EXPLANATORY MEMORANDUM TO

THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TRANSFER OF PUBLIC HEALTH ENGLAND STAFF) REGULATIONS 2021

2021 No. 975

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is being made to effect the transfer of certain public health staff from Public Health England (PHE), an executive agency of DHSC, into the NHS Commissioning Board, known as "NHS England" (NHSE) and the Health and Social Care Information Centre, known as "NHS Digital" (NHSD). As part of the restructuring of public health provision in England, PHE is to be dissolved with its functions transferring to various bodies, including NHSE and NHSD. From 1st October 2021, staff working within the divisions of PHE listed in the Schedule to this instrument will transfer to the organisation corresponding to that division in the Schedule. The purpose of this instrument is to transfer the relevant staff contracts to those organisations with continuity of employment, and to provide protection of existing terms and conditions of employment for the staff affected.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Scotland.

4.2 The territorial application is the same as its extent.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument is a necessary consequence of the Government's decision to restructure public health provision in England, including the dissolution of PHE and the establishment of a new DHSC executive agency: the UK Health Security Agency (UKHSA). As part of that restructuring, certain functions of PHE are to be transferred to NHSE and NHSD ("the receiver organisations"), with others to be carried out by the UKHSA or otherwise remaining within DHSC. The Government is committed to ensuring that any staff affected by the restructuring should transfer with the protection of their current terms and conditions and continuity of service.

6.2 If the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) had applied, the contracts of employment and continuity of service of the staff covered by this instrument would transfer by operation of law to the receiver organisations. However, DHSC's view is that TUPE does not apply. This instrument is made under section 38 of the Employment Relations Act 1999, to make provision similar to TUPE, so as to ensure that staff are given comparable protections to other staff affected by the restructuring. In addition to protection for continuity of service and terms and conditions of employment, the TUPE (regulation 13) provisions about informing and consulting with staff representatives are applied.

6.3 As with TUPE regulation 10, this instrument does not transfer contractual occupational pension entitlements (where those entitlements relate to benefits for old age, invalidity or survivors). The receiver organisations will ensure that appropriate pension options are available for staff.

7. Policy background

What is being done and why?

7.1 In August 2020, the Prime Minister announced the Government's intention to reform the core institutions that lead public health nationally. These changes are driven by learning from the experiences of COVID-19, but more broadly by the need to ensure we have a public health system fully fit for the future. The threats we face in future will be different. So too will the opportunities to do more about them.

7.2 The Government's reforms to the public health system in England will ensure our national health protection capabilities are equipped for the future, put health promotion at the heart of government, and more deeply embed prevention and health improvement expertise across local and national government and the NHS.

7.3 By the 1st October:

7.3.1 the health protection capabilities of PHE and NHS Test & Trace (currently part of DHSC) will be carried out by the UKHSA – an executive agency of DHSC;

7.3.2 a new Office for Health Improvement and Disparities will sit within DHSC incorporating PHE's functions that directly support national health improvement policy; and

7.3.3 the rest of PHE's health improvement and healthcare public health functions will move to NHSE and NHSD.

7.4 These regulations are concerned with the transfer of staff from PHE to NHSE and NHSD ("the receiver organisations").

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 Staff affected by the abolition of PHE, and their Trade Union representatives, are being consulted by PHE (collectively and individually) from 30th June to 31st August 2021. Part of those consultations includes the use of this instrument to securely transfer the relevant staff to the receiver organisations. It is an agreed priority that all PHE staff transfer with continuity of employment preserved and on their existing terms and conditions.

11. Guidance

11.1 There is no guidance associated with this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This instrument is being made to secure the transition of staff with functions moving from PHE to the receiver organisations on 1st October 2021. Monitoring and review of the effectiveness of the reforms and consideration of any subsequent needs for changes in staffing functions will take place in the coming months where we will be clearer if any alternative arrangements need to be put in place to manage this.

15. Contact

15.1 Paul Jenkins at the Department of Health and Social Care - Telephone: 0207 210 4393 or email: paul.jenkins@dhsc.gov.uk - can be contacted with any queries regarding the instrument.

15.2 Simon Reeve, Deputy Director for Public Health Systems and Strategy, at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

15.3 Jo Churchill MP, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.