



National Health Service in Scotland  
Management Executive

St. Andrew's House  
Edinburgh EH1 3DG

Dear Colleague

**COMPETITIVE TENDERING  
TRANSFER OF UNDERTAKINGS (PROTECTION OF  
EMPLOYMENT) REGULATIONS 1981 (TUPE)**

**Summary**

1. This letter is to inform you that we are seeking legal advice on the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) to health service contracts let to a private contractor with a view to issuing further guidance.

**Background**

2. As you may be aware from recent press reports, there is some doubt as to whether TUPE Regulations and the EC Directive on which it is based, applies to NHS services which are contracted out after market testing to a commercial undertaking. The current guidance in the NHS on market testing makes no reference to these regulations. We are therefore seeking legal advice on the application of these regulations to health service contracts.

3. The Confederation of Health Service Employees (COHSE) have challenged South Glamorgan Health Authority on the question of whether the Transfer of Undertakings (Protection of Employment) Regulations 1981 applied to 2 catering contracts which the Authority awarded to Gardner Merchant. They have made an application for a judicial review of the health authority's proposed action.

4. The TUPE Regulations provide that where an undertaking in the nature of a commercial venture is transferred from one person to another then that transfer does not operate so as to terminate the contract of employment of any person employed by the transferor in the undertaking. Any such contract of employment which would otherwise have been terminated by the transfer has effect after the transfer as if originally made between the employee and the transferee. The Regulations implement the EC Acquired Rights Directive EC77/187.

11 December 1992

**Addressees**

**For action:**

General Managers,  
Health Boards

Chief Executives and  
Chief Executive  
Designate,  
NHS Trusts

To be copied to  
Unit General  
Managers for  
action.

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