

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

Functions of Local Authorities and Health Boards

Implementation of integration scheme

Section 21 – Transfer of staff: effect on contract of employment

57. **Section 21** makes provision about the effect on an individual's contract of employment on the transfer (or proposed transfer in the case of subsection (2)) of that individual's employment by scheme under section 12(4), 16(1) or 48(3).
58. Subsection (2) provides that where, before the day of transfer, a person who is to be transferred informs their original employer that they do not wish to transfer employment, the person's contract of employment is terminated on the day before the day of transfer. The effect of this is that a person who does not wish to transfer does not have to do so but instead his or her contract will end on the day before the transfer would have taken place.
59. Subsection (3) sets out the effects of a transfer on an employee's contract. In effect, the contract continues as it was before the transfer, except that the new employer takes the place of the previous employer. This means that the rights, powers, duties and liabilities of the original employer under or in connection with the contract of employment are transferred to the new employer and anything done by or in relation to the original employer in respect of the contract of employment is treated as having been done by or in relation to the new employer.
60. Subsection (4) clarifies that, in relation to pension obligations, in circumstances where staff transfer between employer, whether between a local authority and Health Board or to an integration joint board, there will be no transfer of any liability for any deficit, or right to a share in any surplus, in respect of the transferred employee's membership of a pension scheme relating to their employment prior to the transfer.
61. Subsection (5) provides that a person is not to be treated as being dismissed as a result of any provision of this section.
62. Subsection (6) protects any right that a person may have to terminate their contract where there is a substantial detrimental change to his or her working conditions.
63. Subsection (7) makes clear that the change in employer as a result of the transfer of a person under this section does not constitute a substantial detrimental change to a person's working conditions. This has the effect that the transfer (of itself) of a

*These notes relate to the Public Bodies (Joint Working) (Scotland)
Act 2014 (asp 9) which received Royal Assent on 1 April 2014*

person by scheme under section 12(4), 16(1) or 48(3) cannot be considered a substantial detrimental change such as to give rise to any right mentioned in subsection (6).