

COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002

EXPLANATORY NOTES

Part 2 – Joint Working, Etc.

Section 16 - Transfer of staff

66. **Section 16** sets out the legal effect of any transfer of staff to the employment of another body under a partnership arrangement allowed under section 15 and provides employment protection for staff who are transferred. (Section 15(4)(c) allows for regulations to govern the provision, transfer and secondment of staff in a joint arrangement).
67. Subsection (2) provides that a person’s contract of employment transfers with that person. Subsection (3) specifies that the rights, powers, duties and liabilities of the transferring authority transfer to the receiving authority. It also provides that any actions of the transferring authority in relation to the employee or his or her contract shall be deemed to be actions of the receiving authority. (The terms “transferring authority”, for the current employer, and “receiving authority”, for the new employer, are introduced by subsection (1)).
68. Subsection (4) qualifies subsections (2) and (3) to ensure that an employee’s right to terminate his or her contract are protected.
69. Subsection (5) ensures that section 16 applies to people who have entered into contracts with the transferring authority which have not yet come into effect on the date of transfer.
70. Subsections (2) to (5) therefore ensure that staff contracts, terms and conditions are not adversely affected by such a transfer.