

# JOINT NEGOTIATING COUNCIL FOR THE EDUCATION AND LIBRARY BOARDS

30 March 2015

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

## **JOINT NEGOTIATING COUNCIL CIRCULAR NO. 209**

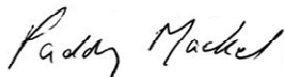
### **Staff Transfer Scheme**

The Joint Negotiating Council for the Education and Library Boards, at its meeting held on Friday 27<sup>th</sup> March 2015, agreed the Staff Transfer Scheme for staff transferring to the Education and Skills Authority.

The Staff Transfer Scheme is attached at Appendix 1.



**Management Side Secretary**  
J Curran



**Trade Union Side Secretary**  
P Mackel



**Trade Union Side Secretary**  
A Speed



**Trade Union Side Secretary**  
J Dawson



**Trade Union Side Secretary**  
D Edmont



**EDUCATION AUTHORITY  
STAFF TRANSFER SCHEME**

Agreed – 25 March 2015

## **STAFF TRANSFER SCHEME**

### **1. Scope**

1.1 This Staff Transfer Scheme ("the Scheme") has been developed pursuant to Section 3 and Schedule 2 paragraph 3(3) of the Education Act (Northern Ireland) 2014, and with due regard to<sup>1</sup> the good practice guidance as set out by the Public Service Commission (PSC) and in accordance with the 3<sup>rd</sup> Guiding Principle and associated recommendations and addendum to the 3<sup>rd</sup> Guiding Principle (Appendix 1) and the RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers (Appendix 2).

1.2 The Scheme applies to teaching and support staff of the five education and library boards and the Staff Commission for Education and Library Boards employed on 31 March 2015, transferring to the new Education Authority ("the EA"), on 1 April 2015.

### **2. Introduction**

2.1 In October 2014 the Northern Ireland Executive agreed to remove from its 2011-15 Programme for Government, the commitment to establish ESA. The Executive also agreed a proposal that legislation should be brought forward to create a single Education Authority to replace the five education and library boards (ELBs) and their Staff Commission. This proposal was borne out of the need to implement technical and administrative changes in

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<sup>1</sup> The phrase "due regard" is used to ensure that the proper weight or significance given to a matter or a factor as circumstances mandate. The Department of Education and the EA have agreed to give "due regard" to the good practice guidance as set out by the Public Service Commission (PSC) in the Guiding Principles and associated recommendations and the RPA Code of Practice on the Third Guiding Principle on Staff Transfers, to safeguard the interests of staff and to ensure the smooth transfer to the new EA. The greater the relevance and potential impact of the PSC guidance on a particular aspect under consideration, the higher the level of consideration or 'due regard' which is required.

education in response to structural change presented by local government reform. The Education Bill received Royal Assent on 11 December and became the Education Act (Northern Ireland) 2014 (“the 2014 Act”).

2.2 The EA was established on 12 December 2014. On 1 April 2015 it will take over the functions and statutory responsibilities of the five existing education and library boards (ELBs) and the Staff Commission for Education and Library Boards (SCELB) which are to be dissolved on 31 March 2015. The assets, liabilities and staff of these bodies will transfer to the EA.

2.3 The Scheme is made pursuant to Schedule 2, Paragraph 3 of the 2014 Act and puts in place the arrangements for the transfer of staff from the employment of education and library boards and the Staff Commission for Education and Library Boards to the EA. These transfers are ‘relevant transfers’ for the purposes of TUPE.

The Scheme confirms that all staff will be afforded protection of their substantive contractual terms and conditions<sup>2</sup> in accordance with the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006<sup>3</sup> (“TUPE”) and the Acquired Rights Directive which TUPE implemented. It also confirms that staff will be afforded protection of their rights to acquire pension benefits and those rights are the same as or (taken as a whole) no less favourable than those that the transferring employee had as an employee of a dissolved body<sup>4</sup>.

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<sup>2</sup> This excludes those ‘temporarily assigned.’ Temporarily assigned under TUPE Regulations relates to a person (on a temporary contract or permanent contract) who is temporarily moved to other duties e.g. to cover someone’s summer holiday or maternity leave, but is expected to return to their own duties afterwards.

<sup>3</sup> 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.

<sup>4</sup> The EA pension schemes will be the Local Government Pension Scheme (NI) administered by NILGOSC and the Northern Ireland Teachers’ Pension Scheme.

- 2.4 The Scheme is in accordance with the PSC 3rd Guiding Principle and associated recommendations on Staff Transfers, the addendum to the 3<sup>rd</sup> Guiding Principle and the RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers agreed by the Executive.. These transfers are relevant transfers under the terms of TUPE.
- 2.5 The EA will be a regional organisation with a strong local presence. It is envisaged that the vast majority of staff will remain in their current locations and continue to undertake their current roles following the staff transfer. Longer term decisions on the location of the Headquarters and any regional organisational restructuring will be a matter for the EA over a period of time, subject to service requirements and in line with relevant statutory and other policy requirements. Where changes to roles and responsibilities involving change to current posts are necessary to maintain and meet service requirements, the EA will consult with the relevant individuals and their trade union representatives about such changes. In recognition of the importance of retaining valuable skills and experience within the new organisation, the EA will endeavour through a combination of measures including where appropriate recruitment, suitable alternative employment/redeployment, natural turnover of staff, early and flexible retirement arrangements, and voluntary severance arrangements, to achieve effective restructuring. Staff transfer matters will be dealt with by EA in accordance with the PSC Guiding Principles and associated recommendations and the RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers.
- 2.6 Staff who undertake new roles and responsibilities as a result of transfer to the EA will be provided with appropriate training, support and remuneration, where applicable.
- 2.7 The EA will make provision for procedures designed to resolve staff disputes arising in relation to matters dealt with by the Scheme. Employees will have

access to an internal grievance procedure<sup>5</sup> to deal with disputes arising from the establishment and implementation of the EA. Additionally, in accordance with the PSC 3<sup>rd</sup> Guiding Principle and addendum and the RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers, and following discussions with the Labour Relations Agency (LRA), it has been agreed with TUS that the Independent Third Party Dispute Resolution Procedures for non-pension matters and pensions will be utilised to deal with disputes arising in relation to employees impacted by the establishment of the EA and to provide provision for the payment of compensation by the Department of Education to any such employee who suffers actual loss where there is material detriment to existing terms and conditions in consequence of the Scheme. Details of the Independent Third Party Disputes Resolution Procedures for non-pension matters and pensions are set out in section 8 and Appendix 2.

### **3. Staff Transfer Scheme**

3.1 In accordance with the RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers issued by PSC and affirmed by the Executive, this Scheme includes the following elements:

- Identification of transferring staff by location/business unit/post as appropriate;
- Date of transfer, substantive<sup>6</sup> and temporary 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 Trade Unions.

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<sup>5</sup> The internal grievance procedure is that applicable to the employee in accordance with their contract of employment under TUPE.

<sup>6</sup> Appendix 4 provides a definition of substantive for the purposes of staff transfer

#### **4. Identification of Staff**

- 4.1 It is agreed that details of staff transferring from the affected organisations will be provided in accordance with the Annex A template and that this will be provided under separate cover by the transferors (ELBs and Staff Commission) to the transferee (EA). Staff may be identified by location, business unit or post as appropriate. The Annex will be updated not less than 14 days prior to the date of transfer. It is also agreed that a copy of Annex A will be provided to the recognised trade unions by the transferors, in anonymised format, through the medium of computerised records and in hard copy, no later than 14 days prior to 1 April 2015. Any changes subsequent to the provision of this information, which occur prior to the effective date of transfer on 1 April 2015, 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 2015.
- 5.2 Annex A will identify both the substantive and where appropriate the temporary 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 or substantially new posts within the EA. The latter group will be held to the arrangements pertaining to those posts.
- 5.3 The EA envisages that the vast 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 restructuring will be made by the EA, subject to service requirements and in line with relevant statutory and other policy requirements, including government policy on the location of public sector jobs and equality considerations. Reasonable adjustments in place in accordance with the Disability Discrimination Act 1995 will be maintained.

Consultation with employees and their trade union representatives will take place on a timely basis throughout the implementation of the new EA organisation structure, in accordance with statutory procedures, PSC guidance and arrangements set out in this Scheme.

- 5.4 Where employees have a dispute about a change in workplace location which has been made as a result of the establishment of the EA, they will have access to the internal grievance procedure and subsequently to the Independent Third Party Dispute Resolution Procedure for non-pension matters. In raising such a dispute employees will be required to indicate what they consider their material detriment to their existing terms and conditions to be; and give an indication of their actual loss. Full details of the process and procedure are set out in section 8 and Appendix 2.

## **6. Contractual terms and conditions**

- 6.1 The EA will take over the contracts of employment, in accordance with TUPE Regulations, of all staff (as referred to in Annex A) transferred on 1 April 2015.
- 6.2 This 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 EA.

