

Reconfiguring the Department of Health's Arms Length Bodies

National Human Resources Framework

Policy	Estates
HR/Workforce	Performance
Management	IM & T
Planning	Finance
Clinical	Partnership Working

Document Purpose	Policy
ROCR Ref:	Gateway Reference: 4225
Title	Reconfiguring the Department of Health's Arm's Length Bodies – National Human Resources Framework – ALB/HR/04/01
Author	DH
Publication Date	2 December 2004
Target Audience	PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, ALB Chairs/CEs/HR, Finance and Communications Directors
Circulation List	Copied to NHS Foundation trusts for information
Description	To provide Arm's Length Bodies with guidance during the change programme to ensure that staff are treated consistently and fairly.
Cross Ref	Reconfiguring the Department of Health's Arm's Length Bodies. Programme Implementation Framework – ALB/P&G/04/01
Superseded Docs	N/A
Action Required	N/A
Timing	N/A
Contact Details	ALB Review HR Team c/o Adam Threadgold Room 286D Skipton House, 80 London Road SE1 6LH 020 7972 5903 ALB.HR.Programme@dh.gsi.gov.uk
For Recipient's Use	

CONTENTS

1.	Introduction to the National HR Framework	3
2.	The ALB Review and context for HR Programme	4
2.1	ALB Review	4
2.2	ALB Objectives	5
2.3	Context for HR Programme	5
2.4	HR Capacity across ALBs	5
2.5	Corporate Services Study	6
2.6	Developing the HR Framework	6
3.	HR Programme Principles and Objectives	7
3.1	Principles and Objectives	7
3.2	HR 'Givens'	8
3.3	ALB HR Communications	9
3.4	Skills Development and Transfer	9
3.5	ALB HR Best Practice Guides	9
4.	Project Management Arrangements and Timetable	11
4.1	Department of Health Arrangements	11
4.2	Project Office	13
4.3	Timetable	14
5.	Types of Change	15
5.1	Definitions	15
5.2	Corporate Governance	16
5.3	ALB Change Process	16

6.	Guiding Principles on HR Policy and Procedure	17
6.1	Introduction	17
6.2	Transfer of Employment	17
6.3	Recruitment and Selection during Change Programme	20
6.4	Consultation and Communication	27
6.5	Redeployment and Staff Support	29
6.6	Relocation	32
6.7	Retention	32
6.8	Redundancy	33
6.9	Equal Opportunities and Diversity	36
6.10	Governance	36
7.	Next Steps	37
	Appendices	
	Appendix one	38
	Appendix two	40
	Appendix three	42
	Appendix four	67

1. INTRODUCTION TO NATIONAL HR FRAMEWORK

Dear Colleagues

This document has one purpose, and that is to provide Arms Length Bodies with guidance that is flexible and responsive enough to local needs, though not overly constraining delivery, whilst making a strong commitment to having a robust Human Resources Framework that ensures staff are treated consistently and fairly during the change process.

This will be a very challenging and difficult time for Arms Length Bodies who will be required to continue to deliver high quality services whilst leading significant change. The planned changes resulting from the ALB Review are about lifting the burden on front line services, whilst reducing bureaucracy and improving efficiency. We want to ensure that these changes are managed in a professional and co-ordinated manner, with the Department working closely with ALB Chief Executives and management teams to bring about the planned headcount reductions and efficiency savings.

This will mean all stakeholders working closely together, and will rely on the co-operation and professionalism of everyone involved. We fully expect ALBs to ensure that their trade unions and staff are properly consulted throughout the implementation of their change programme, and we will work hard to ensure that we communicate and consult in a co-ordinated and consistent manner.

Some significant progress on this has already been made, with briefing events for HR leads, and for national Trade Unions including detailed feedback and core 'Frequently Asked Questions', and then a programme of workshops to develop and consult on possible HR principles all being completed since the initial report was published in July 2004. This work is the basis for this Framework.

The HR arrangements for each individual change programme will underpin the successful achievement of goals, and this Framework is the first step to ensuring that ALBs have a clear understanding of what is required of them, the principles to be followed and the governance arrangements. These are of course no substitute for negotiated and agreed arrangements that may already be in place within ALBs.

We welcome comments and your feedback at ALB.HR.Programme@dh.gsi.gov.uk. Regular updates will also be provided to HR and Trade Union colleagues on an ongoing basis.



John Bacon
Group Director of Health and Social Care Delivery, Department of Health
November 2004.

2. ALB REVIEW AND CONTEXT FOR HR PROGRAMME

2.1 ALB Review

- 2.1.1 Arms Length Bodies (ALBs) are a key part of the health and social care system. The work that they undertake ranges from back office administrative functions to complex ethical or clinical-related work. Their role has been essential in modernising health and social care services. The ALB Review covers those 42 bodies undertaking national functions sponsored by the Department that were in existence or in the pipeline in 2003-04.
- 2.1.2 The NHS has embarked on a long-term programme of reform to devolve power and responsibility for resources to frontline NHS organisations. By rationalising national functions and by finding a less resource-intensive manner of delivering them, it becomes possible to reduce the ALB overhead and reduce the amount of time spent by frontline staff in responding to ALB needs.
- 2.1.3 The ALB Review shares a common objective with the Gershon Review in that it seeks to minimise and modernise the bureaucratic overhead that accompanies the provision of public services. It also carries forward the principles of the Lyons Review, which called for the relocation of public sector jobs away from London and the South East. All ALBs will continue to seek ways in which they can improve efficiency.
- 2.1.4 In summary, the 5 key drivers of the ALB Review are:
- Devolution
 - Closer working between health and social care
 - Appropriate impact for minimal burden
 - Public sector efficiency
 - Relocation
- 2.1.5 The Report on the Reconfiguration of the Department of Health's Arms Length Bodies was published on 22 July 2004. This laid out the rationale behind the recommended changes, the proposed groupings of ALBs and the likely timetable for change. It also referred to the Department working with ALBs to develop an implementation plan setting out the more detailed analysis, programme for change, and roles and responsibilities. This Plan was finalised during November 2004, and the HR Framework is an important first outcome of the Implementation Plan.

2.2 ALB Objectives

- 2.2.1 The ALBs expenditure for 2003/4 was £4.8 billion; this included operating costs of £1.8 billion. They employ around 25,000 staff.
- 2.2.2 The objectives are set against a baseline year of 2003-4:
- a reduction of around 50% in the number of ALBs;
 - a saving in expenditure by ALBs of £0.5 billion by 2007-08; and
 - a reduction in whole time equivalent posts of 25 per cent in the same period

2.3 Context for HR Programme

- 2.3.1 As part of the overall ALB Programme arrangements, HR has been identified as a key workstream, providing guidance, co-ordination and monitoring of the implementation of the HR aspects of the ALB Review, working with employers in the ALB Sector.
- 2.3.2 A change programme such as this will have wide reaching HR implications, and given the challenging timetable, ALBs will require different levels of support and guidance at different times. The Department's main role will be to provide appropriate frameworks and governance arrangements that facilitate the successful implementation of the ALB Review.
- 2.3.3 The Department will also work with ALBs to agree headcount baselines and efficiency targets to ensure the overall target of 25% reduction in headcount is achieved by March 2008.

2.4 HR Capacity across ALBs

- 2.4.1 As part of the initial consultation process with ALBs, it was requested that a brief survey be undertaken to establish HR capacity across ALBs to deliver the ALB Review.
- 2.4.2 From the 18 out of a possible 40 returns received, the following conclusions can be drawn:
- Most ALBs believe they have the capacity to handle the change process required as part of the ALB Review;
 - Most ALBs would welcome support and guidance through the change process;
 - Trade Unions are well represented in ALBs, with most having formally negotiated arrangements in place;
 - A number of ALBs are already hosting HR services;
 - There is a wide range of professional HR support being provided in ALBs

2.5 Corporate Services Study

- 2.5.1 As part of the overall programme of work, and in accordance with the Efficiency Review conducted by Sir Peter Gershon, published in July 2004 as part of the SR2004 statement, the Department has a separate workstream looking at the current corporate services arrangements in ALBs, the range and nature of services provided, the number of staff involved, and any options for improving effectiveness and efficiency.
- 2.5.2 An initial study occurred in September/October 2004 for which ALBs provided data. There are opportunities to make significant savings in corporate services through transforming/transferring operating processes and sharing across institutions. For the HR stream, discussions will take place with ALBs on how these will be targeted and achieved in the first part of 2005.

2.6 Developing the HR Framework

- 2.6.1 The HR workshops held during September 2004 were instrumental in developing the draft National HR Framework, and the Department was very encouraged by the positive and professional range of responses received from both HR and Trade Union colleagues at these events.
- 2.6.2 The summary of feedback received at that time provides the context for what was included in the draft Framework circulated for consultation:
- Clarity about boundaries, accountabilities and responsibilities in delivering the ALB Review;
 - Clarity on the 'givens' and how targets are to be developed and agreed, and the likely timescale for change;
 - Improving communications and networks between ALBs and the Department;
 - The Department removing, not adding, constraints.
- 2.6.3 The feedback received following consultation on the draft HR Framework has informed the redrafting of this final Framework. It is clear that the HR Framework is unlikely to satisfy all the wide-ranging requirements communicated by individual ALBs, but it should ensure that ALBs have a clear understanding of what is required of them, the principles to be followed and the governance arrangements. These are of course no substitute for negotiated and agreed arrangements that may already be in place within ALBs.

3. HR PROGRAMME – PRINCIPLES AND OBJECTIVES

3.1 Principles and Objectives

- 3.1.1 The overall objective for the ALB HR Workstream is to support the ALBs in delivering the required configuration, size and location changes, on time and within budget, with maximum retention of staff skills, the minimum disruption to frontline services, and the maximising of career development opportunities within a reconfigured ALB sector.
- 3.1.2 The Department recognises that individual ALBs will be responsible for the development and delivery of their own practices, to achieve the stated ALB review requirements. It is recognised however that there are benefits for all stakeholders in ensuring that these project plans are consistent, where appropriate, across ALBs, especially in the treatment of staff. The Department will have a role in monitoring progress against the targets set, and reporting to Ministers, in addition to handling any routine Parliamentary business.
- 3.1.3 The means by which the ALB HR workstream will provide support and guidance to ALBs is laid out in detail in this document. These overall principles have been developed following extensive consultation, briefings and workshops with ALB colleagues. The principles will ensure the Department enables and supports the various HR projects in ALBs, rather than constrain activities.
- 3.1.4 The Framework builds upon lessons learnt from other complex NHS, Social Care and Department change programmes, and makes every effort to ensure that past and current experiences of staff transfers, mergers, start-ups, abolitions and restructurings have been incorporated into the Guidance. It is clear from consultation with ALBs and Trade Unions, that many skilled and experienced HR professionals may need only the minimum of support but could benefit from having access to additional intelligence on best practice, precedents and existing networks, thus improving their own effectiveness and contribution to the ALB Review Implementation.
- 3.1.5 The principles guiding the HR programme include:
- Jointly negotiated and agreed local arrangements will normally take precedence over any more detailed guidance provided by the Department;
 - Compulsory redundancies will be avoided wherever possible, subject to ALB business objectives;
 - The most should be made of the existing expertise and experience in organisations – everything possible should be done to ensure this is not lost even where staff are displaced;
 - The best available people should be sought for any new posts;

- The human and financial costs of these changes must be minimised through ensuring that when recruiting, prior consideration is given to staff identified as at risk, and through offering support, career counselling, training and development to individuals;
- That the HR processes followed are consistent (as far as practicable), fair and transparent, and comply with employment legislation;
- That there are full and open communications with staff and staff side organisations throughout the period of organisational change;
- Where ALBs are part way through their planning and implementation process, every effort will be made to ensure that the HR Framework does not conflict or overturn work in progress or require retrospective action;
- The HR Framework will be as flexible as possible to meet the differing needs of the differing ALBs, in particular, those with different timetables for change.

3.2 HR 'Givens'

3.2.1 The National HR Framework acknowledges within its guidance that there are a number of 'givens' that will have an impact on the overall implementation of the ALB Review.

3.2.2 The most critical considerations for the HR Programme include:

- Transfer of Undertakings Protection of Employment Regulations 1981 (TUPE);
- Cabinet Office Statement of Practice on Staff Transfers in Public Sector (January 2000), known as 'the Cabinet Office Guidance', which includes 'Fair Deal for Pensions';
- Gershon – efficiency savings of 2.5% in back office functions;
- Lyons Report – 1000 posts to leave London and South East;
- Existing contractual agreements, including collective agreements and employment contracts;
- The headcount reduction targets, which will be discussed and agreed with each ALB.

3.3 ALB HR Communications

- 3.3.1 Consistent communications with ALBs across all workstreams will be an absolutely critical measure of success of the Department's overall programme. The HR Programme, in particular, will need to ensure that discussions with ALBs staff and trade union representatives are based on fact, and that any principles being discussed are deliverable within available budgets and resource constraints. An important part of the HR communications programme will be the regular HR Steering Committee and HR Communications Forum, details of which are laid out in Section Four.
- 3.3.2 Each ALB will be responsible for the effective consultation and communication with its staff, trade unions and stakeholders. Where ALBs are coming together, the new management must work closely with the old to ensure that staff see as seamless a transition of roles and responsibilities as possible.

3.4 Skills Development and Transfer

- 3.4.1 As part of the HR programme objective to develop skills and knowledge and for the transfer of learning amongst ALB HR colleagues, every opportunity for secondment or attachment to the HR Programme team will be considered prior to external options being considered.
- 3.4.2 This means that once the HR programme team arrangements are agreed, and the project streams implemented, a terms of reference will be developed for any roles required, and these will be circulated to HR colleagues in ALBs for suitably qualified staff to register an interest.
- 3.4.3 A 'policy' for this will be developed and agreed with ALBs as a means of facilitating this approach.

3.5 ALB HR Best Practice Guides

- 3.5.1 The Department appreciates that for many ALBs this guidance may not be sufficiently detailed. It also recognises that timescales mean that more specific guidance may be required on a one to one basis before the HR Best Practice Guides are developed.
- 3.5.2 Work will start on the Best Practice Guides once the HR programme arrangements and resource plan have been agreed. The Department will seek the views of ALBs on the content of the Guides.

