



Human Resources (HR) Transition Framework

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Document Purpose	Best Practice Guidance
Gateway Reference	15981
Title	HUMAN RESOURCES (HR) TRANSITION FRAMEWORK DOCUMENT
Author	HR Strategy Group (DH, ALB and NHS in consultation with representatives from trades unions)
Publication Date	06 Jul 2011
Target Audience	PCT CEs, NHS Trust CEs, SHA CEs, Foundation Trust CEs , PCT Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR
Circulation List	Trade unions, CEs of Local Authorities
Description	The HR Transition Framework provides the overarching guiding standards for the Department, NHS and Arm's Length Bodies (ALBs) relating to the movement of employees between the new or changed bodies proposed in the Health and Social Care Bill 2
Cross Ref	N/A
Superseded Docs	N/A
Action Required	NHS Chief Executives will wish to consider and discuss with human resource directors the implications this document has for local organisations and their HR arrangements.
Timing	N/A

Human Resources (HR) Transition Framework

First published: July 2011

Prepared by: HR Strategy Group

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1. Purpose

1.1 The proposed health and social care reforms will lead to the creation of a number of new key bodies, along with changes to, or the abolition of, other NHS and arm's length body (ALB) employers, as well as changes to the Department of Health (DH). This document outlines the principles applying to the HR and employment processes supporting the potential transfer of functions and roles and appointments to the new and affected bodies, and is part of the ongoing national HR guidance, covering NHS, DH and ALB staff, that we agreed to publish to support the implementation of the reforms.

1.2 The HR Transition Framework provides the guiding standards relating to employee movement from 'sender' (current) to 'receiver' (new or changed) organisations at a national and sub-national level. This document is intended to ensure consistency in the handling of employee matters going forward, and will evolve through the transition process. In addition, receiver organisations will be expected to produce their own People Transition Policies setting out how they will apply the Framework guidance as they establish their new organisations. This Framework primarily affects employees in transition between senders and receivers in the key employer groups; these are the NHS, the ALBs and the DH. A list of the sender and receiver organisations is provided at Annex A.

1.3 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. The new NHS, DH and ALBs will all require new skills and competencies.

1.4 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.

2. Scope

2.1 It is important that employees and their managers are clear about the arrangements that are being set in place to support and engage them at national, regional and local level, how these fit together and how they will be engaged at employer level. This national HR Transition Framework should be used to guide all transfer, selection and appointment activities. It has been developed and agreed (and in the future will be maintained and updated by) the national HR Strategy Group in conjunction with the national HR Transition Partnership Forum¹.

¹ The national HR Transition Partnership Forum brings together officials from DH, SHAs, NHS Employers, and trade unions representing staff in the NHS, Arms Length Bodies and the DH.

2.2 Separate employer group frameworks cover employees affected by change within the NHS, DH and across ALBs respectively as follows:

- **for the NHS**, each Strategic Health Authority has a regional HR or Employment Framework in place, developed and overseen by the appropriate regional Social Partnership Forum (SPF). Each of these frameworks has been checked for consistency of approach and will be maintained in place under successor arrangements to be established before the proposed abolition of SHAs in 2013.
- **for the DH and the ALBs**, HR Frameworks have been made available separately.

2.3 To confirm the scope and relationship between the different current HR Framework documents, the following guiding principles have been agreed:

- the current DH, ALB and regional NHS HR Frameworks deal with the arrangements for handling employees affected by change or at risk of redundancy and potentially in scope for transfer to new roles within sender or receiver organisations. These individual frameworks should be consulted for more specific guidance, and any queries should be raised with the current employer
- this national **HR Transition Framework** provides generic guidance covering the employment and HR processes throughout the transition, as well as setting out specific requirements for the receiver organisations listed at Annex A. It is recognised that employees may be affected in different ways depending on the functions within which they are employed and the roles they undertake. This Framework is intended to help provide consistency during the transition as well as encouraging best HR practice throughout
- further national guidance may be issued as required to support the transition. For example, a proposed concordat is currently being developed to support the Public Health transition. Any further guidance issued will reflect the standards, principles and key content of this HR Transition Framework
- for each new receiving organisation, listed in Annex A, People Transition Policies should be produced to set out how affected employees will be incorporated from different senders into the new employer, and the arrangements that should apply to them post-transfer. This will be the responsibility of each of the receiving employers and the People Transition Policies will be published in due course
- this HR Transition Framework is designed to support and be complementary to regional and local employer policy for dealing with organisational change. In the event of a potential conflict between this HR Transition Framework document and other regional or local policies, it may be necessary to refer the issue to the national HR Transition Partnership Forum for advice on achieving a resolution.

