

DRAFT PCT/SHA Property Transfer Scheme (25/2/2012): MAY BE SUBJECT TO FURTHER CHANGE

NATIONAL HEALTH SERVICE, ENGLAND

TRANSFER SCHEMES

The Health and Social Care Act 2012 North Yorkshire and York Primary Care Trust Property Transfer Scheme 2013

The Secretary of State makes the following Property Transfer Scheme, in exercise of the powers conferred by section 300(1) and (2) and 301(1) to (3), (4) and (6) of, the Schedule 22 to, the Health and Social Care Act 2012(a).

PART 1

General

Citation, commencement and application

1.—(1) This Scheme may be cited as the Health and Social Care Act 2012 North Yorkshire and York Primary Care Trust Property Transfer Scheme 2013 and comes into effect on 1st April 2013.

(2) This Scheme is made in connection with the abolition of the North Yorkshire and York Primary Care Trust(b).

(3) This Scheme does not transfer any rights or liabilities under or in connection with a contract of employment.

Interpretation: general

2.—(1) In this Scheme—

“the 2006 Act” means the National Health Service Act 2006(c);

“the Board” means the National Health Service Commissioning Board(d);

“intellectual property” includes any or all of the following—

- (a) proprietary inventions (whether patentable or not) and proprietary information, technical data and any related documentation;
- (b) non-public or confidential information, including data bases and data collection, and all associated rights whether relating to the use and disclosure of such information by any person or otherwise;
- (c) works of authorship (including computer programs), manuals, documentation, files, records, reports and hardware development tools;
- (d) domain names and websites; and
- (e) any property which is similar or equivalent in nature to any of the matters specified in paragraphs (a) to (d);

“land” means any land and buildings, including any part of such land and buildings, and any plant and other items affixed to it (excluding IT infrastructure);

(a) 2012 c.7

(b) Section 34 of the Health and Social Care Act 2012 (“the 2012 Act”) makes provision for the abolition of Primary Care Trusts.

(c) 2006 c.41.

(d) The National Health Service Commissioning Board is established under section 1H of the National Health Service Act 2006 as inserted by section 9 of the 2012 Act.

“IT” means information technology;

“NHS contract” means an arrangement under section 9 of the 2006 Act;

“the NHS Litigation Authority” means the Special Health Authority known as the National Health Service Litigation Authority^(a)

“property” includes—

- (a) land (or any interest in land) and buildings;
- (b) assets (whether tangible or intangible);
- (c) contracts and other agreements or arrangements; and
- (d) intellectual property;

“Property Schedule” means the schedule of property, rights and liabilities set out in Schedule 2 to this Scheme;

“record” includes material in whatever form or medium which conveys, or is capable of conveying, information inclusive of data;

“Secretary of State” means the Secretary of State for Health;

“the transfer date” means 1st April 2013;

“transferor” means the North Yorkshire and York Primary Care Trust;

“transferee”, other than in Part 2 and except as provided in paragraph 16(2) to (4), means—

- (a) in relation to any property and associated rights or liabilities which are identified in Column 1 of a table in the Property Schedule, a person or body specified as the transferee in the corresponding entry in Column 4, 5 or 6 of that table, as the case may be, in relation to that property or those rights or liabilities; and
- (b) in the case of any other property, rights or liabilities, the person or body specified in this Scheme as the person or body to whom that property or those rights or liabilities are to be transferred.

(2) Any references in this Scheme to the transfer of property include references to the grant of a lease.

PART 2

Transfer of property: Land and buildings

Interpretation

3.—(1) In this Part—

“competent authority” means a person or body with power to dissolve the transferee;

“disposition” means a disposition of land of any kind by whatever means whether directly or indirectly and whether by one or more transactions of any interest of the transferee in the land or the capital value of its interest in the land including—

- (a) a legal or equitable conveyance or transfer of a freehold interest (or, if the title to the land is leasehold, a transfer or assignment of the leasehold interest);
- (b) the grant of a lease (or, if the title to the land is leasehold, the grant of a sublease);
- (c) a grant of a right to occupy;
- (d) a mortgage or charge; and
- (e) any combination of the above,

and “dispose of” or “disposal” is to be construed accordingly;

(a) The National Health Service Litigation Authority was established by S.I. 1995/2800.

- “LIFT” means Local Improvement Finance Trust(a);
- “LIFT contract” has the meaning given in paragraph 5(2);
- “LIFT interest” is to be construed in accordance with paragraph 6(1);
- “LIFT property” is to be construed in accordance with paragraph 4(2);
- “liquidator” means a receiver appointed under section 101 of the Law of Property Act 1925(b) (powers incident to estate or interest in mortgage) and any trust special administrator appointed pursuant to Chapter 5A of Part 1 of the 2006 Act (trust special administrators: NHS Trusts and NHS foundation trusts) or any administrator appointed by whatever means to manage the property of the transferee;
- “NHS body” means an NHS body within the meaning of the 2006 Act;
- “the proprietorship register” means the register of title kept under the Land Registration Act 2002(c);
- “transferee” means —
- (a) in a case where—
- (i) any property identified in Column 1 of a table in Part 1 or Part 2 of the Property Schedule is transferred under paragraphs 4 to 6, or
- (ii) any property is transferred under paragraph 7,
- Community Health Partnerships Limited(d), a company formed under section 223 of the 2006 Act (public private partnerships);
- (b) in a case where any property identified Column 1 of a table in Part 1 or 2 of the Property Schedule is transferred under paragraphs 8 or 11 to 14 to an NHS trust or an NHS foundation trust, that NHS trust or NHS foundation trust and its statutory successor at any point in time, including where that NHS trust is subsequently authorised as an NHS foundation trust under section 35 of the 2006 Act (authorisation of NHS foundation trusts), the statutory successors of that NHS foundation trust; or
- (c) in any other case where property identified in Column 1 of a table in Part 1 or 2 of the Property Schedule is transferred under paragraphs 8 or 11 to 14 to—
- (i) NHS Property Services Limited(e), a company formed under section 223 of the 2006 Act, or
- (ii) the Secretary of State,
- the recipient of that property.

Transfer of LIFT Property and related rights and liabilities

4.—(1) This paragraph, and paragraphs 6 and 7, apply only where, and to the extent that, any property held by the transferor immediately before the transfer date consists of property to which sub-paragraph (2) applies.

(2) This sub-paragraph applies to property consisting of—

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- (a) A Local Improvement Finance Trust is a public private partnership between a Primary Care Trust (and sometimes other local public bodies), the Department of Health (through its company known as Community Health Partnerships Limited) and the private sector, approved by the Secretary of State, whereby a company is formed under the Companies Acts to pursue estate developments and arrangements for the purpose of improving primary care facilities and services in the area designated as LIFT by the Secretary of State.
- (b) 1925 c.20. Section 101 was amended by the Commonhold and Leasehold Reform Act 2002 (c.15), section 68 and Schedule 5, paragraph 2.
- (c) 2002 c.9.
- (d) Community Health Partnerships Limited is a company registered in England and Wales with company number 04220587. The company is to be treated as a company formed under section 223 of the 2006 Act by virtue of provision in paragraph 1 of Schedule 2 to the NHS (Consequential Provisions) 2006 (c.43) pursuant to which a reference in any enactment to section 223 of the 2006 Act (a consolidating Act) is to be treated as including a reference to section 96C of the National Health Service Act 1977 which is the corresponding provision in that Act.
- (e) NHS Property Services Limited is a company registered in England and Wales with company number 7888110.

- (a) land or any interest in land identified in Column 1 of Table 1 in Part 1 of the Property Schedule (Property: Freehold, Leasehold, Licence) which is described as freehold or leasehold LIFT property; and
- (b) any rights to shares and loan notes or other sub-debt in the company known as **[INSERT NAME OF LOCAL LIFT COMPANY]** and registered in England and Wales with company number **[INSERT]**, or any subsidiary of that company, [which is identified as an asset in Column 1 of the table in Part 5 of the Property Schedule.]

(3) Any property to which this paragraph applies which is held by the transferor immediately before the transfer date is, on the transfer date, to transfer to Community Health Partnerships Limited.

(4) Any rights which the transferor has, immediately before the transfer date, in relation to any property to which this paragraph applies are, on the transfer date, to transfer to Community Health Partnerships Limited.

(5) Any liabilities which the transferor has, immediately before the transfer date, in relation to any property to which this paragraph applies are, on the transfer date, to transfer to Community Health Partnerships Limited.

(6) The transfer of any property, rights or liabilities under this paragraph is subject to the conditions specified in paragraph 6(2).