3.5.3 The Best Practice Guides are not intended to replace arrangements, HR policies and procedures that may already exist in ALBs. ALBs should not delay the development and implementation of their objectives under the ALB Review whilst waiting for Best Practice Guides. There will be no requirement for retrospective action should any aspect of the Best Practice Guides be contrary to procedures that are already underway.

3.5.4 The Department believes that the priority for best Practice Guides is as follows:

- Staff Transfers as consequence of ALB Review;
- Recruitment, Selection and Appointment Arrangements as part of ALB Review;
- Handling Redeployment;
- Handling Redundancies.

3.5.5 High-level principles on these areas are contained in Section Six of this Framework.

4. PROJECT MANAGEMENT ARRANGEMENTS AND TIMETABLE

4.1 Department of Health Arrangements

- 4.1.1 The ALB HR workstream forms part of the overall programme of work developed by the Department of Health to monitor and support the implementation of the ALB review, on time and to budget by 2007/08.
- 4.1.2 As such the HR workstream has interdependencies with a number of other key ALB workstreams, namely Finance, Corporate Services review, Communications and Business processes.
- 4.1.3 The main interfaces for the ALB HR workstream however are with the ALBs themselves; the HR and Finance professionals in the various organisations, the trade unions and employee representatives, and the project managers for the ALB review.
- 4.1.4 The project management arrangements have been developed to ensure all of those key interfaces and interdependencies are engaged in the work being carried out in the HR workstream. This 'joined up' approach will ensure the ALBs are treated in a consistent manner, and provided with consistent support and advice.

4.1.5 Following consultation with all the main stakeholders, the following is to be implemented:

- **HR Steering Committee**

This will include key decision makers who will be responsible for the strategic overview and governance of the overall programme.

Dr Anne Rainsberry will be responsible for reporting on the HR workstream at the Department Programme Steering Group (PSG)

Membership	Named Individual
Chair	ALB CEO representative – David Behan, Commission for Social Care Inspection
Finance	Ann-Marie Millar
Communications	Doug Walker
HR Strategy	Dr Anne Rainsberry
Back Office	Dr Andrew Holt
In Attendance	DH HR Programme Manager (Sheree Axon) HR Policy (Vince Rodriguez) HR Project Officer (Adam Threadgold)
ALB HR Director Representation	To be confirmed
ALB Finance Director Representation	To be confirmed
ALB Trade Union Representation	To be confirmed
NHS Representation	To be confirmed
Social Care Representation	To be confirmed
DH Sponsor Representation	To be confirmed
DH GBT Representation	To be confirmed

Representation from ALBs and the Department sponsors should be from 'clusters' of ALBs undergoing similar change programmes e.g. one representative from ALBs going through merger, one from merger by absorption, one from start-ups, one from abolitions/dissolutions.

The HR Steering Committee will meet no less than every six weeks from December until April 2005, and then every two months thereafter. The programme of meetings will drive all other meeting arrangements. Specialist support on legal issues and pensions will be included as appropriate.

- **HR Programme Arrangements**

The HR Programme Manager is responsible for reporting to the HR Steering Committee on any emerging issues, risks or considerations across the individual workstreams.

- **ALB HR Communication Forum**

Key representatives of the involved national Trade Unions (Civil Service, Social Care and NHS) and employer representatives.

Membership	Named Individual
Chair	Dr Anne Rainsberry
HR Programme Manager	Sheree Axon
ALB HR Representation	To be confirmed
ALB Finance Representation	To be confirmed
ALB Chief Executive Representation	To be confirmed
ALB Staff Representation	To be confirmed
ALB Trade Union Representation	To be co-ordinated by the 'staff side' group at a pre-meeting facilitated by the Department.

Representation from ALBs and the Trade Unions should be from 'clusters' of ALBs undergoing similar change programmes e.g. one representative from ALBs going through merger, one from merger by absorption, one from start-ups, one from abolitions/dissolutions.

This forum will meet no less than every 8-10 weeks, with an initial meeting planned for early December 2004.

4.2 Project Office

- 4.2.1 Appropriate project office arrangements have been implemented to ensure that sensible project management arrangements are followed. Any bureaucracy will be minimised, but it is essential that proper audit and governance arrangements are in place to support effective decision-making and risk management.

4.3 Timetable

4.3.1 The overall high-level ALB timetable is as follows:

July 2004	Publication of high level report
July 2004 – October 2004	Consultation with stakeholders
October/November 2004	Finalise detailed implementation planning
By end 2007/08	Reconfiguration and savings achieved

4.3.2 The HR programme timetable has been developed in conjunction with other Department workstreams and this will be clarified as the project evolves. A draft timetable is set out below.

Milestones	By When
2004	
Briefing and initial workshops with HR and Trade unions	September
Draft national HR Framework published for consultation	October
Data collection analysis of baseline costs and headcount completed	October
Outline HR Project costs to be identified	October
Consultation on national Framework completed	November
HR Framework published	November
HR Programme arrangements underway	November
Best Practice Guides – drafting underway	December
2005	
Outline headcount and business plan agreed for all ALBs	January
First Best Practice Guidance published	January
Business Plans Refined	May
Business Plans to have been assessed by sponsors, ALB Review Team and Ministers	September
2008	
Savings achieved	March
New ALB sector up and running	April

5. TYPES OF CHANGE

5.1 Definitions

- 5.1.1 From a detailed analysis of the ALB Review, it is clear that most of the ALBs will be involved in a number of complex change-management arrangements. To ensure that the terminology used, and the principles being developed are fit for purpose, and underpin the required change process, the Department has developed detailed definitions for each of the possible change processes, i.e.:
- Transfer of a function
 - Merger
 - Merger by Absorption
 - Start-Up
 - Abolition/Dissolution
- 5.1.2 These definitions will inform ALB decisions on a number of HR activities, in particular in the area of recruitment, appointments to posts and possible redundancies.
- 5.1.3 These are not legal definitions, but represent the Department's classification of the change process. Advice should be taken on the legal basis for change for each individual project.
- 5.1.4 These definitions have been developed for the ALB Review and apply to the three main types of arms length bodies:
- Executive Agencies of the Department of Health
 - Executive Non-Departmental Public bodies, set up in primary statute with their own powers;
 - Special Health Authorities, set up in secondary legislation to perform functions delegated to them by the Secretary of State

Change Process	Criteria
Transfer of a Function	Where functions are clearly identified with designated staff, and these transfer into an existing organisation, with or without a re-organisation of posts/structures.
Merger	Where two or more organisations combine to form a new organisation for the mutual sharing of benefits and risks arising from the combined business. In substance, this is an equal partnership, with all parties having equal influence. The organisations are dissolved when they have been merged into the newly created one.
Merger by absorption	Where one body absorbs the functions of another. The ALB doing the absorbing remains a legal entity, but the organisation being absorbed is normally dissolved.
Start-up	New organisation being established, with new structure and processes for delivering services/functions.
Abolition/Dissolution	Existing organisation no longer required, and dissolved, normally through primary or secondary legislation.

5.2 Corporate Governance

5.2.1 Guidance is also being provided on critical business continuity matters such as corporate governance. This work is being carried out within the Department's Planning and Programmes Unit and will be ready later this year. In the meantime, 'fast-track' ALBs should ensure that any HR planning assumptions they are making about implementing their required change is in line with general employment law guidance. Some helpful principles are detailed in Section Six.

5.3 ALB Change Process

5.3.1 The ALB Review has been analysed in some detail, and a change process definition applied to each of the proposed changes. This analysis has been included in the overall ALB Implementation Plan, and is also included here, as Appendix 1, for reference purposes. The analysis details the proposed timetable for change and headcount baselines for the purposes of agreeing headcount reduction targets with ALBs over the next few months.

6. GUIDING PRINCIPLES ON HR POLICY AND PROCEDURE

6.1 Introduction

This section of the National HR Framework sets out some of the main principles that ALBs will be expected to follow as part of their implementation of the ALB Review.

Each ALB will be developing and agreeing their own HR policies and procedures, or may already have previously agreed procedures in place. The Department would expect ALBs to ensure that their policies reflect the principles laid out in this section. It would also expect that ALBs will agree provisions that will ensure the necessary balance between preservation of employment, reduction of redundancies, and recruitment for business continuity whilst achieving the overall aims of the ALB Review.

Given the different timetables and complexity of the different change programmes being implemented, this section is not intended to provide detailed processes and procedures, but to provide a high level framework that ALBs can operate within.

Where there is a requirement for more detailed guidance, for example, where this has been requested by ALBs, then the Department will include this in the Best Practice Guides which will be developed over the next few months. (The approach is explained in Section 3.5.)

6.2 Transfer of Employment

Scope

This guidance does not replace the legal advice that should be taken by ALBs on the nature of their change process, the basis for transfer of functions and staff, and the mechanism for transfer.

The over-riding principle underpinning any transfer of function as part of the ALB Review, should be that staff transfer with their work.

The Department is clear that it should not be providing advice on whether TUPE or TUPE-like principles apply to any transfers of functions. This is a matter of law, and is not a 'negotiating' point.

A more detailed 'Best Practice Guide – Staff Transfers' is being developed currently, and should be available for comment in early December 2004.

Transfer of Undertakings Protection of Employment Regulations 1981 (TUPE) and Cabinet Office Statement of Practice of Transfers in Public Sector (January 2000)

- 6.2.1 The application of Transfer of Undertakings Protection of Employment Regulations 1981 (TUPE) will vary across the individual ALB projects depending upon the nature of the change taking place.
- 6.2.2 While TUPE will apply to some transfers, there may be transfers where TUPE does not apply because the transfer is of administrative and regulatory functions, rather than functions which are of a more 'commercial/private sector' type. Where TUPE does not apply for that reason, then the Department would expect that the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (January 2000) ('the Cabinet Office guidance') to be applied. This also includes the additional guidance on pensions 'Fair Deal'. Appendix Two summarises some of the key points relating to the transfer of staff under Cabinet Office guidelines. Appendix Three includes the full text of the Cabinet Office Guidance.
- 6.2.3 Given the complexity of decision-making around the application or not of TUPE, and the length of time these decisions can take, the Department would expect that employers will behave as if TUPE applied, and that TUPE-like principles would be followed, unless they receive legal advice to the contrary and it is agreed by all parties, including the Department's sponsors, that exceptionally, TUPE does not apply. This guidance does not replace any legal advice that employers or Trade Unions wish to take, and does not in anyway impact on an individual's employment rights under their contract of employment.

Continuity of Service

- 6.2.4 For staff transferring into the NHS or other ALBs under TUPE or in accordance with the Cabinet Office guidance, continuity of service will automatically apply. For individuals applying for new posts there is no automatic right to recognise continuous service since this would be a new employment contract in most cases.
- 6.2.5 In order to support the ALB Review programme and the staff potentially affected by the change programme, employers would be expected to remove any unnecessary constraints in relation to the employment of staff, and address the continuity of service issue within their legal powers. For people moving to the NHS, this should involve taking into account previous recognisable service for the purposes of calculating entitlement to contractual benefits such as redundancy, maternity, annual leave or sickness benefits. Where affected staff are on Agenda for Change terms and conditions, those provisions should apply.

Pay and Terms and Conditions of Service

- 6.2.6 For those staff transferring under TUPE, or in accordance with the Cabinet Office guidance, they will have the right to transfer on their existing pay and terms and conditions of service at the time of transfer.

Mechanism for Transfer

- 6.2.7 The legal basis for transfer must be clearly set, and the mechanism for effecting any transfer agreed at an early stage e.g. secondary legislation, Staff Transfer Order.

Pension

- 6.2.8 Preservation of pension entitlements will be a key consideration for staff affected by the ALB Review, and employers should ensure that pension arrangements are a top priority whilst developing their HR Project Plans, and when allocating resources to the project.
- 6.2.9 The complexity of pension arrangements and the length of time required to ensure appropriate arrangements are put in place at the point of staff transferring with their functions to new employers, even if to the NHS, Local Government or ALB sector, should not be underestimated.
- 6.2.10 Where staff are transferred under TUPE or in accordance with the Cabinet Office guidance, employers will be required to ensure that comparable pension arrangements are in place for transferring staff.
- 6.2.11 This initial guidance does not seek to replace the work of employers in ensuring they comply with 'Fair Deal' requirements on pensions, but it does provide some early indicators of the process that should be followed. The issue of pensions can cause affected staff the most anxiety and distress, and it is important in all of the change processes for staff to be reassured about their ongoing pension arrangements.

- 6.2.12 The new employer may not be able to offer continued access to the “old scheme” (by whatever means), so arrangements have to be made to offer a broadly comparable pension scheme. In order for schemes to be broadly comparable, there are two main strands that need to be satisfied:
- The new employer’s pension arrangement for future accrual of pension benefits must be at least broadly comparable to their former public service pension arrangement and a bulk transfer arrangement for past service must be available to staff to transfer their accrued pension from the former employer’s pension scheme to the new employer’s pension scheme.
 - Government Actuaries Department (GAD) must confirm broad comparability for any compulsory transfer of employment of staff. GAD will decide whether the two schemes are comparable and if they are, will issue a Certificate to confirm this. This is detailed in ‘Fair Deal’. If broad comparability cannot be given then, compensation may be offered. GAD will advise of the levels of compensation based on reckonable service; DOB and salary. GAD should be contacted as soon as it is known that a compulsory transfer is to take place.
 - GAD can be contacted on enquiries@gad.gov.uk

Temporary Staff and Staff on Secondment

- 6.2.13 Where TUPE or the Cabinet Office guidance applies, staff on temporary contracts or on secondment have the right to transfer with their work to a new employer for the period of their arrangement.

6.3 Recruitment and Selection during Change Programme

Scope

This section provides guidance on recruitment, selection and appointments necessary as part of the change process. It does not replace existing ALB policies but there are a number of policy matters which the Department would expect ALBs to have due consideration of when delivering the ALB Review.

This section has been substantially reviewed following feedback from ALBs on the draft Framework, to ensure it is fit for purpose and practical.

More detailed guidance will be available later in the year in the Best Practice Guide.

6.3.1 Ongoing Recruitment

It is likely that over the course of the change process, ALBs will have vacancies that could seriously impact ongoing business continuity. These vacancies could be at any level, and the Department would expect ALBs to take every reasonable step to ensure they can deliver services to a high standard during the period of the ALB Review, so ALBs may find they need to recruit.

