



National Health Service in Scotland
Management Executive

St. Andrew's House
Edinburgh EH1 3DG

Dear Colleague

DRAFT CONSULTATION DOCUMENT ON
COMMUNITY CARE STAFF TRANSFER
REGULATIONS

Summary

1. This letter seeks comments on draft regulations dealing with the transfer of NHS staff to local authority employment in connection with community care.

Comments are requested by 27 November 1992.

Action

2. The policy of Care in the Community is designed to enable people to live in their own homes and communities as far as possible. An important component of this policy is that certain patients accommodated in hospitals should be able to live in the community, and that inappropriate admissions to institutional care should be prevented. The introduction of this community care policy will lead to circumstances where it would be appropriate for staff to transfer from NHS employment to the employment of a local authority. Statutory power to make regulations in connection with such transfer is set out in the National Health Service and Community Care Act 1990.

3. This letter seeks any views you may have on the draft Regulations prepared, a copy of which is attached. I would be most grateful to receive any views you may have by 27 November 1992.

4. It should be noted that it is not the Regulations themselves which transfer the staff. The purpose of the Regulations is to ensure continuity of employment (and accordingly secure rights which flow from continuity of employment) where an NHS employee, dismissed by reason of redundancy, accepts an offer of suitable alternative employment by the local authority providing the relevant community care services. In such circumstances no entitlement to redundancy benefit will arise. Where an NHS employee is offered suitable alternative employment by the local authority and refuses to accept, that person will also not be entitled to redundancy benefits arising out of the dismissal.

9 November 1992

Addressees

For action:

General Managers,
Health Boards

General Manager
Common Services Agency

General Manager, State
Hospital

General Manager,
Health Education Board
for Scotland

Unit General Manager

For information:

Chief Executives and
Chief Executive
Designate, NHS Trusts

To be copied to:

Personnel Officers

Enquiries to:

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Manpower Directorate
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STATUTORY INSTRUMENTS

1992 No. (S.)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Transfer of Officers and Servants to Local Authorities) (Scotland) Regulations 1992

<i>Made</i>	1992
<i>Laid before Parliament</i>	1992
<i>Coming into force</i>	1992

The Secretary of State, in exercise of the powers conferred on him by sections 105(7) and 108(1) of, and paragraph 8A of Schedule 1, paragraph 8A of Schedule 5 and paragraph 17 of Schedule 7A to, the National Health Service (Scotland) Act 1978(a) and of all other powers enabling him in that behalf, having consulted such bodies and organisations as appeared to him to be concerned as required by paragraph 7C of Schedule 1, paragraph 8B of Schedule 5 and paragraph 19 of Schedule 7A to the said Act of 1978(b), hereby makes the following Regulations:

(a) 1978 c.29; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24; section 108(1) contains a definition of "regulations" relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 8A of Schedule 1 and paragraph 8A of Schedule 5 were inserted by the National Health Service and Community Care Act (c.19) ("the 1990 Act"), Schedule 5, paragraphs 6 and 12 respectively and paragraph 17 of Schedule 7A was inserted by the 1990 Act, Schedule 6.

(b) 1978 c.29; paragraph 7C of Schedule 1 and paragraph 8B of Schedule 5 were inserted by the 1990 Act, Schedule 5, paragraphs 5 and 12 respectively and paragraph 19 of Schedule 7A was inserted by the 1990 Act, Schedule 6.

5. The Regulations make a similar provision, where the person concerned subsequently transfers within 2 years from the local authority to NHS employment by reason of redundancy from the local authority. As presently drafted, the Regulations provide for the offers of suitable alternative employment to be made in the 2 sets of circumstances no later than 4 weeks after the date on which dismissal takes effect.

6. For the purpose of these Regulations "suitable alternative employment" means employment that is suitable in relation to an officer as respects the capacity, location and the other terms and conditions on which employment is proposed. It will be for the relevant Health Board to assess, in conjunction with the relevant local authority, whether the Regulations apply to a person who is being transferred.

7. The Regulations only apply to the transfer of staff to a local authority. The Secretary of State has no powers to make Regulations in connection with the transfer of staff to employers other than local authorities. Accordingly these Regulations apply to any staff groups who can be employed by a local authority for the purposes of community care such as Administrative and Clerical, PAMs and Auxiliary staff. Local authorities cannot, however, employ doctors or nurses for the purposes of community care and these Regulations do not apply to them.