2.4 These changes will be taking place against a background of significant ongoing management and running cost reductions within current organisations. The running costs for all of the new organisations have yet to be confirmed. It is vital that the appropriate and necessary skills are retained wherever possible during transition and that the costs of change are minimised, including the costs of redundancy.

3. Objectives

3.1 This HR Transition Framework has the following objectives:

- to support the successful establishment of the new organisations
- to support business continuity during the transition
- to retain, as well as to support and develop employees, wherever possible
- to outline the generic HR principles and processes required to support consistency and encourage best practice
- to support value for money and minimise redundancy costs
- to advance equality and promote diversity
- to promote effective partnership working with trade unions.

3.2 This Framework provides information for employees, managers, trade unions and HR professionals in each of the following areas which are covered in the following sections of this document:

- the overarching transitional principles
- the responsibilities of sender and receiver organisations and employees
- the arrangements for determining which business functions and employees are in scope to transfer to the new organisations.
- the arrangements for determining priority pooling arrangements between sender and receiver organisations
- equality and diversity.

4. Overarching HR Transition Principles

4.1 The agreed HR Transition Principles that should apply throughout are to:

- 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
- promote 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, the DH or ALBs are supported and treated with dignity and respect
- use the transition process to enable shared learning and career opportunities between the DH, the NHS and the ALBs wherever possible.

4.2 It will be the responsibility of individual employers to ensure that the HR Transition Principles are applied and adhered to, and national monitoring of application and adherence will be overseen by the HR Strategy Group.

5. Responsibilities of sender and receiver organisations and employees

5.1 **Sender organisations** will be expected to provide practical and timely support to employees throughout the transition period in order to enable them to best prepare and position themselves for opportunities that may arise. In addition, they should:

- continue to ensure that regular opportunities are provided for employees to discuss the changes and the impact they may have
- ensure that practical support is provided to employees, as detailed in sections 5.3 to 5.5 below
- ensure that employees are provided with the necessary time to enable them to access this support
- ensure that data on their current workforce, and any movement of employees, is collected throughout the transition period
- ensure that arrangements are in place to support the redeployment as necessary of displaced employees.

5.2 Where functions are transferring, both the receiving and sending organisations have a legal responsibility to inform and consult employees in transfer or potential transfer situations. Equally, in any potential redundancy situation, employers have statutory obligations to inform and consult employees and trade unions. In some cases, these information and consultation duties may take place simultaneously. Each employer should take independent legal advice on these matters.

5.3 Information, support and advice should be provided to employees by sending organisations in an accessible form under three key headings as follows:

‘Taking control’ – helping employees to help themselves

- using 1:1 meetings, reviews and appraisal to identify key skills that may be in demand
- personal development – identifying areas of need and opportunities to address these
- preparing employees for change, including information on pensions and benefits

- providing opportunities to discuss the guidance to employees and managers outlined in Appendix A to the HR Annex², and providing support to employees to take these forward wherever possible
- providing a map of organisational changes, which are likely to impact on employees during transition and into potential new organisations.

5.4 'Managing Your Career'

- developing and using networking arrangements – supporting employees to develop and make use of formal and informal networks
- developing CVs and successful job applications
- accessing alternative employment opportunities
- accessing job search arrangements
- preparing for interviews.

5.5 'Dealing with Change'

- understanding personal responses to change
- identifying future opportunities (see 5.3 above)
- grievance and appeal arrangements.

