



Local Government (Wales) Act 1994

1994 CHAPTER 19

PART V

RESIDUARY MATTERS AND STAFF

39 The Residuary Body for Wales or Corff Gweddilliol Cymru.

- (1) On 31st March 1996 or on such earlier day as the Secretary of State may by order appoint, there shall be a body corporate to be known as the Residuary Body for Wales or Corff Gweddilliol Cymru (but in this Act referred to as the Residuary Body).
- (2) Schedule 13 shall have effect with respect to the Residuary Body.

40 The Staff Commission for Wales or Comisiwn Staff Cymru.

- (1) There shall be a body corporate to be known as the Staff Commission for Wales or Comisiwn Staff Cymru (but in this Act referred to as the Commission).
- (2) The Commission shall—
 - (a) advise the Secretary of State on the steps necessary to safeguard the interests of staff employed by—
 - (i) the old authorities;
 - (ii) the new principal councils; or
 - (iii) the Residuary Body;
 - (b) consider and keep under review—
 - (i) arrangements for the recruitment of the staff of any of those bodies; and
 - (ii) the organisation, management and remuneration of the staff of the new principal councils;
 - (c) consider and keep under review the arrangements for the transfer of staff from any of the old authorities in consequence of any provision made by or under this Act; and

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- (d) consider such staffing problems and other staffing matters as may be referred to it by the Secretary of State as arising out of any provision made by or under this Act.
- (3) The Secretary of State may give directions to the Commission as to its procedure and to any of the new principal councils or old authorities, or the Residuary Body, with respect to—
- (a) the supply of any information requested, and the implementation of any advice given, by the Commission; and
 - (b) the payment by such a council or authority, or by the Residuary Body, of any expenses incurred by the Commission in doing anything requested by that council or authority or by the Residuary Body.
- (4) Schedule 14 makes provision with respect to the constitution of the Commission and related matters.

Modifications etc. (not altering text)

- C1** Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, art. 16 (with transitional provisions in Schs. 6-8)

41 Continuity of employment in certain cases of voluntary transfer.

- (1) This section applies to a person (“the employee”) who at any time ceases to be employed by an old authority if—
- (a) the termination of his employment is attributable to any provision made by or under this Act;
 - (b) he is subsequently employed by another person; and
 - (c) by virtue of ^[F1]section 138 of the Employment Rights Act 1996] (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under ^[F1]Part XI] of that Act with respect to his terminated employment.
- (2) ^[F2]Chapter I of Part XIV of the Employment Rights Act 1996] (computation of period of employment for the purposes of that Act) shall have effect as if it provided—
- (a) for the period of the employee’s employment by the old authority to count as a period of employment with his new employer; and
 - (b) for the change of employer not to break the continuity of the period of his employment.
- (3) For the purposes of any provision of the employee’s contract of employment with his new employer which depends on his length of service with that employer, the period of his employment with the old authority shall count as a period of employment with his new employer.

Textual Amendments

- F1** Words in s. 41(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 63(2)(a) (with ss. 191-195, 202)
- F2** Words in s. 41(2) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 63(2)(b) (with ss. 191-195, 202)

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Modifications etc. (not altering text)

- C2** Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, art. 16 (with transitional provisions in Schs. 6-8)

42 Transfers of staff.

- (1) This section applies to any person (“a designated employee”) who, immediately before 1st April 1996 was employed by an abolished body under a contract of employment which would have continued but for the abolition of that body and who is designated, or falls within a class or description of person designated, for the purposes of this section by an order made, at any time, by the Secretary of State.
- (2) The contract of employment between a designated employee and the abolished body concerned shall not be terminated by the abolition of the body but shall have effect from 1st April 1996 as if originally made between him and such new employer as may be specified by the relevant designation order under this section.
- (3) Such an order may specify as the new employer a new principal council or the Residuary Body.
- (4) Without prejudice to subsection (2)—
 - (a) all the rights, powers, duties and liabilities of the abolished body under, or in connection with, the contract shall by virtue of this section be transferred on 1st April 1996 to the new employer; and
 - (b) anything done before 1st April 1996 by or in relation to the abolished body in respect of the contract or the designated employee shall be deemed from that date to have been done by or in relation to the new employer.
- (5) Nothing in this section affects any right of a designated employee to terminate his contract of employment if a substantial change is made in his working conditions, to his detriment, but no such right shall arise by reason only of the change of employer effected by this section.
- (6) A class or description of person may be specified by an order under subsection (1) by reference to such list or other document or documents as may be identified in accordance with the order.
- (7) In this section “abolished body” means an old authority or any joint board which ceases to exist as a result of section 59.

Modifications etc. (not altering text)

- C3** Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, art. 16 (with transitional provisions in Schs. 6-8)

43 Compensation for loss of office or diminution of emoluments.

- (1) Where any person—
 - (a) is, at any time after the passing of this Act, in the service of an old authority, a new principal council or the Residuary Body, and
 - (b) suffers loss of employment or diminution of emoluments which is attributable to any provision made by or under this Act,

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compensation in respect of any such loss or diminution suffered by him shall be paid only in accordance with regulations made under section 24 of the ^{M1}Superannuation Act 1972.

