

**PUBLIC HEALTH ENGLAND PEOPLE TRANSITION POLICY
(MODULE 1):**

FREQUENTLY ASKED QUESTIONS

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PUBLIC HEALTH ENGLAND PEOPLE TRANSITION POLICY – MODULE 1: FREQUENTLY ASKED QUESTIONS (FAQs)

This series of Frequently Asked Questions (FAQs) has been developed to support module 1 of the Public Health England (PHE) People Transition Policy (PTP). The full PTP can be found at the following link:

<http://healthandcare.dh.gov.uk/phe.ptp/>

The FAQs cover a range of topics under the following sections:

- Section 1: General questions**
- Section 2: PHE leadership team**
- Section 3: Specific steps in the agreed HR transition policy / process:**
 - 3.1 Functions Mapping;**
 - 3.2 “Lift and shift”;**
 - 3.3 Job matching;**
 - 3.4 Redeployment;**
 - 3.5 New and unmatched posts**
- Section 4: Legal basis of transfer**
- Section 5: Terms and conditions**
- Section 6: Consultation**
- Section 7: Partnership working**

This set of FAQs will be updated on a frequent basis across the entire transition period, and they will be made available to all staff and sender/employer organisations. For ease of reference, some of the questions included here are taken from the FAQs that have been developed for the national guidance on the policy and process¹ for filling posts (these FAQs are indicated within this document by an asterisk [“*”]).

If you have any queries about any aspect of the topics covered in this document, or if you would like to propose new questions for inclusion within future FAQ packs, then please do contact us at:
phe_hr@dh.gsi.gov.uk

¹ www.hrtransition.co.uk

Section 1: General questions

Q1.1: What is the Public Health England People Transition Policy?

A: The Public Health England (PHE) People Transition Policy (PTP) sets out the agreed HR policies and processes for transferring staff from existing senders to the new organisation. It is based on the principles of the HR Transition Framework (published in July 2011, which provides the guiding standards relating to employee movement), and the nationally agreed guidance on filling posts in receiving organisations (published in July 2012). The PHE PTP also builds on the earlier statement *Building a People Transition Policy for Public Health England* (which was published in February 2012)².

The PHE PTP will be published as a modular series of series of factsheets:

- Module 1 sets the policy, process and timetable for handling the transfer, appointment and redeployment of staff from 'sender' organisations to the Public Health England
- Module 2 will set out the agreed framework for the terms and conditions of Public Health England staff.

Q1.2: Why are you only publishing module 1 of the Public Health England (PHE) People Transition Policy (PTP)?

A: Over recent months, we have been working with senders and partners to agree key aspects of the staff transition. There are a number of areas where work is still ongoing and which will be progressed across the summer. To avoid unnecessary delays in confirming important aspects of the PHE PTP we have decided to issue agreed details now.

So, in module 1, we are publishing what we can now on the agreed policy, process and timetable for staff transition, and we will continue to issue further modules as and when appropriate. We will endeavour to keep all colleagues informed as to the nature and content of future PTP modules, as well as other related PHE developments.

Q1.3: When will module 2 be published? What will the contents be? What do you mean by "agreed framework"?

A: We don't have a definite timeline yet for issue of module 2 but we expect it to be in September

The content will be focused on the details of what transferring to PHE will mean to your terms and conditions. It will give clarity on the legal basis for transfer, terms and conditions, protection and pension arrangements.

Q1.4: Who does the Public Health England People Transition Policy apply to?

A: It applies to staff performing functions within organisations that are expected to transfer into PHE. The details were initially confirmed in the PHE Operating Model (published in December) as:

² <http://www.dh.gov.uk/health/2012/02/phe-transition/>

- **Health Protection Agency** staff including scientists, doctors, nurses, technicians, emergency planners, analysts and administrators, who identify and respond to health hazards and emergencies caused by infectious disease, hazardous chemicals, poisons or radiation
- **National Treatment Agency for Substance Misuse** staff including clinicians, analysts and experienced drug treatment workers and commissioners from a variety of backgrounds across the health, social care, criminal justice and substance misuse fields, who improve the availability, capacity and effectiveness of drug treatment in England
- **Department of Health** staff, including public health practitioners, whose functions are expected to transfer to Public Health England
- Public health staff working in **strategic health authorities** who currently lead a range of functions including health protection, health improvement and screening, which are expected to transfer to Public Health England
- The **regional and specialist public health observatories** whose staff produce information, data and intelligence on people's health and healthcare for practitioners, policy makers and the wider community
- The **cancer registries** and the **National Cancer Intelligence Network** whose staff are responsible for the collection, analysis, interpretation and dissemination of population-based cancer data
- The **National End of Life Care Intelligence Network** whose staff aim to improve the collection and analysis of information related to the quality of care provided to adults reaching the end of life to support the improvement of services
- **NHS Screening Programmes** whose staff lead and support screening programmes in England
- The **UK National Screening Committee** which is responsible for providing advice on screening to the UK countries
- The **quality assurance reference centres** whose staff aim to maintain standards in the cancer screening programmes while supporting excellence
- Public health staff working in **primary care trusts** whose functions are expected to transfer to Public Health England including **consultants in dental public health** who work with a range of partners to improve oral health and ensure patient safety and improved quality in dentistry
- Public health staff working in **specialised Commissioning Groups** who support the effective commissioning of specialised services

Discussions are currently taking place between the Public Health England Transition Team, senders and partners to agree the details of these broad categories of staff. The purpose of these meetings will be to confirm functional transfers and to agree, where possible, those functions that will be "lift and shift" and those that may be subject to job matching (for example where there are more people than posts available or where the work that is to be carried out in PHE is different to that in current sender organisations. The outcomes from these discussions will be confirmed to all affected staff once agreements have been reached.

Q1.5: How will redundancies be minimised?

A: The HR Transition Framework³, the national policy and process on filling posts and employer group HR frameworks set out a checklist of key processes to help organisations

³ http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_126234

identify the practices they should follow to ensure that compulsory redundancies are minimised.

***Q1.6: What will be done to minimise redundancies if TUPE does not apply to support the principle in the national “filling posts” document?**

A: We will effect transfers in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) where it applies. We have also ensured there is a wide power within the Health and Social Care Act to effect transfers by way of Transfer Schemes. This gives us the ability to effect transfers of many staff where there is no TUPE situation - e.g. in a redeployment situation. By having this power it means that a substantial number of employees will be transferred, thus avoiding a redundancy situation in non TUPE situations.

A key principle of the national policy and process for “filling posts” in receiver Organisations’ is to minimise redundancies. To that end we will maximise Suitable Alternative Employment (SAE) opportunities and use appropriate Transfer Schemes or Orders to effect the transfer of staff wherever possible. This will include staff who are at risk of redundancy (affected by change) but at the time of the relevant transfer will be taking up a role on an SAE basis because their organisation, function or role is ceasing.

Q1.7: I have more questions about the HR processes outlined in the PHE PTP, and how they apply to my personal situation / circumstances. Who can I speak to?

A: We have developed a wide range of FAQs to support the PHE PTP – these are set out below, and they may be of assistance in answering any queries that you may have. If not, you should speak with your line manager / employer and/or trade union, or you can contact the Public Health England Transition Team at: phe_hr@dh.gsi.gov.uk.

Section 2: PHE Leadership Team

Q2.1: Are the numbers of director posts in the PHE leadership team justified? Why is PHE having so many very senior posts – is this really necessary?

A: Public Health England will have eight directors who report to the Chief Executive, working as part of a streamlined top team. The number and responsibilities of the directors who will lead the organisation are consistent with equivalent bodies in the UK and leading international agencies for public health.

PHE will be responsible for leading and managing an integrated delivery service at the centre of a new public health system. It will provide the national leadership and expert scientific and professional resources, including unrivalled evidence and intelligence, to support them in this role and to help the public make healthier choices.

In order to be able to discharge its functions as the new national body at the centre of the public health system, PHE requires a senior executive team of the size and calibre who are currently being recruited.

Q2.2: Why are some of the senior roles only open to public health consultants?

A: Public Health England is now starting recruitment for a number of posts for its executive team. PHE will provide strategic leadership and vision for the protection and improvement of the nation's health.

For some posts, candidates are required to be operating at consultant level and already an outstanding public health leader familiar with providing professional advice to Government departments and health care providers. They will be regarded as an expert in the field of public health from both a theory and practice perspective including tackling social determinants and the development of effective solutions.

It is essential that the successful candidates will be able to demonstrate significant experience and expertise in the development, application and review of evidence based approaches to decision making within public health or other related areas, alongside the ability to build strong strategic alliances across the health care system and internationally

Section 3: Specific steps in the agreed HR transition policy / process

3.1: Functions Mapping

Q3.1.1: What is the process for agreeing staff transfers?