As a matter of good practice, and especially in those ALBs undergoing a significant change, such as merger or dissolution, every vacancy should be examined to see if the work could be completed in some other way than by a permanent recruit. HR professionals will be expected to consider the full range of options including secondment, redeployment, short term temporary contracts, absorption of tasks into other posts etc.

In addition, the following principles will apply;

- The Department would not expect any ALB to recruit a **permanent** member of staff six months or less before the date of a **merger or dissolution**, without the specific agreement of the Senior Department Sponsor or their nominees in circumstances where the impact of that post on business continuity is agreed as critical;
- The Department would also not expect any ALB to appoint to any **permanent** Executive Director post 12 months or less before the date of **any major organisational change** without the specific agreement of the Senior Department Sponsor.

6.3.2 Selection and Appointments to Posts during Change Programme

This section includes general principles that should be followed when undertaking selection and appointments to posts during the change programme, and specific principles for Board appointments, including Chief Executives and Executive Directors.

The Best Practice Guide will provide more detailed guidance on matching and slotting in to posts, and ring fenced competition. There will be ALBs who will be involved in these activities before the Guide is available, and the Department would expect ALBs to consult with their staff representatives and/or trade unions to agree the procedure for matching people to posts and any ring fenced competition that may be appropriate.

ALBs may wish to consider the following general principles in relation to selection as part of reviewing their own processes;

- Equal pay: Careful drafting of job descriptions and selection criteria can help ensure new posts and salary bands are correctly graded against comparable posts within the organisation;
- In competition for posts, selection panels should include members who have up to date equal opportunities training. There is a risk of claims of discrimination, whether on grounds of sex, race or disability and since December 2003, on grounds of sexual orientation and religion or belief, if an unsuccessful competitor for any post can show less favourable treatment on one of the above grounds. The process must also follow the principles of any policies the ALBs may have on Valuing Diversity etc. In practice this should mean:
 - Ensuring no detrimental treatment on the grounds of gender, race, trade union membership or activity, age or sexuality;
 - Treating disabled staff in accordance with the Disability Discrimination Act, which places a duty on employers to make reasonable adjustments.

(a) Chairs and Non Executive Directors/Commissioners

In relation to appointments to Chair and Non-Executives, sponsor branches will be able to provide information on the latest guidance from Secretary of State which stands until such time as he has considered the detailed ALB Implementation Plan in November 2004.

The NHS Appointments Commission (NHSAC) will provide guidance. (www.apcomm.nhs.uk) The appointments of Chairs and Board members to all ALBs has been delegated by Secretary of State to the NHS Appointments Commission. The following section has been prepared by NHSAC

The general principles to be followed are:

- **New bodies**
Advertisements will be placed for the chairs and non-executives of new bodies in time for them to begin the recruitment of the new executive team in accordance with the programme timetables.
- **Existing bodies taking over new functions**
As a general principle, the chair of the NHS Appointments Commission will come to a view on the performance of incumbent chairs through discussion with the Senior Departmental Sponsor about the performance of the organisation; a discussion with the chair about their approach to the proposed additional duties and; written comments from the body's Chief Executive.

The chair of the NHSAC will meet with the chair(s) of the body(ies) whose functions are being subsumed to discuss their view of the proposed changes and determine their ambition or capacity for future involvement in the expanded organisation.

The NHSAC will then reach a view as to whether the incumbent should continue to be chair of the enlarged authority and, if so, confirm them in that role. The NHSAC may decide that the chairs of one or more of the subsumed organisations are equal contenders for the new post or that neither of the existing chairs are suitable to chair the new enlarged authority, in which case it will arrange a formal selection interview to determine the appointment.

Following this exercise there may be a need to enlarge the board with non-executives with new skills. In that case, a competition will be held which may, if appropriate, be restricted to either the chair or members of the bodies from which functions are being transferred.

- **Bodies being abolished**

All the chairs and non-executives will be asked whether they wish to be considered for other posts with the NHS and if so, will be informed of suitable vacancies for which they can apply in the usual way. All chairs of these bodies will be offered the opportunity for a 1:1 discussion with the chair of the NHSAC by December 2004 whether their functions are going to a new body or being transferred to a current organisation.

(b) Appointments to Chief Executives and Executive Director posts

The Department would expect ALBs to follow the principles laid out in the table below, depending on the change process being implemented. The change definitions are also included in Section 5 of this report. This does not replace existing Departmental Guidance and Regulations on appointments to Executive Board posts.

Change Process	Criteria	Key HR Implications for Appointments to Executive posts, including Chief Executive
Transfer of a function	Where functions are clearly identified with designated staff, and these transfer into an existing organisation, with or without a re-organisation of posts/structures.	Any Executive Director who is designated to transfer with the function, would normally be entitled to transfer on their existing terms and conditions of service into a comparable, but not necessarily to the same, post.
Merger	<p>Where two or more organisations combine to form a new organisation for the mutual sharing of benefits and risks arising from the combined business.</p> <p>In substance, this is an equal partnership, with all parties having equal influence.</p> <p>The organisations are dissolved when they have been merged into the newly created one.</p>	<p>The Chief Executives and Executive Directors of all affected organisations will normally be displaced, unless there are comparable posts available to them.</p> <p>Careful consideration should be given to the size, weight and range of responsibilities of the 'new' posts plus the skills requirements.</p> <p>The Chair will want to agree with the Senior Department Sponsor (SDS) how appointments to the Chief Executive post will be handled, for example; should the existing postholders meet the person specification, the Chair may wish to agree with the SDS that the existing postholders should be given prior consideration in preference to open competition.</p> <p>If prior consideration shows that all, some or just one of the existing postholders meet the criteria in the person specification, the appointment should be made by a limited internal competition. If not, then appointments should be made through open competition.</p>

(b) Appointments to Chief Executives and Executive Director posts (continued)

Change Process	Criteria	Key HR Implications for Appointments to Executive posts, including Chief Executive
Merger by absorption	Where one body absorbs the functions of another. The ALB doing the absorbing remains a legal entity, but the organisation being absorbed is normally dissolved.	This is similar in practice to 'transfer of functions'. Staff would normally have the right to transfer to the new employer in a comparable post, on their existing terms and conditions of service. The displaced CEO and/or Executive Directors would not normally have the automatic right to any 'new' executive post, but the ALB Appointment Committee may want to give these postholders prior consideration for any suitable posts before going out to open competition.
Start-up	New organisation being established, with new structure and processes for delivering services/functions.	Executive and senior appointments that arise from a new organisation being established should normally be filled by open competition.
Abolition/Dissolution	Existing organisation no longer required, and dissolved, normally through primary or secondary legislation.	Existing postholders are normally displaced, unless suitable alternative employment can be found in a related organisation. Ultimately, terminations on grounds of redundancy may be unavoidable.

(c) Appointments Process for Executive Board posts

ALBs will be expected to establish robust and comprehensive selection and appointments processes as part of the change programme. These processes should reflect the scope, accountability and seniority of roles. In particular, the Department would expect the arrangements for external assessors to follow the guidance below:

- **External Assessors**

External assessors have an important role to play in senior appointments. They bring a wider perspective which adds additional objectivity to the process. Assessors nominated by the Department have a key advisory role for ensuring the integrity, rigour and fairness of appointments to the most senior posts.

ALBs will be expected to use external assessors on appointments to Chief Executive and Executive Director appointments panels. The Director for Health and Social Care or the ALB Programme Director should be consulted on the membership of all Chief Executive appointments panels. For Chief Executive appointments, there should be at least two external assessors, one from the Department, and the other from the appropriate background, e.g. NHS, Social Care, Public Health.

ALBs may wish to consider consulting a senior member of the Department with the appropriate professional background on who should be the second external assessor for 'specialist' posts such as Director of Finance, HR, Corporate Services etc.

Both external assessors should be involved throughout the complete recruitment and selection process, as agreed with ALBs for each specific selection exercise.

ALBs have the right to appoint the candidate of their choice, but they are not expected to appoint a candidate placed below the line by the external assessors.

(d) Other Appointments

For ease of reference, the change definition grid has been used again to set out general principles relating to other appointments.

Change Process	Criteria	Key HR Implications for Staff Appointments
Transfer of a function	Where functions are clearly identified with designated staff, and these transfer into an existing organisation, with or without a re-organisation of posts/structures.	<p>Normally, all staff who spend most of their time working on the functions that are being transferred, have the right to transfer with their function to the new organisation, in a comparable post.</p> <p>Any person who is designated to transfer with the function, would normally be entitled to transfer on their existing terms and conditions of service into a comparable, but not necessarily to the same, post.</p>
Merger	Where two or more organisations combine to form a new organisation for the mutual sharing of benefits and risks arising from the combined business. In substance, this is an equal partnership, with all parties having equal influence. The organisations are dissolved when they have been merged into the newly created one.	<p>Functions and designated staff transfer to new organisation, but there may be re-organisation requiring appointments to 'new' posts in a revised structure. Staff are not guaranteed exactly the same posts but comparable posts on the same terms and conditions.</p> <p>A comprehensive 'matching' and slotting in exercise may be appropriate, depending upon whether posts remain substantially the same, or whether it is a new or substantially changed post.</p> <p>Where there are new or substantially changed posts, consideration should be given to training staff to equip them to hold such posts as a means of avoiding redundancy.</p>

(d) Other Appointments (continued)

Change Process	Criteria	Key HR Implications for Staff Appointments
Merger by absorption	Where one body absorbs the functions of another. The ALB doing the absorbing remains a legal entity, but the organisation being absorbed is normally dissolved.	This is similar in practice to 'transfer of functions'. Staff would normally have the right to transfer to the new employer in a comparable post, on their existing terms and conditions of service. Staff who are displaced would not normally have the automatic right to any 'new' post, but the ALB may want to give these postholders prior consideration before going out to open competition.
Start-up	New organisation being established, with new structure and processes for delivering services/functions.	New posts that arise from a new organisation being established should normally be filled by open competition, except where staff have the right to transfer to the new organisation with their work, when matching or slotting may be appropriate.
Abolition/Dissolution	Existing organisation no longer required, and dissolved, normally through primary or secondary legislation.	Existing postholders are normally displaced, unless suitable alternative employment can be found in a related organisation. Ultimately, terminations on grounds of redundancy may be unavoidable.

6.4 Consultation and Communication

Existing Consultation and Communication Arrangements

- 6.4.1 Ineffective and inadequate communication will influence staff attitudes and motivation. It is therefore essential that an effective consultation and communications strategy be established at the start of any organisational change programme.
- 6.4.2 Trade Unions should be involved throughout the process, in accordance with statutory requirements and ALB consultation arrangements. The Department would expect ALBs to meet with Trade Unions no less than monthly to review the progress being made against the ALB Implementation Plan.
- 6.4.3 The HR communications strategy for staff should be developed in conjunction with constituent organisations, and their trade unions and/or employee representatives. Timing of communications is critical, as there will be a tension between reassuring potentially affected staff, whilst not making commitments that cannot be met, or that are not based on fact.

- 6.4.4 Communications with potentially affected staff should be consistent, factually accurate and regular. They should also be in line with other communication plans in place for the whole implementation programme, and reflect the phase the project is in.
- 6.4.5 There can also be difficult times during the project when potentially affected staff have not yet been identified by their employers, and people are uncertain about their futures, so seeking detailed clarification about their employment position. Constructive and proactive relationships with Trade Unions and employee representative groups should be developed in order to provide support and information to all staff throughout the process.
- 6.4.6 General principles to consider are:
- Once the initial consultation process with Trade Unions has been completed, let staff know about the type of change, the timescale and the communication strategy.
 - On the basis of the above, publish the appropriate communication strategy. The numbers of staff involved and their geographical spread will affect this. Prepare and agree with trade unions a comprehensive Q&A prior to the announcement. Get all the staff together for the first announcement and then timetable into the published project plan, regular staff meetings/bulletins. Set up a mailbox for staff queries – which should be promptly answered by the HR team – and pages on appropriate website.
 - Ensure affected staff are provided with appropriate advice and assistance at key stages to enable them to make informed decisions on their future options (e.g. redeployment, secondment) if these are available. This communication will normally be lead by line management, supported by HR.
 - Where TUPE or the Cabinet Office guidance applies, ensure that, at the appropriate time, staff are provided with advice on the implications of transferring to external providers on their current terms and conditions and broadly comparable pensions and are given opportunities to make contact with potential providers.
 - Ensure that change is as smooth as possible, by producing and agreeing with the stakeholders and Trade Unions, a transition plan which sets out responsibilities and key objectives. When appropriate the involvement of the private sector contractor, where applicable, or the stakeholder organisations should be secured in this plan in order to maximise the chances of success.

Collective Agreements and Formal Procedures

- 6.4.7 This guidance should not replace any collective agreements or formal agreed policies and procedures already in place in ALBs.

6.5 Redeployment and Staff Support

Scope

Redeployment and staff support will be key issues for all ALBs undergoing a major change as a result of the ALB Review. The Department would expect ALBs to have a co-ordinated approach with other relevant ALBs and the wider NHS and Social Care employers, to implement effective and robust redeployment arrangements that minimise the need for redundancies.

In particular, the Department expects all NHS employers to work co-operatively with ALBs to support the redeployment of affected staff.

This Framework does not provide for a central clearing house. There is insufficient evidence at this stage that these arrangements would be effective given the wide-ranging nature of ALBs' work, and the geographic spread of affected organisations. ALBs however are encouraged to develop local arrangements relevant to their organisation that provide for the effective co-ordination of the redeployment of staff.

