

## THE EAST HAMPSHIRE PRIMARY CARE TRUST (TRANSFER OF STAFF, PROPERTY, RIGHTS AND LIABILITIES) ORDER 2006

The Secretary of State for Health makes this Order in exercise of the powers conferred by section 126(4) of, and paragraphs 20 and 26 of Schedule 5A to, the National Health Service Act 1977(a). She is satisfied that consultation has taken place in accordance with regulations made under section 16A(5) of that Act(b).

### Citation, commencement and interpretation

1.—(1) This Order may be cited as the East Hampshire Primary Care Trust (Transfer of Staff, Property, Rights and Liabilities) Order 2006 and shall come into force on 1st October 2006.

(2) In this Order—

“the Establishment and Dissolution Order” means the Primary Care Trusts (Establishment and Dissolution) (England) Order 2006(c);

“the new PCT” means the Hampshire Primary Care Trust which is established by the Establishment and Dissolution Order;

“the old PCT” means the East Hampshire Primary Care Trust which is dissolved by the Establishment and Dissolution Order;

“the Portsmouth City Teaching PCT” means the Portsmouth City Teaching Primary Care Trust which was established by the Portsmouth City Primary Care Trust (Establishment) Order 2001(d);

“the Portsmouth Hospitals NHS Trust” means the Portsmouth Hospitals National Health Service Trust which was established by the Portsmouth Hospitals National Health Service Trust (Establishment) Order 1992(e); and

“the Portsmouth Hospitals NHS Trust Transfer Schedule” means the document produced by the old PCT and entitled “Portsmouth Hospitals NHS Trust Transfer Schedule - Schedule of Liabilities Transferring from the East Hampshire Primary Care Trust to the Portsmouth Hospitals National Health Service Trust” and dated 25th September 2006.

### Transfer of staff to the new PCT

2.—(1) This article applies in relation to any person who—

(a) was an employee of the old PCT immediately before 1st October 2006; and

(b) is not identified in article 3(1) or 4(1).

*Subject to*      *by / based on*

- (a) 1977 c.49; section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19), section 65(1) of, and paragraph 4, 37(1) and (6) of Schedule 4 to, the Health Act 1999 (c.8) (“the 1999 Act”), section 67(1) of, and paragraphs 5(1) and (13)(b) of Schedule 5 to, the Health and Social Care Act 2001 (c.15), sections 6(3)(c) and 37(1) of, and paragraphs 1 and 10(a) of Schedule 8 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”) and by sections 184 and 196 of, and paragraphs 7 and 38 of Schedule 11 to, and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”); paragraphs 20 and 26 of Schedule 5A were inserted by section 2(2) of, and Schedule 1 to, the 1999 Act; paragraph 20 was amended by section 1(3) of, and paragraphs 1, 35(1) and (3) of Schedule 1 to, the 2002 Act and by section 34 of, and paragraphs 23 and 43 of Schedule 4 to, the 2003 Act.
- (b) The Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999/2337, as amended by S.I. 2001/3788, 2002/880, 2002/2469, 2004/696, 2004/865, 2004/1771, 2005/848 and 2006/562.
- (c) 2006 2072.
- (d) S.I. 2001/784, as amended by S.I. 2003/2662.
- (e) S.I. 1992/2506, as amended by S.I. 2004/75.

(2) Any person to whom this article applies shall on 1st October 2006 be transferred to the employment of the new PCT.

(3) The contract of employment of an employee transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) shall have effect on and after 1st October 2006 as if originally made between that employee and the new PCT.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the old PCT under, or in connection with, a contract to which that paragraph applies shall, by virtue of this article, be transferred to the new PCT on 1st October 2006;
- (b) anything done before that date by or in relation to the old PCT in respect of that contract or that employee shall be deemed on and after 1st October 2006 to have been done by or in relation to the new PCT.

