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*Status: This is the original version (as it was originally enacted).*

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## SCHEDULE 4

(introduced by section 29)

### TRANSFER OF STAFF, PROPERTY AND LIABILITIES

#### *Requirement to make staff or property transfer scheme*

- 1 (1) If the Scottish Ministers consider that it is necessary or expedient in connection with the making of an order under section 6 or 30(1) or the exercise by a National Park authority of its functions, they may—
- (a) require a local authority any part of whose area is within the National Park to make—
    - (i) a scheme for the transfer of employees of the local authority to a National Park authority or another local authority,
    - (ii) a scheme for the transfer of property and liabilities of the local authority to a National Park authority or another local authority,
  - (b) require a National Park authority to make—
    - (i) a scheme for the transfer of employees of the National Park authority to a local authority or another National Park authority,
    - (ii) a scheme for the transfer of property and liabilities of the National Park authority to a local authority or another National Park authority.
- (2) In this schedule—
- “property transfer scheme” means a scheme under sub-paragraph (1)(a)(ii) or (b)(ii),
  - “staff transfer scheme” means a scheme under sub-paragraph (1)(a)(i) or (b)(i),
  - “transferee authority” means the authority to which staff or, as the case may be, property and liabilities are transferred, or proposed to be transferred, by a transfer scheme,
  - “transferor authority” means the authority required (or to be required) to make a transfer scheme.
- (3) Before making a requirement under sub-paragraph (1) the Scottish Ministers must consult—
- (a) the transferor authority,
  - (b) the transferee authority,
  - (c) every local authority any part of whose area is within the National Park.

#### *Transfer schemes*

- 2 (1) Where required to do so under paragraph 1(1), the transferor authority must—
- (a) make a staff transfer scheme or, as the case may be, a property transfer scheme, and
  - (b) submit the scheme to the Scottish Ministers for approval,
- by such date as the requirement may specify.
- (2) Before making the scheme the transferor authority must consult—
- (a) the transferee authority,
  - (b) every local authority any part of whose area is within the National Park, and
  - (c) in the case of a staff transfer scheme, such associations of employees of the transferor authority as the authority considers appropriate.

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- (3) The scheme must specify a date (“the transfer date”) on which the transfer is to take effect.
  - (4) In making the scheme the transferor authority must take into account any guidance given by the Scottish Ministers as to—
    - (a) the provisions which they consider appropriate for inclusion in the scheme,
    - (b) in the case of a staff transfer scheme, the criteria to be used in determining the employees to whom the scheme is to apply.
- 3
- (1) The Scottish Ministers may, on receipt of the scheme—
    - (a) approve the scheme (with or without modifications), or
    - (b) reject the scheme.
  - (2) The Scottish Ministers must not approve the scheme with modifications unless they have—
    - (a) sent a copy of the proposed modifications to the transferor authority and the persons mentioned in paragraph 2(2)(a) and (b), and
    - (b) taken into account any comments on the proposed modifications made to them by the transferor authority or any of those persons.
- 4
- (1) If—
    - (a) a transferor authority fails to make and submit a scheme to the Scottish Ministers in accordance with paragraph 2(1), or
    - (b) the Scottish Ministers reject a scheme in pursuance of paragraph 3(1)(b),
 the Scottish Ministers may themselves make a staff transfer scheme or, as the case may be, a property transfer scheme.
  - (2) Sub-paragraph (1) does not prevent the Scottish Ministers approving a scheme submitted to them after the due date.
- 5
- At any time before the transfer date the Scottish Ministers may modify a scheme made or approved by them under this schedule, but only after consultation with the transferee authority and, in the case of a scheme approved by them, with the transferor authority and the local authorities mentioned in paragraph 2(2)(b).

#### *Effect of transfers of staff*

- 6
- (1) On the transfer date each employee to whom a staff transfer scheme approved or made by the Scottish Ministers under this schedule applies transfers to and becomes a member of the staff of the transferee authority.
  - (2) The terms and conditions of appointment of such a person are to be determined by the transferee authority but, taken as a whole, must be not less favourable to the person transferred than the terms on which that person was employed immediately before the transfer.
  - (3) Where a person becomes a member of the staff of the transferee authority under sub-paragraph (1), then, for the purposes of the Employment Rights Act 1996 (c. 18), that person’s period of employment by the transferor authority counts as a period of employment by the transferee authority and the change of employment does not break the continuity of the period of employment.
  - (4) Where a person ceases to be employed by a transferor authority by virtue of sub-paragraph (1) that person is not, on ceasing to be so employed, to be treated—

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- (a) for the purposes of any scheme or regulations by virtue of the Superannuation Act 1972 (c. 11) as having been retired on redundancy,
- (b) for the purposes of Part XI (redundancy payments etc.) of the Employment Rights Act 1996 (c. 18) as having been dismissed by reason of redundancy.

*Effect of transfers of property and liabilities*

- 7 (1) On the transfer date—
- (a) property to which a property transfer scheme approved or made by the Scottish Ministers under this schedule applies transfers to and vests in, and
  - (b) liabilities to which such a scheme applies become liabilities of, the transferee authority.
- (2) A certificate issued by the Scottish Ministers that any property or liability has, or has not, been transferred by virtue of sub-paragraph (1) is conclusive evidence of the transfer or the fact that there has not been a transfer.