A: Throughout the organisation design phase of work, a summary of the functions that PHE will deliver was developed, which has been shared with senders. In line with nationally agreed HR guidance, this information – and how it relates to the functions that are delivered by existing organisations – will be used to support discussions with senders and trade unions to agree areas where there are functional transfers.

Working closely together, senders and the Public Health England Transition Team will agree the details for managing the following transfer scenarios (see also FAQs below for a summary of each):

- “Lift and shift”
- Job matching
- Redeployment

Q3.1.2: What does “designated to transfer” mean?

A: If you have been told that you have been designated to transfer, this means, subject to formal consultation, your employment will transfer with your work to Public Health England.

Q3.1.3: What happens if I do not want to transfer? Can I refuse to transfer?

A: If the function in which you work transfers to Public Health England then it is very likely that you will be expected to transfer too. You can object to a transfer but in practice this will, for most people, be deemed to be a resignation and you may forfeit your rights to any redundancy payment due. This is a serious step to take and you should consider this very carefully and take advice from your trade union and/or your employer.

In some situations, this may not be the case (eg for some staff employed by organisations that will not cease with the establishment of Public Health England). In these circumstances, you may appeal against the transfer process, and if your appeal is successful you may be placed in the redeployment pool and alternative employment sought. Again, we would advise that you consider this step very carefully, and that if you are considering this scenario that you discuss your personal situation with your trade union and/or employer.

***Q3.1.4: What is the guidance for people whose destinations have not yet been confirmed or who have not yet been matched?**

A: Decisions will be made known as soon as possible. All sender organisations should be actively supporting and preparing staff for the next phase of transition. The relevant processes are detailed in the “filling posts” national policy and process. In line with this, policy discussions between senders, receivers and trade unions on functions transferring and the matching of staff to posts in the new organisations have already started.

***Q3.1.5: What do we do where a function does not transfer, but an individual post could slot into a receiver organisations?**

A: Staff can only slot into a post where there is a transfer of function.

However if work is currently being carried out in the sender organisation and is not included in a transferring function, Public Health England will need to review this, on a case-by-case basis.

***Q3.1.6: If a person is mapped to two or more functions, are they able to go through two or more transition processes?**

A: Following the agreement between receivers, senders and trade unions about those functions that will transfer, senders will then need to determine the posts in their organisations that they believe should be included in these transferring functions. As these decisions involve agreeing the primary purpose of the roles, it is unlikely that any post will be part of more than one transferring function.

Such issues will be discussed by each sender organisation and the Public Health England Transition Team in meetings that are scheduled to take place across the summer.

Q3.1.7: Will there be any reorganisations prior to transfer?

A: It may be that your current employer is required to reorganise to meet set efficiency targets, in which case you will be fully consulted with about the proposed changes and their likely impact on you. In such cases, these are not related to TUPE / TUPE-like activity or pre-transfer selection.

Q3.1.8: What is the difference between being designated as being affected by change; at risk of redundancy; and being under notice of termination by reason of redundancy?

A: The 'affected by change' designation should be used where it is known that organisational change will take place, which will have a direct impact on the numbers and/or type of staff employed, but where the overall timescales and milestones are not yet clarified, or where there is a significant lead-in time before the changes are finalised and staff are subsequently formally declared as being at risk of redundancy. In this context it is important that staff are given early support and have the opportunity to influence plans through formal consultation.

The 'at risk' designation should be used for the affected staff where a formal process of consultation on actual staff redundancies is about to begin or a consultation on a change, which is likely to lead to redundancies. If an individual has not secured a post through "lift and shift", job matching or pre-transfer selection, the employer will have to put staff 'at risk' and commence redeployment activity to try to secure suitable alternative employment. Staff will normally have been declared as affected by change in advance of this, where the lead-in time has been sufficient to allow for this.

A termination notice tells you when the last day of your employment will be (the day you will be made redundant). This notice cannot be issued until after the consultation has been completed. During this period you may be offered suitable alternative employment. You will need to check your contractual redundancy processes for further information.

3.2: Lift and Shift

***Q3.2.1: What is a 'lift and shift' transfer? What is the definition of "lift and shift"?**

A: A "lift and shift" transfer is one where the existing function or functions within the relevant sender organisation will remain exactly as they are now when they transfer to the receiver, including all of the existing workforce. No job matching or pre-transfer selection process will be required.

We expect the majority (up to around 90%) of posts in Public Health England to be filled by "lift and shift". To minimise disruption to business as usual activities, Public Health England will work with senders to reach early agreement on such "lift and shift" transfers.