8. This letter should be copied to Personnel Officers for information.

Yours sincerely

A handwritten signature in cursive script that reads "A J Matheson". The signature is written in dark ink and is positioned above a solid horizontal line.

A J MATHESON
Director of Manpower

- (i) dismissed by reason of redundancy by that National Health Service body; and
 - (ii) offered [no later than 4 weeks after the date on which that dismissal takes effect] suitable alternative employment by the local authority providing the relevant community care services;
- (b) an officer to whom these Regulations applied by virtue of paragraph (a) above where—
- (i) he has accepted an offer of suitable alternative employment in the circumstances described in that paragraph and, within a period of 2 years after the date of acceptance of that offer, he is dismissed by reason of redundancy by the local authority which made the offer; and
 - (ii) he is offered [no later than 4 weeks after the date on which that dismissal takes effect] suitable alternative employment by a National Health Service body.

Continuity of employment

4. Where an officer to whom these Regulations apply accepts an offer of suitable alternative employment as described in paragraph (a) or (b) of regulation 3 above, and is transferred to employment by a local authority or, as the case may be, a National Health Service body, then for the purposes of the Employment Protection (Consolidation) Act 1978, the period of employment with—

- (a) in the case referred to in regulation 3(a) above, the National Health Service body;
- (b) in the case referred to in regulation 3(b) -
 - (i) |the National Health Service body from whom he was transferred; and
 - (ii) |the local authority to whom he was transferred,

shall count as a period of employment with the local authority or, as the case may be, the National Health Service body to whose employment he is transferred, and the transfer shall not break the continuity of the period of employment.

Entitlement to redundancy benefits

5. Where an officer to whom these Regulations apply does not accept an offer of suitable alternative employment as described in regulation 3(a)(ii) or (b)(ii) above, that officer shall

Citation and commencement

1. These Regulations may be cited as the National Health Service (Transfer of Officers and Servants to Local Authorities) (Scotland) Regulations 1992 and shall come into force on 1992.

Interpretation

2. For the purposes of these Regulations, the following expressions shall have the meanings ascribed to them unless the contrary intention appears:—

“the Agency” means the Common Services Agency for the Scottish Health Service;

“community care services” has the meaning indicated by section 5A(4) (local authority plans for community care services) of the Social Work (Scotland) Act 1968(a);

“dismissed by reason of redundancy” means dismissed in any of the circumstances set out in section 81(2) of the Employment Protection (Consolidation) Act 1978(b);

“National Health Service body” means a Health Board, the Agency or an NHS trust;

“officer” includes servant;

“suitable alternative employment” means employment that is suitable in relation to an officer as respects the capacity and location in which it is proposed that he be employed and as respects the other terms and conditions on which it is proposed that he be employed.

Application of the Regulations

3. These Regulations apply to an officer in the following cases:—

- (a) an officer of a National Health Service body who, in connection with arrangements relating to community care services, is—

(a) 1968 c.49; section 5A was inserted by the 1990 Act, section 52.

(b) 1978 c.44.

not be regarded as entitled, in connection with the dismissal referred to in regulation 3(a)(i) or, as the case may be, regulation 3(b)(i) above, to any benefit in connection with redundancy arising out of that dismissal, whether that benefit arises by virtue of or under any enactment or by virtue of the terms and conditions of his employment.

Minister of State,
Scottish Office

St Andrew's House,
Edinburgh

1992

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the continuity of employment of officers and servants of Health Boards, the Common Services Agency for the Scottish Health Service ("the Agency") or NHS trusts who are transferred to employment by local authorities in connection with arrangements relating to community care services provided by these authorities under Part II of the Social Work (Scotland) Act 1968 or section 7, 8 or 11 of the Mental Health (Scotland) Act 1984.

The Regulations also make provision for continuity of employment where the officer or servant subsequently transfers within 2 years from the local authority to a Health Board, the Agency or an NHS trust by reason of redundancy from the authority.

Where an officer or servant is offered suitable alternative employment by the local authority and refuses to accept, that person will not be entitled to redundancy benefits arising out of the dismissal. An officer or servant who had been transferred to a local authority and, within 2 years, is dismissed by reason of redundancy would not be entitled to redundancy benefits if he refused an offer of suitable alternative employment with a Health Board, the Agency or an NHS trust.