



Local Government etc. (Scotland) Act 1994

1994 CHAPTER 39

PART I

LOCAL GOVERNMENT REORGANISATION

CHAPTER 2

STAFF

8 Transfer of employees

- (1) Subject to the provisions of this section, the Secretary of State may by order make provision with respect to—
 - (a) the transfer of employees from an existing local authority to a new authority with effect from 1st April 1996; and
 - (b) any matters arising out of or related to such transfer.
- (2) An order under this section may, without prejudice to the generality of subsection (1) (a) above—
 - (a) make provision as to the new authority to which groups of employees, or particular employees, are to be transferred;
 - (b) prescribe a general rule or rules by which the transfer of employees, or of specified groups of employees, can be determined.
- (3) Each regional and district council shall, in accordance with the provisions of an order made under this section, prepare a scheme in relation to the transfer under or by virtue of this Act of their employees.
- (4) No scheme under subsection (3) above shall be made without the consent of the new authority or authorities, or of the new water and sewerage authority or authorities

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(within the meaning of Part II of this Act), to whom the employees concerned are to be transferred or, failing such consent, without the consent of the Secretary of State.

- (5) The Secretary of State shall by order under this section provide for the transfer of all fire and police personnel employed by an existing local authority for the purposes of a fire brigade or police force to the new authority which will, after 1st April 1996, have responsibility as respects that brigade or force.
- (6) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
 - “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority;
 - “fire personnel” means any persons employed by an existing local authority for the sole purpose of assisting a fire brigade maintained by that authority;
 - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board; and
 - “police personnel” means any persons employed by virtue of section 9 of the Police (Scotland) Act 1967 (employees other than constables).

9 Effect of section 8 on contracts of employment

- (1) This section applies to any person transferred from an existing local authority to a new authority under or by virtue of an order under section 8 of this Act.
- (2) The contract of employment between such a person (the “employee”) and his present employer shall not be terminated by the abolition of that employer but shall have effect from 1st April 1996 (the “transfer date”) as if originally made between the employee and such new authority (his “new employer”) as may be specified in relation to him in an order made under section 8 of this Act.
- (3) Without prejudice to subsection (2) above—
 - (a) all the present employer’s rights, powers, duties and liabilities under or in connection with a contract to which that subsection applies shall by virtue of this section be transferred on the transfer date to the new employer; and
 - (b) anything done before the transfer date by or in relation to the present employer in respect of that contract or the employee shall be deemed after that date to have been done by or in relation to the new employer.
- (4) Subsections (2) and (3) above are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his terms and conditions of employment, but no such right shall arise by reason only of the change of employer effected by section 8 of this Act.
- (5) In this section—
 - “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority; and
 - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board.

10 Continuity of employment

- (1) This section applies to a person who at any time after the passing of this Act ceases to be employed by an existing local authority (his “former employer”) if—
 - (a) the termination of his employment is attributable, directly or indirectly, to any provision made by or under this Act;
 - (b) he is subsequently employed by another person (his “new employer”); and
 - (c) by virtue of section 84 of the Employment Protection (Consolidation) Act 1978 (renewal or re-engagement) that subsequent employment precludes his receiving any redundancy payment under Part VI of that Act.
- (2) Where this section applies to a person, Schedule 13 to the said Act of 1978 (computation of a period of employment for the purposes of that Act) shall have effect in relation to that person as if it included the following provisions, that is to say—
 - (a) the period of employment of that person with his former employer shall count as a period of employment with his new employer; and
 - (b) the change of employer shall not break the continuity of the period of employment.
- (3) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.
- (4) In this section “existing local authority” includes a joint committee and a joint board but does not, subject to any other provision of this Act, include an islands authority.

11 Remuneration of employees of local authorities

- (1) For the purposes of this section the Secretary of State may, after consulting such associations of local authorities as appear to him to be appropriate—
 - (a) designate such existing body as he considers appropriate; or
 - (b) by order made by statutory instrument establish a new body,
(in this section referred to, in either case, as “the advisory body”) to consider any increase made or proposed to be made by an authority in the remuneration of any of their employees.
- (2) An order under subsection (1)(b) above—
 - (a) may make provision as to the constitution and membership of the body established;
 - (b) may include provision as to the employment of staff and the remuneration and superannuation of the members and staff of the body; and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purpose of enabling them to carry out their functions under this section, the advisory body shall consult and seek information from authorities and, if requested to do so by the advisory body, the Secretary of State may give a direction to any such authority requiring them to furnish to the advisory body such information as may be specified in the direction relating to the remuneration and other terms and conditions of employment of such employees of the authority as may be so specified.