5.6 The new **receiver organisations** have a unique opportunity to define a new organisational culture and to establish best practice HR arrangements from the outset, paying due regard to legislative requirements. All of the receiving organisations should work quickly, in partnership with trade unions which represent employees in sending and receiving organisations, to finalise and publish their proposed structures and produce their own People Transition Policies to cover the new organisational arrangements post-transfer. These activities will be conducted under the auspices of the HR Transition Partnership Forum. Each document should cover the following key areas:

- setting out how employees will be handled in accordance with best HR practice post transfer
- transfer arrangements in line with TUPE/COSOP (see 6.4 below) as appropriate
- pooling arrangements, selection standards, appointments processes and timetables, including consultation on TUPE/COSOP and the provision of information in respect of any measures it envisages taking post-transfer
- employee and trade union engagement and formal consultation arrangements
- supporting employees going forward
- arrangements for the redeployment of any employees displaced as a result of the transfer
- grievance and appeal mechanisms.

² Additional Annex to Sir David Nicholson's letter on 'Equity and Excellence: Liberating the NHS' – Managing the transition and the 2011/12 Operating Framework, 15 December 2010. Gateway Reference 15383. 'Appendix A: Influencing your own future'.

5.7 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 required. In due course, these should be finalised to form the basis on which appraisal and regular 1:1 discussions should be conducted.

5.8 Throughout the transition period, employees, with support from their managers, will be expected to avail themselves of opportunities to prepare and develop themselves for the future, and to request such support when it is not immediately available.

6. Determining which functions are in scope

6.1 The basis for determining which functions and employees are in scope to move between organisations will depend on the degree of fit between current and future functions and roles.

6.2 At a high level, the Functions and People Mapping exercise undertaken by employers will be used to inform the planning process and establish where current functions, roles and employees lie within sending organisations to help to identify the pattern of movement from sending to receiving organisations. The geographical location of current employees and organisations will also be provided in the mapping exercise with implications for employees identified.

6.3 Detailed scoping between sender and receiver organisations will be used to finalise the transfer of functions and employees.

TUPE and COSOP

6.4 Transfers between sender and receiver organisations will be guided by the legal requirements of the Transfer of Undertakings (Protection of Employment) Regulations (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 schemes if appropriate to do so. These powers support the principle expressed within COSOP of using a transfer scheme when COSOP applies. Any scheme 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 scheme. It should be noted that, other than in transfers covered by TUPE/COSOP and for accredited ALBs, limited competition for Civil Service posts at all levels is not available to staff on non-Civil Service terms, except through external open competition.

6.5 The law relating to transfers is complex. Each transfer is different and decisions are taken depending on the particular circumstances of the transfer. The broad legal principle underpinning transfers is that TUPE applies when there is a 'relevant transfer'. This may

include:

- a transfer of an undertaking, business or part of an undertaking or business; or
- a service provision change, where a contractor takes on a contract to provide a service for a client from another contractor.

6.6 When such a transfer or service provision change takes place, employees who are substantially performing the duties that are to be transferred in the undertaking or business, or delivering the service immediately before the transfer, would normally transfer to the new organisation, with their contractual terms, including continuity of service, protected (other than occupational pensions). 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.

6.7 Transfers should normally be managed as follows:

- identification of a direct mapping opportunity using the Functions and People map. This will determine the extent of the functions and employees to potentially transfer
- confirmation by receiver and sender organisations that the functions are substantively the same and therefore potentially in scope for a TUPE or TUPE-related transfer
- timely notification of the employees affected and consultation with the relevant trade unions at the earliest opportunity
- notification of transfer dates and new reporting arrangements.

7. Pooling arrangements

7.1 This section outlines the proposed pooling arrangements for:

- employees designated as at risk post-transfer
- employees at risk, affected by change or affected by the DH Business Shared Services Transition Programme or
- the filling of unfilled vacancies by employees currently employed in DH, ALBs, SHAs or PCTs.

It provides the guiding principles, qualifying criteria and process steps relating to employee movement from sender to receiver organisations at national and sub-national level.

7.2 For the sake of clarity, the following steps are presented in sequential order. It is recognised that in some situations, these processes may be running at different stages within an organisation at the same time, depending on the precise timing of the overall change programme, although every effort should be made to align job opportunities to organisational change. It is the view of all parties to this Framework that effective consultation and partnership working with trade unions, using relevant partnership arrangements, will help sending and receiving organisations to manage the sometimes complex change processes more effectively.