Transfer of LIFT contracts and other documents

5.—(1) This paragraph applies in respect of the transfer of any LIFT contract or any deed of title to LIFT property consisting of land or an interest in land held by the transferor immediately before the transfer date

(2) For the purposes of this paragraph, “a LIFT contract” is any contract or agreement to which the transferor is a party which relates to the transferor’s participation in **[INSERT NAME OF LIFT FOR LOCALITY]** including—

- (a) the Strategic Partnering Agreement;
- (b) the Shareholder’s Agreement;
- (c) any Land Retained Agreement;
- (d) any Funder’s Direct Agreement;
- (e) any Intercreditor Deed;
- (f) any Independent Tester or Independent Certifier’s Appointment; or
- (g) any warranties or direct agreements.

(3) Any LIFT contract held by the transferor immediately before the transfer date which is identified in Column 1 of the table in Part 2 of the Property Schedule (property related contracts and agreements) is, on the transfer date, to transfer to Community Health Partnerships Limited [as a successor in LIFT].

(4) The transfer is, in the case of a LIFT contract, subject to any conditions specified in the corresponding entry in Column 4 of the table in Part 2 in relation to that LIFT contract.

(5) Any rights which the transferor has, immediately before the transfer date, in relation to a contract, agreement or other document to which this paragraph applies are, on the transfer date, to transfer to Community Health Partnerships Limited.

(6) Any liabilities which the transferor has, immediately before the transfer date, in relation to a contract, agreement or other document to which this paragraph applies are, on the transfer date, to transfer to Community Health Partnerships Limited.

(7) Where a contract, agreement, lease, deed or other document of title (“a relevant document”) to which this paragraph applies is transferred to Community Health Partnerships Limited and—

- (a) contains any provisions which apply or otherwise refer to—
 - (i) an NHS body, or

- (ii) a Public Sector Body as defined in the relevant document; or
- (b) contains any references to health services provided by the Tenant,

the transfer is, for the purposes of the application of those provisions or those references on or after the transfer date, subject to the condition that Community Health Partnerships Limited is also to be regarded as an NHS body or a Public Sector Body or, as the case may be, is to be treated as if it were a provider of health services for those purposes.

(8) The transfer under this paragraph of any loan agreement entered into by the transferor is subject to the conditions specified in paragraph 6(4).

LIFT Property: other conditions of transfer

6.—(1) Where, under paragraph 4, any freehold or leasehold interest in land or any shares (each a “LIFT interest”) are transferred to Community Health Partnerships Limited, the transfer is subject to conditions specified in sub-paragraph (2).

(2) The conditions specified in this sub-paragraph are as follows—

- (a) for the purposes of corporation tax treatment, Community Health Partnerships Limited is to be treated as having acquired each LIFT interest on the date on which the transferor (or any statutory predecessor of the transferor) acquired that LIFT interest;
- (b) where Community Health Partnerships Limited makes a disposal of any LIFT interest, any expenditure that has, prior to the transfer date, been incurred by the transferor and which would, if such disposal had been made by the transferor prior to the transfer date, have been allowable as a deduction when computing the chargeable gain or allowable loss by virtue of section 38 of the Taxation of Chargeable Gains Act 1992 (acquisition and disposal costs etc.)(a), is to be treated as though such expenditure had been incurred by Community Health Partnerships Limited;
- (c) for the purposes of paragraph (b) only, it is to be presumed that the transferor would be liable to corporation tax on chargeable gains if the transferor were to sell a LIFT interest; and
- (d) neither the transfer of any LIFT interest nor anything done by virtue of any provision of this Scheme is to be regarded as a scheme or arrangement for the purposes of section 30 of the Taxation of Chargeable Gains Act 1992 (tax-free benefits)(b).

(3) Where, under paragraph 4, the transferor’s interest in any loan agreement is transferred to Community Health Partnerships Limited, the transfer is subject to the conditions specified in sub-paragraph (4).

(4) The conditions specified in this sub-paragraph are as follows—

- (a) the transferor and Community Health Partnerships Limited are to be treated as if they were members of the same group as at the transfer date so that section 340(4) of the Corporation Taxes Act 2009 (group transfers and transfers of insurance business: transfer at notional carrying value)(c) is to apply;
- (b) for the purposes of section 340 of the Corporation Taxes Act 2009, the notional carrying value of each loan is, at the transfer date, to be its outstanding undiscounted value;
- (c) for the purposes of paragraph (b) only, the transferor is to be deemed to be within the charge to corporation tax as defined by section 336(2)(b) of the Corporation Taxes Act 2009 (transfer of loans on group transactions)(d); and
- (d) for the purposes of section 344 of the Corporation Taxes Act 2009 (introduction), such transfer is not to be treated as a case within section 336 of that Act.

(a) Section 38 was amended by the Finance Act 2003 (c.14), Schedule 10, paragraph 5.
 (b) Section 30 was amended by the Finance Act 1996 (c.8), Schedule 20, paragraphs 46 and 47, and by the Finance Act 2011 (c.11), Schedule 9, paragraph 1.
 (c) Section 340 was amended by the Taxation (International and Other Provisions) Act 2012 (c.8), Schedule 8, paragraphs 123 and 126.
 (d) Section 336 was amended by the Finance Act 2012 (c.14), Schedule 16, paragraph 148.

(5) The transferee in relation to any LIFT property or LIFT contract must notify any beneficiaries of, and counterparties to, any leases, warranties or other agreements transferred to it of the assignment to it of transferor's interests in those leases, warranties or other agreements.

(6) The notice requirements in sub-paragraph (5)—

- (a) apply irrespective of any applicable notice provisions in those leases, warranties or other agreements; and
- (b) override the application of any such notice provisions.

Transfer of residual LIFT Property, Lift Contracts, rights and liabilities

7.—(1) This paragraph applies to any property—

- (a) which is LIFT property or a LIFT contract;
- (b) which is not identified in a table in Part 1 of the Property Schedule; and
- (c) in respect of which provision has not been made in paragraphs 4 to 6.

(2) Any property to which this paragraph applies which is held by the transferor immediately before the transfer date is, on the transfer date, to transfer to Community Health Partnerships Limited.

(3) Any rights or liabilities which the transferor has immediately before the transfer date in relation to any property transferred under this paragraph are, on the transfer date, to transfer to Community Health Partnerships Limited.

Transfer of other specified property, rights and liabilities

8.—(1) This paragraph applies to any property consisting of—

- (a) land or any interest in land identified in Column 1 of Table 1 in Part 1 of the Property Schedule (Property: Freehold, Leasehold, Licence) to which paragraphs 4 to 7 of this Part do not apply;
- (b) a legal charge identified in Column 1 of Table 2 in Part 1 of the Property Schedule.

(2) Any property to which this paragraph applies which is held by the transferor immediately before the transfer date is, on the transfer date, to transfer—

- (a) in the case of property referred to in sub-paragraph (1)(a), to the transferee identified in the corresponding entry in Column 6 of the relevant table in relation to that property; and
- (b) in the case of property referred to in sub-paragraph (1)(b), to the transferee identified in the corresponding entry in Column 5 of the relevant table in relation to that property.

(3) Any rights which the transferor has, immediately before the transfer date, in relation to any property to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in the relevant table in Part 1 of the Property Schedule in relation to that property.

(4) Any liabilities which the transferor has, immediately before the transfer date, in relation to any property to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in the relevant table in Part 1 of the Property Schedule in relation that property.

Conditions on transfer on use of land

9.—(1) This paragraph applies where, under paragraph 8, property consisting of land or any interest in land which is identified in Column 1 of Table 1 in Part 1 of the Property Schedule (Property: Freehold, Leasehold, Licence) is transferred to an NHS trust or to an NHS foundation trust.

(2) The transfer is subject to the provisions of this paragraph and of Schedule 1.

(3) The transferee must take all reasonable steps to ensure that any person or body providing services under the 2006 Act which occupy, use, or have any other interest in, the land at the transfer date may continue to occupy or use the land or have such interest in the land.

(4) The transferee, or, where a liquidator is appointed in respect of the transferee, the liquidator, must, subject to sub-paragraphs (8), (11) and (13), transfer the land free from financial encumbrances, together with any rights or liabilities under or in connection with a contract or other agreement relating to the land transferred, to the Secretary of State or to such person as the Secretary of State may nominate, for nil consideration, in the following circumstances—

- (a) a liquidator has been appointed in respect of the transferee;
- (b) the land, or any part of it, is no longer being used for the purposes of providing services under the 2006 Act;
- (c) the Secretary of State or other competent authority has made a final decision to dissolve the transferee;
- (d) any NHS contracts or other contracts held by the transferee under which the transferee provides services under the 2006 Act are terminated or expire without being renewed or there being an intention to renew;
- (e) the transferee resolves or decides to dispose of the transferee's interest in the land, or any part of it;
- (f) the land was transferred to an NHS foundation trust under paragraph 8 which, by 1st October 2013, has not obtained the necessary approvals and risk ratings from Monitor^(a) to enable the land to be transferred to it;
- (g) the land was transferred to an NHS trust or NHS foundation trust under paragraph 8, that land forms part of a larger site comprised within the single legal title and approval to subdivide the site has not been obtained from the Secretary of State;
- (h) the land was transferred to an NHS trust or NHS foundation trust under paragraph 8 and approval to transfer the land was obtained from the Secretary of State based on incorrect or misleading information provided to the Secretary of State or is otherwise transferred to an NHS trust or NHS foundation trust in error; or
- (i) where there has been a breach of any provisions of this Scheme.

