):

### **By end of March 2012**

- PCT clusters will have completed their transition plan covering delivery and transition activity and governance for 2012/13 agreed with local authorities.
- Assessment of transition plans and feedback in April 2012.
- Development of interface with PHE in shadow form from April 2012.

### **During shadow year 2012/13**

- Development of vision and strategy for new Public Health role (linked to Health and Wellbeing Boards).
- System preparation including new commissioning and contracting development, clinical and corporate governance, communications with stakeholders, providers and public.
- Agreement on support functions for Public Health in new role (HR, IT, estates, finance support).
- Formal HR and finance transfer process to local government.
- Development and testing of new emergency planning arrangements and response.
- Agreed Public Health Delivery Plan for 2012/13 – accountability remains with PCT and performance reported to SHA.
- Relationship with shadow PHE developed.

### **Monitoring and assessment in 2012/13**

The following outlines the proposed monitoring and assessment during 2012/13 (again subject to agreement):

- PCT cluster monthly milestone reporting to SHA.
- October 2012 – formal assessment of progress with transfer from PCT to local authorities (method to be agreed).
- January 2013 – PCT cluster to provide a formal governance handover document to local authority.
- Midnight 31st March 2013 local authorities take on new roles and responsibilities for Public Health.

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## **Appendix 1**

### **LGA guide to the law on TUPE**

- Introduction**
- 1 Relevant transfers: the scope of the Regulations**
- 2 Staff transfers within public administrations**
- 3 Withdrawal of two-tier code**
- 4 Who and what transfers**
- 5 Pensions**
- 6 Changes to terms and conditions**
- 7 Unfair dismissal**
- 8 Redundancy**
- 9 Notification of employee liability information**
- 10 Informing and consulting with the affected workforce**
- 11 Employers' liability compulsory insurance**
- 12 Legislation**
- 13 Sources of Information**

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## Introduction

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE/the Regulations) provide that where there is a 'relevant transfer' from one employer to another, the new 'transferee' employer takes over the contract of employment of the employees working in the undertaking that transfers.

This guide sets out the main points of the Regulations, and while it is not a complete statement of the law, it is intended to provide guidance to help local authority employers understand the position.

### 1 Relevant transfers: the scope of the Regulations

The Regulations apply to 'relevant transfers'. A 'relevant transfer' can occur:

- when a business, undertaking (or part of one) is transferred from one employer to another as a going concern (this is known as a 'business transfer'), or
- when a client engages a contractor to carry out work on its behalf, or where it re-assigns such a contract – including bringing the work back 'in-house' (this is known as a 'service provision change transfer').

The two categories are not mutually exclusive and it is possible that a transfer will fall into both categories.

#### **A business transfer**

For a business transfer to take place, there must be a change in the identity of the employer and the transfer of an 'economic entity which retains its identity'. For the purposes of the Regulations, an 'economic entity' means an 'organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary'. An 'organised grouping of resources' can mean tangible or intangible assets as well as employees.

#### **A service provision change transfer**

The Regulations provide that a service provision change will occur in circumstances where:

- a client out-sources a service; or
- the service is awarded to a new contractor following a second generation tendering exercise; or
- the contract is brought back 'in-house' and is undertaken by the client itself.

The term 'contractor' in relation to a service provision transfer specifically includes sub-contractors. Therefore a transfer will occur in circumstances where the client awards a contract to a main contractor, who then in turn, awards the work (or a part of that work), to a sub-contractor whilst retaining the contract with the client.

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In a service provision change, it appears to be enough that the 'activities' in question cease being carried out by one person and are carried out in future by another or others, as long as those changes in service provision involve 'an organised grouping of employees which has as its principal purpose the carrying out of those activities on behalf of the client'.

This requirement is intended to confine the application of the Regulations to circumstances where the transferor has a dedicated team of employees that carry out the service activity that is to be transferred (although 'dedicated' does not mean that the employees must be working exclusively on those activities).

As well as capturing the award or reassignment of a service contract, the Regulations could also apply where the original contract is split, and assigned to different contractors.