***Q3.2.2: What can be done after "lift and shift" transfer to reorganise roles or make them redundant?**

A: It will be for the receiver organisation to decide how they will want to deliver the range of functions and services they have responsibility for post transfer. This may involve a reorganisation of "lift and shift" functions and staff at some future date. Any reorganisation or possible redundancies would need to be in accordance with agreed regulations, policies and procedures for that organisation and involve consultation trade unions and staff.

***Q3.2.3: When will lift and shift functions be confirmed?**

A: Receivers, senders and trade unions are meeting to discuss and agree transfers. These discussions will include functions that are to be lifted and shifted. Confirmation of these decisions will be as soon as possible.

For Public Health England, we expect confirmation of these decisions towards the end of August.

3.3: Job Matching

***Q3.3.1: How will job matching be done?**

A: Receivers are required to use the agreed generic job descriptions and role content specifications for describing posts that are included in functions that are transferring. Postholders and jobs must be matched to a function and grade taking into account the role content specification.

Their job will normally be considered to be matched where 51% of the postholder's substantive job matches the post in the same function and grade in the new organisation, taking into account the role content specification.

Transfers that are made from job matching processes (see specific FAQs below) will be via either

- Direct "slot in" or
- Competitive "slot in"

Q3.3.2: Who will lead the job matching process?

A: Job matching is the responsibility of sender organisations, and decisions will be made by a panel made up of a HR representatives, functional representatives and trade union representatives. Where applicable, input may also be sought from a representative of the Public Health England Transition Team.

Q3.3.3: When will the details of job matching be confirmed?

A: Senders and Public Health England will be working together across the summer to discuss and agree transfers. These discussions will include functions where job matching is required. We expect confirmation of these decisions by early September.

***Q3.3.4: What do we mean by ‘a job will be considered to match where 51% of the postholder’s job matches?’**

A: Job matching is not an exact science and sender organisations will need to make a judgement based on the similarity between the primary purpose and key accountabilities of the existing role in relation to those described in the receivers’ job description. A template proforma for recording job matching outcomes has been developed for use by senders and is available to HR professionals on the HR transition website.⁴ The Department of Health will also be publishing further guidance on matching during August. Whilst the proforma does not ask for percentages to be added, it must provide sufficient evidence to fulfil the definition in the national policy.

***Q3.3.5: Will matching be restricted to posts of the same band, or can it be one band up or one band down?**

A: Matching is restricted to posts on the same pay band or grade. For example, an individual on AfC pay band 8a can only be matched against a post on pay band 8a.

***Q3.3.6: In the matching process, how can senders ensure they treat part time workers fairly?**

A: We expect all employers to treat their staff fairly and in accordance with legal requirements. We are tracking the people changes in the system and will be able to identify if part time staff are adversely affected by transition.

Q3.3.7: What is the definition of a direct slot-in?

A: Where a match is agreed (the functions and associated roles are substantively the same) and the overall number of people match the number of posts available across all sender organisations. In such circumstances, employees will be directly slotted into these posts within Public Health England (e.g. when ten people meet the matching criteria for ten roles available), and their employment will transfer at the agreed transfer date.

Q3.3.8: What is the definition of competitive slot-in?

A: Where a match is agreed (the functions and associated roles are substantively the same) - but there are more people than posts across all sender organisations. In such circumstances, there will be a competitive slotting-in process for the posts within Public Health England (e.g. if ten people meet the matching criteria but only eight roles are

⁴ www.hrtransition.co.uk.

available).

Q3.3.9: When do you expect competitive selection (competitive slot-in) to take place? What form of selection exercises will you apply?

A: Competitive selection is likely to take place in September - the process depends on the role and level of seniority. It could be a paper based exercise or interview and assessment. We will notify people as soon as this has been agreed and will be consistent with any national guidance on this.

***Q3.3.10: Under the national “filling posts” document, is it the sender or receiver local protection arrangement that would apply if a person accepts a lower grade or band of job?**

A: It is the sender’s pay protection arrangements that apply if they exist.

3.4: Redeployment

Q3.4.1: What happens if I do not secure a post via “lift and shift” or “job matching”? How will staff who lose their roles as a consequence of the establishment of Public Health England be supported?

A: If your function transfers to Public Health England but you have not been successful in securing a post following “lift and shift” or job matching and pre transfer selection, your line manager will discuss this with you and you will receive formal confirmation in writing explaining what the next steps will be. You would be put ‘at risk’ by your employer at this stage.