(5) Where sub-paragraph (4) applies and land is transferred to the Secretary of State or to a person nominated by the Secretary of State (“the nominee”), the Secretary of State may also require the transfer to the Secretary of State or to the nominee, for nil consideration, of such assets as are associated with that land as the Secretary of State may reasonably determine which have been transferred under or by virtue of any provision in Part 5 of this Scheme (transfer of assets).

(6) The transferee must notify the Secretary of State of the occurrence of any of the circumstances specified in sub-paragraph (4)(a) to (i) as soon as practicable after they have arisen and, subject to sub-paragraphs (8), (11) and (13)—

- (a) the transfer must occur as soon as practicable thereafter; and
- (b) the right of the Secretary of State to have the land transferred back is to take priority over any competing rights in the land but is to remain subject to any such rights.

(7) Where there is a transfer to the Secretary of State pursuant to sub-paragraph (4)—

- (a) the transferee's public dividend capital is to be treated as being repaid to the net book value of the land at the date of the transfer to the Secretary of State; or
- (b) in the event the net book value of the land as at the transfer to the Secretary of State is greater than its net book value as at the transfer date, the Secretary of State may require the transferee to repay public dividend capital in an amount representing the difference.

(a) Monitor, formerly known as the Independent Regulator of NHS Foundation Trusts, is the body corporate continued in existence by section 61 of the 2012 Act.

(8) If the Secretary of State is of the opinion that the land should remain with the transferee and should not be transferred under sub-paragraph (4), the Secretary of State may refuse to accept the transfer.

(9) In the event that the Secretary of State refuses the transfer under sub-paragraph (8) the transferee or a liquidator may dispose of the land in accordance with Schedule 1 and the Secretary of State may elect either that the provisions of that Schedule—

- (a) are not to apply with respect to a successor in title to the land; or
- (b) are to apply with respect to the successor in title to the land.

(10) If in accordance with sub-paragraph (9)(a) the provisions of Schedule 1 are not to apply against a successor in title, the provisions of the following paragraphs of that Schedule are deemed not to apply—

- (a) paragraph (b) of the definition of Termination Date;
- (b) the definition of transferee; and
- (c) paragraphs 2(2)(b), 7 and 8(a)(iii).

(11) Notwithstanding the provisions in sub-paragraph (8), the Secretary of State may waive the obligation on the part of the transferee in sub-paragraph (4) in the following circumstances—

- (a) where part, or parts, of the land are not being used to provide services under the 2006 Act;
- (b) where there has been a breach of any provisions of this Part;
- (c) where a NHS contract or other contract held by the transferee under which the transferee provides services under the 2006 Act is terminated or expires without being renewed but where the transferee still retains other such contract or contracts;
- (d) the land forms part of a larger site comprised within a single legal title and approval to subdivide the land was not obtained from the Secretary of State; or
- (e) where approval to the transfer is given by the Secretary of State based on incorrect or misleading information or is otherwise transferred in error.

(12) Where under sub-paragraph (11), the Secretary of State waives the obligation on the transferee in sub-paragraph (4), the land will remain with the transferee at least until such time as there is a further occurrence of any of the circumstances set out in sub-paragraph (4)(a) to (i).

(13) The following dispositions are not to be treated as dispositions for the purposes of sub-paragraph (4)(e)—

- (a) a disposition to a statutory body or service supply company if for the purpose of an electricity substation, gas governor, sewage pumping station, water pumping station or other utility services which have been or are to be constructed or installed in or upon the land;
- (b) a lease or tenancy conferring no security of tenure for a term of three years or less which is not granted at a premium;
- (c) a license to occupy terminable upon three months notice conferring no security of tenure;
- (d) a disposition entered into by the transferee for the purpose of complying with its obligations under paragraph 9(3);
- (e) a mortgage or charge of the land to which the Secretary of State has provided written consent;
- (f) a transfer of part of the land to which the Secretary of State has provided written consent; or
- (g) any other disposition to which the Secretary of State has provided written consent.

(14) The transferee—

- (a) must, within 28 days of the transfer to it of the land, apply to the Land Registry for the registration of the transferee's title to the land subject to the provisions set out in Schedule 1 and must simultaneously apply to the Land Registry for the entry of—

- (i) an agreed notice to protect the interest of the Secretary of State under sub-paragraph (4), and
 - (ii) a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002^(a) (applications)) in Form N, as prescribed by Rule 91 of, and Schedule 4 to, the Land Registration Rules 2003^(b) (standard forms of restriction), in the following terms—
 - “No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without written consent signed by the Secretary of State for Health of Richmond House, 79 Whitehall, London SW1A 2NS or his conveyancer.”;
 - (b) must take any further steps required to ensure that the agreed notice and restriction referred to in sub-paragraph (a) are entered on the proprietorship register;
 - (c) must provide the Secretary of State with confirmation of the entry of the agreed notice and the restriction referred to in paragraph (a) as soon as practicable after it receives notification of the same from the Land Registry;
 - (d) in the event that it has not registered the restriction referred to in paragraph (a), is to be deemed to have consented to the entering in the proprietorship register of the restriction referred to in paragraph (a) by the Secretary of State (under section 43(1)(b) of the Land Registration Act 2002 (applications));
 - (e) must not, without the prior written consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) the restriction entered in the proprietorship register in accordance with paragraphs (a) and (b); and
 - (f) must throughout its ownership of the land keep it in a state of repair and condition consistent with the use of the land for the provision of services under the 2006 Act.
- (15) Where the land is leasehold the transferee must—
- (a) not enter into any renewal lease of the land without the written consent of the Secretary of State and, as a condition of providing consent, the Secretary of State will require the transferee to provide a deed of covenant in the Secretary of State’s favour in which the transferee covenants to comply with the provisions of paragraph 9 and Schedule 1;
 - (b) not refuse or otherwise elect not to take a renewal lease of the land without first notifying the Secretary of State and offering to assign or transfer the lease to the Secretary of State or a person nominated by the Secretary of State;
 - (c) not exercise any break right in the lease of the land without first offering to assign or transfer the lease to the Secretary of State or a person nominated by the Secretary of State;
 - (d) comply with the tenant covenants in the lease of the land, promptly giving to the Secretary of State notice of any breaches of such covenants notified to it, giving the Secretary of State the option to remedy any such breaches and reimbursing the Secretary of State or a person nominated by the Secretary of State the full cost incurred by or on the Secretary of State’s behalf in remedying such breaches.
- (16) The transferee—
- (a) must, in respect of sub-paragraph (15)(b), give the Secretary of State at least four months prior written notice of the lease expiry date in order for the Secretary of State to determine whether the Secretary of State, or a person nominated by the Secretary of State, will take an assignment or transfer of the lease and for such an assignment or transfer to be completed;
 - (b) must, in respect of sub-paragraph (15)(c), give the Secretary of State written notice of the intention to exercise a lease break right at least four months prior to the last date for

(a) 2002 c.9.

(b) S.I. 2003/1417. Rule 91 was amended by S.I.2005/1766, rule 3.

serving a notice to break in respect of the relevant break date, such notice to contain details of the break date, the date by which the break notice must be served and confirmation that the transferee wishes to exercise the break; and

- (c) may only exercise the lease break if the Secretary of State has not indicated an intention for the Secretary of State, or a person nominated by the Secretary of State, to take a transfer or assignment of the lease two weeks prior to the last date for serving notice to break the lease.

(17) The transfer of any property to the Secretary of State to which this paragraph applies is to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise); and
- (b) whether or not that property would otherwise be capable of being transferred.

Other conditions of transfer

10.—(1) This paragraph applies in relation to property which consists of land and buildings identified in Column 1 of Table 1 in Part 1 of the Property Schedule (Property: Freehold, Leasehold, Licence) which is transferred under paragraph 4 or 8.

(2) The transfer is subject to, and with the benefit of—

- (a) any interest in the land which is identified in the corresponding entry in Column 4 of Table 1 in Part 1 of the Property Schedule;
- (b) any existing leases, tenancies and licenses and any rights of occupiers and their successors in respect of the land; and
- (c) any other interest in, and matter affecting, the land.

(3) Where the transferee in relation to any land or interest in land transferred under paragraph 8 is NHS Property Services Limited, the transferee may enter into or grant such lease, tenancy, license, memorandum of occupation or other occupational agreement or arrangement as they may reasonably require or agree without the requirement to obtain any consent that would otherwise be required provided such lease, tenancy, license memorandum of occupation or other occupational agreement is entered into with or granted in favour of—

- (a) an NHS body;
- (b) a public authority within the meaning of section 300(9) of the Health and Social Care Act 2012(a); or
- (c) any other provider of services for the purposes of the health service(b).