(5) Paragraphs (2) and (3) are without prejudice to any right of any employee to terminate his contract of employment if a substantial and detrimental change is made to that employee's working conditions, but no such right shall arise by reason only of the change of employer effected by this article.

(6) Paragraphs (2) and (3) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that employee has objected to the transfer to the new PCT and had informed the old PCT of that objection on or before 30th September 2006.

(7) Where an employee has informed the old PCT of his objection as mentioned in paragraph (6), his contract of employment with the old PCT shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed from the old PCT.

#### **Transfer of staff to the Portsmouth City Teaching PCT**

3.—(1) This article applies in relation to any person who—

- (a) was an employee of the old PCT immediately before 1st October 2006;
- (b) was employed immediately before 1st October 2006 to work at Jubilee House, Medina Road, Cosham, Portsmouth, PO6 3NH; and
- (c) has been notified in a letter posted on or before 1st September 2006 that he is to be transferred to the employment of the Portsmouth City Teaching PCT.

(2) Any person to whom this article applies shall on 1st October 2006 be transferred to the employment of the Portsmouth City Teaching PCT.

(3) The contract of employment of an employee transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) shall have effect on and after 1st October 2006 as if originally made between that employee and the Portsmouth City Teaching PCT.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the old PCT under, or in connection with, a contract to which that paragraph applies shall, by virtue of this article, be transferred to the Portsmouth City Teaching PCT on 1st October 2006;
- (b) anything done before that date by or in relation to the old PCT in respect of that contract or that employee shall be deemed on and after 1st October 2006 to have been done by or in relation to the Portsmouth City Teaching PCT.

(5) Paragraphs (2) and (3) are without prejudice to any right of any employee to terminate his contract of employment if a substantial and detrimental change is made to that employee's working conditions, but no such right shall arise by reason only of the change of employer effected by this article.

(6) Paragraphs (2) and (3) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that employee has objected to the transfer to the Portsmouth City Teaching PCT and had informed the old PCT of that objection on or before 30th September 2006.

(7) Where an employee has informed the old PCT of his objection as mentioned in paragraph (6), his contract of employment with the old PCT shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed from the old PCT.

#### **Transfer of staff to the Portsmouth Hospitals NHS Trust**

4.—(1) This article applies in relation to any person who—

- (a) was an employee of the old PCT immediately before 1st October 2006;
- (b) was employed immediately before 1st October 2006 to work at the premises identified in the Schedule to this Order; and
- (c) has been notified in a letter posted on or before 1st September 2006 that he is to be transferred to the employment of the Portsmouth Hospitals NHS Trust.

(2) Any person to whom this article applies shall on 1st October 2006 be transferred to the employment of the Portsmouth Hospitals NHS Trust.

(3) The contract of employment of an employee transferred under paragraph (2)—

- (a) is not terminated by the transfer; and
- (b) shall have effect on and after 1st October 2006 as if originally made between that employee and the Portsmouth Hospitals NHS Trust.

(4) Without prejudice to paragraph (3)—

- (a) all the rights, powers, duties and liabilities of the old PCT under, or in connection with, a contract to which that paragraph applies shall, by virtue of this article, be transferred to the Portsmouth Hospitals NHS Trust on 1st October 2006;
- (b) anything done before that date by or in relation to the old PCT in respect of that contract or that employee shall be deemed on and after 1st October 2006 to have been done by or in relation to the Portsmouth Hospitals NHS Trust.

(5) Paragraphs (2) and (3) are without prejudice to any right of any employee to terminate his contract of employment if a substantial and detrimental change is made to that employee's working conditions, but no such right shall arise by reason only of the change of employer effected by this article.

(6) Paragraphs (2) and (3) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if that employee has objected to the transfer to the Portsmouth Hospitals NHS Trust and had informed the old PCT of that objection on or before 30th September 2006.

(7) Where an employee has informed the old PCT of his objection as mentioned in paragraph (6), his contract of employment with the old PCT shall be terminated immediately before the date on which the transfer would occur, but he shall not be treated, for any purpose, as having been dismissed from the old PCT.