Your employer should provide you with support - using, for example, one-to-one meetings, reviews and appraisals - to identify your key skills that may be in demand and opportunities to address your personal development needs. They should also prepare you for change, including information on pensions and benefits, and providing you with opportunities to discuss your career options to assist you in identifying any suitable alternative employment.

In such circumstances, you will normally have priority for any suitable remaining vacancies at the same pay band in Public Health England, irrespective of function, along with other employees transferring to the organisation who are at risk and on that band.

***Q3.4.2: Whose responsibility is it to look for suitable alternative employment for at risk staff?**

A: The primary responsibility rests with the employer. Affected staff also have a personal responsibility to mitigate against their redundancy and will be required to actively participate in any redeployment process. Specific details and obligations are covered in each organisation’s policies, AfC Section 16 and the individual’s contract of employment.

Q3.4.3: How prescriptive is the redeployment process? Will there be a format for Public Health England to handle this?

A: Individual organisations are expected to follow the agreed national policies and processes, and the Public Health England People Transition Policy, for all stages of staff

transfer (including for re-deployment).

Q3.4.4: Why are Public Health England running a selection process prior to transfer?

A: Public Health England wants to enable staff to make informed decisions about their future employment. Conducting the selection process prior to your transfer will allow you to be clear about the post you will be transferring to in Public Health England or any alternative opportunities available to you should you chose to transfer your employment or not.

Q3.4.5: What protections will be provided for staff who are taking up a role on a suitable alternative employment basis?

A: In normal circumstances staff who achieve employment through a redeployment exercise will join the new organisation on the terms and conditions of employment of the receiving organisation. Receivers can still use the flexibilities available to them, for example to retain continuity of reckonable service, but in any event would not be able to retain continuity of service in relation to an individual's statutory rights. By placing these staff on the Transfer Scheme or Order, wherever possible, we will be able to protect these rights. For the sake of clarity, employees involved in such situations will be treated no less favourably than colleagues who will transfer via other routes into PHE

Q3.4.6: What happens if I reject a post offered to me because I do not think it counts as alternative employment?

A: If you refuse an offer of alternative employment you will need to establish that it is not suitable for you. We would encourage you to seek advice from your trade union (if you belong to one), regarding this issue.

Any factors that you identify for refusal must be clearly stated, a simple refusal for no reason at all would be classed as unreasonable. Public Health England will look at both the suitability of the job it has offered you, and the reasons for your refusal of the alternative job separately and come to separate decisions respectively. Again, we would encourage you to seek advice from your trade union (if you belong to one), and your line manager to discuss implications of your decision.

3.5: New & Unmatched Posts

Q3.5.1: How will new or unmatched posts in Public Health England be filled?

A: Open competition will be used for all posts which have not been successfully matched or where new posts are required since they are in functions which are not currently carried out in sender organisations.

Q3.5.2: How will these posts be advertised?

A: Civil Service rules will apply and posts will be advertised using open competition simultaneously on the websites of the following:

- Civil Service Gateway - <https://jobsstatic.civilservice.gov.uk/csjobs.html/>
- NHS Jobs - <http://www.jobs.nhs.uk/>
- HR Transition - www.hrtransition.co.uk

Job descriptions and details of selection processes will be available to all staff who are at risk of redundancy or affected by change.

Section 4: Legal Basis of Transfer

There is reference in module 1 of the Public Health England People Transition Policy, and the national guidance on filling posts, to Transfer Orders and Transfer Schemes. The following descriptions have been provided to assist understanding.

Staff Transfer Schemes

The power to make Staff Transfer Schemes under the Health and Social Care Act belongs to the Secretary of State for Health (SofS). The schemes will be drafted by the Department of Health lawyers and signed on behalf of the Secretary of State by a senior civil servant in the Department of Health. The schemes will contain a schedule which identifies the forename, surname and NI number of each transferring employee. The documents are not published and will be held confidentially by the Department (they contain personal data about the employees transferring which would need to be redacted if ever disclosed to third parties). There are no statutory timetables or consultation periods linked to the Transfer Schemes themselves.

Transfer Orders

The SofS for Health has powers to make orders to transfer staff between certain NHS bodies under the NHS Act 2006. The staff transfer provisions are included in either the Establishment Order or Abolition Order of the sender / receiver. There are statutory consultation requirements linked to the establishment or abolition of an NHS body and this would include the staff transfer proposals. Time needs to be factored into the legal and administrative process for transfers under this mechanism for the statutory consultation to be completed. Additionally, the orders will be public documents and need to be laid at least 28 days before they are intended to come into force. Transfer Orders will not include details of individual employees because they are published documents and accordingly staff transferring in these circumstances will need to be informed by a letter from the sender (by the date stated in the Order) that they are to transfer.