(4) The transferee in relation to any land or interest in land transferred under paragraph 8 must notify any beneficiaries of, and counterparties to, any leases, warranties or other agreements transferred to it of the assignment to it of transferor's interests in those leases, warranties or other agreements.

(5) The notice requirements in sub-paragraph (4)—

- (a) apply irrespective of any applicable notice provisions in those leases, warranties or other agreements; and
- (b) override the application of any such notice provisions.

Transfer of other related contracts and agreements

11.—(1) This paragraph applies to any contract or agreement which relates to any property transferred under paragraph 8, other than a clinical contract within the meaning of paragraph

(a) 2012 c.7.

(b) Section 275(1) of the 2006 Act defines "the health service" as the health service continued under section 1(1) of the 2006 Act and under section 1(1) of the National Health Service (Wales) Act 2006 (c.42).

15(1), which is identified in Column 1 of the table in Part 2 of the Property Schedule (property related contracts and agreements).

(2) Any rights which the transferor has, immediately before the transfer date, in relation to any contract or agreement to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 5 of the table in Part 2 of the Property Schedule in relation to that contract or agreement.

(3) Any liabilities which the transferor has, immediately before the transfer date, in relation to any contract or agreement to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 5 of the table in Part 2 of the Property Schedule in relation to that contract or agreement.

(4) The transferee in relation to any land or interest in land transferred under paragraph 8 must notify any beneficiaries of, and counterparties to, any leases, warranties or other agreements transferred to it of the assignment to it of transferor's interests in those leases, warranties or other agreements.

(5) The notice requirements in sub-paragraph (4)—

(a) apply irrespective of any applicable notice provisions in those leases, warranties or other agreements; and

(b) override the application of any such notice provisions.

(6) Where a contract, agreement, lease, deed or other document of title ("a relevant document") to which this paragraph applies is transferred to NHS Property Services Limited and—

(a) contains any provisions which apply or otherwise refer to an NHS body; or

(b) contains any references to health services provided by the Tenant,

the transfer is, for the purposes of the application of those provisions or those references on or after the transfer date, subject to the condition that NHS Property Services Limited is also to be regarded as an NHS body or, as the case may be, is to be treated as if it were a provider of health services for those purposes.

(7) Sub-paragraph (8) applies to any contract or agreement identified in Column 1 of the table in Part 2 of the Property Schedule which is also identified in Column 1 of the table in Part 4 of that Schedule.

(8) The transfer of any contract or agreement to which this sub-paragraph applies is to be made to the transferee identified in Column 5 of the Table in Part 2 of the Property Schedule notwithstanding any entry in the table in Part 4 of the Property Schedule which purports to transfer that property to any other transferee.

Collateral warranties

12.—(1) This paragraph applies to a collateral warranty given in connection with land or any interest in land transferred under this Part entered into by the transferor before the transfer date.

(2) Where a collateral warranty to which this paragraph applies is identified in Column 1 of the table in Part 2 of the Property Schedule (property related contracts and agreements), all rights and liabilities of the transferor which exist under or in connection with that warranty are to transfer, on the transfer date, to the transferee identified in Column 5 of that table in relation to the land to which that warranty relates.

Transfer of information, documents and records

13.—(1) The transferor's interest, immediately before the transfer date, in the items specified in subparagraph (2) which relate to any land or other property which is identified in Column 1 of a table in Part 1 of the Property Schedule are, on the transfer date, to transfer to the transferee identified in the corresponding entry in that table in the Property Schedule in relation to that land or that other property.

(2) The items referred to in subparagraph (1) include—

- (a) all title deeds and documents and tenancy deeds and documents relating to land or any interest in land transferred under this Part; and
- (b) all books, records, general correspondence and other documents created or held by the transferor (including any original hard copy documents or records and documents or records that are kept in electronic form by means of a computer or other electronic device).

(3) Those items are transferred subject to the condition that the transferee, or any other person holding or accountable for them, must allow the Secretary of State, or any person authorised to act on the Secretary of State’s behalf, to access, inspect and take copies of those documents or records at all reasonable times on reasonable notice where access to or inspection or the copying of such documents is necessary or incidental to the effective discharge of any functions or obligations of the Secretary of State.

Transfer of residual property, rights and liabilities

14.—(1) This paragraph applies to any property (except LIFT property and LIFT contracts to which paragraph 7 applies) held by the transferor immediately before the transfer date which is not identified in Parts 1 or 2 of the Property Schedule.

(2) Any property to which this paragraph applies which consists of—

- (a) land or any interest in land; or
- (b) a contract or agreement or a title deed or document relating to land or an interest in land,

which is held by the transferor immediately before the transfer date is, on the transfer date, to transfer to NHS Property Services Limited.

(3) Any rights or liabilities which the transferor has in relation to any property to which this paragraph applies are, on the transfer date, to transfer, on the transfer date, to NHS Property Services Limited.

(4) NHS Property Services Limited must notify any beneficiaries of, and counterparties to, any leases, warranties or other agreements relating to land or other property of the assignment to it of transferor’s interests in those leases, warranties or other agreements.

(5) The notice requirements in sub-paragraph (4)—

- (a) apply irrespective of any applicable notice provisions in those leases, warranties or other agreements; and
- (b) override the application of any such notice provisions.

(6) Where a contract, agreement, lease, deed or other document of title (“a relevant document”) to which this paragraph applies is transferred to NHS Property Services Limited and—

- (a) contains any provisions which apply or otherwise refer to an NHS body; or
- (b) contains any references to health services provided by the Tenant,

the transfer is, for the purposes of the application of those provisions or those references on or after the transfer date, subject to the condition that NHS Property Services Limited is also to be regarded as an NHS body or, as the case may be, is to be treated as if it were a provider of health services for those purposes.

PART 3

Transfer of clinical contracts and related matters

Interpretation

15.—(1) In this Part—

“APMS contract” means an arrangement for the provision of primary medical services made under section 83(2)(b) of the 2006 Act (primary medical services) and in accordance with directions given by the Secretary of State under section 8 of that Act (Secretary of State’s directions to health service bodies)(a);

“Board commissioned service” means a service that the Board must commission by virtue of Part 3 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (services to be commissioned by the Board)(b);

“clinical contract” means—

- (a) a primary care contract;
- (b) a NHSCHC contract; or
- (c) another contract or arrangement between the transferor and a provider of health services for the provision of such services as part of the health service;

“commissioning function” means—

- (a) in relation to the Board, the function of arranging for the provision of services as part of the health service—
 - (i) for or in respect of persons for whom it is responsible under or by virtue of regulations under section 3B of the 2006 Act (Secretary of State’s power to require Board to commission services)(c), or
 - (ii) by virtue of agreements under section 7A of the 2006 Act (exercise of Secretary of State’s public health functions)(d);
- (b) in relation to a clinical commissioning group, the function of that group of arranging for the provision of services as part of the health service, in particular for the persons for whom it has responsibility under or by virtue of section 3 of the 2006 Act (duties of clinical commissioning groups as to commissioning of certain health services)(e); or
- (c) in relation to a local authority, the function of arranging for the provision of health services under section 2B (functions as to improvement in public health)(f) of, or Schedule 1 (further provision about services under the 2006 Act) to, the 2006 Act, or by virtue of section 6C(1) or (3) of that Act (regulations as to the exercise of Secretary of State’s public health functions by local authorities)(g);

“GMS contract” means an agreement for the provision of primary medical services made under section 84 of the 2006 Act (general medical services contracts: introductory);

“NHSCHC contract” means a contract or other arrangement between the transferor and another person for the provision of one or more parts of a package of care that is provided as part of the provision of NHS Continuing Health Care to any person;

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

“PMS agreement” means an agreement for the provision of primary medical services made under section 92 of the 2006 Act (arrangements by Strategic Health Authorities for the provision of primary medical services);

“primary care contract” means—

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- (a) The Alternative Provider Medical Services Directions signed on 13th April 2010 and amended on 26th April 2012 and published on the Department of Health website www.dh.gov.uk. Section 83 of the 2006 Act is amended by section 55(1) of, and paragraph 30 of Schedule 4 to, the 2012 Act. Section 8 is amended by section 13 of the 2012 Act.
 - (b) S.I. 2012/2996.
 - (c) Section 3B was inserted by section 15 of the 2012 Act.
 - (d) Section 7A was inserted by section 22 of the 2012 Act.
 - (e) Section 3 of the 2006 Act was amended by section 13 of the 2012 Act.
 - (f) Section 2B was inserted by section 12 of the 2012 Act. Schedule 1 was amended by section 17 of the 2006 Act.
 - (g) Section 6C was inserted by section 18 of the 2012 Act.

