

# JOINT NEGOTIATING COUNCIL FOR THE EDUCATION AND LIBRARY BOARDS

11 March 2009

**To: Chief Executives  
Council Members  
MSO/TUSO**

## **Joint Negotiating Council Circular No. 161**

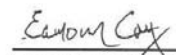
### **Staff Transfer Scheme for Education and Library Board Staff Transferring to the Northern Ireland Library Authority**

The Joint Secretaries of the Joint Negotiating Council have agreed the Staff Transfer Scheme for those staff transferring to the Northern Ireland Library Authority on 1 April 2009.

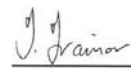
The Staff Transfer Scheme is attached at Appendix 1.

  
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**REVIEW OF PUBLIC ADMINISTRATION**

**NORTHERN IRELAND LIBRARY AUTHORITY**

**STAFF TRANSFER SCHEME**

## **STAFF TRANSFER SCHEME**

### **1. SCOPE**

- 1.1** This Staff Transfer Scheme has been developed in accordance with The Libraries Act (Northern Ireland) 2008 and other legislative requirements plus PSC Guiding Principles and recommendations. It will be updated as necessary in line with the Executive's Code of Practice on Staff Transfers, relevant legislation and any further principles issued by PSC and accepted by the Executive.
- 1.2** The Scheme covers transferring staff employed on 31 March 2009 who will transfer into the new Library Authority on 1 April 2009.

### **2. INTRODUCTION**

- 2.1** In November 2005 the Government published the first decisions on the Review of Public Administration (RPA). The public library service was to be administered on a regional basis, either within the proposed education authority or as a stand-alone library body. In March 2006 it was announced that a separate regional body, the Library Authority, would be established to manage and deliver the public library service for Northern Ireland. The Executive endorsed that decision on 7 June 2007 and agreed that legislation should be introduced. The Libraries Act (Northern Ireland) 2008 completed passage in the Assembly in May 2008.
- 2.2** This Transfer Scheme is made under Section 1 of the Libraries Act (NI) 2008 and sets in place the arrangements for the transfer of relevant staff from the Education and Library Boards to the Library Authority. 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)<sup>1</sup> and the Acquired Rights Directive on which TUPE is based, paragraph 4 of Schedule 2 of the Libraries Act, the 3rd Guiding Principle issued by PSC as well as the addendum to the 3<sup>rd</sup> Guiding Principle agreed 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 9.
- 2.3** This Staff Transfer Scheme, for transferring staff employed on 31 March 2009, takes account of the arrangements set out in the preceding paragraph. It fully reflects the 3<sup>rd</sup> Guiding Principle on Staff Transfers and the addendum issued by the PSC and agreed by the Executive.
- 2.4** The Library 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 Library Authority will consult with individuals and their trade union representatives about such changes. In recognition of the importance of keeping valuable skills and experience in the library service, it is anticipated that a balance of vacancy controls, suitable alternative employment, early retirements and voluntary severance arrangements can be sufficient to effect restructuring. The Library Authority will adhere to PSC Guiding Principles and associated recommendations as accepted by the Executive in relation to staff transfer matters.

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<sup>1</sup> The Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006 are designed to protect the rights of employees when a transfer occurs from one employer to another.

**2.5** Staff who undertake new roles and responsibilities as a result of transfer to the Library Authority will be provided with appropriate training and support.

### **3. STAFF TRANSFER SCHEME**

**3.1** This Scheme includes the elements identified in the RPA Code of Practice on Staff Transfers [DN: Not yet finalised], issued by PSC. The contents are as follows:

- Identification of staff transferring to the Northern Ireland Library Authority
- Date of transfer, substantive post/grade and location
- Contractual terms and conditions
- Pension arrangements and protection
- Dispute resolution arrangement
- Provision for the payment of compensation for actual loss
- Recognition of Trade Unions.