### **Exceptions – 'one-off' basis**

The Regulations will not apply where a client buys in services from a contractor on a 'one off' basis rather than entering into an ongoing relationship for the provision of the service.

### **Exceptions – 'supply of goods for client's use'**

The Regulations are not expected to apply where a client uses a contractor to supply goods for the client's use. The intention here is to exclude situations such as that in a contract to supply sandwiches and drinks to a staff canteen, where the client then sells on the goods to its employees. However, a contract to run the client's canteen would not be caught by the exception and the Regulations could apply.

## **2 Staff transfers within public administrations**

Under the Regulations, the reorganisation of a public administrative authority, or the transfer of administrative functions between public administrations, is not a relevant transfer within the meaning of the legislation.

However, the Cabinet Office Statement of Practice on staff transfers (commonly referred to as 'COSOP') provides that such transfers should follow TUPE principles. Such transfers will therefore normally take place either by a statutory order applying the requirements of TUPE or more arguably, by a consensual agreement that COSOP applies and that the principles of TUPE will be adhered to.

## **3 Withdrawal of two-tier code**

The local government two-tier code (the Code of Practice on Workforce Matters in Local Authority Service Contracts) no longer applies as it was withdrawn on 23 March 2011. The code, which formed part of [ODPM Circular 03/2003](#), required local authorities to specify in

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tender contracts that employees hired by the successful contractor had to be provided with terms and conditions “no less favourable overall” to the transferred ex-public sector employees they would work alongside. The announcement withdrawing the code is available at <http://www.communities.gov.uk/statements/newsroom/openpublicservices>. However, some pension protections still apply to employees transferring from an authority on a contracting out (see 4 below).

## **4 Who and what transfers**

### **Who transfers?**

All of the transferor’s employees assigned to the organised grouping that is transferring will transfer. The definition of employees in the Regulations includes apprentices.

Where an employee works across two or more parts of the transferor’s organisation and only one part is transferring, the question of whether the employee is assigned to the part that is transferring is determined by assessing where the employee predominantly works. This is a question of fact in each case and relevant factors will include:

- the amount of time the employee spends in the transferring part;
- the value and importance the employee has to the transferring part;
- what the terms and conditions say about the employee’s role; and
- how the employee’s costs are distributed across the different parts.

### **Exclusion of ‘temporarily assigned employees’**

The Regulations do not apply to employees who are only temporarily assigned to the organised grouping that is transferring. Whether or not an employee is deemed to be on a temporary assignment will depend on a number of factors, including the length of the assignment and whether or not the employee has a date to return to a part of the transferor’s business that is not transferring.

### **Employee objection**

Employees can object to transferring. If they do, the employee’s employment is deemed to have terminated by operation of law, not by dismissal. However, if the objection is because the transfer involves or would involve a substantial change to the employee’s terms and conditions to their material detriment, the objection will amount to a dismissal.

### **What transfers: contract of employment**

The basic underlying principle of TUPE is that when a relevant transfer occurs, the transferee takes over the contract of employment of the transferring employees. Terms that will typically transfer under the contract include:

- pay scales and rates and pay intervals;
- hours of work;

- 
- place of employment;
  - continuous service;
  - annual leave entitlements;
  - sick leave and sick pay schemes;
  - maternity provisions;
  - part-time or flexible working arrangements;
  - other time off arrangements; and
  - disciplinary, grievance and other contractual procedures.

### **Transfer of trade union recognition agreements**

As a general principle, the transferee inherits any voluntary trade union recognition agreements that are in place at the time of the transfer that relate to the transferring employees. However, the Regulations include an important exception. The transferee will only be required to recognise an independent trade union, if the organised grouping of transferred employees for whom the trade union is recognised maintains an identity distinct from the rest of the transferee's business. If the transferring employees do not retain a separate identity, the trade union recognition agreement lapses and it will be up to the transferee and the trade union(s) to renegotiate a new agreement, or amend an existing agreement if the transfer introduces a new trade union into the transferee's business.