- (a) a contract or agreement between the transferor and a provider of primary care services to provide one or more primary care services; or
- (b) arrangements with a person included in a pharmaceutical list for the provision of pharmaceutical services (a contract or agreement to provide additional pharmaceutical services pursuant to directions under section 127(1)(b) of the 2006 Act^(a) (arrangements for additional pharmaceutical services) is also covered by sub-paragraph (a));

“primary care services” means services provided as part of the health service pursuant to arrangements made by the transferor under Part 4, 5, 6 or 7 of the 2006 Act^(b) (whether or not they are to be arranged by the transferee under those Parts);

“public health-related primary care contract” means a primary care contract under which an additional pharmaceutical service is provided that primarily relates to the functions of a local authority under section 2B of the 2006 Act (duties as to improvement of public health)^(c) and which is in respect of—

- (a) an independent prescribing service (although not all independent prescribing services are public health related);
- (b) a needle and syringe exchange service;
- (c) a patient group direction service (although not all patient group direction services are public health related);
- (d) a screening service (although not all screening services are public health related);
- (e) a stop smoking service;
- (f) a supervised administration service (although not all supervised administration services are public health related); or
- (g) a supplementary prescribing service (although not all supplementary prescribing services are public health related);

“relevant body” means the body that has, or would have had, responsibility for a person for whom services are or were provided under a contract pursuant to regulation 20(2) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (interpretation – NHS Continuing Health Care and NHS funded nursing care);

“relevant clinical commissioning group” means, as regards rights and liabilities in relation to a clinical contract, a clinical commissioning group whose commissioning function includes arranging the provision of services to which the rights and liabilities relate.

(2) Treating arrangements with a person included in a pharmaceutical list for the provision of pharmaceutical services (other than a contract or agreement to provide additional pharmaceutical services pursuant to directions under section 127(1)(b) of the 2006 Act) as contracts for the purposes of this transfer scheme does not create or remove any rights, or impose or remove any liabilities, in respect of those arrangements for any other purposes.

Clinical contracts: the transfer of rights and liabilities to the appropriate transferee or transferees

16.—(1) Subject to paragraphs (2) and (3), any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a clinical contract which is identified in Column 1 of the table in Part 3 of the Property Schedule are, on the transfer date, to transfer to the transferee or transferees identified in Column 4 of that table.

(2) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a primary care contract which is for the provision of primary dental services or primary

(a) Section 127 of the 2006 Act was amended by section 55(1) of, and paragraph 64 of, Schedule 4 to the 2012 Act.
 (b) Parts 4 to 7 of the 2006 Act were amended by Part 6 of and Parts 4 to 7 of Schedule 4 to the 2012 Act.
 (c) Section 2B of the 2006 Act was inserted by section 12 of the 2006 Act.

ophthalmic services or which is a GMS contract, PMS agreement or APMS contract are, on the transfer date, to transfer to the Board—

- (a) notwithstanding any entry in the table in Part 3 which purports to transfer them to any other transferee; and
- (b) without prejudice to the powers of the Board to assign the contract to another transferee in accordance with paragraph 21 on a subsequent date.

(3) Any rights or liabilities which the transferor has, immediately before the transfer date, in any other primary care clinical contract which is for the provision of primary medical services, other than those mentioned in sub-paragraph (2), are, on the transfer date to transfer—

- (a) in the case of a contract that relates to a function of a local authority under section 2B of, or Schedule 1 to, the 2006 Act or by virtue of section 6C(1) or (3) of that Act, to the relevant local authority; and
- (b) in any other case, to the Board,

and sub-paragraph (4) applies.

(4) Any transfer of a contract to which sub-paragraph (3) applies is to be made—

- (a) notwithstanding any entry in the table in Part 3 which purports to transfer that property to any other transferee; and
- (b) without prejudice to the powers of the transferee to assign the contract to another transferee under paragraph 21.

(5) Except as provided elsewhere in this scheme, the transfer of rights and liabilities in relation to a clinical contract pursuant to sub-paragraphs (1) to (3) is subject to any conditions or third party rights that—

- (a) are specified in the corresponding entry in Columns 2 and 3 of the table in Part 3 of the Property Schedule in relation to that contract;
- (b) otherwise exist in relation to such a contract.

(6) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a primary care contract that is not—

- (a) listed in Column 1 of the table in Part 3 of the Property Schedule;
- (b) a contract to which sub-paragraph (2) or (3) applies; nor
- (c) a public health-related primary care contract,

are, on the transfer date, to transfer to the Board, whether or not that contract has expired before the relevant date.

(7) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a public health-related primary care contract that is not listed in Column 1 of the table in Part 3 of the Property Schedule, are, on the transfer date—

- (a) if the contract has not expired before the transfer date, to transfer to the relevant local authority; or
- (b) if the contract expired before the transfer date, to transfer to the Board.

(8) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a NHSCHC contract that is not listed in Column 1 of the table in Part 3, are, on the transfer date, to transfer to the relevant body or, as the case may be, the relevant bodies, whether or not that contract has expired before the relevant date.

(9) Subject to sub-paragraphs (10) and (11), any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a clinical contract that is not—

- (a) listed in Column 1 of the table in Part 3 of the Property Schedule; nor
- (b) a primary care contract or a NHSCHC contract,

are, on the transfer date, to transfer to the relevant clinical commissioning group or groups whether or not that contract has expired before the relevant date.

(10) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to a clinical contract that—

- (a) is not identified in Column 1 of the table in Part 3 of the Property Schedule;
- (b) is not a primary care contract; and
- (c) which relates to a function of a local authority under section 2B of, or Schedule 1 to, the 2006 Act or by virtue of section 6C(1) or (3) of that Act,

are, on the transfer date, to transfer to the relevant local authority whether or not that contract has expired before the relevant date.

(11) Any rights or liabilities relating to Board-commissioned services which the transferor has immediately before the transfer date, in relation to a clinical contract that is neither—

- (a) listed in Column 1 of the table in Part 3 of the Property Schedule; nor
- (b) a primary care contract or a NHSCHC contract,

are, on the relevant date, to transfer to the Board, whether or not that contract has expired before the relevant date.

(12) The transfer of any rights or liabilities in relation to a clinical contract pursuant to sub-paragraphs (6) to (11) is subject to any third party rights that exist in relation to that contract.

(13) For the purposes of —

- (a) sub-paragraph (7), a local authority is “the relevant local authority” if—
 - (i) it is the local authority in whose area are located the premises at or from which the services were or are provided under the contract, unless it is unreasonable to allocate the contract on that basis;
 - (ii) in circumstances where services were or are provided under the contract at or from more than one set of premises, it is the local authority in whose area are located the largest of the premises (by total floor size) at or from which services were or are provided under the contract, unless it is unreasonable to allocate the contract on that basis; or
 - (iii) if neither paragraph (a) nor (b) applies, the local authority whose area includes the largest share of the area of the transferor; and
- (b) sub-paragraphs (3)(a) and (10), the relevant local authority is the local authority in whose area the services under the contract were or are to be provided.

Variation of contract terms: collateral arrangements

17.—(1) Where—

- (a) by virtue of this Part, the rights and liabilities in relation to a contract or agreement transfer;
- (b) the proper operation of that contract or agreement relied on collateral arrangements made under Parts 4, 5, 6 or 7 of, or sections 2 or 3 of, or Schedule 1 to, the 2006 Act; and
- (c) as a consequence of the transfer, the transferee is no longer able to rely on those collateral arrangements,

the transferee may unilaterally vary the contract or agreement, but only to the extent that is necessary to enable the proper operation of the contract or agreement, and in a manner that reproduces the effect of the manner in which the transferor was able to rely on the collateral arrangements.

(2) A variation of a contract or agreement under sub-paragraph (1)—

- (a) must not relate to the volume of services to be provided under the contract or agreement nor the amount of money to be paid in respect of such services;
- (b) must take effect before 1st April 2014; and
- (c) must be notified in writing to the other parties to the contract or agreement.

Rights and liabilities where more than one transferee

18.—(1) This paragraph applies where, in any case, the rights and liabilities in relation to a clinical contract are transferred from the transferor to more than one transferee by virtue of this Part.

(2) Subject to any conditions specified in relation to a particular contract identified in the table in Part 3 of the Property Schedule, where this paragraph applies, the transferees have the rights and liabilities on a several basis, to the extent and insofar only as the rights and liabilities relate to a commissioning function which falls to be performed by that transferee on and after the transfer date.

Collateral warranties

19.—(1) All rights and liabilities which exist immediately before the transfer date under a collateral warranty given in connection with any clinical contract entered into by the transferor before the transfer date are to transfer, on the transfer date, to the transferee or transferees identified in relation to that contract accordance with this Part.

(2) Sub-paragraph (1) applies to a collateral warranty irrespective of whether the term of the clinical contract to which the collateral warranty relates has expired before the transfer date.

