

## The legal details

For the purposes of this guide it is assumed that compulsory transfers will fall within the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) definition of a 'relevant transfer'. This means that TUPE would apply and employment contracts would transfer from one employer to the other without any change to terms and conditions, and without a break in continuity of service. In addition, the Cabinet Office Statement of Practice (COSOP) applies across the NHS, as it does in other parts of the public sector. As well as giving guidance on the application of TUPE in the public sector, COSOP provides some guidance on what is expected to happen when TUPE does not apply. The current version of COSOP states that the principles of TUPE should be followed and that legislation should be used where possible to effect the transfer and that the staff are treated no less favourably than if TUPE applied. COSOP also states that where TUPE does not apply, and legislation is not used to effect the transfer, staff should be offered the opportunity to move to the new employer on terms that are overall no less favourable than if TUPE applied; and if they choose not to move they should, where possible, be redeployed within the transferring organisation.

Terms and conditions may vary between NHS organisations, and staff will need to seek advice about their own circumstances. You should contact your HR department, trade union or staff representative to get further advice. All appropriate engagement and consultation must take place with staff before any potential transfer takes place, regardless of which body you move to or from.

You should note that if your circumstances mean you are moving to another part of your existing NHS employer, that has been internally separated, legally no transfer takes place and you will remain on your existing terms and conditions.