- 6.3 The EA will take over all the rights and obligations arising from the contracts of employment of transferred staff except for criminal liabilities.
- 6.4 Where employees consider they have experienced material detriment to their existing terms and conditions as a result of the establishment of the EA, they will have access to the internal grievance procedure and subsequently the Independent Third Party Dispute Resolution Procedure for non-pension matters. In raising such a dispute employees will be required to indicate if and why they believe their dispute relates to non-adherence to the transfer scheme, associated with the transfer of functions; or a change in workplace location which has been made as a result of the establishment of the EA; or their dispute relates to designated employer. The Independent Third Party Dispute Resolution Procedure provides for resolution of the dispute and compensation for actual loss where there is material detriment to existing terms and conditions. Full details of the process and procedure are set out in section 8 and Appendix 2.

## **7. Pension Arrangements**

- 7.1 All transferring staff who are members of a pension scheme will continue to be provided membership of a pension scheme that provides benefits which are no less favourable taken as a whole, in accordance with the provisions of Schedule 2 paragraphs (6)(b) and (8)(a), of the Education Act (NI) 2014.
- 7.2 The pension schemes for the EA are the Local Government Pension Scheme (Northern Ireland) (LGPS(NI)) administered by the Northern Ireland Local Government Officers' Superannuation Committee (NILGOSC) and the Northern Ireland Teachers' Pension Scheme (NITPS). Staff who are currently members of NILGOSC and NITPS will transfer to the EA and remain as members of these schemes. Staff that are not currently members of NILGOSC or NITPS will transfer to the EA and be eligible to become members of NILGOSC or NITPS based on the eligibility criteria set by these schemes.

Newly appointed staff to the EA will also be eligible to become members of the NILGOSC or NITPS based on the eligibility criteria set by these schemes.

It is hereby confirmed that all existing staff will have full pension protection.

7.3 It has been agreed that there is no requirement for the Independent Third Party Dispute Resolution Procedure Pensions outlined in Appendix 2, Annex 2, because no staff will have their pension provision transferred to another pension scheme as a result of the establishment of the EA.

## **8. Disputes Resolution**

### **8.1 Disputes arising from establishment of the EA (excluding pension disputes)**

8.1.1 The EA will operate an internal dispute resolution procedure (internal grievance procedure<sup>7</sup>) which relates to the individuals terms and conditions of service and is in compliance with the LRA Code of Practice on Disciplinary and Grievance Procedures (3 April 2011). 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; or
- a change in workplace location which has been made as a result of the establishment of the EA; or
- their 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.

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<sup>7</sup> The internal grievance procedure is that applicable to the employee in accordance with their contract of employment under TUPE.

8.1.2 Staff accessing the internal grievance procedure will also be advised they have a further right of appeal under the Independent Third Party Dispute Resolution Procedure for non-pension matters in line with recommendations in the PSC 3<sup>rd</sup> Guiding Principle and addendum.

Staff will have access to the Independent Third Party Dispute Resolution Procedure for non-pension matters in the event of disputes in relation to:

- non-adherence to this staff transfer scheme associated with the transfer of functions; or
- a change in workplace location which has been made as a result of the establishment of the EA; or
- their designated employer.

Staff accessing the Independent Third Party Dispute Resolution Procedure for non-pension matters 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: 3<sup>rd</sup> Guiding Principle - Staff Transfers (Appendix 2)

8.1.3 Staff are expected to utilise and exhaust the internal grievance procedure before turning to the Independent Third Party Dispute Resolution Procedure. Where the internal grievance procedure includes a final stage which is independent/external<sup>8</sup>, this final stage is replaced by the Independent Third Party Dispute Resolution Procedure for non-pension matters.

8.1.4 The EA will advise those staff that accessing the Independent Third Party Dispute Resolution Procedure for non-pension matters does not affect their

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<sup>8</sup> Stage 4 of the internal grievance procedure (i.e. reference to an Independent Appeals Committee administered by the LRA) is replaced by the Independent Third Party Dispute Resolution Procedure for non-pension matters.

statutory right to lodge a claim with the Office of the Industrial Tribunal and Fair Employment Tribunals.

## **8.2 Time-limit for Disputes lodged under the Independent Third Party Dispute Resolution Procedure for non-pension matters**

8.2.1 Any appeal being lodged under the Independent Third Party Dispute Resolution Procedure for non-pension matters 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.

## **9. Payment of compensation for actual loss**

9.1 Where a complaint is upheld, the Independent Third Party Dispute Resolution panel will make a determination to the EA 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 a payment of compensation by the Department of Education.

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 Independent Third Party Dispute Resolution panel will be paid by the Department of Education. The panel's determination will not be subject to any further appeal.

**10. Joint employer and trade union arrangements**

10.1 The EA 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. The recognised trade unions representing teachers are ATL, INTO, NAHT, NASUWT, UTU and representing other staff are NIPSA, UNISON, GMB, UNITE, ASPECT, AEP and UCATT.

10.2 The EA will set up appropriate joint employer and trade union arrangements to ensure the effective management of HR and industrial relations issues following transfer in accordance with the PSC 3<sup>rd</sup> Guiding Principle and associated recommendations and addendum accepted by the Executive.

## **ANNEXES TO BE ADDED**

**A Staff Transferring on 1 April 2015 to the EA**

## **APPENDICES**

- 1 PSC 3<sup>rd</sup> Guiding Principle and associated recommendations, and addendum to 3<sup>rd</sup> Guiding Principle – Staff Transfers**
- 2 RPA Code of Practice: 3<sup>rd</sup> Guiding Principle - Staff Transfers**
- 3 Education Act (Northern Ireland) 2014**
- 4 Definition of substantive posts**

## **Annex A**

### **STAFF TRANSFERRING ON 1 APRIL 2015 TO THE EA**

Part 1 will list the following information for all staff (including teachers) where no measures are envisaged:

- 1) School name or business unit
- 2) School Reference Number (where applicable)
- 3) Total number of staff by post or staff grouping

Part 2 will list the following information for all non-teaching staff identified as being 'at risk' or where some measures are envisaged:

- 1) Identification of staff either by business unit or, if appropriate, on an individual basis or otherwise
- 2) Date of transfer
- 3) Post on transfer (substantive or acting up) into which the employee is to be placed
- 4) Grade on transfer (substantive or acting up) onto which the employee is to be placed
- 5) Location on transfer (as per computerised system – for information only).

Following agreement between the transferors, transferee and trade unions, Annex A information was provided to EA and TUS by 20 March 2015.

# publicservicecommission

## THIRD GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

### STAFF TRANSFERS

#### Introduction

1. The Commission's role is to safeguard the interests of staff and to ensure their smooth transfer to new organisations established as a consequence of Government decisions on the Review of Public Administration, taking into account statutory obligations, including those arising from Section 75 of the Northern Ireland Act 1998.
2. In pursuance of that role, the Commission's position in relation to staff transfers is represented in the Guiding Principle and associated recommendations described below. In formulating the Guiding Principle and associated recommendations, the Commission has also had due regard to the Secretary of State's commitment, as set out in his statement of 22 November 2005, that "Every possible effort will be made to avoid redundancies."
3. The Public Service Commission has consulted Government, employers in the RPA Affected Group, the sectoral Staff Commissions and NIC/ICTU about the most appropriate way to effect staff transfers. This is part of a wider set of arrangements which will be required to achieve the Secretary of State's commitment of making every possible effort to avoid redundancies in bodies affected by RPA, safeguard the interests of staff and ensure their smooth transfer into new organisations.

#### Guiding Principle

4. The Public Service Commission recommends that:
  - Government make statutory provision for staff transfers, which is fully consistent with domestic and European legislation, for all those employees, in the RPA Affected Group, who will move to a new or different organisation as a result of decisions following the Review of Public Administration. The wording of the statutory provision should be replicated consistently in all relevant legislation in order to ensure fair and equitable treatment for all staff in the RPA Affected Group.
  - The Transfer of Undertakings (Protection of Employment) Regulations 2006 shall apply to all transfers arising from the Review of Public Administration and, to ensure certainty, Government should declare that all such transfers are relevant transfers for the purposes of those regulations. The Government should ensure the statutory provision puts beyond doubt that

no employing authority will have the right to challenge or limit the determination by the Government that the transfer is a relevant transfer so as to prevent or restrict the protection of continuity of staff rights under such a transfer.

- Any pension scheme, into which an employee is transferred must, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership.
- Government should make statutory provision for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA. The effect of such provision will be to provide for compensation for actual loss where there is material detriment to existing terms and conditions.