Transfer of property, including records, associated with clinical contracts and proposed primary care clinical contracts

20.—(1) Subject to any conditions specified in relation to a particular contract in the table in Part 3 of the Property Schedule, or any specific provision made in relation to such property in any other Part of the Property Schedule, the property associated with a clinical contract the rights and liabilities in relation to which are transferred under or by virtue of this Part, whether expired or unexpired, which the transferor has immediately before the transfer date is to transfer, on the transfer date, to—

- (a) where there is only one transferee in relation to that contract, that transferee;
- (b) where there is more than one transferee in relation to that contract—
 - (i) the transferee identified in the table in Part 3 of the Property Schedule as being the nominated transferee in relation to the clinical contract to which the property relates, or
 - (ii) where there is no such nominated transferee, the transferee whose name would appear first if the names of the transferees were listed in alphabetical order.

(2) The property associated with a proposed primary care contract (whether or not an application was required in respect of that proposal and whether or not the proposal has been rejected), which the transferor has immediately before the transfer date is to transfer, on the transfer date, to the Board.

(3) The associated property referred to in sub-paragraphs (1) and (2) includes—

- (a) all computers and other hardware relating to any IT system for the collection of activity data and the payments to providers under the clinical contracts;
- (b) all software and electronic data relating to the IT system for the collection of activity data and the payments to providers under the clinical contracts;
- (c) all books, records, maps and other documents (in whatever form) created or held by the transferor (including any original hard copy documents or records and documents or records that are kept in electronic form by means of a computer or other electronic device) including—
 - (i) the original signed copy of the clinical contract (if there is one),
 - (ii) financial records relating to the clinical contract, and
 - (iii) records relating to the performance by providers of services under clinical contracts; and
- (d) all general correspondence relating to the clinical contract, including records relating to any sanctions imposed.

- (4) For the purposes of this paragraph, the documents (in whatever form) relating to—
- (a) a determination, or proposed determination, as to whether or not premises are or are not in a reserved location are property associated with the primary care clinical contract, or the proposed primary care clinical contract, the contract premises for which gave rise to the determination or proposed determination;
 - (b) the provision, or proposed provision, of dispensing services by a dispensing doctor are property associated with the primary care clinical contract of the provider of primary medical services whose registered patient list was the basis for that provision or proposed provision.

Power to assign rights and liabilities in relation to a clinical contract transferred by virtue of this Part

21.—(1) Notwithstanding any implied or express provision to the contrary in any clinical contract transferred by virtue of this Part, a transferee (“the assignor”) may, subject to paragraph (2), assign its rights and liabilities under the contract, including where that contract has expired, to any other person (“the assignee”) that is—

- (a) named in the table in Part 3 of the Property Schedule;
- (b) a local authority whose area includes the area, or any part of the area, of the transferor;
- (c) a clinical commissioning group whose area includes the area, or any part of the area, of the transferor; or
- (d) the Board.

(2) Paragraph (1) only applies where—

- (a) the assignee and assignor have agreed in writing that the rights and liabilities under a named clinical contract should be so assigned;
- (b) in the case of a contract that has not expired, the assignee may lawfully make arrangements for the provision of the services provided under that contract; and
- (c) the assignment takes effect before 1st April 2014.

(3) Where the rights and liabilities under a clinical contract are assigned in accordance with this paragraph, the property associated with that contract (to be understood by reference to paragraph 20) is also to transfer with the rights and liabilities under the contract.

PART 4

Transfer of other contracts and agreements

Transfer of specified contracts and agreements

22.—(1) This paragraph applies to any other contract or agreement which is identified in Column 1 of the table in Part 4 of the Property Schedule.

(2) Any rights which the transferor has, immediately before the transfer date, in any contract or agreement to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of the table in Part 4 of the Property Schedule in relation to that contract or agreement.

(3) Any liabilities which the transferor has, immediately before the transfer date, in any contract or agreement to which this paragraph applies are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of the table in Part 4 of the Property Schedule in relation to that contract or agreement.

Transfer of Pharmaceutical Needs Assessments to Local Authorities and controlled locality determinations

23.—(1) A pharmaceutical needs assessment prepared by the transferor before the transfer date pursuant to regulations made under section 128A of the 2006 Act (pharmaceutical needs assessments)(a), and the records, maps and other documents (in whatever form) relating to it are, on the transfer date, to transfer—

- (a) to the local authority whose area includes the area covered by the pharmaceutical needs assessment; or
- (b) if the pharmaceutical needs assessment covers an area which includes all or part of the area of more than one local authority, to the local authority whose area includes the largest share of the area covered by the pharmaceutical needs assessment.

(2) The records, maps and other documents relating to the determination or proposed determination of whether or not an area is a controlled locality pursuant to regulations under section 129(6)(e) of the 2006 Act (regulations as to pharmaceutical services)(b) are to transfer to the Board.

Transfer of other contracts and agreements and related rights and liabilities

24.—(1) Subject to paragraph (2), the property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to all other contracts (other than a contract of employment), agreements, arrangements, assignments and orders which relate to any of the functions of the transferor under or by virtue of the 2006 Act or any other enactment or instrument which are not identified in the Property Schedule are, on the transfer date, to transfer to the Secretary of State or, where the Secretary of State considers that it is more appropriate in the circumstances of any particular case, the Board.

(2) Any rights or liabilities which the transferor has, immediately before the transfer date, in relation to an honorary contract between the transferor and an individual health professional who was not an employee of the transferor, are, on the transfer date, to transfer to—

- (a) in the case of an honorary contract held by a health professional employed in an academic post relating to public health, the Secretary of State; or
- (b) in any other case, the Board.

PART 5

Transfer of assets

Transfer of furniture, fittings, plant, equipment and machinery

25. The property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to items which are identified in Column 1 of the table in Part 5 of the Property Schedule are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of that table.

Transfer of information technology

26. The property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to any item of information technology which is identified in Column 1 of the table in Part 6 of the Property Schedule are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of that table.

(a) Section 128A of the 2006 Act was amended by section 206(1) and 306(1)(b) and (4) of the 2012 Act.

(b) Section 129(6)(e) of the 2006 Act was amended by section 55(1) and Part 7 of Schedule 4 to the 2012 Act.

Transfer of intellectual property

27. The property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to the items of intellectual property which are identified in Column 1 of the table in Part 7 of the Property Schedule are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of that table.

PART 6

Transfer of information, data and records

Transfer of specified information, data and records

28.—(1) The property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to the information, data and records identified in Column 1 of the table in Part 8 of the Property Schedule are, on the transfer date, to transfer to the transferee identified in the corresponding entry in Column 4 of that table.

(2) This paragraph, and paragraphs 29 and 30, do not apply in respect of the transfer of any information, data and records—

- (a) to be transferred under or by virtue of paragraph 13; or
- (b) relating to staff employed by the transferor before the transfer date which are transferred under or by virtue of any provision in a staff transfer scheme made under section 300(3) of the Health and Social Care Act 2012 in connection with the abolition of the transferor.

Transfer of other information, data and records

29.—(1) This paragraph applies to any other information, data and records created or held by the transferor immediately before the transfer date which are not identified in the Property Schedule [but which relate to the exercise of any statutory functions of the transferor under or by virtue of the 2006 Act or any other enactment or instrument.]

(2) The information, data and records referred to in paragraph (1) include—

- (a) all books, records and other documents created or held by the transferor (including any original hard copy documents or records and documents or records that are kept in electronic form by means of a computer or other electronic device) including —
 - (i) financial records (including any records about grants made by the transferor under or by virtue of any provision in the 2006 Act);
 - (ii) governance records;
 - (iii) records relating to the performance by providers of clinical services under clinical contracts;
 - (iv) records relating to the management and use of controlled drugs;
 - (v) reports relating to assessments made by the transferor in connection with the provision of health services under or by virtue of the 2006 Act or any other enactment or instrument;
 - (vi) records relating to policy making; and
- (b) all general correspondence.

(3) Except as provided by sub-paragraph (4), the property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to the information, documents, data and records to which this paragraph applies are, on the transfer date to transfer to the Secretary of State.

(4) The property, rights and liabilities which the transferor has, immediately before the transfer date, in relation to any information, documents, data and records to which this paragraph applies

which relate to the management and use of controlled drugs are, on the transfer date, to transfer to the Board.

Rights of access to information, data and records

30.—(1) This paragraph applies to any item of information technology, intellectual property, information, documents (including contracts and agreements), data and records (“relevant property”) created or held by the transferor immediately before the transfer date which is transferred by virtue of any provision of this Scheme.

(2) The transfer of any item to which this paragraph applies is subject to the conditions set out in sub-paragraphs (3) and (4) and any conditions specified in Schedule 2 in relation to that transfer.

