

## SCHEDULE 3

(introduced by section 31)

### TRANSFERS OF STAFF AND PROPERTY

#### PART 1

#### STAFF TRANSFERS TO THE AUTHORITY AND THE AGENCY

##### *Interpretation*

- 1 In this Part—
- “central service” has the meaning given by section 38(5) of the 1967 Act;
  - “relevant service” means relevant service within the meaning of section 38A(1)(bd) or (be) of that Act; and
  - “transfer day”, in relation to a person, means the day on which a staff transfer order comes into force in relation to the person.

##### *Staff transfer orders*

- 2 (1) The Scottish Ministers may by order (a “staff transfer order”) make provision for or in connection with—
- (a) the transfer of persons employed, by virtue of section 9 of the 1967 Act (employees other than constables), by police authorities or joint police boards from any such authority or board to the Authority;
  - (b) the transfer of constables from police forces to relevant service;
  - (c) the transfer of constables from central service to relevant service.
- (2) A staff transfer order may in particular—
- (a) prescribe rules by which the transfer of persons, or classes of person, specified in the order can be determined;
  - (b) provide that persons, or classes of person, so specified are to become members of the Agency.
- (3) Where a staff transfer order makes provision such as is mentioned in paragraph (a) of sub-paragraph (1), the order may include provision requiring the police authority or joint police board concerned to make a scheme in relation to the transfer of the staff to whom the order relates.
- (4) Where a staff transfer order makes provision such as is mentioned in paragraph (b) of sub-paragraph (1), the order may include provision requiring the maintaining authority for the police force concerned to make a scheme in relation to the transfer of the staff to whom the order relates.
- (5) For the purposes of sub-paragraph (4), the maintaining authority in relation to a police force is—
- (a) where the force is for an area which is not combined by virtue of an amalgamation scheme under the 1967 Act, the police authority for that area;
  - (b) where the force is for an area consisting of police areas combined by virtue of such a scheme, the joint police board constituted under the scheme.

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*Status: This is the original version (as it was originally enacted).*

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- (6) Where a staff transfer order makes provision such as is mentioned in paragraph (c) of sub-paragraph (1), the Scottish Ministers must make a scheme in relation to the transfer of the staff to whom the order relates.
- (7) A staff transfer order may include provision requiring a scheme made by virtue of sub-paragraph (4) to include provision as to the terms and conditions which are to have effect in relation to constables who are to be on relevant service.
- (8) Terms and conditions such as are mentioned in sub-paragraph (7) may be included in a scheme only with the approval of the Scottish Ministers.
- (9) A scheme made under sub-paragraph (6) may include provision—
  - (a) for central service to have effect from a time specified in the scheme as relevant service;
  - (b) as to the terms and conditions which are to have effect in relation to constables who are to be on relevant service.

#### *Consultation*

- 3 (1) Before making a staff transfer order, the Scottish Ministers must consult—
  - (a) the Authority; and
  - (b) if the order includes—
    - (i) provision transferring constables to relevant service falling within section 38A(1)(be) of the 1967 Act; or
    - (ii) provision such as is mentioned in paragraph 2(2)(b), the Director General of the Agency.
- (2) Before making a scheme by virtue of paragraph 2(3), the police authority or joint police board concerned must consult the Authority.
- (3) Before making a scheme by virtue of paragraph 2(4), the police authority or joint police board concerned must consult—
  - (a) the Authority; and
  - (b) if the scheme includes provision for or in connection with the transfer of constables to relevant service within the meaning of section 38A(1)(be) of the 1967 Act, the Director General of the Agency.

#### *Effect on existing contracts of employment*

- 4 (1) This paragraph applies where—
  - (a) a person is to be transferred by virtue of a staff transfer order under paragraph 2; and
  - (b) immediately before the transfer day, the person has a contract of employment with a police authority or joint police board (the “employer”).
- (2) On and after the transfer day the contract of employment has effect as if originally made between the person and the Authority.
- (3) On the transfer day the rights, powers, duties and liabilities of the employer under or in connection with the contract of employment of the person are transferred to the Authority.

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- (4) Anything done before the transfer day by or in relation to the employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to the Authority.
- (5) If, before the transfer day, the person gives notice to the Authority or the person's employer that the person objects to becoming a member of staff of the Authority—
  - (a) the contract of employment with the employer is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated; and
  - (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.
- (6) Nothing in this schedule prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person's working conditions is made.
- (7) The person has the right to terminate the contract of employment by virtue of the employer's identity changing by virtue of the making of the staff transfer order only if it is shown that, in all the circumstances, the change is—
  - (a) significant; and
  - (b) detrimentalto the person.

## PART 2

### TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES TO THE AUTHORITY

#### *Interpretation*

- 5 In this Part, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

#### *Transfer of property, rights and liabilities*

- 6 (1) The Scottish Ministers may make a transfer scheme.
- (2) A transfer scheme is a scheme making provision for or in connection with the transfer to the Authority of property, rights and liabilities of any of the following—
  - (a) a police authority;
  - (b) a joint police board;
  - (c) a local authority;
  - (d) the Scottish Ministers;
  - (e) any other person.
- (3) A transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights or liabilities relate to the functions of the Agency (as specified in section 2(2)) or the police support services.
- (4) A transfer scheme must specify a date (the “transfer date”) on which the transfer is to take effect; and different dates may be specified in relation to different property, rights or liabilities.

- (5) On the transfer date—
- (a) any property or rights to which a transfer scheme applies transfer to and vest in the Authority; and
  - (b) any liabilities to which such a scheme applies become liabilities of the Authority.
- (6) A transfer scheme may make provision for the creation of rights, or the imposition of liabilities, in relation to the property, rights or liabilities transferred by virtue of the scheme.
- (7) A certificate issued by the Scottish Ministers that any property, right or liability has, or has not, been transferred by virtue of a transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.
- (8) A transfer scheme may in particular make provision about the continuation of legal proceedings.
- (9) A transfer scheme may make provision for the Authority to make any payment which—
- (a) before a day specified in the scheme could have been made by any of the persons specified in paragraphs (a) to (e) of sub-paragraph (2); but
  - (b) is not a liability which can become a liability of the Authority by virtue of a transfer scheme.
- (10) A transfer scheme may make provision for the payment by the Authority of compensation in respect of property and rights transferred by virtue of the scheme.
- (11) Before making a transfer scheme, the Scottish Ministers must consult—
- (a) the Authority;
  - (b) any police authority, joint police board, local authority or other person whose property, rights and liabilities (or any of them) are to be transferred by virtue of the scheme.