The exception should prevent disruption to existing industrial relations arrangements when a group of workers are transferred into an existing group of workers who are represented by a different trade union. There is nothing to stop the transferee amending its existing arrangements to include the new trade union, but the exception means it is not compelled to upset the status quo if it would be too disruptive.

## **5 Pensions**

Under the Regulations, the provisions of an occupational pension scheme, as defined by the Pension Schemes Act 1993, are excluded from transfer. However, it is specifically provided that provisions other than those relating to old age, invalidity or survivors' benefits are not treated as being part of the occupational pension scheme, and are therefore liable to transfer.

### **Pensions Act 2004 and Transfer of Employment (Pension Protection) Regulations 2005**

Aside from the Regulations though there are some pension protections under the Pensions Act 2004 and Transfer of Employment (Pension Protection) Regulations 2005 which apply to employees who transfer and were in, or eligible to join, or in a qualifying period to join, the relevant occupational pension scheme. This means the new employer must offer either membership of an occupational pension scheme or a stakeholder arrangement as follows:

Occupational Pension Scheme:

- 
- a money purchase scheme with the employer matching employee contributions up to 6% of basic pay; or
  - a non-money purchase scheme (generally a final salary or cash balance scheme) providing either:
    - a final salary scheme that meets the "reference scheme test" for contracting out of the state second pension (generally providing a pension of 1/80 of contracted-out earnings for each year plus provisions for spouses); or
    - a scheme that matches employee contributions up to 6% of basic pay; or
    - a scheme that entitles members to benefits worth at least six per cent of pensionable pay (defined in the schemes rules as the pay that is used to determine the amount of contributions and benefits) per annum, plus the value of the employees' own contributions (and in this case, employees cannot be required to contribute in excess of 6% of pensionable pay per annum)

Stakeholder Pension Scheme:

- a scheme that matches employee contributions up to 6% of basic pay.

### **Transfers from the public sector (excluding local government): Fair Deal**

The Fair Deal policy applies to the public sector, except for local government. It requires the provision of a broadly comparable pension to employees who transfer out from the public sector to the private sector. However, HM Treasury is reviewing the Fair Deal policy and is considering a range of options for future policy, which run from keeping the policy in its current form, to removing it altogether.

### **Contracting-out transfers from local authorities**

Unlike the rest of the public service, the Fair Deal pensions policy does not apply to local authorities. However, the Best Value Authorities Staff Transfers (Pensions) Direction 2007 provides that on a contracting out from a Best Value Authority in England or a Police Authority in Wales to a service provider, the transferring employees must be provided with continued access to the LGPS (via an admission agreement) or to a broadly comparable pension scheme.

## **6 Changes to terms and conditions**

The Regulations set out the circumstances in which an employer and employee can agree to change terms and conditions of employment of transferred employees. They make it clear that the employer must never vary the contract of employment where the sole or principal reason is:

- either the transfer itself; or

- 
- for a reason that is connected to the transfer that is not an economical, technical or organisational (ETO) reason entailing change in the workforce.

Any attempt to vary a contract of employment in these circumstances will be rendered void by the Regulations.

[The Department for Business, Innovation and Skills' \(BIS\) guidance](#) on TUPE seeks to clarify some contentious issues that arise from case law.

### **By reason of the transfer or in connection with the transfer?**

The BIS guidance differentiates between an action that is by reason of the transfer itself and one that is for a reason connected with the transfer. A change that is *by reason of* the transfer itself is one where there are no extenuating circumstances linked to the reason for the proposed change in terms and conditions. Conversely, where the reason for the change is prompted by a knock-on effect of the transfer, such as the need to re-qualify staff to use different machinery used by the transferee, then the reason is *connected to* the transfer and a variation will be valid if that reason is also an economic, technical or organisational reason.

### **An ETO reason**

There is no statutory definition of an ETO (economic, technical or organisational) reason, but the BIS guidance suggests it is likely to include:

- a reason relating to the profitability or market performance of the transferee's business (an economic reason);
- a reason relating to the nature of the equipment or production processes used (a technical reason); and/or
- a reason relating to the management or organisational structure of the transferee's business (an organisational reason).