### **Associated Recommendations**

5. The Public Service Commission recommends the following actions be taken by Government:

- The preparation, in consultation with the Public Service Commission, relevant public service employers and the relevant trade unions, of an RPA Code of Practice, which would establish the key principles for statutorily-based staff transfer schemes and transfer arrangements, including pensions provision and independent third party resolution processes. The RPA Code of Practice should reflect statutory provisions and be prepared and promulgated well in advance of the proposed transfer date.
- Ensure the development, well in advance of the proposed date of transfer, of written statutorily-based staff transfer schemes which are compliant with all relevant statutory obligations and the RPA Code of Practice, which should be the subject of established consultation and negotiation arrangements.
- The setting up of appropriate joint employers and trade union arrangements to ensure the effective management of HR issues following transfer and which would complement the already established Central Joint Forum.

6. The Public Service Commission also **recommends** that Government should require from employers:

- Implementation of the policies and practices as detailed in the written statutorily-based staff transfer scheme.

## **Commentary**

7. While this Guiding Principle deals with a number of significant core issues in relation to safeguarding the interests of staff and ensuring their smooth transfer to new organisations, the Commission is mindful that there are a number of other HR issues, including for example redundancy provisions, which may be the subject of future Public Service Commission Guiding Principles and Recommendations.



*Sid McDowell*

**SID McDOWELL  
CHAIRMAN  
PUBLIC SERVICE COMMISSION  
4 December 2006**

**SELECTION OF STAFF FOR TRANSFER**

**ADDENDUM TO THIRD GUIDING PRINCIPLE - STAFF TRANSFERS**

1. An employee should transfer to the organisation which is taking over the functions on which s/he is engaged immediately before the transfer of functions. Where, however, a decision on an assignment for transfer is required, a range of factors including the preferences and circumstances of the employee and the needs of the business will be taken into consideration. Any decision will be taken in consultation with the relevant trade union and the receiving organisation. Management should consult with the relevant trade unions and other representatives of staff before advising individuals of their designated employer.
2. If an individual member of staff wishes to appeal against his/her designated employer or a change in the location of his/her workplace, this should be made in accordance with the provisions for third party resolution of disputes.
3. The implementation of the Review of Public Administration decisions may provide an opportunity for management to consider personal preferences of staff in respect of location, working patterns etc. and to minimise hardship/domestic disruption for individual staff. Initially such consideration should be given within each sector, but Government should ensure that arrangements are set up for cross sector co-operation. Individual decisions will be dependent on business need. If staff take on new roles and or responsibilities, as a result of the transfer, adequate training and support should be provided.
4. Where the transfer gives rise to a surplus of staff, employers should deal with this, as appropriate, by using mechanisms such as the offer of suitable alternative employment, by internal competition, employment in another organisation, or voluntary severance schemes.

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**SID McDOWELL**  
**CHAIRMAN**  
**PUBLIC SERVICE COMMISSION**  
**12 October 2007**

## RPA CODE OF PRACTICE: 3<sup>rd</sup> GUIDING PRINCIPLE - STAFF TRANSFERS

### 1. Introduction

- 1.1 Further to the acceptance of the Public Service Commission's 3<sup>rd</sup> and addendum to the 3<sup>rd</sup> Guiding Principle, Staff Transfers and Selection of Staff for Transfer respectively, this code of practice has been developed in response to the requirement in the 3<sup>rd</sup> Guiding Principle. This code of practice is issued to inform Departments and public sector employers in the RPA Affected Group about recommendations from the Commission *in its third and addendum to the third Guiding Principle*, which have been accepted. Its purpose is to assist in the practical implementation of the guiding principle. **Departments and public sector employers are expected to comply with this code of practice.**
- 1.2 The purpose of this code of practice is to ensure that arrangements are put in place to safeguard the interests of staff who transfer to a new or different organisation as a result of RPA decisions.
- 1.3 In particular the code of practice outlines:
- a) The Key Principles to be applied (paragraph 2);
  - b) A Model Legislative Framework (paragraph 3);
  - c) Transfer Schemes (paragraph 4);
  - d) RPA Independent Third Party Dispute Resolution: non-pension (paragraph 5)
  - e) RPA Independent Third Party Dispute Resolution: pensions (paragraph 6).

### 2. Key Principles

- 2.1 The following principles should be applied when staff transfer to new or different organisations:
- All staff in the RPA affected group who will move to a new or different organisation as a result of RPA decisions will have the statutory protections of the Transfer of Undertakings (Protection of Employment) Regulations 2006. All primary legislation being prepared to implement the RPA will provide that such transfers shall be relevant transfers for the purposes of those regulations.
  - Staff will transfer to the organisation which is taking over the functions on which s/he is assigned<sup>4</sup> immediately before the transfer of functions. Employers should consult with the relevant trade union and other staff representatives and, where practicable, the receiving organisation before advising individuals of their designated employer.

<sup>4</sup> This excludes those "temporarily assigned". Temporarily assigned under TUPE relates to a person (on a temporary contract or a permanent contract) who is temporarily moved to other duties e.g. to cover someone's summer holiday or maternity leave, but is expected to return to their own duties afterwards.

- Should a decision on assignment for transfer be required, where possible, employee preferences and circumstances (e.g. welfare, health etc) should be taken into account for all such decisions in addition to the primary consideration of the business need. Employers should take such a decision in consultation with the relevant trade union and the receiving organisation<sup>5</sup>. In order to minimise the instance of a decision on assignment being required, employers should consider, in consultation with the relevant trade union and where practicable the receiving organisation, whether to initiate the reorganisation of functions and posts prior to transfer. Where this cannot be achieved, a degree of flexibility should be retained.
- Employers should ensure that they put in place adequate training and support for staff who take on new roles and or responsibilities as a result of the transfer.
- Where a transfer gives rise to a surplus of staff, employers should, as appropriate, use a range of mechanisms to deal with this, for example suitable alternative employment, internal competition, voluntary severance schemes etc. This list is neither prescriptive nor exhaustive, for example the possibility of employment in another organisation should also be examined. Employers should have due regard to the provisions of the PSC 5<sup>th</sup> Guiding Principle as accepted by the Executive.
- Statutory provision must be made to ensure that any pension scheme into which an employee is transferred will, in the opinion of a professionally qualified actuary, provide benefits that are no less favourable taken as a whole than those provided by the pension scheme of which that employee was a member on the day before transfer. The actuarial assessment will include all benefits in respect of old age, invalidity and survivors' benefits arising from their occupational pension scheme membership. Further guidance is outlined in Fair Deal for Staff Pensions – the original guidance published by HM Treasury in June 1999<sup>6</sup>; and Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreement and Related Issues – Guidance Note by HM Treasury, June 2004<sup>7</sup>.
- RPA implementing legislation will require employers to develop a transfer scheme. Further details in this regard may be found in the model legislative framework which is referenced at paragraph 3.

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<sup>5</sup> Where the receiving organisation does not yet exist in law, arrangements should be made to consult with the Chief Executive Designate of that receiving organisation.

<sup>6</sup> See Annex A of the Cabinet Office Statement of Practice *Staff Transfers in the Public Sector*: <http://www.civilservice.gov.uk/documents/pdf/employment/stafftransfers2.pdf>

<sup>7</sup> [http://www.hm-treasury.gov.uk/media/E/B/pensions\\_bta\\_guidance\\_290604.pdf](http://www.hm-treasury.gov.uk/media/E/B/pensions_bta_guidance_290604.pdf)

- Statutory provision must also be made for independent third party resolution processes for dealing with disputes arising uniquely from the implementation of the RPA – the RPA Independent Third Party Dispute Resolution Procedure. The effect of such provision will be to resolve disputes, and where appropriate, provide for compensation for actual loss where there is material detriment to existing terms and conditions. Details of the procedures that will apply for disputes arising in relation to matters not including occupational pensions are outlined at paragraph 5 below. The procedures that will apply in respect of disputes on matters of pensions are detailed at paragraph 6 below.
  - Employers should examine current consultation arrangements to ensure that they are adequate and, where necessary, take action to put in place appropriate joint employer and trade union arrangements to ensure the effective management of HR issues following transfer.
- 2.2 Employers should refer to the PSC 6<sup>th</sup> Guiding Principle to ensure that they comply with their obligations in relation to informing and consulting with employees, their representatives and trade unions both pre and post transfer. The importance of this is stressed, in particular, in relation to the measures in connection with the transfer which are envisaged to be taken in relation to any affected employees (Regulation 13 of the Transfer of Undertaking (Protection of Employment) Regulations 2006 refers).

### **3. Model Legislative Framework**

- 3.1 An illustrative model legislative framework (the Libraries Act (NI) 2008, Schedule 2, paragraph 4), containing the provisions outlined at paragraph 2, can be found at the following link: [www.opsi.gov.uk](http://www.opsi.gov.uk). This framework will be used as a guide when requesting legislation containing staff transfer arrangements.