(3) The conditions referred to in sub-paragraph (2) are that—

- (a) the transferee must, in connection with the exercise of any functions of the transferee under or by virtue of the 2006 Act or any other enactment or instrument including this Scheme, allow access on reasonable notice to all relevant property to the Secretary of State or to any person authorised by the Secretary of State for the purpose of inspecting such relevant property and to take or be supplied with, and to use, copies of such relevant property;
- (b) the transferee must, in connection with the exercise of any functions of the transferee under or by virtue of the 2006 Act or any other enactment or instrument including this Scheme, allow access on reasonable notice to all relevant property to the Board or to any person authorised by the Board for the purpose of inspecting such relevant property and to take or be supplied with, and to use, copies of such relevant property;
- (c) the transferee must, in connection with the exercise of any functions of the transferee under or by virtue of the 2006 Act or any other enactment or instrument including this Scheme, allow the NHS Litigation Authority, or any person or body authorised by the NHS Litigation Authority, to access, inspect and take copies of relevant property at all reasonable times on reasonable notice where access to or inspection or copying of such relevant property is necessary or incidental to the effective discharge of any functions or obligations of the NHS Litigation Authority.

(4) Where property to which this paragraph applies consists of a contract or agreement which is transferred under any Part of this Scheme to more than one transferee and a nominated transferee is identified in a table in the Property Schedule in relation to that property, the nominated transferee must allow access to any other transferee identified in the Property Schedule in relation to that property to inspect and take copies at all reasonable times on reasonable notice where access to or inspection or copying of the relevant property is necessary or incidental to the effective discharge of any functions or obligations of that transferee.

PART 7

Transfer of other property, rights and liabilities

Transfer of unspecified residual property and associated rights and liabilities

31.—(1) This paragraph applies to any other property held by the transferor immediately before the transfer date which is not identified in the Property Schedule and in relation to which provision has not been made in Parts 2 to 6 of this Scheme.

(2) Any property to which this paragraph applies is, on the transfer date, to transfer to the Secretary of State.

(3) Any rights which the transferor has in relation to any property transferred under this paragraph are to transfer, on the transfer date, to the Secretary of State.

(4) Any liabilities which the transferor has in relation to any land, interest in land or other property transferred under this paragraph are to transfer, on the transfer date, to the Secretary of State.

Transfer of residual rights and liabilities: general

32.—(1) Any rights of the transferor which exist immediately before the transfer date and in relation to which provision has not been made in Parts 2 to 6 of this Scheme are, on the transfer date, to transfer to the Secretary of State.

(2) Any liabilities (actual or contingent) of the transferor, other than liabilities to which paragraph 33 and 34 apply, which exist immediately before the transfer date and in relation to which provision has not been made in Parts 2 to 6 of this Scheme are, on the transfer date, to transfer to the Secretary of State.

Transfer of residual liabilities: NHS Continuing Healthcare

33.—(1) Subject to sub-paragraph (3), any liabilities (actual or contingent) of the transferor in relation to the provision of, or omission to provide, NHS Continuing Healthcare which the transferor has immediately before the transfer date, are, on the transfer date, to transfer to the relevant body.

(2) Sub-paragraph (1) does not apply to any liabilities in respect of which provision is made in Part 3 of this Scheme (clinical contracts and related matters).

(3) In sub-paragraph (1)—

- (a) “NHS Continuing Healthcare” has the meaning given in Part 3; and
- (b) “relevant body” means the body that has, or would have had, responsibility for a person pursuant to regulation 20(2) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (interpretation – NHS Continuing Health Care and NHS funded nursing care).

Transfer of criminal liabilities

34. Any criminal liabilities of the transferor which exist immediately before the transfer date are, on the transfer date, to transfer to the NHS Litigation Authority.

PART 8

General supplementary provision

Supplementary provision: general

35.—(1) Any act or omission by or in relation to the transferor before the transfer date in connection with—

- (a) any property, rights or liabilities transferred under this Scheme; or
- (b) any contract or agreement entered into by the transferor in connection with any property, rights or liabilities transferred under or by virtue of this Scheme,

is deemed to have been an act or omission of, or in relation to, the transferee.

(2) Anything (which may include legal proceedings) which, when this Scheme takes effect, is in the process of being done by, or in relation to, the transferor in connection with any property, rights or liabilities transferred under this Scheme is deemed to have effect as if done by, or in relation to, and may be continued by, or in relation to, the transferee.

(3) Any reference to the transferor in any contract or agreement (whether written or not), instrument or other document in connection with any property, rights or liabilities transferred

under this Scheme is to be treated as a reference to the transferee or, as the case may be, transferees to whom that contract, agreement, instrument or other document is transferred.

(4) Any rights relating to a contract or agreement (whether written or not) transferred by virtue of any provision of this Scheme which were enforceable by or against the transferor immediately before the transfer date are, on the transfer date, to be enforceable by or against the transferee.

(5) Any liabilities relating to contract or agreement (whether written or not) transferred by virtue of any provision of this Scheme which were enforceable by or against the transferor immediately before the transfer date are, on the transfer date, to be enforceable against the transferee.

(6) Subject to paragraph 36, no right to terminate or vary a contract, arrangement, agreement or instrument is to operate or become exercisable, and no provision of any contract, arrangement, agreement or instrument is to operate or become exercisable or contravened, by reason of the transfer of any property, rights or liabilities under this Scheme.

(7) Where the rights and liabilities under a contract or agreement are transferred by virtue of any provision of this Scheme—

- (a) on the transfer date, from a transferor to a transferee; or
- (b) in the case of an assignment of a contract or agreement after the transfer date as permitted by this Scheme, from an assignor to an assignee,

that contract or agreement is to continue to have effect as if it was originally entered into or agreed by the transferee or, as the case may be, the assignee.

(8) The transfer of property, rights or liabilities provided for by this Scheme is to be made—

- (a) irrespective of any requirement for consent that would otherwise apply (whether arising under any enactment, instrument, agreement or otherwise); and
- (b) whether or not they would otherwise be capable of being transferred.

(9) Where an assignment of rights and liabilities is provided for in this Scheme, any reference to a transferee also includes a reference to the assignee in relation to any such assignment.

Supplementary provision: variation of contracts and agreements

36.—(1) This paragraph applies in respect of the transfer of a contract or agreement to more than one transferee by virtue of a provision in any Part of this Scheme notwithstanding any implied or express provision to the contrary in that contract or agreement.

(2) Where this paragraph applies, the transferees may agree a variation to the terms and conditions of the contract or agreement to the extent that is necessary to enable the proper operation of the contract or agreement following the change to the number of parties to the contract or agreement by virtue of it being transferred to more than one transferee.

(3) Paragraph (2) only applies where—

- (a) all the transferees in relation to the contract or agreement have agreed to the variation in writing;
- (b) the variation does not relate to the volume of services to be provided under the contract or agreement nor the amount of money to be paid in respect of such services; and
- (c) the variation is to take effect before 1st April 2014.

(4) Any other party to a contract or agreement varied pursuant to paragraph (2) must be notified in writing of any such variation by the transferees.

(5) Nothing in this paragraph is intended to affect the ability of the parties to a contract or agreement to which this paragraph applies to agree a variation to that contract or agreement other than as permitted by this paragraph, in accordance with the terms and conditions of that contract or agreement.

Modification of scheme

37.—(1) This Scheme may be modified after it comes into effect, in accordance with the following paragraphs.

(2) A modification may be made in respect of the transfer of any property under Part 2 to either NHS Property Services Limited or Community Health Partnerships Limited so as to alter the recipient of that property, and to make any other modification in connection with that alteration, where—

- (a) the Secretary of State has determined that—
 - (i) the proper recipient of the property should be NHS Property Services Limited instead of Community Health Partnerships Limited; or
 - (ii) the proper recipient of the property should be Community Health Partnerships Limited instead of NHS Property Services Limited; and
- (b) in either case referred to in paragraph (a), the Secretary of State, NHS Property Services Limited and Community Health Partnerships Limited all agree that a modification should be made to the Scheme to that effect.

(3) Any other modification must be agreed by—

- (a) the Secretary of State;
- (b) the transferee in respect of any property, rights or liabilities to which the modification relates; and
- (c) any person other than the Secretary of State or a transferee whose interests appear to the Secretary of State to be interests that are or may be significantly affected by the modification.

(4) Subject to paragraph (5), a modification to this Scheme—

- (a) must be made before 1st April 2014; and
- (b) may have effect from such earlier date as may be agreed.

(5) A modification may take effect on any date, whether before or after the date of the agreement to make that modification, other than a date which is—

- (a) before the transfer date; or
- (b) after 1st April 2014.

