

Review of Public Administration

Education Sector

Staff Transfer Scheme

(Agreed 12 October 2009)

STAFF TRANSFER SCHEME

1. Scope

- 1.1 This Staff Transfer Scheme has been developed in accordance with the Education [Bill] 2008, legislative requirements, and the 3rd Guiding Principle and other Guiding Principles recommended by the Public Service Commission (PSC) and accepted by the Executive. It will be updated as necessary in line with the Executive's Code of Practice on Staff Transfers, relevant legislation and any further principles recommended by PSC and accepted by the Executive.
- 1.2 The Scheme covers staff employed on [31 December 2009] transferring into the new Education and Skills Authority, established on [1 January 2010]

2. Introduction

- 2.1 In November 2005, the Government published its decisions for the RPA within the education sector, including the establishment of the Education and Skills Authority (ESA). ESA will have responsibility for the functions performed currently by the five Education and Library Boards (ELBs), the Council for the Curriculum Examinations and Assessment (CCEA) and the Youth Council. It will also have responsibility for the front-line support and related functions currently undertaken by the Council for Catholic Maintained Schools (CCMS), the Northern Ireland Council for Integrated Education (NICIE) and Comhairle na Gaelscolaíochta (CnaG). It will absorb some of the functions of the Staff Commission, while others will no longer be required. Some functions from within the Department of Education (DE) will also transfer to ESA. Initially scheduled for April 2008, the Minister for Education announced in November 2008 that the timetable for the establishment of ESA would be extended to 1 January 2010.
- 2.2 This Transfer Scheme is made under [*Schedule 2 and 3*] of the Education [Bill] and sets in place the arrangements for the transfer of staff from the Education Sector RPA affected group into ESA. It confirms that existing contractual terms and conditions will be protected in accordance with current employment and equality legislation such as the Transfer of Undertakings (TUPE)¹ and the Acquired Rights Directive, on which TUPE is based, *paragraph 2, Schedule 2 and paragraph 3, Schedule 3* of the Education Bill and the 3rd Guiding Principle recommended by PSC as well as the addendum to the 3rd Guiding Principle accepted by the Executive (supported by the RPA Code of Practice on Staff Transfers). These transfers are relevant transfers under the terms of TUPE. Where staff consider they have experienced a material detriment to their existing terms and conditions they will have access to the internal grievance procedure and ultimately RPA Independent Third Party Dispute Resolution Procedure as outlined in section 8.

¹ The transfer of Undertakings (Protection of Employment) Regulations 2006 are designed to protect the rights of employees when a transfer occurs from one employer to another.

- 2.3 This Staff Transfer Scheme, for transferring staff employed on [31 December 2009], takes account of the arrangements set out in the preceding paragraph. It fully reflects the 3rd Guiding Principle on Staff Transfers and the addendum recommended by the PSC and accepted by the Executive.
- 2.4 The Education and Skills Authority envisages that there will be restructuring of its internal arrangements to achieve a cohesive and efficient Authority. Where changes to roles and responsibilities are necessary to maintain and meet service requirements, involving change to current posts, the Education and Skills Authority will consult with individuals and their trade union representatives about such changes. In recognition of the importance of retaining valuable skills and experience within the new organisation, it is anticipated that a balance of internal competition, suitable alternative employment, early retirements and voluntary severance arrangements, etc. can be sufficient to effect restructuring. The Education and Skills Authority will adhere to PSC Guiding Principles and associated recommendations as accepted by the Executive in relation to staff transfer matters.
- 2.5 Staff who undertake new roles and responsibilities as a result of transfer to the Education and Skills Authority will be provided with appropriate training and support.

3. Staff Transfer Scheme

- 3.1 This Staff Transfer Scheme includes the elements identified in the RPA Code of Practice on Staff Transfers issued by PSC and affirmed by the Executive. The contents are as follows:
- Identification of transferring staff by location/business unit/post as appropriate
 - Date of transfer, post/grade and location
 - Contractual terms and conditions
 - Pension arrangements and protection
 - Disputes resolution arrangements
 - Provision for the payment of compensation for actual loss
 - Recognition of Trades Unions

4. Identification of Staff

- 4.1 Details of staff transferring from the Education Sector RPA affected organisations will be listed in Annex A attached to this scheme. Staff may be identified by location, business unit or post as appropriate. The Annex will be [updated/available] not less than 14 days prior to the date of transfer. A copy of Annex A will be provided to the recognised trade unions through the medium of computerised records no later than 14 days prior to 1 January 2010. Any changes subsequent to the provision of this information, which occur prior to the

effective date of transfer on [date to be inserted], will also be notified. All other necessary information being transferred under the TUPE arrangements, such as liabilities arising from employment contracts, will transfer at this time.