### **4. Transfer Schemes**

- 4.1 Written transfer schemes should be developed, *well* in advance of the transfer dates, in consultation with recognised trade unions, and should contain the following elements:
- a. identification of staff transferring from the existing organisation to the new or different organisation, either by business unit or, if appropriate, on an individual basis or otherwise;
  - b. the date of transfer, the grade and/or post into which the employee is to be placed and the location of the post within the new or different organisation on that date;
  - c. confirmation that contractual terms and conditions will be protected in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006;

- d. where employees are not remaining as members of the pension scheme of which they were members before the date of transfer, up-to-date details of the arrangements by which occupational pensions are to be protected<sup>8</sup>;
  - e. details of the arrangements for dispute resolution in relation to the application of this Code of Practice which comply with the guidance as set out in paragraphs 5 and 6; and
  - f. provision for the payment of compensation where staff can demonstrate actual loss where there is a material detriment to their existing terms and conditions.
- 4.2 This list is not exhaustive; employers in consultation with employee representatives may also include in the staff transfer scheme supplementary, incidental, transitional and consequential provisions.

## 5. RPA Independent Third Party Dispute Resolution: non-pension matters

### Interpretation

- 5.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration.
- 5.2 This guidance applies in cases where there is either a claim of non-adherence to the transfer scheme associated with the transfer of functions, a dispute against the designated employer or in the case of a dispute in relation to a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions.
- 5.3 This guidance does not apply to the handling of RPA disputes in respect of pension provision. The handling of such disputes is outlined separately at paragraph 6.
- 5.4 Individual employers are reminded that they are required to operate an **internal** dispute resolution procedure which complies with statutory obligations including the statutory right of accompaniment<sup>9</sup>. To facilitate a speedy resolution, employers are asked to ensure that RPA disputes relating to non-adherence to the transfer scheme associated with the transfer of functions, disputes against designated employer or disputes in relation to a change in workplace location which has been made as a result

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<sup>8</sup> "pension protection" is defined as follows: "pension protection " is secured for a transferring employee ("T") if after the change in T's employer T has, as an employee of Y, rights to acquire pension benefits and those rights are the same as or (taken as a whole) not less favourable than those T had as an employee of X.

<sup>9</sup> Subject to change following DEL review of dispute resolution procedures in NI.

of the implementation of RPA decisions are dealt with by a decision making authority<sup>10</sup>.

- 5.5 Employers are required to inform employees of their additional right of appeal to the RPA Independent Third Party Procedure as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third party procedure. **Employers are reminded that the RPA Independent Third Party Procedure does not replace internal dispute resolution and all of the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA independent procedure.**

In organisations where grievance/dispute resolution procedures include a final stage which is independent/external, this final stage would be replaced by the RPA Independent Third Party Dispute Resolution Procedure

- 5.6 Employees must be advised that the implementation of these procedures does not affect their right to lodge a claim with the Industrial Tribunal or Fair Employment Tribunal.
- 5.7 At the first stage of the internal dispute resolution procedure employees are required to indicate either:

**A**

- i) if and why they believe that their dispute relates to:
- a) non-adherence to the transfer scheme associated with the transfer of functions; or
  - b) a change in workplace location which has been made as a result of the implementation of Review of Public Administration decisions;
- ii) what they consider would resolve the dispute; and
- iii) what they consider their material detriment to their existing terms and conditions to be; and, give an indication of their actual loss.

or:

**B**

- i) if and why they believe their dispute relates to designated employer;
- ii) what they consider would resolve the dispute; and
- iii) whether they consider that there is material detriment to their existing terms and conditions, and if so, give an indication of their actual loss.

Employers must indicate to employees whether they consider a dispute fulfils the above criteria and thus can be taken to the RPA Independent Third Party Dispute Resolution. The employee may appeal an employer's decision, including appealing ultimately to the RPA Independent Third Party Dispute Resolution Procedure, in this regard.

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<sup>10</sup> This could be either an individual or panel within the organisation.

### **RPA Independent Third Party Dispute Resolution: non- pension matters**

- 5.8 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the Labour Relations Agency (LRA) for a range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 1.
- 5.9 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 5.10 Employers must make employees aware that the LRA must receive their appeal within six weeks from the date of conclusion of internal dispute resolution. 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. The appeal will follow the process set out at paragraph 5.11 below.

### **RPA Independent Third Party Dispute Resolution Procedure for non-pension matters**

- 5.11 The key features of the RPA Independent Third Party Dispute Resolution Procedure for non-pension matters are outlined below:
- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 5.10
  - ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
  - iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures have been exhausted;
  - iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within six weeks from the date of conclusion of the internal dispute resolution;
  - v) if the appeal does not meet the criteria as set out in iii) above the LRA will notify both parties;

vi) written statements from both the employer and the employee must be submitted to the LRA Arbitration Secretary at least 2 weeks before the date of the hearing; and

vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

## 6 RPA Independent Third Party Dispute Resolution: Pensions

### Interpretation

- 6.1 This guidance applies to all employees in the RPA Affected Group, who will move to new organisations or to a new employer as a result of decisions on the Review of Public Administration and whose pension provision is transferred to another pension scheme as a result of that move.
- 6.2 This guidance applies in the handling of RPA appeals in respect of pension provision.
- 6.3 Individual employers are reminded that, by virtue of the Pensions (Northern Ireland) Order 1995, their pension schemes are required to operate an internal dispute resolution procedure for pensions – this is normally a two stage process. They should ask pension scheme trustees or managers to ensure that arrangements in place are capable of dealing with RPA related appeals and that scheme members have access to information on these arrangements.
- 6.4 Individual employers should ensure that arrangements are in place to provide for individual pension schemes to inform scheme members of their right of appeal to the RPA Independent Third Party Dispute Resolution Procedure for pension-related disputes as well as their right to be accompanied by a work colleague or represented by a trade union representative to the RPA third-party procedure by a work colleague or trade union representative. **The RPA Independent Third-Party Dispute Resolution Procedure is in addition to internal dispute resolution for pensions (see 6.3) and all the principle requirements of the internal process must continue to be met. Internal dispute procedures are to be exhausted before appeal to the RPA Independent Third Party Dispute Resolution Procedure**

### Third-Party Dispute Resolution Procedure: Pensions

- 6.5 In line with current statutory provisions, claims of maladministration, if unresolved during internal dispute resolution, may be referred to third-party dispute resolution in the form of the Pensions Advisory Service. If it still remains unresolved the dispute can be further referred to the Pensions Ombudsman. This will therefore include claims in respect of maladministration where the claim has arisen as a result of RPA. **The procedure detailed at paragraph 6.11, therefore, provides for RPA**

**Independent Third Party Dispute Resolution Procedure where claims do not meet the criteria as laid down by the Pensions Ombudsman.**

- 6.6 Scheme members should be made aware that the Pensions 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 the act or omission happening.

**RPA Independent Third Party Dispute Resolution Procedure: Pensions**

- 6.7 The model for the RPA Independent Third Party Procedure is drawn from the principles applying to the Procedural Arbitrations provided by the LRA for range of public sector bodies together with the good practice elements of the statutory arbitration schemes. The RPA Independent Third Party Dispute Resolution Procedure will be a three person panel procedure; the Chair will be provided by the LRA, wing members will be nominees from public service employers and trade unions who will be trained through the LRA. For further information please refer to Annex 2.
- 6.8 Where a complaint is upheld, the panel will make a determination to the employer to remedy any deficiencies found. If the deficiencies cannot be remedied, the panel will fix an amount of compensation which reflects actual loss incurred. Employers will implement the panel's determination.
- 6.9 Employers must make employees aware that to bring forward an appeal they must do so 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 the act or omission happening.

Employers must also make employees aware that the LRA must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

- 6.10 The RPA Independent Third Party Process outlined at 6.11 does not cover disputes in respect of maladministration which are within the remit of the Pensions Advisory Service and the Pensions Ombudsman. For further information in relation to third party dispute resolution in this regard please see paragraphs 6.5 and 6.6 above.

**The RPA Independent Third Party Dispute Resolution Procedure: Pensions**

- 6.11 The key features of the RPA Independent Third Party Procedure for pensions are outlined below:

- i) the employee notifies the LRA and the employer, in writing, of the decision to appeal to the RPA Independent Third Party Dispute Resolution Procedure within the time limit outlined at paragraph 6.9;
- ii) both parties send to the LRA Arbitration Secretary all relevant correspondence;
- iii) the LRA appoints the panel who determines whether the appeal is within time, and that internal grievance/dispute resolution procedures for pensions have been exhausted;
- iv) if the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date and the case is scheduled to be heard within 6-8 weeks. Where necessary, the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required. The cost of the actuary will be met by the respondent employer;
- v) if the appeal does not meet the criteria as set out in iii) above, the LRA will notify both parties;
- vi) written statements from both the employer and the employee must be submitted at least 2 weeks before the date of the hearing; and
- vii) the case is heard and the panel's determination is sent to both parties within 10 working days of the hearing. This constitutes the end of the process and there is no further appeal through this mechanism.