Redeployment

- 6.5.1 There are some key legal principles which underpin redeployment activities, and the Department would expect ALBs to give due consideration for these in their own redeployment policies, which may already have been negotiated and agreed with Trade Unions. These principles include:
- Consultation: In addition to consultation with union representatives on a collective basis, there should be consultation with the individual to explain their position and the process you intend to follow to assist them with redeployment. Staff should be made aware that termination of employment is a possibility although every effort will be made to avoid this;
 - Follow up meetings should be held to allow individuals to have their say on the process and for managers to feed back the progress being made to find suitable alternative employment;
 - Employers have a duty to offer any suitable alternative employment wherever possible. ALBs should search actively for suitable vacancies and bring them to the attention of their displaced staff;
 - There should be fairness within selection for alternative posts and for the purposes of unfair dismissal law which provides that there should be fair selection for redundancy. Any unfairness in the selection process for alternative posts would reflect on the fairness of any subsequent termination of employment by reason of redundancy;

- Refusing an offer of suitable alternative employment without good reason, means that a member of staff loses any entitlement to redundancy payment. The job must be suitable in terms of its content, status and terms and conditions. The reasonableness of the refusal can focus on the employee's personal circumstances, for example travel arrangements, health or childcare commitments;
- Staff on maternity leave during the redeployment process are entitled to be offered suitable alternative employment. A failure to do this may result in a claim for unfair dismissal and sex discrimination;
- Trial periods: All staff have a statutory right to a four week trial period in a new post where it differs in any substantial way from what they did before or in a different place to where they were previously employed and where other terms and conditions differ from their previous post except where differences are minor or trivial.

Staff Support

- 6.5.2 Many ALBs will already have agreed staff support arrangements in place, some of which may involve outplacement support through professional third party suppliers. In such disruptive times, the Department would expect ALBs to place a high priority on ensuring that affected staff have adequate support. Career counselling and staff support arrangements are a matter for ALBs to establish within their own funding arrangements.
- 6.5.3 At a minimum, this should include:
- Interview skills training, where relevant;
 - Advice on writing CVs and completing applications, where relevant;
 - Access to local networks of NHS and other public sector employers for information on current vacancies and other work opportunities;
 - One to one support.
- 6.5.4 In addition, ALBs should ensure that managers involved in redeployment decisions have been fully trained and/or briefed on agreed processes, their responsibilities in managing the staff processes and building their understanding of the types of reactions they may encounter from affected staff, and how to manage these reactions effectively and supportively.
- 6.5.5 People at Board level or in equivalent positions of seniority who are interested in exploring alternative senior executive positions in the NHS can contact the new NHS Talent Management Team (via Mike Atkin on 0113 254 6580). The Team will offer career advice and notify people of any suitable vacancies.

6.5.6 When developing new staff support arrangements, ALBs are encouraged to work together to ensure consistency of approach and to obtain best value. ALBs may wish to consider the following service elements when agreeing their specification for outplacement support:

Guidance Pack

- (a) preparation and printing
- (b) supply to staff registering for service

Telephone helpline

- (a) registering of individuals
- (b) arranging consultant appointments
- (c) reserving places on group/specialist workshops
- (d) access to general help and advice

Online support – outplacement website

- (a) Job market/trends information
- (b) Self-assessment tools
- (c) Tools for CV compilation, letter writing and interview techniques
- (d) Access to vacancy database
- (e) on-line helpdesk

One to one meetings with consultants

- (a) on site
- (b) off site

Group workshops

- (a) design costs (if appropriate)
- (b) delivery costs, including venue & catering
- (c) administration, booking participants onto the workshops and issuing joining instructions and/or information
- (d) supply of workshop materials per participant

Specialist workshops

- (a) design costs (if appropriate)
- (b) delivery costs, including venue & catering
- (c) administration, booking participants onto the workshops and issuing joining instructions and/or information
- (d) supply of workshop materials per participant

Resource centres

- (a) Administration
- (b) Preparation and submission of weekly reports

6.6 Relocation

- 6.6.1 There may be instances where staff affected by the ALB Review would be willing to consider relocation, and, where appropriate, this should be encouraged. Relocation should also be considered as a way of avoiding redundancies, as long as it is in the best interests of the ALB and the individual concerned.
- 6.6.2 Most ALBs will already have negotiated and agreed relocation policies and procedures, and these should be followed. There is no intention to provide guidance on what is a reasonable travelling distance, as this should be part of ALB policy arrangements. For some ALBs the General Whitley Council may apply. Other ALBs may have staff on Local Government terms and conditions, and their entitlements are laid out in the Green Book.
- 6.6.3 Senior Civil Servants (SCS) are mobile, and may be required to transfer to any post in SCS. Due consideration should be given to the guidance provided in Lyon's Report about relocation packages for Civil Servants. This is available from Cabinet Office (www.cabinetoffice.gov.uk)
- 6.6.4 The Department would expect ALBs to ensure that their relocation policies have the following guiding principles:
- To provide appropriate means for reimbursement of reasonable additional costs necessarily incurred on permanent transfer to a new location;
 - To make proper use of public funds, exercising due economy consistent with what is necessary to progress the business;
 - To ensure consistency of treatment for all staff;
 - Compliance with all statutory and Civil Service requirements, e.g. discrimination legislation relating to race, sex, disability, religious belief and sexual orientation, the Data Protection Act 1998 and Inland Revenue rules for reimbursement of relocation and travel expenses.

6.7 Retention

- 6.7.1 Employers will naturally be concerned about the retention of skills and experience to ensure the continuity of front line services and business requirements within the ALB sector. As such, ALBs are already considering a number of innovative options for incentivising staff to remain with their current employer.

- 6.7.2 Early guidance (July 2004) was issued to Chairs and Chief Executives advising that ALBs should not agree to any new (or changes to) remuneration arrangements, which would not be common practice, and within current standard arrangements. This guidance is included for reference in Appendix Four.
- 6.7.3 This guidance continues to be the current Department position on retention bonuses for the following reasons:
- Retention bonuses have been relatively common practice within the private sector (although there is evidence of a move away from this trend), however, it is not established in the public sector for the obvious reasons relating to governance, accountability and stewardship of public funds;
 - The central question for ALBs is whether the risk of losing key staff is greater than the risks associated with putting in place an arrangement that has the potential to attract significant public scrutiny;
 - Linked to this is that there is little clear and persuasive evidence that retention bonuses sufficiently mitigate against the risk of losing key staff;
 - Retention bonuses can also cause resentment among those ineligible for bonuses, either because they (or their post) are not considered vital enough, or because they have not made sufficient fuss compared with others. In addition, payment of any retention bonuses could lead to a potentially successful claim for equal pay.
- 6.7.4 There may be cases where ALBs still wish to pursue retention bonuses, in which case, funding of any financial retention incentives will need to be discussed and approved with Department Sponsor Director in advance of discussion with affected staff. The Department Director will expect a business case to be presented and sponsor branches will be able to provide guidance to individual ALBs on the requirements of such a business case.
- 6.7.5 Some ALBs may have already agreed with their sponsors 'dispensation' for retention bonuses. The Department would not expect ALBs to take any retrospective action following on from the issuing of this Guidance.

6.8 Redundancy

- 6.8.1 The Department would expect ALBs to take all necessary steps to avoid or minimise the need to terminate contracts of employment on the grounds of redundancy. ALBs should ensure they have exhausted possibilities of, for example, suitable alternative employment, recruitment freeze, revised ways of working, including flexible and/or homeworking, the possibility of relocation support and restructuring of posts if appropriate.

Consultation and Procedures

- 6.8.2 In considering any form of redundancy programme, the Department would expect ALBs to comply with all statutory requirements, and also the guidance provided by Advisory, Conciliation and Arbitration Service (ACAS) – www.acas.org.uk. The ACAS guidance provides specific advice on legal requirements for consultation and disclosure of information, as well as examples of good practice.
- 6.8.3 Before considering any compulsory redundancy scheme, measures to avoid or minimise redundancy should be thoroughly examined, and opportunities for redeployment explored.
- 6.8.4 The Department would expect ALBs to work closely with their Trade Unions should there be any possibility of the change process resulting in compulsory redundancies. In addition, most employers will have negotiated and agreed procedures on reorganisation and redundancy and these should be followed.
- 6.8.5 The Department would expect ALBs to ensure that the proper processes have been followed in relation to identifying the redundant posts, establishing the legal basis for the dismissal on the grounds of redundancy and following proper and legal consultation arrangements with identified staff and trade unions. For example, in some cases, the General Whitley Council Handbook may apply, as could entitlement to early retirement benefits under the provisions of the NHS (Compensation for Premature Retirement) Regulations 1981, if the dismissal is on the grounds of redundancy and the individual is over 50 with at least 5 years service in the NHSPS. Further information for staff in PCSPS on redundancy is available from PCSPS at www.civilservice-pensions.gov.uk

Funding and Sign-Off

- 6.8.6 It is essential ALBs are able to demonstrate the probity, consistency and value for money of any proposed redundancy programmes. ALBs must be confident that their legal advisors and their auditors are satisfied that due process has taken place in line with the guidance contained in this Framework and the Best Practice Guide which is to follow. Handling redundancy programmes is time consuming and sensitive work which needs skilled HR and Finance support. ALB Chief Executives should satisfy themselves that the teams tackling this work in their organisation have the capacity and capability to do so.
- 6.8.7 Prior to effecting any redundancy dismissals, funding will need to be identified. Therefore, if the ALB is seeking any additional funding beyond its current allocation to support these, the

Department would require the financial profile (in terms of number and costs) of the proposed redundancy programme before approving the funding. If this is the case, ALBs should liaise directly with the sponsor branch. The Department does not currently have any central funds for redundancy costs.

- 6.8.8 The Department would expect to authorise any redundancy package of £100,000 capitalised costs or more. The important audit steps required are as follows:
- ALB Chief Executives should satisfy themselves that proposals relating to the redundancy programme have been reviewed by their legal advisors and auditors, and any proposed changes have been taken account of;
 - The proposals should then be formally approved by whatever ALB Committee has responsibility for these matters e.g. Remuneration Committee;
 - This action should be taken in sufficient time to ensure that staff affected will be able to work their notice period, and will therefore not require any pay in lieu of notice;
 - If an individual does find alternative employment during the notice period, then they will be deemed to have left voluntarily and would forfeit their right to redundancy;
 - Once approved by ALB Committee, the proposal should be submitted to the Department for ratification. This requirement covers all grades of staff whose redundancy packages cost more than £100,000 capitalised costs;
 - The Senior Department Sponsor in conjunction with the sub-committee of the HR Steering Committee, established for this purpose, will ratify the decision taking into account compliance with the Framework and Best Practice Guidance, national consistency and value for money issues. A central record of decisions will be maintained;
 - Notice to terminate a contract on the grounds of redundancy may be given to an individual, but no firm offer of a package costing £100,000 capitalised costs or more should be made until the package has received formal ratification.

Detailed Best Practice Guidance on Handling Redundancies will be available for comment later in the year. This will also include guidance on possible dispute resolution procedures relating to redundancy.

- 6.8.9 The Department would expect ALBs to ensure all measures set out in para 6.8.1 are exhausted prior to considering the launch of a voluntary redundancy scheme. Where such a scheme is thought to be necessary, a business case should be developed and approved by the Senior Department Sponsor.

6.9 Equal Opportunities and Diversity

- 6.9.1 The HR principles underpinning the ALB Review have been developed to ensure that equality of opportunity exists so that no employee or job applicant is discriminated against either directly or indirectly.
- 6.9.2 Individual organisations in carrying out the HR programme must demonstrate due regard to the equal opportunities policies in place within their organisations and ensure that all staff are treated fairly. Staff should be given access to appropriate dispute resolution procedures if they feel they have been unfairly treated
- 6.9.3 These policies need to take account of the legal framework within the Sex Discrimination Act 1975, the Race Relations Act 1976, the Race Relations Amendment Act 2000 and the Disability Discrimination Act 1995. New regulations, which came into force in December last year, outlaw discrimination in employment and training on the grounds of religion or belief and sexual orientation.

6.10 Governance

- 6.10.1 Detailed guidance on corporate governance for the period of the change process is being developed by the Department, and this will be made available to ALBs later in the year.
- 6.10.2 It is expected that ALBs will ensure they have the appropriate governance arrangements in place to ensure that in their implementation of the ALB Review, there is the:
- Fair treatment of staff, and;
 - Proper use of public funds
- 6.10.3 The Department would not expect any 'unusual' arrangements to be put in place as part of the ALB Review. This is reiterated in the letter from John Bacon, included in Appendix Four. Examples of this could include increasing the basis for redundancy payments at a time when it is known there could be redundancies, or any other material and unplanned enhancements to existing contracts of employment prior to the change process.

7. NEXT STEPS

Ongoing Feedback and Questions

- 7.1 In this National HR Framework, we have highlighted a number of issues where all of the required information is not yet available, and the Department will be working hard to ensure that outstanding decisions, in particular relating to targets and types of change process, are made and communicated as soon as possible.
- 7.2 Ongoing feedback from ALBs on the contents of this HR Framework will be vital to informing the Best Practice Guides and the work of the HR Steering Committee.
- 7.3 Any ongoing feedback, questions, or requests for additional copies of this document should be sent to:

ALB.HR.Programme@dh.gsi.gov.uk

Ongoing HR Programme Arrangements

- 7.4 The HR Programme will have a number of ongoing activities, and ALBs will be kept fully informed of any meetings of the various groups, and will also be sent agendas, papers and notes of meetings for information. In addition, there will be a number of 'briefing and update' sessions planned to ensure that the HR Framework, and Best Practice Guides remain up to date and relevant.
- 7.5 The timetable for the rest of the business year will be communicated during December 2004. The first meeting of the HR Steering Committee is planned for January 2005.