5. Date of transfer, post and location

- 5.1 The effective date of transfer is [1 January 2010].
- 5.2 Annex A will identify the location and post to which staff identified by location, business unit or post as appropriate will transfer and the grade on which they transfer, except for those staff who have already been appointed to new posts within the Education and Skills Authority. The latter group will be held to the arrangements pertaining to those posts.
- 5.3 The Education and Skills Authority envisages that the majority of staff will remain in their current locations. However for some staff the initial location and post on transfer may be a temporary measure until decisions are made on the location of the headquarters accommodation and the full organisational design. Longer term decisions on the location of the headquarters accommodation and any regional organisational structure will be made by the Education and Skills Authority subject to service requirements in line with relevant statutory and policy requirements, including taking account of Guidelines recommended by PSC and accepted by the Executive, Government Policy on the Location of Public Sector Jobs agreed by the Executive and the assessment of equality considerations in line with the requirements of the Northern Ireland Act 1998.
- 5.4 Where staff have disputes about initial or future location as a result of RPA they will have access to the internal grievance procedure and ultimately to the RPA Independent Third Party Dispute Resolution Procedure as outlined in section 8.

6. Contractual terms and conditions

- 6.1 The Education and Skills Authority will take over the contracts of employment, in accordance with TUPE Regulations, of all staff transferred on [1 January 2010] arising from RPA.
- 6.2 This Transfer Scheme confirms that the contract of employment of each individual will be operational from the date recognised by the current employer as if originally made between him/her and the Education and Skills Authority.
- 6.3 The Education and Skills Authority will take over all the rights and obligations arising from the contracts of employment of transferred staff except for criminal liabilities.

7. Pension Arrangements

- 7.1 All transferring staff who are members of a pension scheme eg Local Government Pension Scheme (Northern Ireland) (LGPS (NI)), Northern Ireland

Teachers Pension Scheme (NITPS), will transfer as members of that Scheme (subject to Executive agreement). It is hereby confirmed that all existing staff will have pension protection in line with the provisions of *Schedule 2 paragraphs (6)(b) and (8)(a)*, *Schedule 3 paragraphs (6)(b) and (8)(a)* of the Education [Bill 2008].

8. Disputes Resolution

8.1 Disputes arising from implementation of the RPA (excluding pension disputes)

8.1.1 The Education and Skills Authority will operate an internal dispute resolution procedure (internal grievance procedure which relates to the individuals terms and conditions of service) which complies with the Employment (NI) Order 2003 and the RPA Code of Practice on Staff Transfers. Staff will have access to these internal arrangements if they have a grievance about:

- non-adherence to this staff transfer scheme associated with the transfer of functions;
- a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- designated employer.

Staff accessing the internal grievance procedure will have a right to be represented by a trade union representative or accompanied by a work colleague.

8.1.2 Staff accessing the internal grievance procedure will also be advised they have a further right of appeal under the RPA Independent Third Party Dispute Resolution Procedure in line with recommendations in the 3rd Guiding Principle "Staff Transfers" recommended by PSC and accepted by the Executive.

Staff will have access to the RPA Independent Third Party Dispute Resolution Procedure in the event of disputes in relation to:

- non-adherence to this staff transfer scheme associated with the transfer of functions;
- a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- designated employer.

Staff accessing the RPA Independent Third Party Dispute Resolution Procedure will have a right to be represented by a trade union representative or accompanied by a work colleague. Further details on this procedure may be found in the RPA Code of Practice: Staff Transfers for the 3rd Guiding Principle (www.rpani.gov.uk)

- 8.1.3 Staff will be advised that they are expected to utilise and exhaust the internal grievance procedure before turning to the RPA Independent Third Party Dispute Resolution Procedure, with the exception of former ELB, CCMS and SCELB staff where Stage 4 of the internal grievance procedure ie Independent Appeal process is replaced by the RPA Independent Third Party Dispute Resolution Procedure as set out in the preceding paragraph.
- 8.1.4 The Education and Skills Authority will advise those staff that accessing the RPA Independent Third Party Dispute Resolution Procedure does not affect their statutory right to lodge a claim with the Office of the Industrial Tribunal and Fair Employment Tribunals.