## **7. Action Required**

- 7.1 All Departments preparing primary legislation should apply the key principles in paragraph 2 above in accordance with the provisions in the legislative framework the Libraries (NI) Act 2008 which can be found at the following link: [www.opsi.gov.uk](http://www.opsi.gov.uk). All relevant organisations and employers, in consultation with recognised trade unions, are required to implement the provisions in paragraphs 5 and 6 at an appropriate stage in implementation plans.

**RPA CENTRAL UNIT**  
**May 2009**

**RPA Independent Third-Party Dispute Resolution Procedure: Non-Pensions**

1. If having exhausted the employer's internal procedure the matter/s remain/s unresolved then the employee may exercise their right to an independent third party appeal.

To exercise this right the employee must lodge their appeal in writing to the Labour Relations Agency (LRA) no later than 6 weeks from the date of the conclusion of the internal dispute resolution. This is further explained at paragraph 4 below – Time Limits).

2. The RPA Independent Third Party Procedure will be applied by a panel. The RPA Independent Appeal Panel will consist of an independent Chairperson appointed by the LRA and 2 panel members will represent the employer and employee interests; one nominated from the RPA Appeal Panel list provided by the appropriate public service employers and the other from the RPA Central Joint Forum Trade Union Side.

**Conflicts of Interest**

3. Parties should satisfy themselves that there are no conflicts of interest with any of the persons appointed to the Panel. In the event that there are, they should be notified to the Arbitration Secretary.

*Prior to the operation of this procedure all Panel members will have received a briefing from the Labour Relations Agency on the generic operation of this procedure including their role as Panel members. The Panel at all times shall:-*

- (i) Act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his/her case and dealing with that of the other party; and*
- (ii) Adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.*

**Time Limits**

4. Employers must make the employee aware that the LRA and the employer must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution.

The parties will do all things necessary for the proper conduct of the appeal hearing. This includes complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

If an appeal is received by the LRA which is outside the time limit the matter will be referred to an Independent Panel Chairperson 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. (The employee will need to set out in writing the reason/s for any delay). The Independent Panel Chairperson may seek the views of the other party and may call both parties to a hearing to establish the reasons for the delay. The appeal will follow the process set out at paragraph 5 below.

### **Withdrawal**

5. The appellant can withdraw their appeal at any time by notifying in writing the Arbitration Secretary at the Labour Relations Agency.

### **RPA Third-Party Dispute Resolution Process: Non Pensions**

6. The key features of the RPA Independent Third-Party Dispute Resolution process are outlined below:

#### **Confidentiality and Privacy**

- i) All processes under these procedures are strictly private and confidential to the parties concerned. The Panel, the parties and an officer of the LRA will attend the hearings;

#### **Making the appeal application**

- ii) the employee will notify the LRA and the employer, in writing, of the decision to appeal to the RPA Third-Party Dispute Resolution procedure within the time limit outlined in paragraph 4 above;
- iii) written submission; (see exchange of documents xi)
- iv) The LRA appoints the chairperson and constitutes the Panel in accordance with the procedure;
- v) The chairperson will determine whether the appeal is within time, and that internal dispute resolution procedures have been exhausted;
- vi) If the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date as soon as reasonably practicable and the case will be scheduled to be heard within six weeks.
- vii) if the appeal does not meet the criteria as set out in 5.11 of the RPA Code of Practice on Staff Transfers the LRA will notify both parties;

## **Venue**

- viii) Hearings will be held in the LRA Head Office or Regional Office in the North West. If there are particular circumstances alternative venues may be considered and requests for a venue other than the LRA offices should be made in writing to the LRA Arbitration Secretary within 14 days of the date of the letter notifying of the hearing arrangements. Such requests will be determined by the LRA after all parties have received a copy of the appeal and been given a reasonable opportunity to respond;

## **Assistance**

- ix) Where a party needs the services of an interpreter, signer or communicator at the hearing, the LRA should be so informed well in advance of the hearing;

## **Travelling expenses**

- x) Every party shall meet its own travelling expenses and those of its representatives;

## **Exchange of Documents**

- xi) At least 14 days before the date of the hearing each party will send to the LRA Arbitration Secretary (for forwarding to the Panel and the other party and for the retention of the LRA Arbitration Section) three copies of a **written** statement of case, together with three copies of:

Any supporting documentation or other material to be relied upon at the hearing; including witness statements, if any; and where appropriate;

A list of names and title/role of all those persons who will accompany each party to the hearing.

## **Written Statements**

- xii) Written statements of case should be as clear and complete as the parties can make it with the resources available to them since good written evidence helps the Panel to form a clear picture of the situation and the problem in advance of the actual hearing itself. Appeal Panels can arrive at their outcomes only after considering all the facts and arguments submitted to them by the parties and they always study the written statements very carefully. It is, therefore, in the interests of each party to do themselves full justice by providing a clearly set out exposition of their case and to include in it all the important information and relevant points. It is also essential that all information given to the Panel is known to the other side;

- xiii) The Agency therefore arranges for the simultaneous exchange of the parties' written statements before the hearing;
  - xiv) Written statements of case and documentary or other material that have not been provided to the Panel prior to the hearing may only be relied upon at the hearing with the Panel's permission;
  - xv) When the case is heard the Panel's determination is sent in writing to both parties within 10 working days of the hearing. This constitutes the end of the process and there is **no** further appeal through this mechanism.
7. When the Independent Chairperson has prepared his report he/she submits it to the Labour Relations Agency which forwards copies to the parties. The report will set out:
- (i) The terms of reference;
  - (ii) The date and place of hearing and names of those present;
  - (iii) A short summary of the respective submissions of the parties;
  - (iv) The Panel's findings of fact;
  - (v) The award decision itself.

The award will be signed and dated. A copy of the report will be retained by the Labour Relations Agency.

**RPA Independent Third-Party Dispute Resolution Procedure: Pensions**

1. If having exhausted the employer's internal procedure the matter/s remain/s unresolved then the employee may exercise their right to an independent third party appeal.

To exercise this right the employee must lodge their appeal in writing to the Labour Relations Agency (LRA) no later than 6 weeks from the date of the conclusion of the internal dispute resolution. This is further explained at paragraph 4 below – Time Limits).

2. The RPA Independent Third Party Procedure will be applied by a panel. The RPA Independent Appeal Panel will consist of an independent Chairperson appointed by the LRA and 2 panel members will represent the employer and employee interests; one nominated from the RPA Appeal Panel list provided by the appropriate public service employers and the other from the RPA Central Joint Forum Trade Union Side.

**Conflicts of Interest**

3. Parties should satisfy themselves that there are no conflicts of interest with any of the persons appointed to the Panel. In the event that there are, they should be notified to the Arbitration Secretary.

*Prior to the operation of this procedure all Panel members will have received a briefing from the Labour Relations Agency on the generic operation of this procedure including their role as Panel members. The Panel at all times shall:-*

- (i) *Act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his/her case and dealing with that of the other party; and*
- (ii) *Adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.*

**Time Limits**

4. Employers must make the employee aware that to bring forward an appeal they must do so 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 the act or omission happening.

Employers must also make the employee aware that the LRA and the employer must receive their appeal in writing within 6 weeks from the date of conclusion of internal dispute resolution. The parties will do all things necessary for the proper conduct of the appeal hearing. This includes

complying with any orders or directions of the Panel and co-operating with the arrangements of the hearing.

### **Withdrawal**

5. The appellant can withdraw their appeal at any time by notifying in writing the Arbitration Secretary at the Labour Relations Agency.

### **RPA Third-Party Dispute Resolution Process: Pensions**

6. The key features of the RPA Independent Third-Party Dispute Resolution process are outlined below:

#### **Confidentiality and Privacy**

- i) All processes under these procedures are strictly private and confidential to the parties concerned. The Panel, the parties and an officer of the LRA will attend the hearings;

#### **Making the appeal application**

- ii) the **employee** will notify the LRA and the employer, in writing, of the decision to appeal to the RPA third party dispute resolution procedure within the time limit outlined in paragraph 4 above;
- iii) written submission; (see exchange of documents xi)
- iv) The LRA appoints the chairperson and constitutes the Panel in accordance with the procedure;
- v) The chairperson will determine whether the appeal is within time, and that internal dispute resolution procedures have been exhausted;
- vi) If the appeal fulfils the above criterion, the LRA Arbitration Secretary fixes a hearing date as soon as reasonably practicable and the case will be scheduled to be heard within 6-8 weeks. Where necessary the panel will appoint an actuary to independently assess the case and to provide them with a report and, where necessary, an assessment of the actions required;
- vii) if the appeal does not meet the criteria as set out in 6.11 and 6.12 of the RPA Code of Practice on Staff Transfers the LRA will notify both parties;

#### **Venue**

- viii) Hearings will be held in the LRA Head Office or Regional Office in the North West. If there are particular circumstances alternative venues may be considered and requests for a venue other than the LRA offices must be made, in writing with reasons, to the LRA Arbitration

Secretary within 14 days of the date of the letter notifying of the hearing arrangements. Such requests will be determined by the LRA after all parties have received a copy of the appeal and been given a reasonable opportunity to respond;

### **Assistance**

- ix) Where a party needs the services of an interpreter, signer or communicator at the hearing, the LRA should be so informed well in advance of the hearing;

### **Travelling expenses**

- x) Every party shall meet its own travelling expenses and those of its representatives;

### **Exchange of Documents**

- xi) At least 14 days before the date of the hearing each party will send to the LRA Arbitration Secretary (for forwarding to the Panel and the other party and for the retention of the LRA Arbitration Section) three copies of a **written** statement of case, together with three copies of:

Any supporting documentation or other material to be relied upon at the hearing; including witness statements, if any; and where appropriate;

A list of names and title/role of all those persons who will accompany each party to the hearing.