### **Circumstances where a variation may be agreed**

The employer and employee can agree to vary the terms and conditions of employment where the sole or principal reason is unconnected with the transfer, or is connected with the transfer and is an ETO reason entailing changes in the workforce. The Regulations do not define what is meant by 'entailing changes in the workforce' but the courts have interpreted it to mean that the employer must change the job functions performed by the employees or change the number of employees making up the workforce.

Employers should remember, however, that the normal employment law rules governing variations to contracts of employment continue to apply, and an employer cannot unilaterally change contractual terms.

### **Post-transfer harmonisation**

The BIS guidance emphasises that the courts have interpreted that a proposal to vary terms

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and conditions to achieve harmonisation will be seen as being by reason of the transfer itself. Therefore, an employer cannot rely on an ETO reason that would potentially validate the variation.

## **7 Unfair dismissal**

The Regulations provide that where, either before or after a transfer, an employee of the transferor or transferee is dismissed, the dismissal is automatically unfair if:

- the reason is the transfer itself; or
- the reason is connected with the transfer that is not an ETO reason entailing changes in the workforce.

Where there is an ETO reason entailing changes in the workforce, then the dismissal is not automatically unfair but is subject to the normal requirements on unfair dismissal.

## **8 Redundancy**

Under normal circumstances, redundancy will be an ETO reason for a dismissal in a TUPE situation, and therefore potentially a fair dismissal (subject to the normal rules on unfair dismissal).

## **9 Notification of employee liability information**

The Regulations require the transferor to provide the transferee with a specified set of information that will enable the transferee to understand the rights, duties and liabilities in relation to the transferring employees.

The information required is:

- the identity of the employees who will transfer;
- the age of those employees;
- information contained in the 'statement of particulars' for those employees (the information required by s.1 of the Employment Rights Act 1996);
- information relating to any applicable collective agreements;
- instances of disciplinary action within the preceding two years taken by the transferor in respect of those employees in circumstances where the [Acas Code of Practice on disciplinary and grievance procedures](#) applies;
- instances of any grievances raised by those employees within the preceding two years in circumstances where the Acas Code applies; and

- 
- instances of any legal action taken by those employees against the transferor in the previous two years, and instances of potential legal action that may be brought by those employees where the transferor has reasonable grounds to believe such actions might occur.

### **Timing of the information**

The information should be given at least two weeks before the transfer takes place. In special circumstances where it is not reasonably practicable to meet this deadline, the information must be supplied as soon as is reasonably practicable. The information may be given in instalments, as long as all of the information is provided and the two-week deadline is met. The information can be given by a third-party, for instance a local authority could pass the information from the existing contractor to the new contractor in circumstances where the contract is awarded to a new employer following a second-generation tender.

### **Information must be in writing**

The information must be provided by the transferor in writing, or in other forms that are accessible to the transferee. This would include electronic data, such as e-mail, so long as the transferee can access the information.

### **Changes to the information**

If any of the information changes between the time it is originally provided and the date of the transfer, the transferor is required to give the transferee written notification of the changes.

### **Remedy for failure to notify transferee**

If the transferor does not provide the employee liability information, the transferee can complain to an employment tribunal. If the complaint is upheld, a declaration to that effect will be made and the transferee will be awarded compensation for any loss that it has incurred because of the failure to provide the information. The level of compensation will be at least £500 for each employee for whom the information was not provided, unless it would be just and equitable to award a lower sum.

## **10 Informing and consulting with the affected workforce**

Both the transferor and transferee are under a duty to inform and in circumstances where “measures” are proposed to also consult with the appropriate representatives of the affected employees. The affected employees may also include employees who are not transferring, if the transfer will impact on them.

### **Measures**

The Regulations do not define ‘measures’ but they are normally taken to include proposals that the employer proposes to put in place, such as redundancies or a change in the workplace, even if the change does not result in a change to employees’ terms and conditions.