7.3 In addition, there may be exceptional circumstances in which it is necessary to proceed to external recruitment for some posts before all of the stages below have been exhausted. Such exceptional circumstances will occur where there is clear evidence that the skills and knowledge required for new posts is not available in the existing pools. In such cases, agreement to proceed on this basis should be sought in advance through the relevant partnership forum.

7.4 Step 1 – transfers

This section covers employees whose functions and posts are transferring into the receiving organisation.

- i. Where the functions and associated roles are substantively the same and where the overall number of posts at each level is unchanged, employees should be transferred into posts in the receiving organisation and their employment should transfer at the agreed transfer date.
- ii. Where the function transfer is confirmed under 6.1 – 6.3 above, but where the overall number of posts in the receiving organisation is lower, employees should transfer at the agreed transfer date and it will be the responsibility of the receiving employer, in accordance with any statutory requirements and best practice guidance, to determine the new structures and the specific appointment arrangements that will apply to the employees that have transferred in these circumstances (see the respective People Transition Policies). These employees may then be ring-fenced to compete for the limited posts as available within the receiving organisation. Where there are existing employees in the receiving organisation who are at risk of redundancy and performing the same functions, they may also be included within the ring-fence for these posts.
- iii. Transferred employees who are unsuccessful through the process referred to above should be given prior consideration for any suitable remaining vacancies (at their grade or equivalent) in the receiving organisation alongside any existing employees of the organisation who have already been placed 'at risk'.

7.5 Step 2 – limited ring-fencing

This section covers the appointment arrangements for any outstanding vacant roles in the receiving organisations, after Step 1 above has been completed. The vacancies remaining should be offered to the following groups of employees in the following priority order, which are subject to the restrictions outlined in 6.4 (for example, please refer to the Cabinet Office 'Efficiency and relocation support programme' – the protocol for handling surplus staff situations):

- i. employees who are formally at risk of redundancy from the NHS, DH or ALBs for whom the post may offer suitable alternative employment
- ii. any remaining vacancies should be made available to other NHS, DH or ALB employees who are affected by change.

7.6 Step 3 – wider ring-fencing

Any outstanding vacancies not filled through the steps set out in 7.4 and 7.5 above should be ring-fenced for all other employees in the DH, ALBs and the NHS to apply for through the agreed employer selection process. This will ensure that such potential opportunities for progression or development are brought to the attention of other DH, ALB and NHS staff before open competition takes place.

7.7 Step 4 – Open competition

Any posts that subsequently remain vacant after the steps set out in 7.4 to 7.6 above are exhausted should be advertised through the normal external recruitment processes of the organisation concerned.

7.8 As stated earlier, there may be exceptional circumstances in which it is necessary to proceed to external recruitment for some posts before all of the stages set out above have been exhausted, and this could occur at any of the four stages listed.

8 Equality and diversity

8.1 As stated earlier in 1.3, employers must comply with all relevant employment and equality 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.

8.2 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. 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.

8.3 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.

8.4 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.

9 Further advice and information

9.1 As explained earlier in this document, the current DH, ALB and regional NHS HR Frameworks deal with the arrangements for handling employees affected by change or at risk of redundancy and potentially in scope for transfer to new roles within sender or receiver organisations. These individual documents should be consulted for more specific guidance. In addition, any queries from employees about the application of this HR Transition Framework should be raised with their employer or Trade Union representative.

Annex A - Current sender and receiver organisations created and/or affected by the Health and Social Care Bill 2011

Senders:

Strategic Health Authorities

Primary Care Trusts

Department of Health

Arms Length Bodies

Receivers*:

NHS Commissioning Board

Monitor

Health Education England

Health Research Authority

NHS Trust Development Authority

Care Quality Commission (CQC)

National Institute for Health and Clinical Excellence (NICE)

Public Health England (Executive Agency of the Department of Health)

Healthwatch England (as part of the CQC)

Department of Health

**This Receivers list will be amended if and when new bodies are established that will be covered by this HR Transition Framework.*

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First published 7 July 2011

Published to Delphi, in electronic format only.

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