### **Written Statements**

- xii) Written statements of case should be as clear and complete as the parties can make it with the resources available to them since good written evidence helps the Panel to form a clear picture of the situation and the problem in advance of the actual hearing itself. Appeal Panels can arrive at their outcomes only after considering all the facts and arguments submitted to them by the parties and they always study the written statements very carefully. It is, therefore, in the interests of each party to do themselves full justice by providing a clearly set out exposition of their case and to include in it all the important information and relevant points. It is also essential that all information given to the Panel is known to the other side;
- xiii) The Agency therefore arranges for the simultaneous exchange of the parties' written statements before the hearing;
- xiv) Written statements of case and documentary or other material that have not been provided to the Panel prior to the hearing may only be relied upon at the hearing with the Panel's permission;

- xv) When the case is heard the Panel's determination is sent in writing to both parties within 10 working days of the hearing or within 10 working days of the receipt of the actuarial report. This constitutes the end of the process and there is **no** further appeal through this mechanism.
7. When the Independent Chairperson has prepared his report he/she submits it to the Labour Relations Agency which forwards copies to the parties. The report will set out:
- (vi) The terms of reference;
  - (vii) The date and place of hearing and names of those present;
  - (viii) A short summary of the respective submissions of the parties;
  - (ix) The Panel's findings of fact;
  - (x) The award decision itself.

The award will be signed and dated. A copy of the report will be retained by the Labour Relations Agency.



# Education Act (Northern Ireland) 2014

CHAPTER 12

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# Education Act (Northern Ireland) 2014

## CHAPTER 12

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# Education Act (Northern Ireland) 2014

2014 CHAPTER 12

An Act to provide for the establishment and functions of the Education Authority; to confer power on the Department of Education to make grants to sectoral bodies; and for connected purposes. [11th December 2014]

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

## *The Education Authority*

### **The Education Authority**

1.—(1) There shall be a body corporate to be known as the Education Authority (referred to in this Act as “the Authority”).

(2) Schedule 1 applies in relation to the Authority.

### **Functions of the Authority**

2.—(1) The Authority has the functions transferred to it by or under this Act or conferred or imposed on it by or under this Act or any other statutory provision.

(2) The functions exercisable immediately before the transfer date by education and library boards under any statutory provision are on that date transferred to the Authority.

(3) It is the duty of the Authority (so far as its powers extend) to encourage, facilitate and promote shared education.

(4) It is the duty of the Authority (so far as its powers extend) to encourage, facilitate and promote the community use of premises of grant-aided schools.

### **Dissolution of education and library boards and Staff Commission**

3.—(1) The following bodies are dissolved—

- (a) education and library boards;
- (b) the Staff Commission for Education and Library Boards.

(2) Schedule 2 makes provision for the transfer to the Authority of the assets, liabilities and staff of the bodies dissolved by subsection (1) and contains other supplementary provisions.

*Funding of sectoral bodies*

**Funding of sectoral bodies**

4. The Department may, subject to such conditions as it thinks fit, pay grants to any body which is recognised by the Department as representing the interests of controlled schools, or any body which is recognised by the Department as representing grant-aided schools of any other particular description.

*Supplementary provisions*

**Amendments, repeals and other consequential provision**

5.—(1) The statutory provisions set out in Schedule 3 have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions set out in Schedule 4 are repealed to the extent specified in the second column of that Schedule.

(3) The Department may by order make such supplementary, incidental, consequential or transitional provision as it considers necessary or appropriate in consequence of, or for giving full effect to, any provision made by this Act.

(4) An order under subsection (3) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(5) No order may be made under subsection (3) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

**Interpretation**

6.—(1) In this Act—

“DEL” means the Department for Employment and Learning;

“the Department” means the Department of Education;

“the Education Orders” has the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986;

“the funding departments” means the Department and DEL;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“the transfer date” means the date appointed under section 7(2) for the coming into operation of section 3(1).

(2) Other words or expressions which are defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning in this Act as in that Order.

**Short title and commencement**

7.—(1) This Act may be cited as the Education Act (Northern Ireland) 2014.

(2) The following provisions of this Act come into operation on such date as the Department may by order appoint—

- (a) section 2(3);
- (b) section 3(1);
- (c) section 5(1) and (2) and Schedules 3 and 4;
- (d) paragraph 8(2) of Schedule 1.

(3) The other provisions of this Act come into operation on the day after this Act receives Royal Assent.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### THE EDUCATION AUTHORITY

##### *Status*

- 1.—(1) The Authority shall not be regarded—
- (a) as the servant or agent of the Crown; or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The property of the Authority shall not be regarded as property of, or held on behalf of, the Crown.
- (3) Subject to the following provisions of this Schedule and Article 106 of the 1986 Order, section 19 of the Interpretation Act (Northern Ireland) 1954 applies to the Authority.

##### *Membership*

- 2.—(1) The Authority shall consist of—
- (a) a Chair appointed by the Department on the basis of merit through a fair and open public competition,
  - (b) 8 persons nominated in accordance with paragraph 3 (“political members”), and
  - (c) 12 persons appointed by the Department (“appointed members”) of whom—
    - (i) 4 shall be persons appearing to the Department to represent the interests of transferors of controlled schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests;
    - (ii) 4 shall be persons appearing to the Department to represent the interests of trustees of maintained schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests;
    - (iii) 1 shall be a person appearing to the Department to represent the interests of integrated schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests;

- (iv) I shall be a person appearing to the Department to represent the interests of voluntary grammar schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests;
- (v) I shall be a person appearing to the Department to represent the interests of controlled grammar schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests; and
- (vi) I shall be a person appearing to the Department to represent the interests of Irish Medium schools, appointed after consultation with persons or bodies appearing to the Department to represent such interests.

(2) In making appointments under sub-paragraph (1)(c)(iii), the Department shall, so far as practicable, secure that each person appointed has experience in a field of activity relevant to the discharge of the functions of the Authority.

(3) A person is disqualified for membership of the Authority if that person is an officer of the Authority.

#### *Political members*

3.—(1) Where members are first appointed to the Authority, the political members shall be nominated by applying sub-paragraphs (3) to (8).

(2) Where at any other time—

- (a) an Assembly is elected under section 31 or 32 of the Northern Ireland Act 1998,
- (b) a resolution which causes one or more Ministerial offices to become vacant is passed under section 30(2) of that Act, or
- (c) the period of exclusion imposed by a resolution under section 30(2) of that Act comes to an end,

all political members shall cease to hold office and the political members shall be nominated by applying sub-paragraphs (3) to (8).

(3) At the request of the Department, the nominating officer of the political party for which the formula in sub-paragraph (7) gives the highest figure may nominate a person as a political member.

(4) The nominated person may take up office as a political member by making a statement to that effect to the Department.

(5) If—

- (a) the nominating officer does not exercise the power conferred by sub-paragraph (3) within the period of 7 days from the Department's request, or
- (b) the nominated person does not take up office as a political member within that period,

that power shall become exercisable by the nominating officer of the political party for which the formula in sub-paragraph (7) gives the next highest figure.

(6) Sub-paragraphs (3) to (5) shall be applied as many times as may be necessary to secure that all of the offices as political member are filled.

(7) The formula is—

$$\frac{S}{1 + M}$$

where—

S = the number of seats in the Assembly which were held by members of the party on the day on which the Assembly first met following its election;

M = the number of members of the party (if any) who hold office as a political member.

(8) Where the figures given by the formula for two or more political parties are equal, each of those figures shall be recalculated with S being equal to the number of first preference votes cast for the party at the last general election of members of the Assembly.

(9) A person shall cease to hold office as a political member if that person resigns by notice in writing to the Department.

(10) Where a person ceases to hold office as a political member otherwise than by virtue of sub-paragraph (2), the nominating officer of the party on whose behalf that person was nominated may nominate another person to hold the office.

(11) If—

(a) the nominating officer does not exercise the power conferred by sub-paragraph (10) within such period as the Department may determine from the person ceasing to hold office, or

(b) the nominated person does not take up the office within that period,

the vacancy shall be filled by applying sub-paragraphs (3) to (8) within the further period of 7 days.