APPENDIX ONE

Analysis of Change Process and Timetable, including Baseline Headcounts

Grouping	Name of ALB	Main location	Status	Proposed Change	Proposed Change definition	Proposed timescale – Expected date of changes	WTE Posts Baseline 31st April 2004 unless stated otherwise
Central to NHS	NHS Blood and Transplant	NHS BT	SHA	New – merger of NBA & UKT	Start-up	October, 2005	0
Central to NHS	Dental Practice Board	DPB	SHA	Merger into NHSBSA, then dissolve	Merger and dissolve	October, 2005	321
Central to NHS	Dental Special Health Authority	NA	SHA	Will no longer be created	Will no longer be created	Will no longer be created	0
Central to NHS	Family Health Services Appeal Authority	FHSAA	SHA	Dissolve – transfer functions to NHSLA	Transfer and dissolve	April, 2005	15
Central to NHS	Health and Social Care Information Centre	HSCIC	SHA	Start-up – take on functions from NHSIA + Statistics	Start-up	April, 2005	0
Central to NHS	National Blood Authority	NBA	SHA	Dissolve – merger into NHS BT	Merger and dissolve	October, 2005	5,599
Central to NHS	NHS Appointments Commission	NHSAC	SHA	Start-up as ENDPB with wider remit, subject to primary legislation. Take on some functions from CPIPH and COREC. Dissolve SHA	Start-up	April, 2006	49
Central to NHS	NHS Business Services Authority	NHSBSA	SHA	Start-up – merger of NHSPA, DPB, PPA and NHS-CSFMA	Start-up	October, 2005	0
Central to NHS	NHS Counter Fraud & Security Management Service	CFSMS	SHA	Devolve to PCTs work of Compliance Unit by 1 October 2005. Merger with NHSBSA then CFSMS dissolved.	Merger and dissolve	October, 2005	250
Central to NHS	NHS Direct	NHSD	SHA	Review planned	TBA	April, 2006	1,987
Central to NHS	NHS Estates	NHSE	Executive Agency	Some functions transfer to SHAs, ODPM, and DH – Dissolved	Transfer then dissolve	April, 2005	412
Central to NHS	NHS Information Authority	NHSIA	SHA	Dissolve and functions transfer to HSIC & NPfIT	Transfer then dissolve	April, 2005	1,127
Central to NHS	NHS Litigation Authority	NHSLA	SHA	Take on functions from FHSAA by 1 April 2005. NHS LA functions then subject to Redress primary legislation.	TBA	TBA	217
Central to NHS	'NHS Redress Authority'	Redress	SHA	Start-up with transfer of functions as appropriate from NHS Litigation Authority	Start-up	April, 2006	0
Central to NHS	NHS Logistics	NHSL	SHA	Being market tested.	TBA	April, 2006	1,403
Central to NHS	NHS Modernisation Agency	MA	Other	Review underway with some functions transferring to NHS and NILSI	Transfer then dissolve	July, 2005	842
Central to NHS	NHS Pensions Agency	NHSPA	SHA	Merger into NHSBSA, then dissolve.	Merger and dissolve	October, 2005	339
Central to NHS	NHS Professionals	NHSP	SHA	Review underway – possible independent status	TBA	April, 2007/08	671
Central to NHS	NHS Purchasing & Supply Agency	PASA	Executive Agency	Transfer of DES functions from MHRA. Take on relevant the Department procurement activity.	Transfer	April, 2005	333
Central to NHS	NHSU	NHSU	SHA	Review underway with some functions transferring to NILSI	Transfer then dissolve	July, 2005	262
Central to NHS	NHS Institute for Learning, Skills and Innovation	NILSI	SHA	Start-up with transfer in of functions from NHSU, MA and NHS Leadership Centre	Start-up	July, 2005	0
Central to NHS	Prescription Pricing Authority	PPA	SHA	Merge into NHSBSA	Merger and dissolve	April, 2006	2,438
Central to NHS	UK Transplant	UKT	SHA	Dissolve – merger into NHS BT	Merger and dissolve	October, 2005	121
Central to NHS	National Programme for IT	NPfIT	Executive Agency	Time limited EA, with transfer of IT infrastructure functions from NHSIA and some functions from DH	Start-up	April, 2005	0

Grouping	Name of ALB	Main location	Status	Proposed Change	Proposed Change definition	Proposed timescale – Expected date of changes	WTE Posts Baseline 31st April 2004 unless stated otherwise
Public Welfare	Commission for Patient and Public Involvement in Health	Birmingham	ENDPB	Consultation on arrangements to replace CPPIH that best meet the needs of Patients' Forums.	Dissolve	April, 2006	197
Public Welfare	Health Protection Agency	London/Salisbury	SHA changing to ENDPB	Transfer functions from PHLS, NRPB, NIBSC. Change to ENDPB from 1st April 2005.	Transfer	April, 2005	2,726
Public Welfare	National Biological Standards Board	Potters Bar - Herts	ENDPB	Transfer functions to HPA, then dissolve.	Transfer then dissolve	April, 2006	308
Public Welfare	National Clinical Assessment Authority	London	SHA	Transfer as stand alone function to NPSA & dissolve	Transfer then dissolve	April, 2005	89
Public Welfare	National Patient Safety Agency	London	SHA	Take on NCAAA function, COREC admin functions, national confidential enquiries from NICE and some functions from NHS Estates	Transfer of functions from NCAAA, NHS Estates and from NICE	April, 2005	149
Public Welfare	National Radiological Protection Board	Didcot - Oxon	ENDPB	Transfer the functions to HPA then dissolve	Transfer then dissolve	April, 2005	349
Public Welfare	National Treatment Agency for Substance Misuse	London	SHA	TBA – likely transfer of functions to NHS and Govt. offices	Transfer	TBA	88
Public Welfare	Central Office of Research Ethics	London	Other	Management arrangements to NPSA. Appointment arrangements to NHSAC	Transfer	April, 2005	0
Public Welfare	Public Health Laboratory Service	PHLS	ENDPB	Transfer functions to HPA then dissolve	Transfer then dissolve	April, 2005	69
Regulation	Council for Regulation of Healthcare Professionals	CHRE	ENDPB	None	None	NA	8
Regulation	Commission for Social Care Inspection	CSCI	ENDPB	None	None	NA	2,622
Regulation	Dental Vocational Training Authority	DVTA	SHA	Dissolve – transfer functions to PMETB	Transfer	2005/06	4
Regulation	General Social Care Council	GSCC	ENDPB	Transfer responsibility for student grants to NHSBSA	Transfer	During 2005	173
Regulation	Healthcare Commission	HC	ENDPB	"Take on MHAC functions"	Transfer	2007/08	771
Regulation	Human Fertility and Embryology Authority	HFEA	ENDPB	Dissolve – merge into RAFT	Merger then dissolve	April, 2008	106
Regulation	Human Tissue Authority	HTA	ENDPB	HTA will be established 1 April 2005, then merged into RAFT	Start-up then merger	Start-up April 2006 then Dissolved April 2008	0
Regulation	Mental Health Act Commission	MHAC	SHA	Dissolve – some functions going to HC. Requires primary legislation – Mental Health Bill.	Transfer and dissolve	2007/08	36
Regulation	Monitor – Independent Regulator – Foundation Trusts	Monitor	ENDPB	Subject to primary legislation – become non-ministerial government department	None	TBA	28
Regulation	Postgraduate Medical Education & Training Board	PMETB	ENDPB	Take on DVTA functions	Transfer	2005/06	27
Regulation	Regulatory Authority for Fertility & Tissue	RAFT	ENDPB	New	Start-Up	April, 2008	0
Regulation	Medicines and Healthcare Products Regulatory Authority	MHRA	Executive Agency	Transfer the Device Evaluation Service to NHS PASA	Transfer	April, 2005	806
Standards	Health Development Agency	HDA	SHA	Dissolve – merger by absorption into NICE	Merger by absorption	April, 2005	138
Standards	National Institute for Clinical Excellence	NICE	SHA	Take on HDA functions National confidential enquiries to transfer to NPSA	Merger by absorption plus transfer.	April, 2005	92
						TOTAL	25,171

NB: Information correct at the time of going to print. 29th November 2004.

APPENDIX TWO

Summary of Key Points Relating to the Cabinet Office Guidance on 'Staff Transfers in Public Sector'.

Transfer of Undertakings (Protection of Employment) Regulations 1991

(Adapted from Chapter 3 of Cabinet Office Guidance entitled "Better Quality Services: A Handbook on creating public/private partnerships")

Provisions

- 1.1 In broad terms, TUPE protects employees' terms and conditions when the business in which they work is transferred from one employer to another, and the business retains its identity. When TUPE applies, employment with the new (or transferee) employer is treated as continuous from the date of the employee's start with the first (or transferor) employer. Terms and conditions cannot be changed where the operative reason for the change is the transfer of the undertaking, although changes for other reasons may be negotiated. It is the responsibility of Departments, as employers: to satisfy themselves, on the basis of advice from the Department's legal advisers, whether TUPE applies in particular circumstances; to ensure that TUPE is honoured, where it does apply (including the consultative requirements) up to the time of transfer; and to ensure that the transferee employer accepts their responsibilities when TUPE applies.

Chapter 2 Assessing whether TUPE will apply

- 1.2 Whether TUPE applies, depends on all the relevant facts of the case and will be for the overall project team to answer. They should always seek legal advice and keep lawyers fully apprised of all relevant facts. In complex cases, Departmental legal advisors may decide to seek Counsel's opinion. The case law of the European Court of Justice (ECJ) suggests that TUPE is likely to apply to a contract for services awarded to the private sector (including companies formed as a result of management or employee buyouts) following competitive tendering, if an economic entity has been transferred and remains in existence performing the same or similar activities. Departments may specify that staff are to transfer (which will cause TUPE to operate), or else must give a view on the likely application of TUPE.

Effect of TUPE applying

- 1.3 If TUPE applies, the transferee employer:
- takes over the contracts of **all** the employees who were employed in the undertaking at the time of the transfer (unless there are changes for economic, technical or organisational reasons, entailing changes in the workforce) on the same terms and conditions as they were employed by the transferor, except in relation to future occupational pensions entitlement.
 - takes over all rights, powers, duties and liabilities in respect of the transferring employees.
 - takes over any collective agreement, including recognition agreements applicable to the employees transferring.
 - Is obliged to make information available to workers' representatives and the transferor employer, and to consult workers' representatives on matters relating to the transfer.

Transfers in the Public Sector

- 1.4 The Cabinet Office published a Statement of Practice in January 2000 entitled *Staff Transfers in the Public Sector* at: <http://www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf>

The policy in the Statement is based on the following principles:

- “contracting-out exercises with the private sector and voluntary organisations and transfers between different parts of the public sector, will be conducted on the basis that the staff will transfer and TUPE should apply, unless there are genuinely exceptional reasons not to do so.;
- this includes second and subsequent round contracts that result in a new contractor and where a function is brought back into a public sector organisation where, in both cases, when the contract was first awarded staff transferred from the public sector;
- in circumstances where TUPE does not apply in strict legal terms to certain types of transfer between different parts of the public sector, the principles of TUPE should be followed (where possible using legislation to effect the transfer) and the staff involved should be treated no less favourably than had the Regulations applied (this is referred to as “TUPE-like”); and
- there should be appropriate arrangements to protect occupational pensions, redundancy and severance terms of staff in all these types of transfer” .

APPENDIX THREE

STAFF TRANSFERS IN THE PUBLIC SECTOR STATEMENT OF PRACTICE

JANUARY 2000

Guiding Principles

- The Government is committed to ensuring that the public sector is a good employer and a model contractor and client. The people employed in the public sector, directly and indirectly, are its biggest asset and critical in developing modern, high quality, efficient, responsive, customer focused and environmentally friendly public services.
- The Government's approach to modernising public services is a pragmatic one, based on finding the best supplier who can deliver quality services and value for money for the taxpayer. This involves some services or functions being provided by, or in partnership with, the private or voluntary sector, or restructured and organised in a new way within the public sector. The involvement, commitment and motivation of staff are vital for achieving smooth and seamless transition during such organisational change.
- Public Private Partnerships and the process of modernisation through organisational change in the public sector will be best achieved by clarity and certainty about the treatment of staff involved. The Government is committed to ensuring that staff involved in all such transfers are treated fairly and consistently and their rights respected. This will encourage a co-operative, partnership approach to the modernisation of the public sector with consequential benefits for all citizens.

Introduction

1. In order to meet these guiding principles the Government believes that there must be a clear and consistent policy for the treatment of staff, founded upon the provisions of the Transfer of Undertaking (Protection of Employment) Regulations 1981 (as amended) (TUPE). This Statement of Practice¹ sets out the framework that the Government expects all public sector organisations to work within to achieve this aim (see paragraph 6 for the coverage of this Statement).
2. TUPE implements the 1977 European Council Acquired Rights Directive. In broad terms, TUPE protects employees' terms and conditions (except occupational pension arrangements) when the business in which they work is transferred from one employer to another. Employment with the

¹ Further copies of this Statement can be obtained from tel. 0207 270 5774, by e-mail to S McDonald, or Cabinet Office web-site at www.cabinet-office.gov.uk/civilservice/2000/tupe/stafftransfers.pdf

new employer is treated as continuous from the date of the employee's start with the first employer. Terms and conditions cannot be changed where the operative reason for the change is the transfer although changes for other reasons may be negotiated.

3. The Government takes a positive attitude towards TUPE, regarding it as an important aspect of employment rights legislation with the potential to promote a co-operative, partnership approach towards business restructuring and change in the public sector. It has, however, acknowledged that TUPE is less than satisfactory in its current form and, following amendments to the Acquired Rights Directive agreed in June 1998, will be shortly consulting on proposals for revising it.
4. The Government's strategy in revising this legislation is based on the principle that it must be made to work effectively for all those whose interests depend upon it. This mirrors the approach that the Government is adopting in deciding policy on employment relations issues generally.
5. In the area of Public Private Partnerships and change in the public sector, the consultations that the Government has undertaken and the representations which have been made, have showed a strong consensus between private sector employers, the voluntary sector, employee representatives and public sector organisations for the application of TUPE to all general situations where a service or function is contracted out, then retendered, brought back into the public sector, transferred within the public sector, or restructured and organised in a new way in a different part of the public sector. It is accepted that there will be some genuinely exceptional circumstances where TUPE will not apply but attempts to orchestrate a non-TUPE situation in other circumstances should not be tolerated. The policy in this Statement of Practice is therefore based on the following principles:
 - on the contracting-out exercises with the private sector and voluntary organisations and transfers between different parts of the public sector, will be conducted on the basis that staff will transfer and TUPE should apply, unless there are genuinely exceptional reasons not to do so;
 - this includes second and subsequent round contracts that result in a new contractor and where a function is brought back into a public sector organisation where, in both cases, when the contract was first awarded staff transferred from the public sector;
 - in circumstances where TUPE does not apply in strict legal terms to certain types of transfer between different parts of the public sector, the principles of TUPE should be followed (where possible using legislation to effect the transfer) and the staff involved should be treated no less favourably than had the Regulations applied; and
 - there should be appropriate arrangements to protect occupational pensions, redundancy and severance terms of staff in all these types of transfer. Attached at Annex A is HM Treasury's Statement of Practice on Staff Transfers from Central Government "A fair deal for Staff

Pensions" which sets out the policy on staff pensions announced by the Chief Secretary on 14 June 1999 that must be followed by Central Government Departments and Agencies, and which Ministers expect to be adopted by other public sector employers².