Q4.1: The Public Health England People Transition Policy covers the legal basis of transfer at a high level. Where is the detail?

A: Module 1 of the People Transition Policy provides an overall summary of the agreed HR processes staff transfers into the new organisation. Detailed work with senders will be ongoing across the summer on some elements of the policies and processes, including the legal basis of transfer. We will update colleagues on progress in future modules of the Public Health England People Transition Policy.

Q4.2: I hear a lot about TUPE and COSOP. What is the difference between TUPE and COSOP protections? Which one will apply to Public Health England?

A: The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protects employees' terms and conditions when a business or undertaking, or part of one, which retains its identity post-transfer is transferred to a new employer, or there is a service provision change. TUPE is a *matter of law*. PHE will effect transfers in accordance with the TUPE Regulations 2006 where it applies.

In circumstances where TUPE does not apply in strict legal terms, the Cabinet Office Statement of Practice, January 2000 (Revised November 2007) ('COSOP') will be

followed. In COSOP the employees involved in such transfers will be treated no less favourably than if TUPE applied in relation to protecting statutory continuity of employment and current terms and conditions which are part of the transfer. COSOP is a *matter of policy*.

There shall be appropriate arrangements to protect occupational pensions, and the terms and conditions of staff. It should be noted that the “Fair Deal” pensions provisions of COSOP are expected to apply to TUPE transfers as well as non-TUPE transfers. This provides the right to a broadly comparable occupational pension for those involved in public sector transfers.

COSOP was developed to ensure that staff involved in public sector re-organisations where TUPE does not apply suffer no detriment, by ensuring the principles of TUPE apply. The national policy and process for “filling posts” clearly sets out the way transfers will be effected and it has been agreed that where TUPE does not apply then transfers will be covered by COSOP. Employees involved in such transfers will be treated no less favourably than if TUPE applied in relation to protecting statutory continuity of employment and transferring on current terms and conditions including any current contractual redundancy or severance entitlements. Further, principles contained within the Fair Deal Annex of COSOP relating to occupational pensions will be adhered to.

While TUPE may apply for some functions, it is likely that COSOP will apply to the majority of transfers. In these circumstances the principles of COSOP will be adhered to, and Transfer Schemes will be used to cover the staff transfers where there is a power to do so.

***Q4.3: As COSOP does not create a legal right, can we be sure that receiving organisations will respect its principles regarding Terms & Conditions and pay?**

A: There are two legal mechanisms capable of effecting a transfer of employment:

- TUPE; and/ or
- Transfer Orders or Schemes.

We intend to effect Transfer Schemes or Orders where there is a legal power to do so to effect the legal transfer of staff. Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies, terms and conditions of employees will automatically transfer to the new employer. This would mean that employees would continue to work under the same terms and conditions, even though they are employed by a new employer.

Where TUPE does not apply we will follow the principles in the COSOP. Following the principles in COSOP, the employees involved in such transfers will be treated no less favourably than if TUPE applied in relation to protecting statutory continuity of employment and transferring on current terms and conditions which are part of the transfer, including any contractual redundancy or severance entitlements. COSOP can be made legally binding through transfer schemes and orders, as staff will legally transfer over to receiver organisations by way of these statutory instruments. Further, principles contained within the Fair Deal Annex of COSOP relating to occupational pensions will be adhered to.

***Q4.4: Can staff be made redundant prior to transfer where TUPE applies?**

A: No. If TUPE applies, and a member of staff is working in a function designated to transfer, they will be included in the transfer scheme or order unless they object. Normally an objection will have the effect of terminating the affected employee's contract of employment. Any individuals considering their position should always seek advice from their trade union.

***Q4.5: Can staff be made redundant post transfer where TUPE applies?**

A: Yes under TUPE dismissals can be made post transfer where there is an economic, technical or organisational reason entailing changes to the workforce, or are unconnected with the transfer. This may include a redundancy situation.

***Q4.6: What is the legal mechanism for effecting a transfer? Who has the power to create the Transfer Schemes or Orders?**

A: As outlined above, there are two legal mechanisms capable of effecting a transfer of employment: TUPE; and/ or Transfer Orders or Schemes.