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- (4) If it appears to the advisory body that an authority have fixed or propose to fix for any employee or class of employee of theirs a rate of remuneration which, having regard to any recommended levels of remuneration formulated on a national basis by representatives of local authorities and employees of local authorities, is greater than that which the advisory body consider appropriate for that employee or class of employees, they shall notify the authority concerned and recommend to them the rate of remuneration which should be paid to the employee or class of employees concerned.
- (5) If it appears to the advisory body that an authority to whom they have made a recommendation under subsection (4) above are not complying with that recommendation, then, after giving notice in writing to the authority concerned of their intention to do so, they may refer the matter to the Secretary of State; and on such a reference the Secretary of State, after consultation with such associations of local authorities and of employees of local authorities as he considers appropriate in relation to the employee or class of employees concerned, may give a direction to that authority requiring them, with effect from such date as may be specified in the direction (not being earlier than the date on which notice was given to them by the advisory body), to pay such employee or class of employees of theirs as was the subject of the recommendation and as may be so specified remuneration at the rate recommended by the advisory body under subsection (4) above and specified in the direction.
- (6) An authority to whom a direction is given under subsection (3) or subsection (5) above shall comply with the direction.
- (7) If at any time in the period of three months beginning on 1st April 1996 it appears to the advisory body that the remuneration paid at any time before that date to any employee or class of employees of an existing local authority was such that, if that authority had not ceased to exist, the advisory body would have made a recommendation to the authority under subsection (4) above or, having made such a recommendation before that date, would have referred the matter to the Secretary of State under subsection (5) above, they shall notify the Secretary of State and report to him the rate of remuneration which in their opinion should have been paid to the employee or class of employees concerned immediately before 1st April 1996 or such earlier date as may be specified in the report, being the date on which the employee or employees ceased to be employed by the local authority concerned.
- (8) On receiving a report under subsection (7) above the Secretary of State may, after such consultation as is specified in subsection (5) above, by order made by statutory instrument provide that, for the purposes of the provisions of this Act, or of any regulations made under section 24 of the Superannuation Act 1972 (compensation for loss of office etc.), relating to transfer of officers and compensation for loss of office, the employee or class of employees to whom the report relates and who are specified in the order shall be deemed to have been receiving, immediately before 1st April 1996 or such earlier date as may be specified in the report, remuneration at the rate stated in the report and specified in the order.
- (9) An order made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this section—
“authority” means an existing local authority and a new authority;

“existing local authority” includes a joint committee and a joint board but does not include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands and Western Isles) and a joint board.

- (11) The Secretary of State may not give a direction under subsection (5) above nor make an order under subsection (8) above after 31st March 1997.

12 Staff commission

- (1) The Secretary of State shall, after such consultation, whether before or after the passing of this Act, as he thinks fit, by order establish a staff commission for the purpose of carrying out such functions in relation to the staff and staffing of authorities as he may consider appropriate.
- (2) Without prejudice to the generality of subsection (1) above, an order under this section may confer on the staff commission the functions of—
- (a) considering and keeping under review the arrangements for the recruitment of staff by new authorities and for the transfer in consequence of this Act or of any instrument made under it of staff employed by existing local authorities which cease to exist by virtue of Chapter 1 of this Part of this Act;
 - (b) considering such staffing problems arising out of, in consequence of or in connection with any provision of or instrument made under this Act as may be referred to them by the Secretary of State or by any authority;
 - (c) advising the Secretary of State as to the steps necessary to safeguard the interests of such staff; and
 - (d) advising authorities, either by the commission or by persons nominated by them.
- (3) An order under this section may make provision as to the constitution and membership of the commission, the appointment and removal from office by the Secretary of State of the chairman and members of the commission, the employment of staff and the remuneration and superannuation of the members and staff of the commission.
- (4) The Secretary of State may give directions—
- (a) to the staff commission as to—
 - (i) the carrying out by them of their functions; and
 - (ii) their procedure;
 - (b) to any authority with respect to the furnishing by them of information requested by the commission; and
 - (c) to any authority with respect to—
 - (i) the implementation by them of any advice given by, or by persons nominated by, the commission; and
 - (ii) the payment by them of any expenses incurred by the commission in doing anything requested by them.
- (5) Any expenses incurred by the staff commission and not recovered by them from an authority shall be paid by the Secretary of State out of money provided by Parliament.
- (6) The Secretary of State may by order provide for the winding up of the commission and the disposal of their assets.