#### **Enforceability and transfer of rights**

5.—(1) Any right which—

- (a) was enforceable by or against the old PCT immediately before 1st October 2006; and
- (b) is not referred to in article 2, 3 or 4;

shall on 1st October 2006 be transferred to the new PCT and on and after that date shall be enforceable by or against that PCT.

(2) In paragraph (1), "right" includes any right in relation to trust property held by the old PCT.

**Transfer of liabilities**

6.—(1) All liabilities to which the old PCT was subject immediately before 1st October 2006 which—

(a) are not referred to in article 2, 3 or 4; and

(b) are identified as a liability in the Portsmouth Hospitals NHS Trust Transfer Schedule:

shall on 1st October 2006 be transferred to the Portsmouth Hospitals NHS Trust.

(2) All other liabilities—

(a) to which the old PCT was subject immediately before 1st October 2006; and

(b) which are not referred to in article 2, 3 or 4 or in paragraph (1);

shall on 1st October 2006 be transferred to the new PCT.

(3) In paragraph (2), "liabilities" includes any liabilities in relation to trust property held by the old PCT.

**Transfer of property**

7.—(1) All property held by the old PCT immediately before 1st October 2006 shall on 1st October 2006 be transferred to the new PCT.

(2) In paragraph (1), "property" includes trust property.

**Determination of doubt**

8.—(1) If there is any doubt as to which transferee a liability is transferred by article 6, the transferees shall agree the matter between themselves.

(2) If the transferees are unable to agree the matter between themselves, the South Central Strategic Health Authority shall determine the matter.

Signed by authority of the Secretary of State for Health

Member of the Senior Civil Service  
Department of Health

Date

**SCHEDULE**

Article 4(1)(b)

<i>Name/description of premises</i>	<i>Address</i>
Queen Alexandra Hospital	Southwick Hill Road, Cosham, Portsmouth, PO6 3LY
St Mary's Hospital	Milton Road, Portsmouth, PO3 6AD.
Trevor Howell Day Hospital	Milton Road, Portsmouth, PO3 6AD.
Amulree Day Hospital	Milton Road, Portsmouth, PO3 6AD.
Dolphin Day Hospital	Bury Road, Gosport, PO12 3PN.
Dryad Ward, Gosport War Memorial Hospital	Bury Road, Gosport, PO12 3PN.
Daedalus Ward, Gosport War Memorial Hospital	Bury Road, Gosport, PO12 3PN.
Cedar Ward, Petersfield Community Hospital	Swan Street, Petersfield, GU32 3LB.

## Portsmouth Hospitals NHS Trust Transfer Schedule

## Schedule of Liabilities Transferring from the East Hampshire Primary Care Trust to the Portsmouth Hospitals NHS Trust

## Clinical Negligence:

**PCT ref** EHCN 002-A                      **NHS LA ref** M4CP070/001

**Current status**

Site - Trevor Howell Day Hospital - Without prejudice offer to settle in the sum of £25,000 made June 2008 - awaiting advice of progress.

## Risk Pooling Schemes for Trusts:

**PCT ref** EHEL 0015-5                      **NHS LA ref** M3LP070/004

**Current status**

Site - Edith Keen Ward - Case repudiated - ongoing

**PCT ref** EHEL 0020 - g                      **NHS LA ref** M5IP070/001 (CD)

**Current status**

Site - Ashdown 1 - Case repudiated - ongoing

**PCT ref** EHEL 0021-1                      **NHS LA ref** M6LP070/001

**Current status**

Site - Mary Ward - Under investigation - reported to NHS LA

**PCT ref** EHEL 0022-2                      **NHS LA ref** M6LP202-001

**Current status**

Site - Anne Ward - Under investigation - reported to NHS LA

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Signed for East Hampshire Primary Care Trust

25 September 2006