[Section 8.1 subject to the results of ongoing consultation with NIC ICTU as well as consideration by the LRA]

8.2 Disputes about pension provision

- 8.2.1 Staff who are members of a pension scheme will have access to an internal dispute resolution procedure provided for by their pension scheme by virtue of the Pensions (Northern Ireland) Order 1995. For members of the LGPS (NI) and the NITPS further details about this procedure may be found at www.nilgosc.org.uk and www.deni.gov.uk respectively.
- 8.2.2 Disputes in respect of maladministration, if unresolved by the internal dispute resolution procedure, in line with current statutory provisions may be referred to third party dispute resolution in the form of the Pensions Advisory Service. If the dispute remains unresolved it can be further referred to the Pensions Ombudsman. This includes claims of maladministration arising as a result of RPA.
- 8.2.3 Staff accessing the internal dispute resolution procedure will also be advised by the pension scheme they have a further right of appeal under the RPA Independent Third Party Dispute Resolution Procedure: Pensions which is drawn from the principles applying to the Procedural Arbitrations provided by the LRA.

The RPA Independent Third Party Dispute Resolution Procedure does not cover claims in respect of maladministration that fall within the remit of the Pensions Advisory Service and Pensions Ombudsman. Further details of this procedure may be found on www.pensionservice.gov.uk or <http://www.pensions-ombudsman.org.uk>.

- 8.2.4 The Education and Skills Authority will advise those staff that accessing the RPA Independent Third Party Dispute Resolution Procedure does not affect their statutory right to lodge a claim with the Office of the Industrial Tribunals and Fair Employment Tribunal.

[Section 8.2 subject to the results of ongoing consultation with NIC ICTU as well as consideration by the LRA]

8.3 Time-limit for RPA Disputes

- 8.3.1 In respect of non-pension related disputes employees should be aware that any appeal being lodged under the RPA Independent Third Party Dispute Resolution Procedure must be received by the LRA within six weeks from the date of conclusion of the internal grievance procedure. If an appeal is received by the LRA which is outside this time limit, the matter will be referred to an arbitrator who may extend the time limit if it is concluded, in all the circumstances of the case, that it was not reasonably practicable to lodge the appeal in time.
- 8.3.2 In respect of pension related disputes scheme members should be aware that any appeal lodged under the RPA Independent Third Party Dispute Resolution Procedure must be received by the LRA within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of it happening.
- 8.3.3 In respect of maladministration related disputes arising as a result of RPA, scheme members should be aware that the Pension Ombudsman will normally only investigate a complaint within three years of the relevant act or omission or within three years of the date the scheme member knew or reasonably ought to have known of it happening.

[Section 8.3 subject to the results of ongoing consultation with NIC ICTU as well as consideration by the LRA]

9. Payment of compensation for actual loss

- 9.1 Where a complaint is upheld, the RPA Independent Third Party Dispute Resolution panel will make a determination to the Education and Skills Authority to remedy any deficiencies found. If the deficiencies cannot be remedied, transferred staff who experience a material detriment to their existing terms and conditions and who can demonstrate actual loss will be entitled to the payment of compensation.
- 9.2 The level of compensation, which will reflect actual loss incurred will be determined by the panel upon consideration of the individual facts of the particular case. In some cases compensation is already provided for in existing terms and conditions and these will be applied when they arise.
- 9.3 Any compensation determined by the RPA Independent Third Party Dispute Resolution panel will be paid by the Education and Skills Authority. The panel's determination will not be subject to any further appeal through the RPA mechanism.

[Section 9 subject to the results of ongoing consultation with NIC ICTU as well as consideration by the LRA]

10. Joint employer and trade union arrangements

- 10.1 The Education and Skills Authority will recognise the existing trade union (or unions) in respect of their transferred staff to the same extent and for the same purposes as before the transfer took place.
- 10.2 The Education and Skills Authority will set up appropriate joint employer and trade union arrangements to ensure the effective management of HR issues following transfer in line with 3rd Guiding Principle recommended by PSC and accepted by the Executive.

ANNEXES TO BE ADDED

- A Transferring staff**
- B PSC 3rd Guiding Principle and addendum**
- C Education [Bill] 2008**

Annex A

STAFF TRANSFERRING ON [date to be inserted] TO THE EDUCATION AND SKILLS AUTHORITY

Part 1 of the annex will list staff whose location on transfer is certain.

Part 2 will list those for whom the location may be temporary.

The Code of Practice requires that the following information is provided:

- 1) Identification of staff either by location, business unit, or post as appropriate
- 2) Date of transfer
- 3) Post on transfer
- 4) Grade on transfer
- 5) Location on transfer