

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 11 – Miscellaneous

Transfer schemes

Section 300 – Transfer schemes

1534. This section enables the Secretary of State to establish schemes to transfer staff or property, rights and liabilities from one body to another, in connection with the establishment, modification or abolition of a body by the Act. For example, the schemes may transfer property currently held by a PCT (which are being abolished by the Act) to a CCG; or transfer staff currently involved in the provision of public health commissioning from a PCT to a local authority.
1535. *Subsection (1)* allows the Secretary of State to establish transfer schemes for property or staff.
1536. *Subsection (2)* defines a property transfer scheme and sets out the organisations or bodies that may transfer or receive property under these schemes. Property transfers can be made from the bodies listed in column 1 of the table in Schedule 22 (property transfer schemes) to a body listed in the corresponding entry in column 2 of that table.
1537. *Subsection (3)* defines a staff transfer scheme and sets out the organisations or bodies that staff may be transferred from or to under these schemes. Staff transfers can be made from the bodies listed in column 1 of the table in Schedule 23 (staff transfer schemes) to a body listed in the corresponding entry in column 2 of that table.
1538. *Subsection (4)* allows the Secretary of State to direct the NHS Commissioning Board or a “qualifying company” to exercise the Secretary of State’s functions and make staff or property transfer schemes in connection with the abolition of one or more PCTs or SHAs. A qualifying company is a company defined for these purposes in *subsection (8)* as wholly or partly owned by the Secretary of State or the NHS Commissioning Board and formed under section 223 of the NHS Act, for the purpose of providing facilities or services to the NHS, or a subsidiary of a company formed under that section and wholly owned by the Secretary of State. Such a company could be used, for example, as an intermediate solution to hold PCT property before it is transferred to, for example, local authorities, consenting persons or public authorities providing services as part of the health service in England, or CCGs. Section 223 has been used by Secretary of State in the past to set up a number of companies to offer services to the NHS, such as NHS Professionals Limited, Bio Products Laboratory Limited and Community Health Partnerships Limited (the LIFT delivery company).
1539. *Subsection (5)* allows the Secretary of State to give directions to the NHS Commissioning Board or to qualifying company about how to do this.

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

1540. *Subsection (6)* makes provision as to how individuals employed by the civil service are to be treated for the purposes of transfer schemes under section 300 and section 301.
1541. *Subsections (7), (8) and (9)* cover definitions, including defining a “qualifying company” and clarifying that a transfer of property includes the grant of a lease.

Section 301 – Transfer schemes: supplemental

1542. This section makes additional provision relating to the transfer schemes made under section 300. It sets out in more detail what may be transferred, and how it may be done - for example, it enables transfer schemes to make provision about the shared use of property transferred.
1543. *Subsection (1)* makes provision about what may be transferred by a staff or property transfer scheme.
1544. *Subsection (2)* sets out the bodies to whom criminal liabilities can be transferred.
1545. *Subsection (3)* allows property or staff transfer schemes to make supplementary, incidental, transitional or consequential provisions associated with the transfer of staff or property. For example, a covenant could be placed on property transferred under a transfer scheme to require it to be used for healthcare purposes.
1546. *Subsection (4)* allows property transfer schemes to make provision for shared ownership or use of property.
1547. *Subsection (5)* allows staff transfer schemes to make the same or similar provisions to the Transfer of Undertakings (Protection of Employment) Regulations. *Subsection (8)* defines “TUPE regulations”.
1548. *Subsection (6)* allows transfer schemes to be modified by agreement once they come into operation.
1549. *Subsection (7)* requires the Secretary of State to ensure that all property, rights and liabilities of a PCT, SHA or Special Health Authority covered by a transfer scheme are transferred.

Section 302 – Subsequent property transfer schemes

1550. This section allows any property, rights or liabilities initially transferred from a PCT, SHA or the Secretary of State to a Special Health Authority or a qualifying company, to be subsequently transferred to one of the organisations listed in Schedule 22 to this Act.
1551. *Subsection (2)* allows the Secretary of State to establish such subsequent transfer schemes. *Subsection (3)* ensures that the supplemental provisions for transfer schemes apply in the same way as for other property transfer schemes.