Coverage

6. This Statement of Practice sets out a framework to be followed by public sector organisations to implement the Government's policy on the treatment of staff transfers where the public sector is the employer when contracting out or the client in a subsequent retendering situation. It applies directly to central government departments and agencies and to the NHS. The Government expects other public sector organisations to follow this Statement of Practice. Local government is subject to some different considerations particularly the current restrictions in legislation contained in Parts I and II of the Local Government Act 1988. However abolition of CCT from January 2000 and proposals to modify Section 17 of the 1988 Act, as part of the introduction of Best Value, will remove in part obstacles to local authorities following this Statement of Practice. However, in doing so, they must have regard to the need to comply with their best value duties. The Personnel and Human Resources panel of the Local Government Association support the principles set out in this Statement of Practice and have encouraged their adoption by individual local authorities.
7. The Statement of Practice covers the following types of situation that may involve transfers of staff:
 - Public Private Partnerships (e.g. following Better Quality Service reviews). This includes contracting-out; market testing; PFI; privatisation and other outsourcing and contracting exercises, (paragraph 10-16);
 - Second and subsequent generation contracting where, when the contract was first awarded, staff transferred from the public sector, (paragraph 12);
 - Reorganisations and transfers from one part of the public sector to another, (paragraph 17-20); and
 - Reorganisations and transfers within the civil service (where TUPE cannot apply because there is no change in employer but TUPE principles should be followed), (paragraphs 21 and 22).
8. This Statement deals only with the policy framework for the treatment of staff involved in such transfers. It does not offer policy advice or guidance on:
 - assessing the options for a particular service or function;
 - project appraisal or procurement (except on the application of TUPE);
 - managing a contracting exercise;

² Separate consideration is being given to the protection of pensions in staff transfers from local government.

- how to discharge the obligations when TUPE applies or not; or
- how to secure appropriate pension provision, redundancy or severance terms.

Nor does it remove the need to seek legal advice in each individual case.

9. Detailed guidance on these aspects is provided separately, often tailored for different parts of the public sector to reflect their different needs, and for different types of Public Private Partnership. A list of relevant guidance for these aspects is at Annex B.

Transfers as a Result of Public Private Partnerships

10. This section of the Statement deals with the policy that should be adopted for the transfer of staff from the public sector to a private sector employer or a voluntary sector body. This will be as a result of a Public Private Partnership where a service or function currently performed by the public sector will in future be carried out by a private sector organisation. This may, for example, be a result of a PFI initiative, strategic contracting out or market testing exercises. All will involve some sort of contracting exercise where the public sector organisation (not necessarily the one in which the staff are employed) is the contracting authority.
11. In such transfers the application of TUPE will always be a matter of law based on the individual circumstances of the particular transfer. However, the policy adopted in defining the terms of the contracting exercise can help ensure that staff should be protected by TUPE and that all parties have a clear understanding that TUPE should apply and will be followed. In such transfers, therefore, the public sector contracting authority should, except in genuinely exceptional circumstances (see paragraph 14), ensure that:
 - at the earliest appropriate stage in the contracting exercise, it states that staff are to transfer and this should normally have the effect of causing TUPE to apply, although legal advice should always be taken to confirm the applicability of TUPE in individual cases;
 - at the earliest appropriate stage staff and recognised unions (or, if none, other independent staff representatives) are informed in writing of the intention that staff will transfer (and where possible when the transfer will take place) and that TUPE should apply;
 - potential bidders are then invited to tender, drawing their attention in the Invitation to Tender letter to the intention that staff will transfer and TUPE should apply. Potential bidders should be also advised that they can, if they wish, submit bids where staff do not transfer and TUPE not apply, but that these will only be accepted if they fall within the genuinely exceptional circumstances i.e. unless the bid falls within one of the exceptions at paragraph 14 it must comply with the condition that staff transfer and TUPE should apply;

- the contracting exercise is then operated on the basis that the intention is that staff will transfer and TUPE should apply. Public sector contracting authorities should however consider all bids received. If a tenderer considers that staff should not transfer, they should be asked to give their reasons for this. Tenderers should be reminded if they do not consider that staff should transfer and the contract does not fall within the exceptions in paragraph 14, the contracting authority reserves the right not to accept the tender;
- in a very few cases bids made on the basis staff will not transfer and TUPE not apply will fall within the genuinely exceptional circumstances set out in paragraph 14 and cause the authority to accept the bid. The costs of redeploying staff and redundancies costs to the public sector employer must be taken into account when assessing such a bid. In all other cases the bid should not be accepted as it will not conform to the contracting authority's view that staff should transfer and TUPE apply; and
- where there is then a contractual requirement that staff should transfer, the requirements of TUPE should be scrupulously followed by the public sector contracting authority who should also ensure that it is satisfied that bidders' proposals fully meet the requirements of TUPE.

Second and subsequent transfers

12. This part of the Statement also extends to the retendering of contracts where, when the contract was first awarded staff transferred from the public sector (irrespective of whether TUPE applied at the time). Where a public contracting authority retenders such a contract then, except in exceptional circumstances (and where the incumbent contractor is successful), staff working on the contract should transfer and TUPE should apply. Views should be sought from the current contractor as to whether, from their point of view, there are any exceptional circumstances why staff should not transfer (by reference to paragraph 14). The retendering exercise should then be conducted as described above in paragraph 11.

Transfer of services or functions back into the public sector

13. There may also be circumstances that require a function contracted-out to a private sector contractor or voluntary sector body to be brought back into the public sector on the termination of the contract. If, when the contract was first awarded staff transferred from the public sector (irrespective of whether TUPE applied at the time), then the public sector organisation should ensure that staff working on the contract transfer (and TUPE should therefore apply) into its organisation unless there are genuinely exceptional reasons not to do so. Views should be sought from the current contractor as to whether, from their point of view, there are any exceptional circumstances why staff should not transfer (by reference to paragraph 14). For transfers into

the Civil Service, where TUPE applies, then the recruitment provisions of the Civil Service Order in Council and Civil Service Commissioners Recruitment Code as well as Civil Service Nationality rules are not relevant³.

Exceptions

14. There may be a small number of cases where the policy set out in paragraph 11-13 may not be followed and TUPE may not apply. There must be genuinely exceptional reasons why this should be the case. Circumstances that may qualify for such exceptions are, broadly:
 - where a contract is for the provision of both goods and services, but the provision of services is ancillary in purpose to the provision of the goods; or
 - where the activity for which the public sector organisation is contracting is essentially new or a one off project; or
 - where services or goods are essentially a commodity bought “off the shelf” and no grouping of staff are specifically and permanently assigned to a common task; or where the features of the service or function subject to the contracting exercise are significantly different from the features of the function previously performed within the public sector, or by an existing contractor e.g. a function to be delivered electronically and in such a way that it requires radically different skills, experience and equipment.
15. Where a public sector organisation believes such genuinely exceptional circumstances exist then it should be prepared to justify this, and the departure from the Government’s policy (para 11-13), publicly, if challenged. In central government, the agreement of the relevant departmental Ministers may need to be obtained before such an exception is made.
16. In such exceptional cases where staff do not transfer and TUPE does not apply, the public sector organisation should, in the case of first generation contracts, seek to identify as soon as possible with the contractor any staff that will be taken on voluntarily by the contractor⁴; and then, where possible, to redeploy those members of staff remaining within the public sector organisation (the costs of such redeployments and possible resulting redundancy payments must be taken into account when evaluating the bid).

³ Civil Service Management Code.

⁴ Public Sector organisations should be aware that the transfer of a major part of the workforce, in terms of numbers or skills, may cause TUPE to apply.

Transfers and Reorganisations within the public sector

17. TUPE can apply to the transfers of a function from one part of the public sector to another where there is a change of employer. This, for example, can include⁵:
 - Transfers between local government and Civil Service Departments and Agencies
 - Transfers between local government and NDPBs
 - Transfers between local government and the NHS
 - Transfers between the NHS and Civil Service Departments and Agencies
 - Transfers between the NHS and NDPBs
 - Transfers between NDPBs and Civil Service Departments and Agencies

18. The application of TUPE will, again, always be a matter of law based on the individual circumstances of the particular transfer. The amended Acquired Rights Directive directly legislates the *Henke* judgement of the European Court of Justice that: an administrative reorganisation of public administrative authorities or the transfer of administrative function is not a transfer and, therefore, as a matter of law, does not fall within the Directive. Recent case law suggests that it excludes from the legislation's application only a relatively limited range of situations involving the transfer of entities pursuing non-economic objectives within the public sector. Nevertheless the issue has still to be tested fully in the tribunals and courts. The *Henke* exception has been thought to apply where: the reason for a transfer is only because there is a change of geographical boundaries and the type of public sector body carrying out the function does not change (e.g. the transfer of administrative staff as a result of changes to police authority boundaries); or where the main function is a judicial, quasi-judicial or quasi-judicial regulatory function (e.g. the creation of the Financial Services Authority) and incapable of being performed other than by a public sector authority. Officeholders who are not workers are also excluded from the scope of the Directive.

19. However, transfers at the instigation and under the control of central government will usually be effected through legislation, in particular those involving Officeholders. Provision can then be made for staff to transfer on TUPE terms, irrespective of whether the transfer is excluded from the scope of the Directive implemented by TUPE. Departments must therefore ensure that legislation effecting transfers of functions between public sector bodies makes provision for staff to transfer and on a basis that follows the principles of TUPE along with appropriate arrangements to protect occupational pension, redundancy and severance terms.

⁵ This list is not exhaustive. However, terms and conditions of employment do vary between different departments and many of the considerations addressed in the Statement for other types of transfer may also apply.

20. Section 38 of the Employment Relations Act also includes a power that can be used to apply the requirements of TUPE specifically to some such transfers e.g. Transfer of Undertakings (Protection of Employment) (Rent Officer Service) Regulations 1999 (SI 2511/1999). Where, for whatever reason, this power or other legislation is not used there will be no legal requirement or obligation in such cases for staff to transfer to another part of the public sector where the function is to be performed (as to attempt to compel them would, in effect, constitute a unilateral change in their employment contract by imposing a change of employer). In such cases, as a matter of policy, public sector bodies should ensure that the principles of TUPE are followed and staff are offered the opportunity to transfer on terms that are, overall, no less favourable than had TUPE applied. They should also ensure appropriate pension provision and redundancy and severance terms. Staff who choose not to transfer should, where possible, be redeployed within the transferring public sector organisation.

Transfers and Reorganisations within the Civil Service

21. Reorganisation and transfers between central government departments and agencies (i.e. within the Civil Service) do not involve a change in employer and TUPE therefore cannot apply.
22. As a matter of policy, therefore, such reorganisations and transfers between central government departments will be conducted on the basis that:
- as a general rule, when functions are transferred from one department to another staff will be transferred with the work;
 - departments should, however, make every effort to provide an opportunity for those who wish to stay with or return to their original department to do so, having regard to ensuring consistent treatment of staff affected and the needs of the work;
 - departments should ensure that wherever possible the principles of TUPE are followed. The existing terms and conditions of staff cannot be changed unilaterally;
 - staff and their recognised unions are informed at the earliest appropriate stage of the reorganisation and transfer; and
 - over time, the receiving department may aim to move, through negotiation with staff, towards fuller alignment of the terms of transferred staff to those of the main body of staff.

APPENDIX THREE – ANNEX A

H M Treasury June 1999

STAFF TRANSFERS FROM CENTRAL GOVERNMENT: A FAIR DEAL FOR STAFF PENSIONS

Guidance to Departments and Agencies

Introduction

1. This paper sets out in general terms how pensions issues are to be handled in future when staff from central government Departments and Agencies are transferred to a new employer as part of a business transfer. The new approach set out here builds upon earlier guidance, and extends and strengthens its application in order to ensure that staff are treated fairly. It is mainly concerned with transfers between the Government and the private sector when contracts are awarded under public-private partnership (PPP) deals.
2. *Better Quality Services* gives guidance on the treatment of staff pensions in PFI and PPP deals, and there are also policy statements and guidance issued by the Treasury Task Force covering, for instance, the Government's continuing commitment to dialogue with staff and other interested parties about the way in which PPP projects are managed.
3. This new guidance should be reflected in procurement practice as soon as is practicable without disruption to projects which are already at an advanced stage. Detailed guidance will be issued to contracting authorities later this year.

Background

4. Pensions are often an important element in the overall remuneration of staff, particularly within the public services where there are occupational pension schemes offering a high quality of benefits. Sometimes public service schemes require very low employee contributions to earn pension benefits, such as in the Principal Civil Service Pension Scheme (PCSPS) where employee contributions are set at only 1½ % of pay, and in these cases employee pay is somewhat lower than it would otherwise be, to reflect the value of the pension scheme.
5. If appropriate arrangements were not made for staff pensions as part of business transfers, the result could be disadvantageous to public service staff who were transferring to the new employer. Not only are pension arrangements an important subject, but they are complex and likely to cause confusion and apprehension if not handled openly and consistently by the contracting authority. It is not in the interests of the contracting authority, or the new employer, or the taxpayer, for staff to be alarmed about the prospects for their pensions in a business transfer which depends upon staff motivation for delivery of good quality public services.

6. Occupational pensions are not covered by the Transfer of Undertaking (Protection of Employment) Regulations 1981 (the TUPE regulations). The new EU Acquired Rights Directive gives Member States the option of including occupational pensions within the terms which are protected by national legislation when an undertaking transfers between employers, and the Government is reviewing whether and if so, how, to include pensions within new TUPE regulations.
7. Independently of the TUPE review, and without prejudice to its conclusions, this paper sets out the standard practices which the Government will follow when its own staff are transferred to other employers. Contracting authorities in other parts of the public sector will continue to make their own arrangements consistent with the law and good employment practice. It would be welcome if they adopted approaches comparable to those set out here. Separate consideration is being given to staff transfers from local government.
8. The principles which Government will apply as a contracting authority in relation to the pensions of transferring staff are:
 - to treat staff fairly;
 - to do so openly and transparently;
 - to involve staff and their representatives fully in consultation about the process and its results; and
 - to have clear accountability within Government for the results.
9. There are two separate but related aspects to treatment of pensions in a business transfer:
 - first, staff should continue to have access after the transfer to a good quality occupational pension scheme under which they can continue to earn pension benefits through their future service;
 - second, staff should be given options for the handling of the accrued benefits which they have already earned.