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## **Employee representatives**

Where the employer recognises a trade union in respect of the affected employees, the representatives will be the trade union representatives. Otherwise, the representatives will be other employee representatives already in place or representatives elected for the purpose of informing and consulting under the Regulations.

## **Informing**

Long enough before the transfer to allow consultation to take place with the employee representatives the employer must inform the representatives:

- that the transfer is going to take place, when it is proposed to take place and the reason for it;
- of the legal, economic and social implications for the affected employees; and
- of any measures that are proposed in connection with the transfer, and if none are proposed of that fact.

## **Consulting**

The Regulations provide that consultation must take place with a view to seeking the employee representatives' agreement to the intended measures. The employer must consider and respond to representations made by the representatives, and if they are rejected give the reason why.

## **Liability**

The transferor and transferee will be jointly and severally liable in respect of compensation awarded for any failure to inform and consult employee representatives.

Further details of the informing and consulting duties are in the [BIS guidance](#) to the Regulations.

## **11 Employers' liability compulsory insurance**

In circumstances where the transferor is either not required to, or is exempt from, holding insurance under the Employers' Liability (Compulsory Insurance) Act 1969 (the 1969 Act), the transferor and transferee will be jointly and severally liable for any personal injury liability that arises from an employee's employment with the transferor prior to a relevant transfer.

Under the 1969 Act, public bodies do not have a statutory duty to hold employers' liability insurance and, in circumstances where the transferor is a public body that does not carry such insurance, this provision means that a claimant who is injured before the transfer can choose whether to bring a claim against either the transferor or the transferee.

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## 12 Legislation

EC Acquired Rights Directive 2001/23/EC

Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

## 13 Sources of Information

### **BIS guidance**

The Department for Business, Innovation and Skills (BIS) has published general guidance on the Regulations. Although it should not be regarded as a complete statement of the law, it does provide practical guidance to help employers and employees understand the provisions. For guidance to the regulations governing the transfer of undertakings please see the BIS website at:

[Employment rights on the transfer of an undertaking: a guide to the 2006 TUPE regulations for employees, employers and representatives](#)

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## Appendix 2

# Guidance letter on interim appointments of Directors of Public Health

4 January 2012



**Gateway reference:** 16964

Richmond House  
79 Whitehall  
London  
SW1A 2NS

TO:

All chief executives in local authorities in England  
All chief executives in primary care trust clusters  
All chief executives in strategic health authority clusters



CC:

All directors of public health in England  
All strategic health authority cluster directors of public health in England (regional directors of public health)  
All HR directors in local authorities in England

Local Government House  
Smith Square  
London  
SW1P 3HZ

Dear colleague,

### **Director of public health appointments**

This letter provides advice and support to local areas on appointing Directors of Public Health to vacant posts in upper tier and unitary local authority areas and on transferring those already in post from the NHS.

#### **Directors of Public Health in local government**

Subject to the passage of the Health and Social Care Bill, from 1 April 2013 upper tier and unitary local authorities will take on critical new functions in public health. To enable them to exercise these functions local authorities will employ Directors of Public Health and the appointment process will be undertaken jointly with the Secretary of State. Public Health England, an Executive Agency of the Department of Health, will take on this role on behalf of the Secretary of State.

#### **Appointing to vacant posts (during transition period up to 1 April 2013)**

External professional assessment and advice provided by the Faculty of Public Health is a central component of senior public health appointments. The system already in place for jointly appointing Directors of Public Health is the most efficient way of assuring the necessary technical and professional skills during the transition period as well as in the future when

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appointments are made jointly with Public Health England. It will ensure that Directors of Public Health can promote, improve and protect health and that local government can provide high level, credible, peer-to-peer advice to the NHS in relation to health services. The information in Annex A provides information on the best way of doing this. All appointments should pay due regard to the Equality Act 2010.

To ensure appointments are fit for purpose in the future, we recommend that all appointments made during the transition period (up to 1 April 2013) reflect the anticipated changes set out in the most recent policy statements on the role of the Director of Public Health in local government from 1 April 2013.

