



Local Government Act 2003

2003 CHAPTER 26

PART 8

MISCELLANEOUS AND GENERAL

CHAPTER 1

MISCELLANEOUS

Contracting-out

101 Staff transfer matters: general

- (1) In exercising a power to contract with a person for the provision of services, a best value authority (in Scotland, a relevant authority) must—
 - (a) deal with matters affecting—
 - (i) who will be the employer of existing staff if a contract is entered into and carried out, or
 - (ii) what will be the terms and conditions of employment of existing staff, or the arrangements for their pensions, if their employer changes as a result of a contract being entered into and carried out, in accordance with directions given to it by the appropriate person;
 - (b) have regard to guidance issued to it by the appropriate person on matters relating to the employment or pensions of existing staff.
- (2) In subsection (1), references to existing staff, in relation to a contract for the provision of services, are to staff who before the contract is carried out are engaged in the provision of any of the services.
- (3) Where the provision of any services under a contract with a best value authority (in Scotland, a relevant authority) for their provision is to cease in circumstances where they are to be provided instead by members of the authority's staff, the authority

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shall comply with directions given to it by the appropriate person for the purpose of requiring it to offer employment to staff who, before the services cease to be provided under the contract, are engaged in the provision of any of the services.

- (4) The duties under Part 1 of the [Local Government Act 1999 \(c. 27\)](#) (best value) of a best value authority have effect subject to subsections (1) and (3).
- (5) The duties under sections 1 and 2 of the [Local Government in Scotland Act 2003 \(asp 1\)](#) (best value) of a relevant authority have effect subject to subsections (1) and (3).
- (6) Directions given, or guidance issued, for the purposes of subsection (1) or (3)—
 - (a) may be addressed to—
 - (i) all best value authorities (or, as the case may be, relevant authorities),
or
 - (ii) authorities of a particular description;
 - (b) may be different for different cases or authorities.
- (7) For the purposes of this section, the Secretary of State is the “appropriate person” in relation to a best value authority in Wales that is—
 - (a) a police authority established under section 3 of the [Police Act 1996 \(c. 16\)](#), or
 - (b) a fire authority constituted by a combination scheme.
- (8) In this section—

“appropriate person”, in relation to Scotland, means the Scottish Ministers;
and

“relevant authority” means—

 - (a) a council constituted under section 2 of the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#),
 - (b) the Strathclyde Passenger Transport Authority, or
 - (c) any other body to which Part 1 of the [Local Government in Scotland Act 2003 \(asp 1\)](#) (best value and accountability) applies.

102 Staff transfer matters: pensions

- (1) The appropriate person shall exercise his power to give directions under section 101(1) so as to secure that where a local authority is contracting with a person (“the contractor”) for the provision of services that are to be provided under a contract instead of by employees of the authority, it does so on terms—
 - (a) that require the contractor, in the event of there being any transferring employees, to secure pension protection for each of them, and
 - (b) that, so far as relating to the securing of pension protection for a transferring employee, are enforceable by the employee.
- (2) For the purposes of subsection (1)—
 - (a) “transferring employee” means an employee of the authority whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the contractor, a contract of employment with someone other than the authority, and
 - (b) “pension protection” is secured for a transferring employee if after that change in his employer he has, as an employee of his new employer, rights to acquire pension benefits and those rights—

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- (i) are the same as, or
 - (ii) under the directions count as being broadly comparable to or better than,those that he had as an employee of the authority.
- (3) The appropriate person shall exercise his power to give directions under section 101(1) so as to secure that where—
 - (a) a local authority has contracted with a person (“the first contractor”) for the provision of services,
 - (b) the application of the TUPE regulations in relation to what was done for the purposes of carrying out the contract between the authority and the first contractor resulted in employees of the authority (“the original employees”) becoming employees of someone other than the authority, and
 - (c) the authority is contracting with a person (“the subsequent contractor”) for the provision of any of the services,the authority contracts with the subsequent contractor on terms satisfying the requirements of subsection (4).
- (4) Those requirements are that the terms—
 - (a) require the subsequent contractor, in the event of there being any transferring original employees, to secure pension protection for each of them, and
 - (b) so far as relating to the securing of pension protection for an original employee, are enforceable by the employee.
- (5) For the purposes of subsection (4)—
 - (a) “transferring original employee” means an original employee—
 - (i) whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the subsequent contractor, a contract of employment with someone other than his existing employer, and
 - (ii) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of the TUPE regulations in relation to what was done for the purposes of carrying out the intervening contract, a contract of employment with someone other than his existing employer;
 - (b) “pension protection” is secured for a transferring original employee if after the change in his employer mentioned in paragraph (a)(i) he has, as an employee of his new employer, rights to acquire pension benefits and those rights—
 - (i) are the same as, or
 - (ii) under the directions count as being broadly comparable to or better than,those that he had before that change.
- (6) In subsection (5)(a)(ii), “intervening contract” means a contract with the authority for the provision, at times after they are provided under the contract with the first contractor and before they are to be provided under a contract with the subsequent contractor, of the services to be provided under the contract with the subsequent contractor.
- (7) Any expression used in this section, and in the TUPE regulations, has in this section the meaning that it has in the TUPE regulations.

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(8) In this section—

“appropriate person”, in relation to Scotland, means the Scottish Ministers;

“local authority”—

(a) in relation to England and Wales, means a local authority for the purposes of section 1(1)(a) of the [Local Government Act 1999 \(c. 27\)](#) (local authorities in England and Wales that are best value authorities), and

(b) in relation to Scotland, means a council constituted under section 2 of the [Local Government etc. \(Scotland\) Act 1994 \(c. 39\)](#);

“the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#)), or any regulations replacing those regulations, as from time to time amended.