Each of these aspects is discussed, in turn, in the following sections.

FUTURE SERVICE

10. The focus of this guidance is upon those cases, likely to be in the majority, where a business transfer means that staff have to be 'early leavers' of the occupational pension scheme associated with their former employment. The Government has no plans to seek amendment to the Superannuation Act 1972 to broaden the categories of employees eligible for membership of the PCSPS. Where Civil

Servants transfer to private sector employment they will therefore cease to be eligible for PCSPS membership, and their ability to earn further occupational pension benefits through future service will depend upon the occupational pension arrangements offered by the new employer.

11. Not all private sector employers offer occupational pension schemes which are as valuable to employees as the public service schemes, and where good quality pension schemes are offered they typically differ in major respects: for instance, the age of normal retirement, the rate of accrual of pension entitlements, provision of a lump sum on retirement, the degree of indexation of pensions increases, and so on. If care were not taken over staff pensions, the unintended upshot of a business transfer might be a detriment to staff pension benefits.
12. The terms of the business transfer should specifically protect staff pensions. The arrangements made to achieve this need to be considered within the overall context of the business transfer negotiations between the contracting authority and prospective private sector partners and should not be so cumbersome or expensive to administer as to militate against finding a justifiable business solution.
13. To require that the new employer should offer transferring staff access to a pension scheme which is in all respects identical to the public service scheme which they are leaving would be unduly restrictive. It would add to administrative costs and it could hamper harmonisation of terms and conditions. In the case of the PCSPS it would be an unrealistic requirement, because a non-statutory scheme which was identical to the PCSPS would not qualify for tax exemption. A requirement for an identical scheme would also prevent employers from offering different benefit packages, more in line with private sector standards, which might overall be of greater value to many transferring employees.
14. The guiding principle should be that the new employer offers transferring staff membership of a pension scheme which though not identical is 'broadly comparable' to the public service pension scheme which they are leaving. To satisfy the criteria for broad comparability there must be a rigorous scrutiny of the alternative pension arrangements by a professionally qualified actuary which compares the alternative scheme with the public service scheme in detail. A broadly comparable scheme will be one which, in the professional opinion of the actuary, satisfies the condition that there are no identifiable employees who will suffer material detriment overall in terms of their future accrual of pension benefits under the alternative scheme. The PCSPS takes actuarial advice from the Government Actuary's Department, as do a number of other public service pension schemes.

15. There may be cases where although there are no identifiable classes of employee who would be materially worse off overall, transfer to the new scheme might be materially detrimental to a few individuals. In such cases it will be a matter of judgement whether the new scheme should be adjusted, or whether it would be better simply to make appropriate compensation arrangements to protect the disadvantaged individual(s).
16. Each case should be considered on its merits. There may be exceptional circumstances where there are special reasons for not providing a broadly comparable pension scheme. The strength of those reasons should be tested rigorously and it would then be necessary for the terms of the business transfer to ensure appropriate compensation for all the staff. Actuarial advice should be taken by the contracting authority on the calculation of any compensation in these exceptional circumstances if a broadly comparable scheme is not to be provided, or if there are identified individuals who would be materially worse off overall in the new scheme. In all cases the preference should be for the new employer to offer transferring staff membership of a broadly comparable scheme, and this should be a contract condition in the procurement. Only in exceptional circumstances should the combination of pension arrangements which are less than broadly comparable plus appropriate compensation for employees be accepted.
17. This principle is already being followed by the Government. Its practical application will now be strengthened, extended and made more open:
 - (i) for transfers of staff from Government Departments and Agencies it will continue to be a requirement for the Government Actuary's Department (GAD) to certify the broad comparability of specified alternative pension arrangements before any contractual commitment is made;
 - (ii) if for exceptional reasons the requirement for broad comparability is to be waived, GAD advice on appropriate compensation to staff must be followed;
 - (iii) GAD will follow a published Statement of Practice in certifying broad comparability (attached). This sets out clearly the principles which are already being followed. Publishing these principles in the form of this Statement for the first time will increase transparency and accountability;
 - (iv) GAD will provide to the contracting authority an analysis of the key differences between the alternative pension scheme and the public service scheme, and the ways in which the differences balance out overall to satisfy the condition of no material detriment overall, by reference to the different groups of employees identified in the staff to be transferred;
 - (v) the full GAD analysis will be made available to trades unions and staff representatives, and GAD will respond to any queries or observations which staff representatives have. A reasonable period will be allowed by the contracting authority for discussion, if requested, of any points arising from the GAD analysis;

- (vi) at the conclusion of this period, if any points of concern about the suitability of the proposed alternative pension arrangements remain which cannot be settled by discussion between staff representatives and the contracting authority, staff representatives may raise their concerns directly with a nominated Minister responsible for the affairs of the Department or Agency;
 - (vii) no contractual commitments will be made whilst this process of review and consultation is underway, but a reasonable time limit may be set by the contracting authority;
 - (viii) the contract for the business transfer must specifically require the implementation of the alternative pension arrangements which have been accepted.
18. In practice this will mean that in order to avoid delay or having to retrace steps, contracting authorities will need to be satisfied about the broad comparability of alternative pension arrangements well in advance of moving a procurement to selection of short-listed bidders or a preferred bidder. Bidders will need to provide GAD with detailed specifications of their proposed pension arrangements in good time to allow the analysis required and, if necessary, subsequent discussion of it with staff representatives. Contracting authorities will have to reflect this in their procurement logistics. There can be no proper evaluation of options for public-private partnership without a full analysis of the future staff pension arrangements.
19. Ministers will not authorise a procurement contract, and contractual commitments should not be made under delegated powers, if the conditions set out in paragraph 17 (above) have not been satisfied. This provides a guarantee to staff that the process of identifying acceptable alternative pension arrangements will be fair and open and carried out in full consultation with their representatives.

Subsequent transfers of staff

20. Current practice restricts the contracting authority's concern about broad comparability to transfers from Government to another employer. Once staff have transferred to a new employer, they may be involved in subsequent business transfers. As a contracting authority, the Government will usually not be involved directly as a party to those arrangements. A contracting authority cannot take responsibility for the treatment of its former staff throughout the remainder of their working lives. But a contracting authority does take an interest in the conduct of business transfers which occur as the direct consequence of actions which it takes as a contracting authority.

21. Therefore:
- (i) where a contract for services is terminated and the work is given to another contractor, the contracting authority will require that pension arrangements are made for staff transferring from the first contractor to the second contractor which would at least be broadly comparable with the public service pension scheme which those staff were in originally. The requirement will be limited to staff originally transferred from the contracting authority, although employers may find it convenient to harmonise terms and conditions in the workforce; and
 - (ii) where a primary contractor under a Government contract transfers staff whose work is integral to performance of the contract to a sub-contractor in consequence of the terms of the primary contractor's obligations to the Government, it should be a condition of that subcontracting that broadly comparable pension arrangements are made for the transferring staff who were originally in the employ of the contracting authority.

ACCRUED BENEFITS

22. The treatment in procurement practice of the accrued pension benefits of transferring staff is more complex, but raises issues of equal importance. Regulations applicable to pension schemes require 'early leavers' to be given the option of 'preserving' their accrued benefits in the pension scheme which they are leaving, or transferring them to another pension arrangement. In the former case (preservation), the early leavers become 'deferred pensioners' of the scheme which they are leaving. The value of their benefits in that scheme will be uprated by price inflation until they come into payment at normal retirement age. This option may often be preferred by staff, especially those who are closer to retirement and do not expect significant future real earnings growth. In the latter case, where accrued benefits are transferred, the transferor scheme makes a transfer payment to the transferee scheme which extinguishes its liability to the early leaver; in return the new employer's scheme awards a past service credit to the individual. (If the transfer were made to a personal pension plan instead, it would be invested in the normal way.)
23. Regulations stipulate a basis for calculating a minimum transfer value where accrued credits are transferred. Typically this will not result in individuals securing full credits in the new employer's scheme in relation to the credits they are surrendering in the transferor scheme, unless there is a specific agreement between the two pension schemes that they should do so. Typically there is then a different basis for calculation of the transfer value involving the transferor scheme in making higher transfer payments. Such agreements between pension schemes are called 'bulk transfer agreements' (although they may in fact cover only a few members of staff, or just one). A bulk transfer agreement specifies the basis for calculating the transfer payment and the size of the transfer credits it will secure.

24. It is desirable where staff are obliged by a transfer of undertaking to be early leavers of a public service pension scheme for there to be bulk transfer agreements covering the award of past service credits by the new employer's pension scheme. Current practice, as set out in *Better Quality Services* is to treat the absence of a bulk transfer agreement as a significant disadvantage of a bid. In practice this means that bids should be unlikely to succeed unless there is a very good prospect of a bulk transfer agreement being concluded to cover transferring staff. But it is still possible for the business transfer to become dissociated from negotiation of the bulk transfer agreement between the two pension schemes, leaving staff uncertain about the arrangements which will eventually be made.
25. The existing approach will therefore now be strengthened by making it a condition for the business transfer that there will be a bulk transfer agreement under which the pension scheme of the new employer will provide day for day past service credits (or an equivalent recommended by the Government Actuary's Department as a suitable reflection of differences in benefit structures between the schemes) to staff choosing to transfer their accrued credits.
26. It will therefore be essential in future that negotiations between the public service pension scheme and the new employer's pension scheme are settled at a sufficiently early stage in the procurement. The contracting authority should then be able to explain to staff and their representatives what the terms for award of past service credits will be. Staff representatives will be able to discuss this with the contracting authority and GAD, and they will have a reasonable period in which to make any observations and, if necessary, to make representations directly to the Minister nominated as responsible for the project.
27. Only in exceptional circumstances should staff transfers be contemplated where the contract terms will not ensure appropriate bulk transfer terms. If there are exceptional circumstances justifying a waiver of this contract requirement, these should be explained and discussed with staff representatives at an early stage.
28. As in current practice, staff should normally be given a three month period following the issue to them of pension option forms in which to elect whether to preserve their accrued benefits or transfer them. Pension option forms should be issued as soon as practicable following the staff transfer.
29. Further guidance will be issued to contracting authorities concerning the mechanics of bulk transfer negotiations.

Subsequent transfers

30. Where a public service pension scheme associated with the public contracting authority is not a party to a bulk transfer agreement involving a further transfer of former public servants, the position is substantially more complicated. But appropriate bulk transfer terms should be sought for staff in transfers arising from second-round and subsequent contracting, and sub-contracting. Further guidance will be issued to contracting authorities concerning appropriate contractual safeguards covering availability of bulk transfer terms in subsequent TUPE transfers involving staff who in initial transfers from the Government were the subject of bulk transfer payments by a public service pension scheme.
31. Making these reforms to procurement arrangements will ensure fair treatment of staff pensions in public-private partnerships. It will continue to be important to look at each case on its merits, and to allow contractual mechanisms to continue to evolve towards better practice. The new approaches described above will guide current practice and new developments to ensure that staff are treated consistently on terms which are fair and predictable, and that there is in every case an opportunity for staff to understand fully the implications for their pensions and to make any representations they wish to the responsible Minister well before a Government contracting authority makes final arrangements for a business transfer involving the transfer of staff.
32. The Government will be ready to consider any further reforms which may be needed to cope with developments. In addition, for the longer term, it will review with representatives of employers and employees the scope for simplifying the administration of public – private partnerships, for instance by developing ‘model schemes’ or industry-wide multi-employer schemes which are broadly comparable with public service schemes and can facilitate transfers of staff between employers more easily as public – private partnership arrangements become more important to the delivery of public services.

Assessment of broad comparability of pension rights

Statement of Practice by the Government Actuary

The Government has issued a Code of Practice entitled “*Transfers of Government Staff: A Fair Deal for Pensions*”, describing the key steps which the Government is taking when staff are transferred within the public service, or from the public service to the private sector, with their work. Central to the process is the requirement for an assessment of whether pension arrangements being offered to employees by their new employer are “broadly comparable”

to those provided by their existing employers. This requirement relates only to the period of employment after the change of employer. Exceptionally, if comparability is not available, there is a requirement for the valuation of any detriment on pensions to be offset by elements of the remuneration package outside the pension scheme.

This Statement of Practice sets out the principles on which the Government Actuary's Department (GAD) undertakes its assessments of broad comparability.

Assessments may be commissioned by a public service employer, or by a contracting authority, on a one-off basis in relation to a specific group of staff. They may also be commissioned by a private sector employer with a view to obtaining a "passport" that his pension scheme is broadly comparable to a specific public service scheme for any group of employees who may transfer from that scheme to his employment over a given period. In either case, the principles are the same. For a passport, where a specific group of employees cannot be identified, the tests are conducted using a very large range of employee profiles containing different characteristics affecting the value of pension rights, for example age, gender, salary level and service length.

Benefits Against Which Assessment Is Made

The assessment will be made against those benefits provided as a right from the current employer's pension scheme, for which the employees are eligible, and the contributions which employees pay towards that scheme. The assessment will not take account of any benefits which are payable solely as a result of a member being declared redundant, either compulsorily or voluntarily, where those exceed the normal benefits available to an individual who resigns from employment at that time.

The assessment excludes the injury benefits payable by public service employers which provide a minimum income guarantee as a result of injury or death while in the service of the employer.

It is recognised that there is uncertainty over the legal protection for benefits available on redundancy and injury within the Transfer of Undertakings (Protection of Employment) Regulations 1981. If so requested by a public service employer or contracting authority, an additional assessment of comparability of the arrangements being offered by the new employer against a base of those on offer with the existing public service employer will be undertaken.

General Principles

The general principles on which the assessment of broad comparability is made on transfers from the public service to the private sector are set out below. Corresponding principles apply on other transfers. It must be recognised that there is a very wide range of possible remuneration packages, including pensions, and that some flexibility may need to be applied in the practical implementation of these principles.