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- (7) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- “authority” means an existing local authority and a new authority;
 - “existing local authority” includes a joint committee and a joint board but does not, except as may be provided by any other provision of this Act, include an islands authority; and
 - “new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles), a residuary body and a joint board.

13 Compensation for loss of office or diminution of emoluments

- (1) This section applies to any person who at any time after the passing of this Act is in the service of—
- (a) an existing local authority;
 - (b) a new authority; or
 - (c) a residuary body,
- and who suffers loss of employment or diminution of emoluments which is attributable to any provision made by, under or by virtue of this Act.
- (2) Where the Secretary of State makes provision by regulations under section 24 of the Superannuation Act 1972 (compensation for loss of office etc.) in relation to compensation in respect of any such loss or diminution as is referred to in subsection (1) above, such compensation shall be paid only in accordance with those regulations; and accordingly none of the bodies mentioned in subsection (1) above shall pay any such compensation under any other statutory provision, by virtue of any provision in a contract, or otherwise.
- (3) Subsection (2) above shall not preclude the making of any payment to which a person is entitled by virtue of contractual rights acquired by him on or before 9th December 1993.
- (4) Regulations under the said section 24 shall not provide compensation for a person to whom this section applies in respect of any such loss or diminution as is mentioned in subsection (1) above so far as attributable to the termination (without prejudice to the provision of compensation where the said loss or diminution is attributable otherwise than to such termination) on or before 1st April 1996 of a contract made after 9th December 1993 which provides for the employment of that person for a fixed term extending beyond 1st April 1996.
- (5) For the purpose of determining under subsections (5) or (6) of section 82 (general exclusions from right to redundancy payment) or section 84(3) (renewal of contract or re-engagement) of the Employment Protection (Consolidation) Act 1978—
- (a) whether the provisions of a new contract offered to a person employed by any such body as is mentioned in subsection (1) above 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.

(6) Except as provided in subsection (5) above nothing in this section shall be construed as affecting any entitlement to a redundancy payment under Part VI of the said Act of 1978 or to any payment by virtue of any provision of the Superannuation Act 1972 other than the said section 24.

(7) In this section—

“existing local authority” includes a joint committee and a joint board but does not, except as may be provided by any other provision of this Act, include an islands authority; and

“new authority” means any of the authorities constituted under section 2 of this Act (other than Orkney Islands, Shetland Islands or Western Isles) and a joint board.

14 Employment by new authorities

(1) If a new authority enter into a contract of employment with a person who has received or is entitled to receive a redundancy payment under Part VI of the Employment Protection (Consolidation) Act 1978—

(a) by reason of his dismissal at any time—

(i) after the passing of this Act by a regional or district council; or

(ii) after the passing of this Act and before 1st April 1996 by a joint committee or a joint board; or

(b) by reason of his having been employed, immediately before 1st April 1996, by such a council, committee or board under a contract of employment which would have continued but for the abolition of such councils, committees or boards on that date and who is not transferred to a new authority by virtue of an order under section 8 of this Act,

the authority shall, if the Secretary of State so directs, pay to him, or to such person as he may direct, an amount equal to the redundancy payment.

(2) The Secretary of State shall not give a direction under subsection (1) above in respect of the employment of any person by a new authority if the authority satisfy him—

(a) that they could not reasonably have made that person an offer of employment on the terms and conditions of the contract first mentioned in that subsection which, if accepted by him, would have precluded his entitlement to the redundancy payment; or

(b) that the authority made such an offer but that the person concerned acted reasonably in refusing it; or

(c) that he could reasonably have refused such an offer if it had been made by the authority.

(3) In any case in which an amount is payable by a new authority under subsection (1) above there shall also be payable by them to the Secretary of State or to such person as he may direct an amount equal to any compensation under the regulations referred to in section 13(2) of this Act which has been paid or is payable to the person concerned before the time when he enters into the contract.

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- (4) In this section “new authority” means any of the authorities constituted under section 2 of this Act and a joint board.