(12) Where—

(a) the Assembly has resolved under section 30(2) of the Northern Ireland Act 1998 that a political party does not enjoy its confidence, and

(b) the party's period of exclusion has not come to an end,

the party shall be disregarded for the purposes of any application of sub-paragraphs (3) to (8).

(13) In this paragraph "nominating officer", in relation to a party, means the person registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 as the party's nominating officer or a member of the Assembly nominated by that person for the purpose.

#### *Chair and appointed members*

4.—(1) Subject to the provisions of this paragraph, the Chair and the appointed members of the Authority shall hold and vacate office in accordance with the terms of their respective appointments.

(2) An appointment as Chair or an appointed member shall be for a specified period of not more than 4 years.

(3) A person holding office as Chair or appointed member may at any time resign that office by notice in writing to the Department.

(4) The Department may by notice in writing remove a person from office as Chair or appointed member if satisfied that the person—

- (a) has, without reasonable excuse, failed to discharge the functions of the office for a continuous period of 6 months,
- (b) is the subject of a bankruptcy restrictions order (or interim order) or a debt relief restrictions order,
- (c) has failed to comply with the terms of appointment,
- (d) has been convicted of an indictable offence, or
- (e) is otherwise unable, unfit or unwilling to perform the functions of the office.

(5) A person whose term of office as Chair or an appointed member expires or who has resigned shall be eligible for re-appointment.

*Remuneration and allowances of members*

5. The Authority shall pay to its Chair and members such remuneration and allowances as the Department may determine.

*Officers*

6.—(1) The Authority shall have—

- (a) a chief executive, with responsibility to the Authority for the carrying out of its functions and the management of its officers; and
- (b) such other officers as the Authority may determine.

(2) An interim chief executive of the Authority shall be appointed by the Department.

(3) Within one year of the date of the first meeting of the Authority, the Authority shall commence a process to appoint a permanent chief executive.

(4) Every subsequent chief executive shall be appointed by the Authority.

(5) The Authority shall not appoint a person as chief executive unless the Department approves the appointment.

(6) A person shall, so long as that person is, and for 12 months after ceasing to be, a member of the Authority, be disqualified for being an officer of the Authority.

*Remuneration, allowances and pensions of officers*

7.—(1) Subject to sub-paragraph (2), the Authority shall pay to its officers such remuneration and allowances as it may determine.

(2) The Department may direct that the remuneration and allowances of the chief executive and other officers of such class or description as may be specified in the direction shall not be determined under sub-paragraph (1) without the approval of the Department.

(3) The Authority shall—

- (a) pay, or make payments in respect of, such pensions or gratuities to or in respect of its officers or former officers as it may, with the approval of the Department, determine; or

(b) provide and maintain such schemes (whether contributory or not) as it may, with the approval of the Department, determine, for the payment of pensions or gratuities to or in respect of its officers or former officers.

(4) References in this paragraph to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of officers who suffer loss of employment or loss or diminution of emoluments.

#### *Committees*

8.—(1) The Authority may appoint such committees as it considers necessary.

(2) The Authority shall appoint a standing committee to exercise the functions of the Authority under section 2(3).

(3) The membership of the standing committee referred to in sub-paragraph (2) shall, as far as practicable, be representative of the membership of the Authority.

(4) The Authority shall appoint a standing committee to exercise the functions of the Authority under section 2(4).

(5) The membership of the standing committee referred to in sub-paragraph (4) shall, as far as practicable, be representative of the membership of the Authority.

(6) The Authority may authorise a committee to appoint sub-committees for such purposes of the committee as the Authority may approve.

(7) A committee or sub-committee may contain members who are not members of the Authority or of the committee which appointed the sub-committee.

(8) The Authority may authorise any committee of the Authority all the members of which are members of the Authority to perform specific functions on behalf of, and in the name of, the Authority.

(9) Except as provided by a scheme under Article 153 of the 1989 Order, the Authority shall not authorise a committee any member or members of which are not members of the Authority to perform functions on behalf of, or in the name of, the Authority.

(10) The Authority may pay to members of its committees and sub-committees who are neither members nor officers of the Authority such remuneration and allowances as the Authority may, with the approval of the Department, determine.

#### *Proceedings*

9. Without prejudice to section 19(1)(a)(v) of the Interpretation Act (Northern Ireland) 1954, the Authority shall make standing orders regulating the procedure of the Authority and its committees, including provision regulating—

- (a) the convening of meetings;
- (b) the fixing of the quorum;
- (c) the conduct of business at meetings;
- (d) the disclosure by a member of any pecuniary interest in, or family relationship relevant to, any matter to be discussed at a meeting and the withdrawal by such a member from any discussion on that matter;
- (e) the admission or exclusion of the public and press from meetings;
- (f) the keeping of minutes and other records;

- (g) the custody of documents;
- (h) the duties of officers;
- (i) such other matters connected with the conduct of its business as the Authority thinks fit.

10. The validity of any proceedings of the Authority, or of any of its committees, shall not be affected by—

- (a) any vacancy among the officers of the Authority or of the committee;
- (b) any vacancy in the office of the Chair of the Authority;
- (c) any defect in the appointment of any one or more officers of the Authority or in the appointment of the Chair of the Authority; or
- (d) any failure to comply with paragraph 9.

*Application of seal and documents*

11.—(1) The application of the seal of the Authority shall be authenticated by the signature—

- (a) of the Chair of the Authority or the chief executive; or
- (b) of any other member or officer who has been authorised by the Authority (whether generally or specially) for that purpose.

(2) Any document which if executed by an individual would not require to be executed as a deed may be executed on behalf of the Authority by any person generally or specially authorised by the Authority for that purpose.

(3) In any legal proceedings any document purporting to have been so executed on behalf of the Authority shall be deemed to be so executed until the contrary is proved.

12. Any document required under any statutory provision to be served on or sent to the Authority may (without prejudice to the operation of section 24 of the Interpretation Act (Northern Ireland) 1954) be served on or sent to the chief executive of the Authority.

*Finance*

13.—(1) A funding department may make payments to the Authority out of moneys appropriated by Act of the Assembly.

(2) Payments made under this paragraph by a funding department shall be made on such terms and conditions as the funding department may determine.

14.—(1) The Authority may, by means of a bank overdraft or other such means and within such limits and subject to such conditions as may be approved by the Department, temporarily borrow such sums as may be necessary for the purposes of defraying expenditure incurred or to be incurred by it.

(2) Any sum borrowed under this paragraph shall be repaid by the Authority before the end of the financial year in which it is borrowed.

*Accounts*

15.—(1) The Authority shall—

- (a) keep proper accounts and proper records in relation to the accounts; and

(b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

(a) be in such form, and

(b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The Authority shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

(a) the Department;

(b) DEL; and

(c) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on every statement of accounts received under this paragraph; and

(b) send a copy of each report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

#### *Annual report*

16.—(1) As soon as practicable after the end of each financial year, the Authority shall send to the Department and DEL a report on the carrying out of its functions during that year.

(2) A report under this paragraph shall contain such information as the Department may direct.

(3) The Department shall lay a copy of the report before the Assembly.

#### *Other reports and returns*

17. The Authority shall make such reports and returns and give such information—

(a) to the Department as the Department may reasonably require for the purposes of its functions under any statutory provision;

(b) to DEL as DEL may reasonably require for the purposes of its functions under any statutory provision.

#### *Commissioner for Complaints*

18. In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation) for “An education and library board” substitute “The Education Authority”.

#### *Freedom of information*

19. In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (bodies, etc. which are public authorities for the purposes of the Act) for “An Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986” substitute “The Education Authority”.

*Interpretation*

20. In this Schedule “financial year” means—
- (a) the period beginning with the day on which the Authority is established and ending on 31st March 2016; and
  - (b) any subsequent period of 12 months ending on 31st March.

## SCHEDULE 2

Section 3.

## TRANSFER OF ASSETS, LIABILITIES AND STAFF OF DISSOLVED BODIES

*Interpretation*

1. In this Schedule “dissolved body” means a body listed in section 3(1).

*Transfer of assets and liabilities*

2.—(1) All assets and liabilities to which a dissolved body is entitled or subject immediately before the transfer date shall on that date be transferred to, and by virtue of this paragraph vest in, the Authority.

(2) Sub-paragraph (1) has effect in relation to assets or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the assets or liabilities otherwise than by that sub-paragraph.

(3) But sub-paragraph (1) does not apply to rights or liabilities under a contract of employment (which are dealt with by paragraph 3).

(4) A certificate issued by the Department that any assets or liabilities have been transferred to the Authority under this paragraph shall be conclusive evidence of the transfer.

*Transfer of employed staff*

3.—(1) This paragraph applies to persons who immediately before the transfer date are employed by a dissolved body.

(2) The Department may make one or more schemes with respect to persons to whom this paragraph applies.