After Royal Assent, the Government intends to issue statutory guidance on the responsibilities of Directors of Public Health, in the same way that guidance is currently issued for Directors of Children's Services and Directors of Adult Services. Whilst the organisation and structures of individual Local Authorities is a matter for local leadership, we are clear that these legal responsibilities should translate into the Director of Public Health acting as the lead officer in a local authority for health and championing health across the whole of the authority's business. This means that we would expect there to be direct accountability between the Director of Public Health and the Local Authority Chief Executive for the exercise of the Local Authority's public health responsibilities and that they will have direct access to Elected Members.

A template job description for the new role of Directors of Public Health in local government has been developed by the Faculty of Public Health, which defines the necessary core technical and professional competencies ([http://www.fph.org.uk/job\\_descriptions](http://www.fph.org.uk/job_descriptions)). Of course, local authorities may wish Directors of Public Health to take on tasks in addition to the essential technical and professional responsibilities set out in this sample job description and may wish to develop their own.

We would expect Local Authorities to want to make early progress in appointing to a current vacancy and to do this in agreement with their Primary Care Trust cluster to ensure it can continue to fulfil its statutory public health duties until 2013.

### **Transfer of Directors of Public Health to local government**

While the Health and Social Care Bill sets out that Directors of Public Health are transferring to local government and NHS structures are changing, the role of the Director of Public Health as the professional adviser to the local authority and NHS on improving and protecting health and advising on health services remains a constant.

We would expect local areas to be moving forward already with developing their arrangements for public health in the transition year in line with their Joint Strategic Needs Assessment and the new role for local government, recognising that the Health and Social Care Bill has not yet received Royal Assent and that more information will become available early in 2012.

The approach to managing the transition period has been set out in the Operating Framework

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for the NHS in England 2012-2013. The NHS will be accountable for delivering a successful public health transition and it will need to do so in co-production of the new system with local authority colleagues.

Each Primary Care Trust cluster is required to have an integrated plan, submitted through its Strategic Health Authority cluster to the Department of Health by the 5 April 2012, which reflects the outcomes of the local Joint Strategic Needs Assessment, and ensures the public health transition elements have been developed with local authorities. Strategic Health Authority clusters are responsible for assuring Primary Care Trust cluster plans and are required to produce submissions to DH based on early drafts by the end of January 2012 with final submissions by the 5 April deadline.

The Public Health Human Resources Concordat provides the framework for moving forward with planning for 2012-2013. We expect the transition year to be a period of significant development in establishing the new arrangements for public health in local government using the partnership and HR mechanisms that already exist.

**Guidance on appointing Directors of Public Health jointly with Public Health England (from April 2013)**

The Department of Health will publish further guidance, developed in partnership with local government, on the process for local authorities to appoint Directors of Public Health jointly with Public Health England from 1 April 2013, building on the approach outlined in this letter.

Yours sincerely



**Professor Dame Sally C Davies**

Chief Medical Officer, Department of Health



**Carolyn Downs**

Chief Executive Local Government Association

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## **Annex A**

### **Appointing a Director of Public Health**

Directors of Public Health are already joint appointments between the NHS and local government in the majority of areas and have a strong history of working in partnership to improve and protect the health of people locally and tackle the health inequalities that many experience. They provide an essential role in advising on and managing the health services required to achieve those goals.

Current policy statements outline the intention to build a new, enhanced locally-led twenty-first century public health service. The role of the Director of Public Health in local government is central to that.

#### **Faculty of Public Health assessment and advice**

External professional assessment and advice provided by the Faculty of Public Health provides the assurance that Directors of Public Health, as well as their public health consultant colleagues, have the necessary technical and professional skills required to promote, improve and protect health and provide high level, credible, peer-to-peer advice to the NHS about public health in relation to health services.

The existing processes that are in place for senior public health appointments set out by the Faculty of Public Health provide a robust, tried and tested method for providing assurance of technical and professional skills of Directors of Public Health ([http://www.fph.org.uk/senior\\_public\\_health\\_appointments](http://www.fph.org.uk/senior_public_health_appointments)).