- (2) Accordingly, none of the bodies mentioned in subsection (1) shall pay any such compensation under any other statutory provision, by virtue of any provision in a contract or otherwise.
- (3) Subsections (1) and (2) do not preclude the making of any payment to which a person is entitled by virtue of contractual rights acquired by him before 1st December 1993.
- (4) No compensation shall be payable under regulations made under the ^{M2}Superannuation Act 1972, to or in respect of a person to whom subsection (1) applies, in respect of any loss or diminution attributable to the termination of a late contract on or before 1st April 1996.
- (5) In subsection (4)—
- “late contract” means a contract which is made after 30th November 1993 and provides for the employment of the person concerned for a fixed term extending beyond 31st March 1996; and
- “loss or diminution” means loss or diminution of a kind mentioned in subsection (1).
- (6) For the purpose of determining under [^{F3}section 138 or 141 of the Employment Rights Act 1996]—
- (a) whether the provisions of a new contract offered to a person employed by any such body as is mentioned in subsection (1) differ from the corresponding provisions of his previous contract, and
- (b) whether employment under the new contract is suitable in relation to that person,
- there shall be treated as forming part of the remuneration payable under the new contract any compensation to which that person is or, if he accepted the offer, would be entitled in accordance with this section.
- (7) Subject to subsection (6), nothing in this section shall be taken to affect any entitlement to a redundancy payment under [^{F4}Part XI of the Employment Rights Act 1996] or to any payment by virtue of any provision of the ^{M3}Superannuation Act 1972 other than section 24 of that Act.

Textual Amendments

- F3** Words in s. 43(6) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(3)(a)** (with ss. 191-195, 202)
- F4** Words in s. 43(7) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(3)(b)** (with ss. 191-195, 202)

Modifications etc. (not altering text)

- C4** Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, **art. 16** (with transitional provisions in **Schs. 6-8**)

Marginal Citations

- M1** 1972 c. 11.
- M2** 1972 c. 11.

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M3 1972 c. 11.

44 Redundancy payments.

- (1) In determining the effect of any provision of—
- (a) [^{F5}Part IX, X or XI of the Employment Rights Act 1996], or
 - (b) Chapter II of Part IV of the ^{M4}Trade Union and Labour Relations (Consolidation) Act 1992,
- in relation to a person whose contract of employment is terminated as a result of this Act, it shall be assumed that he was dismissed by the old authority concerned by reason of redundancy immediately before 1st April 1996 and that his dismissal was proposed by the authority.
- (2) For the purposes of this section—
- (a) a person's contract of employment is terminated as a result of this Act if—
 - (i) immediately before 1st April 1996 he was in the service of an old authority under a contract of employment which would have continued in force if that authority had not been abolished; and
 - (ii) his contract of employment is not transferred to a new principal council or to the Residuary Body; and
 - (b) a contract of employment is transferred—
 - (i) to a new principal council, if it is treated by any provision made by this Act, or by or under any other enactment, as continued in force with that council on 1st April 1996; or
 - (ii) to the Residuary Body, if it is so treated as continued in force with the Residuary Body on that date.
- (3) The new principal council to whom an old authority's liability as respects any redundancy payment under Part VI of the Act of 1978 is transferred under this Act shall be treated as the employer of the person concerned for the purposes of [^{F6}sections 164, 165, 170 and 179 of the Employment Rights Act 1996] (ancillary provisions about redundancy payments).
- (4) As respects any such redundancy payment, references to the relevant date in [^{F7}sections 155, 156, 162 and 164 of the Employment Rights Act 1996], and in Schedule 4 to that Act, shall be construed as references to 31st March 1996.

Textual Amendments

- F5** Words in s. 44(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(4)(a)** (with ss. 191-195, 202)
- F6** Words in s. 44(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(4)(b)** (with ss. 191-195, 202)
- F7** Words in s. 44(4) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(4)(c)** (with ss. 191-195, 202)

Modifications etc. (not altering text)

- C5** Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, **art. 16** (with transitional provisions in **Schs. 6-8**)

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Marginal Citations

M4 1992 c. 52.

45 Other compensation payments.

- (1) This section applies where any contract of employment made before 1st December 1993 is terminated as a result of this Act.
- (2) Subsection (2) of section 44 applies for the purposes of this section as it applies for the purposes of that section.
- (3) If the contract—
 - (a) provided for the employee’s employment for a fixed term extending beyond 31st March 1996, but
 - (b) did not provide for the earlier termination of the contract by the authority concerned,
 the employee shall be treated as having been entitled, immediately before 1st April 1996, to receive from the old authority an amount equal to the damages which he would have been entitled to recover from that authority if they had not been abolished but had dismissed him immediately before that date.
- (4) If the contract (whether or not for a fixed term) provided for its termination by the old authority on payment of compensation for loss of employment, the employee shall be treated as having been entitled, immediately before 1st April 1996, to receive from the old authority an amount equal to the compensation which he would have been entitled to receive from that authority if they had not been abolished but had terminated the contract immediately before that date.
- (5) In subsection (4) “compensation for loss of employment” does not include any payment to be made under the contract in lieu of notice.
- (6) Where the amount of compensation payable under a contract differs according to the reasons for termination of the contract, the amount payable by virtue of subsection (4) shall be determined on the assumption that the contract was terminated by reason of redundancy within the meaning of [F8 the Employment Protection (Consolidation) Act 1978].
- (7) The Secretary of State may by regulations exclude the operation of this section in prescribed circumstances (and, in particular, in cases of engagement by new principal councils).

Textual Amendments

F8 S. 45(6): by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 63(5)** (with ss. 191-195, 202) it is provided (22.8.1996) that in s. 45(5) for the words “the Employment Protection (Consolidation) Act 1978” there be substituted the words “the Employment Rights Act 1996”

Modifications etc. (not altering text)

C6 S. 45 excluded (4.5.1995) by S.I. 1995/1039, **reg. 3**

C7 Ss. 40-45 applied (with modifications) (23.11.1995) by S.I. 1995/2803, **art. 16** (with transitional provisions in **Schs. 6-8**)

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