Transfer Schemes or Orders will be used where there is a power to do so to effect the transfer of staff – including where there is a TUPE transfer. They will explicitly set out the terms of transfer including that current terms and conditions of employment of the transferring staff are protected.

The Secretary of State for Health has certain powers under legislation to make Transfer Schemes and Orders.

***Q4.7: What is the purpose of the Transfer Schemes and Transfer Orders?**

A: The purpose of the Transfer Schemes and Transfer Orders is to ensure that staff have their statutory continuity of employment protected and transfer on current terms and conditions including any contractual redundancy or severance entitlements. Further, principles contained within the Fair Deal Annex of the Cabinet Office Staff Transfers in the Public Sector Statement of Practice 2000 (COSOP) relating to occupational pensions will be adhered to.

***Q4.8: How will Transfer Schemes or Transfer Orders be developed?**

A: The source document will be the national policy and process for “filling posts”. The Department of Health will work with partners and stakeholders including trade unions to ensure Transfer Schemes and Transfer Orders are consistent with this national policy and process.

Q4.9: What difference does it make whether a Transfer Scheme or Order is used?

A: Whether a Transfer Scheme or Transfer Order is used is wholly dependent on what piece of legislation can be used to cover staff working in different organisations. For example, the Health Protection Agency is covered by the Health and Social Care Act 2012, so would be included in a Transfer Scheme; whereas the National Treatment Agency is covered by the NHS Act 2006 which means that a Transfer Order will be used.

For individual members of staff, there is no material difference in whether they are included under a Transfer Scheme or Order as they both facilitate a legal transfer to PHE

***Q4.10: What will we do in situations where there is no legal power to enact Transfer Schemes or Orders but we would like staff to move?**

A: There is no legal power to effect Transfer Schemes or Orders for a number of senders to Public Health England, and possibly other receivers. In this case, receivers are working closely with the Department of Health to assess alternative approaches with the aim of affording the same protections for affected staff as those staff covered by Transfer Schemes or Orders.

It should be noted that this is a complex issue. Consequently, alternative approaches are being discussed with DH, receivers, senders and trade unions and will be managed on a case by case basis and further information will be provided in due course including the issue of hosted functions.

An update on this issue will be included in module 2 of the Public Health England People Transition Policy (to be published in September). Our policy intent is to provide same level of legal protection to effect the transfer of staff in these bodies in line with the principles of TUPE and COSOP.

***Q4.11: Will staff who achieve promotion pre transfer through the processes set out in the “filling posts” policy, be included on Transfer Scheme or Order?**

A: All staff who join a receiver organisation either through a transfer or through redeployment will be entitled to protection of their existing contractual terms and conditions of service including pay band and salary where it is possible and there is the power to do so to include them in the relevant Transfer Scheme or Order.

***Q4.12: What is the position for staff on Fixed Term Contracts?**

A: The contractual rights of transferring staff will be taken into account in every case. Staff with a fixed term contract that extends beyond 31st March 2013 and who have been identified as part of a transferring function, will be transferred with the function that they are working in to the new receiver.

Section 5: Terms and Conditions

Q5.1: What are the terms and conditions for Public Health England?

A: We will be working on what terms and conditions for new entrants will be over the summer in readiness for the recruitment into new roles. Module 2 of the Public Health England People Transition Policy will contain the detail on terms and conditions (currently scheduled for publication in September). Our objective is to make the transfer as fair and smooth as possible.

Q5.2: What are the implications of PHE staff being civil servants? What is the Civil Service Code and/or the Civil Service Management Code?

A: Public Health England will be an executive agency of the Department of Health. As an executive agency it will be operationally independent, although the Secretary of State for Health will remain ultimately responsible to Parliament for the delivery of the functions for which Public Health England is responsible

Since Public Health England is an executive agency, this means that the staff it employs will be Civil Servants. The Civil Service supports Government in developing and implementing its policies, and in delivering public services. The work of the Civil Service is governed by Civil Service Codes:

- the Civil Service Code sets out the Civil Service values, and the standards of behaviour expected in upholding these values. This code is enshrined in legislation (the Civil Service provisions of the Constitutional Reform and Governance Act 2010).
- the Civil Service Management Code sets the overall framework for Civil Service terms and conditions.