### **4 IDENTIFICATION OF STAFF**

**4.1** Details of staff transferring from the public library service of the five Education and Library Boards to the Library Authority under TUPE are listed in Annex A attached to this scheme. 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 April 2009. Any changes subsequent to the provision of this information, which occur prior to the effective date of transfer on 1 April 2009, 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 April 2009.

**5.2** Annex A identifies the location and post to which individuals will transfer and the grade on which they transfer except for those staff who have already been appointed to new posts in the Library Authority. The latter group will be covered by the arrangements pertaining to those posts.

**5.3** The Library 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 subject to service requirements and will take account of relevant statutory and policy requirements, government policy on the location of public sector jobs, PSC Guiding Principles agreed by the Executive, including the 7<sup>th</sup> Guiding Principle on Location and 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 Library Authority will take over the contracts of employment, in accordance with TUPE regulations, of all staff transferred on 1 April 2009.
- 6.2** This Transfer Scheme confirms that the contract of employment of each individual will have effect from the operational date with the Education and Library Board as if originally made between him/her and the Library Authority.
- 6.3** The Library Authority will take over all rights and obligations arising from the contracts of employment of transferred staff except for criminal liabilities.

## **7. PENSION ARRANGEMENTS**

- 7.1** All existing staff who are members of the scheme administered by the Northern Ireland Local Government Officers Superannuation Committee (NILGOSC) will transfer as members of that Scheme. It is hereby confirmed that all existing staff will have pension protection in line with the provisions of Schedule 2 paragraphs 4(3)(b) and 5 (b) of the Libraries Act (Northern Ireland) 2008.

## **8. DISPUTES RESOLUTION**

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

- 8.1.1** The Northern Ireland Library 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 work colleague or recognised independent trade union representative.

- 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 3<sup>rd</sup> Guiding Principle "Staff Transfers" issued by PSC and agreed 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 work colleague or trade union representative. Further details on this procedure may be found in the RPA Code of Practice: Staff Transfers for the 3<sup>rd</sup> Guiding Principle ([www.rpani.gov.uk](http://www.rpani.gov.uk)) [DN: Not yet published].

**8.1.3** Staff will be advised that they are expected to utilise and exhaust the internal grievance with the exception of Stage 4 Independent Appeal process which is replaced by the RPA Independent Third Party Dispute Resolution Procedure as set out in the preceding paragraph.

**8.1.4** The Northern Ireland Library 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 8.1 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 the scheme administered by the Northern Ireland Local Government Officers Superannuation Committee (NILGOSC) will have access to an internal dispute resolution procedure provided for by their pension scheme by virtue of the Pensions (Northern Ireland) Order 1995. Further details about this procedure may be found in the NILGOSC ( [www.nilgos.org.uk](http://www.nilgos.org.uk)).

**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](http://www.pensionservice.gov.uk) or <http://www.pensions-ombudsman.org.uk>.

**8.2.4** The Northern Ireland Library 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 Library 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 followed when they arise.

**9.3** Any compensation determined by the RPA Independent Third Party Dispute Resolution panel will be paid by the Library 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 Library Authority will recognise the existing independent 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 Library Authority will set up appropriate joint employer and trade union arrangements to ensure the effective management of HR issues following transfer in line with an associated recommendation, made in the 3<sup>rd</sup> Guiding Principle issued by PSC.

## **ANNEXES**

- A Transferring staff - as per attached format**
- B PSC 3<sup>rd</sup> Guiding Principle and addendum - will be circulated in due course**
- C Libraries Act (Northern Ireland) 2008 - will be made available on the NILA intranet**

**STAFF TRANSFERRING ON 1 APRIL 2009  
TO THE NORTHERN IRELAND LIBRARY AUTHORITY**

<b>Business Unit</b>	<b>post/grade on transfer</b>	<b>location on transfer</b>
<i>For example</i>		
Down Area	x Number Library Assistants	Downpatrick Library
	x Number Branch Library Managers	Newcastle Library

Notes (if necessary e.g. in case of need to refer to posts/grades covered by temporary arrangements)