

Changes to legislation: Children's Hearings (Scotland) Act 2011, SCHEDULE 4 is up to date with all changes known to be in force on or before 21 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULE 4

(introduced by section 24)

TRANSFER OF STAFF AND PROPERTY TO CHS

Interpretation

1 In this schedule—

“recognised” has the meaning given by section 178(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52),

“trade union” has the meaning given by section 1 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.

Commencement Information

II Sch. 4 para. 1 in force at 24.6.2013 by S.S.I. 2013/195, arts. 2, 3

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 SCRA to CHS,

(b) the transfer of persons employed by local authorities from authorities to CHS.

(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) require—

(i) in relation to persons employed by SCRA, SCRA and CHS acting jointly, or

(ii) in relation to persons employed by a local authority specified in the order, the local authority and CHS acting jointly,

to make a scheme in relation to the transfer of the persons to whom the order relates.

(3) Sub-paragraphs (4) and (5) apply where—

(a) an order includes a requirement of the sort mentioned in sub-paragraph (2) (b)(i) and SCRA and CHS are unable to comply with the requirement, or

(b) an order includes a requirement of the sort mentioned in sub-paragraph (2) (b)(ii) and the local authority and CHS are unable to comply with the requirement.

(4) The Scottish Ministers may determine the content of the scheme.

(5) The scheme is to be treated as if made in accordance with the requirement imposed by the order.

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Commencement Information

I2 [Sch. 4 para. 2](#) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

Schemes for transfer of staff: consultation

- 3
- (1) Sub-paragraph (2) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(i).
 - (2) SCRA must consult the persons mentioned in sub-paragraph (3) about the content of the scheme.
 - (3) Those persons are—
 - (a) persons employed by SCRA,
 - (b) the Principal Reporter,
 - (c) representatives of any trade union recognised by SCRA.
 - (4) Sub-paragraph (5) applies where a staff transfer order includes a requirement of the type mentioned in paragraph 2(2)(b)(ii).
 - (5) The local authority must consult the persons mentioned in sub-paragraph (6) about the content of the scheme.
 - (6) Those persons are—
 - (a) persons employed by the local authority,
 - (b) representatives of any trade union recognised by the local authority.

Commencement Information

I3 [Sch. 4 para. 3](#) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

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, and
 - (b) immediately before the transfer day the person has a contract of employment with the relevant employer.
 - (2) On and after the transfer day the contract of employment has effect as if originally made between the person and CHS.
 - (3) On the transfer day the rights, powers, duties and liabilities of the relevant employer under or in connection with the contract of employment of the person are transferred to CHS.
 - (4) Anything done before the transfer day by or in relation to the relevant 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 CHS.
 - (5) If, before the transfer day, the person gives notice to CHS or the relevant employer that the person objects to becoming a member of staff of CHS—

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- (a) the contract of employment with the relevant 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 if—
 - (a) the identity of the relevant employer changes by virtue of the making of the staff transfer order, and
 - (b) it is shown that, in all the circumstances, the change is significant and detrimental to the person.
- (8) In this paragraph “relevant employer”, in relation to a person, means—
 - (a) where the person has a contract of employment with SCRA, SCRA,
 - (b) where the person has a contract of employment with a local authority, the local authority.

Commencement Information

I4 [Sch. 4 para. 4](#) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

Transfer of property etc. to CHS

- 5
- (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 CHS of property, rights, liabilities and obligations of any of the following—
 - (a) SCRA,
 - (b) a local authority,
 - (c) the Scottish Ministers.
 - (3) A transfer scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
 - (4) A transfer scheme may—
 - (a) specify different dates in relation to different property, rights, liabilities and obligations,
 - (b) make different provision in relation to different cases or classes of case.
 - (5) On the transfer date—
 - (a) any property or rights to which a transfer scheme applies transfer to and vest in CHS,
 - (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of CHS.
 - (6) A transfer scheme may make provision for the creation of rights, or the imposition of liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

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- (7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation 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 CHS to make any payment which—
 - (a) before a day specified in the scheme could have been made by a person specified in sub-paragraph (2)(a) or (b), but
 - (b) is not a liability which can become a liability of CHS by virtue of a transfer scheme.
- (10) A transfer scheme may make provision for the payment by CHS 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) CHS,
 - (b) the person mentioned in sub-paragraph (2)(a) or (b) whose property, rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme, and
 - (c) any other person with an interest in the property, rights, liabilities or obligations which are to be so transferred.

Commencement Information

I5 [Sch. 4 para. 5](#) in force at 24.6.2013 by [S.S.I. 2013/195](#), [arts. 2, 3](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 17A inserted by [2020 asp 16 s. 6\(2\)](#)
- s. 25(3) inserted by [2020 asp 16 s. 30\(7\)](#)
- s. 27(3)-(4A) substituted for s. 27(3)(4) by [2020 asp 16 s. 3\(2\)](#)
- s. 62(5)(q)-(u) inserted by [2020 asp 9 s. 8\(2\)\(b\)](#)
- s. 163(2)-(2B) substituted for s. 163(2) by [2020 asp 16 s. 27\(3\)\(b\)](#)
- s. 164(2)-(2B) substituted for s. 164(2) by [2020 asp 16 s. 27\(4\)\(b\)](#)
- s. 165(2)-(2B) substituted for s. 165(2) by [2020 asp 16 s. 27\(5\)\(b\)](#)