#### **New role in local government**

The current policy statements anticipating the new role in local government, particularly the suite of Public Health Reform Updates, provides the information to ensure appointments are fit for purpose for the future.

#### **Multidisciplinary public health**

The majority of Director of Public Health posts are open to applicants from a variety of professional public health backgrounds both medical and non-medical. The Faculty of Public Health process reflects the multidisciplinary nature of these posts and is consistent with current statutory regulations for the appointment of NHS medical Consultants in the UK (see Department of Health's Good Practice Guidance, January 2005).

#### **The role of Strategic Health Authority Cluster Directors of Public Health**

Strategic Health Authority Cluster Directors of Public Health play an important role in providing advice and support to local areas with their appointments and will play a key role in linking to Public Health England and the process of appointing Directors of Public Health in the future.

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## **Job description**

The Faculty of Public Health provides essential advice on the draft job description, draft advert and person specification and we recommend you contact them at an early stage to benefit from this.

The Faculty of Public Health provide a template job description that sets out the professional and technical competencies ([http://www.fph.org.uk/job\\_descriptions](http://www.fph.org.uk/job_descriptions)). Sharing your local job description with the Strategic Health Authority cluster Director of Public Health and the Faculty of Public Health Adviser is good practice. It will provide you with assurance that it covers all necessary areas of professional and technical competence although clearly there may be additional responsibilities outside of these areas. An email list of Faculty Advisers is available from the Faculty Office ([aac@fph.org.uk](mailto:aac@fph.org.uk)).

## **Advertising the post**

Reaching relevant professional audiences is important in local recruitment search strategies. Currently it is customary for senior public health positions to be publicised in national journals and internet sites familiar to those professionals, such as the British Medical Journal and Health Services Journal. Local areas will need to consider carefully how to communicate vacancies to both medical and non-medical public health professionals working at a senior level to attract the best candidates for its Public Health Chief Officer.

## **The Advisory Appointments Committee**

The Advisory Appointments Committee is a widely recognised, tried and tested method of recruiting to senior public health appointments and is consistent with the process for medical NHS Consultants ([http://www.fph.org.uk/senior\\_public\\_health\\_appointments](http://www.fph.org.uk/senior_public_health_appointments)). It ensures independent professional advice to organisations making senior professional appointments and appropriate representation at a senior level of key partners that contribute to health improvement, protection and services. Good practice guidance on the NHS (Appointment of Consultants) Regulations 1996 applies to appointments in Primary Care Trusts and Strategic Health Authorities until 1 April 2013.

An Advisory Appointments Committee would usually be chaired by a lay member such as a local authority elected member, for example the cabinet member of the Health and Wellbeing Board, and include external Faculty of Public Health assessors from both public health medicine and a professional background other than medicine. It should ideally also include the following:

- the Chief Executive of the local authority or his/her nominated deputy who will be a Board level executive or who normally deputises as a senior manager for the Chief Executive;
- senior NHS representation, currently the Chief Executive of the Primary Care Trust Cluster or his/her nominated deputy who will be a Board level executive or associate director who normally deputises as a senior manager for the Chief Executive;

- 
- the Strategic Health Authority cluster Director of Public Health or his/her nominated deputy (and in future his/her equivalent in Public Health England);
  - and, in the case of appointments to posts which have either teaching or research commitments, or both, the committee should also include a professional member nominated after consultation with the relevant university.

### **Specialist registration**

All Directors of Public Health are required to be registered with an appropriate specialist register (GMC Specialist Register/GDC Specialist List in Dental Public Health/UK Public Health Register) before they can take up an appointment as a Consultant in Public Health. Non-medical candidates are usually on the Voluntary UK Public Health Register.

Currently those who are on the GMC or GDC Specialist Registers are eligible for appointment under NHS terms and conditions for medical Consultants. Currently those who are on the UK Public Health Register (UKPHR), who are not medically qualified, are eligible for NHS Agenda for Change or Local Authority Senior Managers terms and conditions. Directors of Public Health are eligible for director level NHS remuneration.

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**For more information please contact**

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