Value

- The overall value of the new scheme should be equal to or greater than that of the current scheme.
- In addition to the test of overall value, assessments of value will be made separately for different types of individual, e.g. for different pay levels, for different ages, and for any other characteristics which could reasonably be expected to have a material impact on the value of pension benefits.
- Value is assessed by calculating, on consistent assumptions and methods, the underlying employer costs, in excess of the employee's share of the cost, of providing the benefits under the scheme which will accrue over the remaining working life.
- Value is considered as that in the hands of the employee gross of any liability to tax.

Contributions

- Schemes with higher employee contributions, will not be deemed broadly comparable because of the implied reduction in net pay (unless a compensating pay rise is proposed).

Benefits

- The range of benefits provided under the new schemes must at least match that provided by the current scheme.
- Benefits must be available from the new scheme in respect of the same events and at the same time as would have arisen in the existing scheme.
- In some cases, the amount of benefit may be lower on a particular contingency than under the current scheme, but this will need to be balanced by better benefits on other contingencies.
- Normal retirement age – at which full unreduced retirement benefits are available without employer consent and at which deferred benefits are payable – will be no greater than in current scheme.
- The initial rate of pension at normal retirement age should normally be no lower than that in the former scheme.
- Shortfalls in the level of pensions increases offered must be offset by better benefits elsewhere.

- In defined benefit schemes, benefits and contributions must be calculated on a definition of pensionable pay of at least the value of that applying in the current scheme.
- Under the arrangements for contracting-out of the State Earnings-Related Pension Scheme currently in place, schemes which are either contracted-out or not contracted-out will be considered for broad comparability.
- Time spent with the current employer which would have counted towards qualification for benefits in the existing scheme will count in the new employer's scheme as qualifying service, regardless of whether or not accrued rights are transferred to the new scheme.

Membership

- All those eligible to participate in the current scheme will automatically be admitted to the new scheme from the date of transfer of employment without medical examination. This would not interfere with an employee exercising his/her right to choose to opt out of scheme membership.

Security

- It is recognised that the security of a private sector scheme cannot be provided in the same form as that applying in the public service, but specific safeguards will be sought in the following areas:
 - member representation on trustee bodies
 - protection of accrued rights, on an on-going basis, on any rule change
 - changes inspired by the employer, including loss of the contract, involving joining another pension scheme will trigger the offer of a bulk transfer payment or enhancement of benefits within the scheme, to a level commensurate with existing benefits.

Type of Scheme

- Only defined benefit schemes will be certified as broadly comparable to defined benefit schemes; only defined contribution schemes will be certified as broadly comparable to defined contribution schemes.
- A test of adequacy of contribution (for a defined contribution scheme) or of benefit design where broad comparability cannot apply (for a defined benefit scheme) will be carried out with the aim, but not the certainty, of ensuring benefits of similar value are expected to emerge.
- When the transfer is between defined benefit and defined contribution schemes, (or vice versa), specific provision should be made for death benefits.

Certification

Pension proposals which satisfy my view of broad comparability will be certified as such. The onus, as set out in the certificate, will be on the current employer to ensure that the pension promises made by the prospective new employer are delivered for the staff concerned.

The certificate will detail the key design features of the proposed pension arrangement and any associated undertakings provided by the new employer. It will be written in plain English. It will be in a form which can be distributed to the employees and their representatives.

Where a passport application is being considered an interim certificate will be issued if the formal documentation and approvals from regulatory bodies are not in place.

C D Daykin
Government Actuary 26 May 1999
London

APPENDIX THREE – ANNEX B

OVERVIEW

12 Guiding Principles in Using Market Testing and Contracting Out, Hansard, 4 November 1997, Col 94

Better Quality Services – a Handbook on creating Public/Private Partnerships through Market Testing and Contracting Out, The Stationery Office July 1998, ISBN 0-11-630964-4

Better Quality Services: Guidance for Senior Managers, The Stationery Office, July 1998
ISBN 0-11-130152-2 A summary of the above handbook

Efficiency Plans – Guidance for Development and Use, Cabinet Office, November 1995, ISBN 07115
0305 2 and amendments, November 1996 – describes the various efficiency techniques

Appraisal and Evaluation in Central Government, the “Green Book”, HM Treasury, 1997

Keeping an Eye on the Government's Own Costs, useful ideas on assessing and comparing performances,
HM Treasury, 1997

Deregulation and Contracting Out Act 1994 – An Explanatory Guide, Cabinet Office (originally issued by
the Department of Trade and Industry), 1994

Procurement Policy Guidance and Procurement Practice Guidance (CUP Guidance, as was), HM Treasury
(various dates)

Guidance on Agency Reviews, Cabinet Office, 1995

Towards Best Practice: An evaluation of the Public Sector Benchmarking Project 1996-98,
Cabinet Office, 1998

Partnership for Prosperity: The Private Finance Initiative, HM Treasury, 1997

Selling Government Services into Wider Markets – policy and guidance notes, HM Treasury, 1998

CUP Guidance Note: No 40

CUP Guidance Note: No 44

The Duties of an Accounting Officer, HM Treasury, 1994

A Guide to Quality Schemes for the Public Sector, Cabinet Office, 1999

Public Sector Benchmarking Project Brochure of Services Available, version 3, Cabinet Office, 1999

Assessing Excellence, Cabinet Office, 1999

HOW TO SUCCEED

Competing for Quality Policy Review, HMSO 1996, ISBN 0-11-430142-5

Service First – The New Charter Programme, Cabinet Office, 1998

CUP Guidance Note: No 40

CUP Guidance Note: No 46 Quality Assurance

CUP Guidance Note: No 53 Procurement Training

CUP Guidance Note: No 55

CUP Guidance Note: No 56

CUP Guidance Note: No 59

CUP Guidance Note: No 61

Code of Practice on Access to Government Information, 2nd Edition, 1997

Guidance on Interpretation of Code of Practice on Access to Government Information, 2nd Edition, 1997

“Dear Procurement Officer” Letter DPO (98) 2, of 13 January 1998

Consultants: How to Use Them, in the Pay and Grading Guidance Notes, Cabinet Office, 1996

Use of External Management Consultants, Efficiency Unit Scrutiny, Cabinet Office, 1995

Setting New Standards, Cm 2840

MANAGING STAFF

The Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended

Code of Practice for TUPE Transfers in MOD Contracts, Ministry of Defence 1998

For Your Future Security – Your Pension Scheme Benefits Explained, 1996, published by the Civil Service Pensions Division, Cabinet Office, Office of Public Service

OPS Pay Delegation Guidance Note 32: Trade Union Recognition and Bargaining Arrangements, September 1994, amendment, November 1995

Guidance on Privatisations and Redundancy Guarantees: letter from HM Treasury to Principal Establishment and Finance Officers, 2 March 1994

Health and Safety Executive's Infoline: tel 0541 545500

PREPARING THE GROUND – SCOPING AND ASSESSING FEASIBILITY

Setting New Standards – A Strategy for Government Procurement Cm 2840 HMSO May 1995, ISBN 0-10-128402-0

Maximising Value from Public Sector Assets: Selling Services into Wider Markets, HM Treasury

Competing for Quality Policy Review, HMSO July 1996, ISBN 0-11-430142-5

CUP Guidance Note: No 40

CUP Guidance Note: No 51

CUP Guidance Note: No 57 Strategic Partnering in Government, HM Treasury, Procurement Group

Towards Best Practice: An evaluation of the first two years of the Public Sector Benchmarking project 1996-98, Cabinet Office, 1996

Partnerships for Prosperity: The Private Finance Initiative, HM Treasury Taskforce, 1997

INVITING BIDS

CUP Guidance Note 27 Approved Suppliers (Vendors and Contractors) Lists

CUP Guidance Note 30, Specification Writing

CUP Guidance Note 40, the Competitive Tendering Process

CUP Guidance Note 44, Service Legal Agreements

Trade Sales including Management Buy Outs, HM Treasury (1996 – new edition expected)

Maximising Value from Public Sector Assets: Selling Services into Wider Markets, HM Treasury

Government Opportunities, Business Information Publications Ltd, Glasgow

CUP Guidance Note 51, Introduction to the EC Procurement Rules

CUP Guidance Note 59: Supplier Appraisal Questionnaire; Invitation to Appraisal Interview; Invitation to Tender

CUP Guidance Notes: Nos 59A – 59D

CUP Guidance Note 60, Supplier Appraisal

RESPONDING TO INVITATIONS TO TENDER

Trade Sales including Management Buy Outs (MBOs), HM Treasury

Selling Government Services into Wider Markets – policy and guidance notes, HM Treasury, 1998

Market Testing Costing Guidance, HM Treasury, 1994

Fees and Charges Guide, HM Treasury

CUP Guidance Note: No 35, Life Cycle Costing

CUP Guidance Note: No 59C, Documentation: Model Invitation to Tender

Appraisal and Evaluation in Central Government, “The Green Book” HM Treasury, 1997

EVALUATING BIDS

CUP Guidance Note: No 40 The Competitive Tendering Process

CUP Guidance Note: No 48

CUP Guidance Note: No 55 Debriefing

CUP Guidance Note: No 56

CUP Guidance Note: No 60 Supplier Appraisal

Appraisal and Evaluation in Central Government: “The Green Book”, HM Treasury, 1997

Market Testing Costing Guidance, HM Treasury, 1994

CONTRACTS

Competing for Quality Policy Review, HMSO, 1996, ISBN 0-11-430142-5

CUP Guidance Note: No 1

CUP Guidance Note: No 19

CUP Guidance Note 30: Specification Writing

CUP Guidance Note 61: Contract Management

CUP Guidance Note 51: Disputes Resolution

CUP Guidance Note 58: Incentivisation

CUP Guidance Note 59D: Documentation: Model Conditions of Contract

CUP Guidance Note 61: Contract Management

RETENDERING

CUP Guidance Note 43: Project Evaluation

Civil Service Commissioners' Recruitment Code

Civil Service Management Code

LOCAL GOVERNMENT

DETR Circular 16/97 Local Government Act 1992: Competition in the Provision of Local Authority Services – Guidance on the Conduct of Compulsory Competitive Tendering (para 29 to 33)

Department of Environment Issues Paper: Handling TUPE matters in relation to CCT (21 January 1994)

Handling of Pension Matters in Relation to TUPE (15 March 1995)

Handling of Pensions Matters in Relation to CCT (28 June 1995)

TREASURY TASKFORCE GUIDANCE

Partnerships for Prosperity (November 97)

A Step by step guide to the PFI procurement process (April 98)

Policy Statement No1: PFI and Public Expenditure Allocations (October 97)

Policy Statement No2: Public Sector Comparators and Value for Money (March 98)

Policy Statement No3: PFI and Public Expenditure Allocations for Non-departmental Public Bodies (August 98)

Policy Statement No 4: Disclosure of Information and Consultation with Staff and other Interested Parties (August 98)

Technical Note No 1: How to account for PFI Transactions (September 97) – update expected shortly

Technical Note No 2: How to follow EC Procurement Procedure and advertise in the OJEC (June 98)

Technical Note No 3: How to appoint and manage Advisers (August 98)

Case study material

Private Finance and IS/IT: case study – “TAFMIS ... and after” (Cabinet Office March 98)

Colfox School Dorset – A Case Study on the first DBFO School Project (HM Treasury Taskforce March 98)

APPENDIX FOUR

Early Guidance to ALB's (28th July 2004)

From John Bacon, Group Director, Health and Social Care Delivery, Department of Health.

Reconfiguring the Department of Health's Arm's Length Bodies – Implementation

Now that the report has been released, as the Board director responsible, I am putting in place the arrangements for implementation. The scale of the changes needed is very significant and the project management across the Department and ALBs will need to recognise this. ALB chairs and chief executives will play a key role in leading their organisations through changes that will often be very challenging. New sponsor director arrangements are being put in place in the Department of Health that reflect the new configuration and the changes that need to be made.

The approach to implementation will combine central co-ordination and support with the substantial involvement and accountability of ALBs themselves for delivery of the findings of the ALB review. A small central team will take responsibility for making sure that an ALB implementation plan is produced during the autumn. Chris Outram (currently Chief Executive of North Central London SHA) has been appointed to lead the ALB project and will start to take up post during August. Paul Macnaught will continue as project manager within the Department. We will provide a time-line for the overall project and a framework for individual elements.

It will be important that each organisation takes an approach that bears in mind the need to work within a consistent overall framework for the changes. Individual project plans will need to be agreed between ALBs and the Department. Staff will rightly expect that an equitable and consistent framework is used. Also, the prospective changes in organisations will have risks of business continuity and efficient use of assets such as buildings which will emphasise the need to keep core principles of value for money and governance in mind even during very difficult transitions. If ALB chairs or CEs feel themselves under pressure to make unusual arrangements I must emphasise that this should not be undertaken without clear support from the Department. This includes coming to agreements with staff about terms and conditions that are outside the usual agreements or making commitments about buildings that are unlikely to be seen as economic in the longer term.

In addition to the central ALB team in the Department, there are further arrangements that should support ALBs in making the changes required by the review. Guidance will be sent out shortly to help you ensure that your work can be set appropriately within the context of the overall project. The following strands and lead responsibilities have been put in place:

- Human Resources: development of a handling strategy that promotes consistency of practice whilst reflecting the needs of individual organisations – Anne Rainsberry
- Finance: development of an overall ALB programme and budgets – Anne-Marie Millar
- Business infrastructure: overview of back office functions, estates, IT, relocation and other infrastructure issues – Andrew Holt

The intention is to develop clarity about implementation as soon as possible but clearly, with such a complex array of changes this will require careful planning and cannot be achieved overnight. May I thank you for the leadership you have already shown during the review and in anticipation for your work as we move into the implementation phase.




© Crown copyright 2004

Produced by COI Communications for the Department of Health
265365 0.2k 1P Dec 2004 (FDL)
Chlorine free paper

If you require further copies of this title quote
265365 *ALB National Human Resources Framework* contact:

DH Publications Orderline
PO Box 777
London SE1 6XH
Tel: 08701 555 455
Fax: 01623 724 524
Email: doh@prolog.uk.com

 Textphone: 08700 102 870 (for minicom users) for the
Hard of hearing, 8am to 6pm Monday to Friday.

265365 *ALB National Human Resources Framework* can also be made available
on request in Braille, on audio cassette tape, on disk and in large print.

www.dh.gov.uk/publications