Signed by authority of the Secretary of State for Health

Name
Member of the Senior Civil Service
Department of Health

Date

SCHEDULE 1

Conditions of transfer: supplementary

PART 1

Overage provisions

1. In this Schedule—

“Base Value” means the higher of the Net Book Value of the land as shown in the transferor’s accounts at the transfer date or the Net Book Value of the land as shown in the transferee’s accounts immediately prior to the revaluation prior to the first disposition, and in the case of a

disposition of part only of the land the Base Value for that part is to be such proportion as may fairly and reasonably be ascribed to that part;

“Exempted Disposition” means—

- (a) a disposition in favour of the Secretary of State,
- (b) a disposition to a statutory body or service supply company if for the purpose of an electricity substation, gas governor, sewage pumping station, water pumping station or other utility services which have been or are to be constructed or installed in or upon the land,
- (c) a lease or tenancy conferring no security of tenure not granted at a premium for a term of three years or less,
- (d) disposition entered into by the transferee for the purpose of complying with its obligations in paragraph 9(3) of this Scheme, and
- (e) a mortgage or charge granted with the consent of the Secretary of State if, when applying for registration of that mortgage or charge, the chargee also applies for a restriction in a form referred to under Rule 91 of the Land Registration Rules 2003^(a) (as set out in Schedule 4 to those Rules) to the effect that no disposition by the proprietor of that mortgage or charge is to be registered without the consent of the Secretary of State;

“Market Value” means the estimated amount for which the Relevant Land should exchange at the date of the disposition with vacant possession between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion and assuming that—

- (a) no previous disposition other than a disposition permitted under the Scheme has occurred that has reduced the market value of the Relevant Land,
- (b) no act or omission by the transferee has occurred since the date hereof which has diminished the market value of the Relevant Land,
- (c) any damage to or destruction occurring to the Relevant Land after the date hereof has been fully reinstated, and
- (d) the provisions of this Schedule are disregarded;

“Net Book Value” means the Net Book Value of the land calculated in accordance with the requirements of the Government Financial Reporting Manual published by HM Treasury^(b);

“Overage” means the sum from time to time calculated as follows—

$$O = (R - B) \times 50\%$$

Where

O — means the Overage

R — means the Receipt

B — means the Base Value;

“Overage Payment” means the sum calculated in respect of the Overage as being due for payment on the completion of each disposition and for such purposes—

- (a) any sums previously paid to the Secretary of State by way of Overage in respect of the Relevant Land is to be taken into account and deducted from the payment due, and
- (b) if the sum calculated is a negative number it is to be deemed to be nil;

“Overage Period” means the period starting on the transfer date and ending with the Termination Date;

“Provisional payment” has the meaning given to it in paragraph 10(1) of this Schedule;

“Receipt” means the higher of—

(a) S.I.2003/1417.

(b) A copy of this manual can be found at www.hm-treasury.gov.uk/frem_index.htm.

- (a) the amount (VAT exclusive) received or receivable by or on behalf of the transferee in respect of any disposition, and
- (b) the Market Value of the Relevant Land and in the case of any lease or tenancy granted where the rent reserved under the same exceeds a peppercorn the Market Value of the reversionary interest;

“Relevant Land” means the land or the relevant part or parts of such land which is or are the subject of a disposition and any reference to Relevant Land includes a reference to any part of it;

“Termination Date” means—

- (a) the date on which the **[INSERT NAME OF NHS TRUST/NHS FOUNDATION TRUST]** or its statutory successor parts with its interest in the land and every part thereof, or
- (b) where the Secretary of State makes an election pursuant to paragraph 9(9)(a) of this Scheme, the fifteenth anniversary of the date upon which the **[INSERT NAME OF NHS TRUST/NHS FOUNDATION TRUST]** or its statutory successor transfers or grants a lease of the land or in the case of a transfer or grant of a lease of part of the land, the fifteenth anniversary of the date of each such transfer or grant (other than by way of Exempted Disposition); and

“transferee”, in relation to any land transferred under this Scheme, is to be construed in accordance with paragraph 3 of this Scheme and includes the transferees successors in title to the land.

2. On completion of any disposition other than an Exempted Disposition during the Overage Period the transferee must pay to the Secretary of State the Overage Payment in the following manner—

- (a) as soon as terms have been agreed for the disposition the transferee must provide to the Secretary of State at the address stated in paragraph 12 of this Schedule (or such other address as may be notified to the transferee) full details of the proposed terms of the disposition together with a statement containing a calculation of the Overage Payment;
- (b) the Secretary of State is to have the right (upon reasonable prior notice) to inspect the originals and be given complete and accurate copies by the transferee of all documentation on which the statement is based; and
- (c) the transferee must make the Overage Payment to the Secretary of State on the date of the disposition.

(2) The date of the disposition is to be treated as the date of completion or settlement unless—

- (a) a contract for a disposition is substantially performed (within the meaning of section 44 (5) of the Finance Act 2003^(a) (contract and conveyance)) otherwise than by completion and in which case the effective date for the disposition is to be treated as if it were itself the date on which the contract is substantially performed; or
- (b) where the Secretary of State has made an election pursuant to paragraph 9(9)(b) of this Scheme and a contract for a disposition has been entered into before the Termination Date in respect of which completion is due to take place after the Termination Date, in which event the disposition is deemed to have occurred on the Termination Date.

(a) 2003 c.14. Subsection (5) of section 44 was amended by section 296 of and Schedule 39 paragraph 15(1) and (2) to the Finance Act 2004 (c.12).

PART 2

General Provisions

3. If the Secretary of State and the transferee, or where a liquidator is appointed, the liquidator, are unable to agree upon the Overage Payment or other consideration due to the Secretary of State, the dispute or difference must be determined by arbitration in accordance with paragraph 4 of this Schedule.

4. Any dispute between the Secretary of State and the transferee in respect of which paragraph 3 of this Schedule applies—

- (a) may be resolved by such means as the Secretary of State and the transferee agree; or
- (b) failing agreement between them, must be referred for arbitration—
 - (i) to a person appointed by them, or
 - (ii) in the event that they fail to agree to appoint a person, to a person appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors on the application of the transferee, the liquidator or the Secretary of State.

5. For the avoidance of doubt in the event of any dispute the sum determined as being due under this Schedule is nevertheless to be payable (or be deemed to have become payable) at the date of the relevant disposition (and interest is to be payable under the following paragraph from that date).

6. If any sum which has become due under this Schedule is not paid on the date upon which it became payable then the transferee must pay interest on that sum from the date upon which it became due until it is paid at a rate equivalent to 4% per annum above the base rate of the Bank of England from time to time in force (or if that rate ceases to exist for any reason, at the Law Society interest rate).

7. Where the Secretary of State has made an election pursuant to paragraph 9(9)(b) of this Scheme on any disposition other than an Exempted Disposition of any part of the land prior to the expiry of the Overage Period the transferee will procure that the disponee of the same must at its own expense enter into a Deed of Covenant in favour of the Secretary of State in such form as the Secretary of State may reasonably require whereby the disponee must covenant with the Secretary of State to comply with the terms of this Schedule and the transferee must pay the reasonable legal costs incurred by the Secretary of State in approving and processing such Deed of Covenant.

8. The Secretary of State must (subject to reimbursement of the reasonable legal costs incurred by or on behalf of the Secretary of State) —

- (a) not withhold consent to the registration of a disposition—
 - (i) if (in the case of the first disposition) the Secretary of State has refused the transfer of the land pursuant to paragraph 9(8) of this Scheme; and
 - (ii) if the Secretary of State has received in respect of the disposition—
 - (aa) the Overage Payment or
 - (bb) if the amount of the Overage Payment has not been agreed or determined by the date of the relevant disposition, the provisional payment; and
 - (iii) where the Secretary of State has made an election pursuant to paragraph 9(9)(b) of this Scheme, if the Secretary of State has received from the disponee a properly completed Deed of Covenant in favour of the Secretary of State in the form referred to in paragraph 7 and
- (b) when requested to do so (pursuant to the restriction set out in paragraph 9(14)(a)(ii) of this Scheme provide a written consent signed on behalf of the Secretary of State—
 - (i) to any disposition where the provisions of paragraph 8(a) of this Schedule have been complied with; or
 - (ii) to an Exempted Disposition.

9.—(1) The provisional payment referred to in paragraph 8(a)(ii)(bb) of this Schedule is such amount as the Secretary of State and the transferee or, where a liquidator has been appointed, the liquidator, may agree is to be paid to the Secretary of State to hold as stakeholder until such time as the amount of the Overage Payment has been agreed or determined.

(2) In the event that the provisional payment is less than the amount of the Overage Payment so agreed or determined the balance must be paid in accordance with the provisions of paragraph [5] of this Schedule and in the event that the provisional payment exceeds the amount of the Overage Payment so agreed or determined the balance must be repaid to the transferee.

10. The transferee will not act in collusion with any third party or otherwise do or omit to do anything with a view to avoiding or deferring any payment due or action required under the provisions of this Schedule.

11. For the avoidance of doubt the provisions of this Schedule apply only to produce sums payable by the transferee to the Secretary of State and in no circumstances is any sum to become payable, or repayable (other than as provided for in paragraph 9(2) of this Schedule) by the Secretary of State to the transferee.

12. Any notice, notification or statement required under the terms of this Schedule must be sent to the Secretary of State for Health by recorded delivery post at Richmond House, 79 Whitehall, London SW1A 2NS.