As was made clear in the Operating Model⁵, Public Health England will negotiate specific terms and conditions for staff that will meet the requirements of these codes, but we will also ensure that they retain necessary and appropriate flexibilities. This work on Public Health England terms and conditions is ongoing, but we will provide an update in module 2 of the Public Health England People Transition Policy (in September)

***Q5.3: If Transfer Schemes and Transfer Orders protect my terms and conditions, why are there negotiations about the harmonisation/ standardisation of non contractual HR Policies?**

A: The transfer and appointment of staff from many different existing organisations to new organisations will inevitably mean staff will be transferring with different contractual and non-contractual terms and conditions of service and HR policies.

The intention of the transfer policy is to enable the smooth transition of staff by ensuring that they move from their current organisations to the new organisations with the protection of their terms and conditions of employment (including statutory continuity of service), except where changes have been agreed through appropriate consultation with trade unions and staff.

⁵ http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131892.pdf

Receiver organisations must be able to manage staff from 1 April 2013 in a consistent, fair and equitable way to a common set of harmonised/ standardised non-contact policies and procedures. This will require receivers to work in partnership with trade unions to agree harmonised HR policies and procedures prior to transfer. The outcome of these negotiations will be for receivers to have an agreed list of standard policies and procedures in place for 1 April 2013 and all parties are committed to delivering this outcome for all staff groups.

***Q5.4: Can my terms and conditions of service be changed post-transfer?**

A: The transfer process is complex. Receivers and trade unions will set up appropriate consultation and negotiation machinery. Both employers and trade unions will work together to ensure that any statutory rights are not undermined, but where there is scope for making change, then they will seek to agree any changes through this consultation and negotiation machinery.

Section 6: Consultation

Q6.1: What role are unions playing in developing the People Transition Policy?

A: The national trade unions on the HR Transition Partnership Forum have been engaged in and have participated in the development of guidance and will continue working closely with all stakeholders to ensure there is effective monitoring of the implementation of this guidance.

A specific Public Health England Partnership Working Group has been established to work through the Framework required for establishing Public Health England and to oversee the work on determining the future terms and conditions for Public Health England.

Q6.2: Who is responsible for consulting with me about my transfer?

A: As set out in the nationally agreed HR Transition Framework, your current employer is responsible for consulting with you about any proposed transfer and its impact on your future employment. They will work closely with Public Health England Transition Team and DH HR to determine any proposed changes (referred to as measures) to your existing arrangements and give you every opportunity to discuss these proposals in light of your own personal circumstances.

Section 7: Partnership Working

Q7.1: What is the mechanism for taking forward this work on HR / Public Health England's terms and conditions?

A: The Department of Health and the trade unions have developed a Public Health England Partnership Working Group to assist with the establishment of Public Health England. The Partnership Working Group has members from the RCN, Unite, the Civil Service trade unions and the BMA amongst others. This Group is the agreed employee relations mechanism for taking these negotiations forward and is in line with the partnership agreements that are in place in sender organisations. The Social Partnership Forum HR Transition Partnership Forum has oversight of this Group.

Q7.2: What is the Social Partnership Forum HR Transition Partnership Forum?

A: The Department of Health is responsible for ensuring effective HR policy to support the transition of staff to Public Health England in a fair, clear and transparent way. It is committed to working in partnership with trade unions and employers and working in a consistent way across the NHS, the Department of Health and its Arms Length Bodies during and beyond the transition.

The Social Partnership Forum Human Resources Transition Partnership Forum has been established as a sub-group of the National Social Partnership Forum to provide partnership input to the changes to the whole of the health system, of which Public Health England is a part. It aims to provide a single national forum for the discussion of and development of HR policies and supporting processes to support transition, develop and agree national level HR frameworks and other supporting guidance and support effective transition and ensure HR policies are fair, clear and transparent. It provides an oversight of the more detailed work carried out by the Public Health England Partnership Working Group.

***Q7.3: How are sender and receiver organisations working together with trade unions?**

A: Where functions are transferring, both senders and receivers have a legal duty to inform and consult employees and their representatives. In addition, the HR Transition Framework highlights the unique opportunity that receiver organisations have to define their new organisational cultures, and establish best practice HR arrangements from the outset.

All receivers are therefore working with the trade unions which represent employees in senders and receivers in finalising their structures and establishing the arrangements that will apply post-transfer.

***Q7.4: Will trade unions be recognised by receivers?**

A: Each receiver will need to establish their own effective partnership working arrangements with trade unions, in the form of an appropriate recognition agreement, and arrangements for joint consultation machinery, which will come into force from April 2013. These issues will need to be agreed with affected trade unions in the pre transfer period, and will be included in the Transfer Scheme or Transfer Order where appropriate.