

NATIONAL HEALTH SERVICE, WALES

The Transfer of Staff (Stop Smoking Wales Service) Order 2019

Made 26 September 2019

Coming into force 1 October 2019

The Welsh Ministers make the following Order in exercise of the power conferred by paragraph 24 of Schedule 2 to the National Health Service (Wales) Act 2006⁽¹⁾.

Title and commencement

1.—(1) The title of this Order is the Transfer of Staff (Stop Smoking Wales Service) Order 2019.

(2) This Order comes into force on 1 October 2019.

Interpretation

2. In this Order—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Local Health Board established in accordance with section 11(2) of the Act;

“Public Health Wales NHS Trust” (“*Ymddiriedolaeth GIG Iechyd Cyhoeddus Cymru*”) means the NHS Trust established by the Public Health Wales National Health Service Trust (Establishment) Order 2009⁽²⁾;

“PHW” (“*ICC*”) means Public Health Wales NHS Trust;

“SSW” (“*DSC*”) means the Stop Smoking Wales Service;

“the transfer date” (“*y dyddiad trosglwyddo*”) means 1 October 2019;

“the transferee Local Health Board” (“*y Bwrdd Iechyd Lleol sy'n drosglwyddai*”) means the Local Health Board to whose employment a person was informed in writing by PHW, prior to the transfer

(1) 2006 c. 42.

(2) S.I. 2009/2058 (W. 177).

date, that they would be transferring on the transfer date.

Transfer of staff to Local Health Boards

3.—(1) This article applies to a person who—

- (a) immediately before the transfer date is employed by PHW in connection with the functions of SSW, and
- (b) has been notified in writing by PHW prior to the transfer date that they are to be transferred to the employment of a Local Health Board on the transfer date.

(2) The contract of employment of a person to whom paragraph (1) applies is, on the transfer date, to be transferred to the transferee Local Health Board.

(3) The contract of employment of a person whose employment has transferred to a Local Health Board under paragraph (2)—

- (a) is not terminated by the transfer, and
- (b) has effect from the transfer date as if originally made between that person and the transferee Local Health Board.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of PHW under, or in connection with, the contract of employment of a person whose employment transferred to the transferee Local Health Board on the transfer date under paragraph (2), are to transfer to the transferee Local Health Board, and
- (b) any act or omission before the transfer date by, or in relation to, PHW, in respect of that person or that person's contract of employment, is deemed to have been an act or omission of, or in relation to, the transferee Local Health Board.

(5) Paragraphs (2) to (4) do not have effect to transfer the contract of employment of a person to whom paragraph (1) applies, or any rights, powers, duties and liabilities under, or in connection with, that contract, if, before the transfer date, that person informs PHW that they object to becoming employed by the transferee Local Health Board.

(6) Where a person to whom paragraph (1) applies has objected to the transfer of that person's contract of employment to the transferee Local Health Board as described in paragraph (5), the transfer operates so as to terminate that person's contract of employment with PHW.

(7) Subject to paragraph (8), a person whose contract of employment is terminated in accordance with

paragraph (6) is not to be treated, for any purpose, as having been dismissed by PHW.

(8) Where the transfer involves or would involve a substantial change in the working conditions to the material detriment of a person whose employment is or would have been transferred under paragraph (2), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by PHW.

(9) No damages are to be payable by PHW or a Local Health Board as a result of a dismissal falling within paragraph (8) in respect of any failure by PHW to pay wages to a person in respect of a notice period which the person has failed to work.

(10) Paragraphs (2), (3), and (5) to (8) are without prejudice to any right of a person arising apart from this article to terminate that person's contract of employment without notice in acceptance of a repudiatory breach of contract by the employer.

(11) Records of PHW relating to the employment of those persons to whom paragraph (1) applies whose contracts of employment are to transfer pursuant to this article are to transfer to the transferee Local Health Board, on the transfer date.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

26 September 2019