

# CHILDREN'S HEARINGS (SCOTLAND) ACT 2011

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 4 – Transfer of staff and property to CHS*

##### **Interpretation**

401. [Schedule 4](#) is introduced by section 24 and makes provision about the transfer of staff, property, rights and liabilities to CHS.

##### **Staff transfer orders**

402. [Paragraphs 2 to 4](#) set out the arrangements for the transfer to CHS of staff working in SCRA and local authorities whose functions are to be taken on by CHS. Paragraph 2(1) and 2(2) enable the Scottish Ministers to make a “staff transfer order” to effect this transfer. Where a staff transfer order makes provision for the transfer of SCRA employees to CHS the order may require SCRA and CHS acting jointly to make a scheme in relation to the transfer of those staff. Where a staff transfer order makes provision for the transfer of local authority employees to CHS, the order may require the local authority and CHS acting jointly to make a scheme in relation to the transfer of those staff. If SCRA and CHS or the local authority and CHS are unable to comply with the requirement to make a staff transfer scheme, paragraph 2(4) provides for Ministers to create the scheme.

##### **Schemes for transfer of staff: consultation**

403. [Paragraph 3\(2\)](#) requires SCRA to consult their employees, the Principal Reporter and trade union representatives about the content of a staff transfer scheme which SCRA would be required to make under a staff transfer order. Similarly, paragraph 3(5) requires local authorities to consult their employees and trade union representatives about the content of a staff transfer scheme which the local authority is required to make under a staff transfer order.

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

404. [Paragraph 4](#) makes a number of provisions concerning employees of SCRA or local authorities who are subject to a staff transfer order. Paragraphs 4(2) to 4(4) establish that contract rights and obligations transfer from the former employer to CHS on the transfer day. Paragraph 4(5) provides that employed staff may object in advance to their contract being transferred to CHS, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal. Paragraph 4(7) provides that an employee may terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

**Transfer of property etc. to CHS**

405. [Paragraph 5](#) makes provision for the Scottish Ministers to make a transfer scheme in respect of the transfer of property, rights, liabilities and obligations from SCRA, a local authority or the Scottish Ministers to CHS. Before making a transfer scheme, Ministers must consult with CHS and, if their property, rights, liabilities or obligations are to be transferred, Ministers must also consult with SCRA, the local authority or any other person with an interest in the property, rights, liabilities or obligations.