(3) A scheme may provide for the transfer as from the transfer date of persons to whom this paragraph applies from the employment of a dissolved body to the employment of the Authority.

(4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer effected by a scheme whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of the regulations.

(5) A scheme may include supplementary, incidental, transitional and consequential provision.

(6) A scheme shall—

- (a) identify transferring employees (whether by name or otherwise);
- (b) include provision securing pension protection for such employees;

- (c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and
  - (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.
- (7) Before making a scheme the Department shall consult—
- (a) in the case of a scheme which identifies transferring employees by name, those employees; and
  - (b) in the case of a scheme which identifies transferring employees in any other way, such persons as appear to the Department to be representative of transferring employees.
- (8) For the purposes of this paragraph—
- (a) “pension protection” is secured for a transferring employee if after the change of employer effected by the scheme the employee has, as an employee of the Authority, rights to acquire pension benefits and those rights are the same as or (taken as a whole) no less favourable than those that the transferring employee had as an employee of a dissolved body;
  - (b) “scheme” means a scheme made under this paragraph; and
  - (c) “transferring employee” means an employee of a dissolved body who is transferred by virtue of this paragraph to the employment of the Authority.
- (9) Procedures under sub-paragraph (6)(c) shall involve consideration of grievances by a person other than—
- (a) a member, or member of staff, of the Authority; or
  - (b) a member of the Northern Ireland civil service.

*References to, and acts, etc. done by, or in relation to, a dissolved body*

- 4.—(1) In any statutory provision or document—
- (a) any reference to a dissolved body (whether general or particular) shall, in relation to any time after the transfer date, be construed as a reference to the Authority; and
  - (b) any reference which delimits a function of an education and library board by reference to its area shall, in relation to that time, be disregarded.
- (2) Sub-paragraph (1) does not apply—
- (a) to any reference which is amended by Schedule 3; or
  - (b) if the context otherwise requires.
- (3) Nothing in this Act affects the validity of anything done by, or in relation to, a dissolved body before the transfer date.
- (4) Anything which before the transfer date was done by or in relation to a dissolved body shall, if in effect immediately before that day, continue to have effect to the same extent and subject to the same provisions as if it had been done by, or in relation to, the Authority.
- (5) Anything (including any legal proceedings) in the process of being done by or in relation to a dissolved body immediately before the transfer date may be continued by or in relation to the Authority.

(6) In the case of an education and library board, this paragraph does not apply where any of paragraphs 5 to 8 of Schedule 2 to the Libraries Act (Northern Ireland) 2008 applies.

5.—(1) The Authority shall make arrangements for a statement of accounts to be prepared in relation to each dissolved body for the relevant period.

(2) Each statement of accounts shall—

- (a) be in such form, and
- (b) contain such information,

as the Department may direct.

(3) The Authority shall, within such time after the end of the relevant period as the Department may direct, send a copy of each statement of accounts—

- (a) to each of the funding departments; and
- (b) to the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts received under this paragraph; and
- (b) send a copy of each report to each of the funding departments.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) In this paragraph "the relevant period" means the period—

- (a) beginning on such day as the Department may direct; and
- (b) ending immediately before the transfer date.

### SCHEDULE 3

Section 5.

#### AMENDMENTS

##### *The Education Orders - general amendment of references to education and library boards*

1.—(1) In the Education Orders—

- (a) for "a board", "the board", "that board", "the boards", "each board" and "every board" (wherever occurring) substitute "the Authority";
- (b) for "the board's" (wherever occurring) substitute "the Authority's".

(2) Sub-paragraph (1)—

- (a) applies only in relation to references to an education and library board, or such boards; and
- (b) does not apply in relation to any reference which is subject to specific amendment or repeal by this Act.

##### *The School Sites Act (Northern Ireland) 1928 (c. 8)*

2. In section 1(1) and (2) for "an education authority" substitute "the Education Authority".

*The Exchequer and Financial Provisions Act (Northern Ireland) 1950 (c. 3)*

3. In section 33(1) for “boards under Article 114 of the 1986 Order” substitute “the Education Authority under paragraph 13 of Schedule 1 to the Education Act (Northern Ireland) 2014”.

*The Superannuation (Northern Ireland) Order 1972 (NI 10)*

4. In Article 11(5) for “representatives of local education authorities and” substitute “the Education Authority and with representatives”.

*The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)*

5. In Article 67 for “Education and Library Boards” substitute “the Education Authority”.

*The Solicitors (Northern Ireland) Order 1976 (NI 12)*

6. In Article 3(2) in the definition of “local authority” for “an Education and Library Board established under the Education and Libraries (Northern Ireland) Order 1972” substitute “the Education Authority”.

*The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)*

7.—(1) In Article 24(1), in the Table, for “Education and Library Board” substitute “Education Authority”.

(2) In Article 25—

- (a) in the title for “Education and Library Boards” substitute “the Education Authority”;
- (b) for “an Education and Library Board” substitute “the Education Authority”.

(3) In Article 26(2) and (4)(a) for “an Education and Library Board” substitute “the Education Authority”.

*The Rates (Northern Ireland) Order 1977 (NI 28)*

8. In Schedule 13 for the entry relating to an education and library board substitute—

“The Education Authority.”.

*The Education and Libraries (Northern Ireland) Order 1986 (NI 3)*

9.—(1) In Article 2(2) at the appropriate places in alphabetical order insert the following definition—

“ “the Authority” means the Education Authority;”.

(2) In Article 2(2) for the definition of “the funding departments” substitute—

“ “the funding departments” has the meaning given by section 6(1) of the Education Act (Northern Ireland) 2014;”.

(3) In Article 5(2) for “of its area” substitute “of the community”.

(4) In Article 9C(7) for “the Catholic maintained schools maintained by that board” substitute “Catholic maintained schools”.

(5) In Article 13(3AA) for the words from the beginning to “hospital” substitute “Where, in relation to a school established in a hospital, the Authority is of the opinion that”.

(6) In Article 16(1) for “by a board” substitute “by the Authority or by a board”.

(7) In Article 17(1), (3) and (6) for “the appropriate board” substitute “the Authority”.

(8) In Article 17(1) for “the relevant board” substitute “the Authority”.

(9) In Article 18(2)(a) for “responsible for the management of” substitute “in the case of”.

(10) In Article 46A(6)(b) for “the relevant board” substitute “the Authority”.

(11) In Article 49(1) for “schools under its management” substitute “controlled schools”.

(12) In Article 79(1) for “member of the board or of a committee of the board or a sub-committee thereof” substitute “person to whom this paragraph applies”.

(13) In Article 107(1) for the words from “transferred to it” to the end substitute “to which it is for the time being entitled or subject to for the purposes of the Education Orders”.

(14) In Article 119A(1)(a) and (b) for “the responsible board” substitute “the Authority”.

(15) In Schedule 4—

- (a) in paragraph 5(1)(c) for “area of the board responsible for the management of the school” substitute “locality served by the school”;
- (b) in paragraph 5(1)(d) for “area of the board responsible for the management of the school” substitute “Roman Catholic diocese in which the school is situated (or in so much of that diocese as lies within Northern Ireland)”;
- (c) in paragraph 7 in the definition of “superseded managers” for “schools under the management of boards” substitute “controlled schools”.

(16) In Schedule 6—

- (a) in paragraph 2(1) for “one or more than one board conferring on the board or boards concerned” substitute “the Authority conferring on the Authority”;
- (b) in paragraph 4(2)(b)(i) for “the board or boards concerned” (in each place) substitute “the Authority”;
- (c) in paragraph 5(2)(b)(i) for “the board or boards concerned” (in each place) substitute “the Authority”.

*The Disabled Persons (Northern Ireland) Act 1989 (c. 10)*

10.—(1) In section 2(7) for “education and library boards” substitute “the Authority”.

(2) In section 5(1)—

- (a) for “an education and library board” substitute “the Authority”;
- (b) for “the education and library board” (wherever occurring) substitute “the Authority”.

- (3) In section 5(2)—
- (a) for “an education and library board” (twice) substitute “the Authority”;
  - (b) for “the education and library board” (wherever occurring) substitute “the Authority”;
  - (c) for “the board” substitute “the Authority”.
- (4) In section 5(3) for “the responsible education and library board” (twice) substitute “the Authority”.
- (5) In section 5(4)—
- (a) for “an education and library board” substitute “the Authority”;
  - (b) for the words from “that or any other” to “for the time being” substitute “the Authority”;
  - (c) for “the education and library board” and “that education and library board” substitute “the Authority”.
- (6) In section 5(6) for “an education and library board” and “the education and library board” substitute “the Authority”.
- (7) In section 6(1) for “An education and library board” substitute “The Authority”.
- (8) In section 7(4) for the words from “the education and library board” to the end substitute “the Authority”.
- (9) In section 11 after the definition of “Board” insert—
- “ “the Authority” means the Education Authority;”.

*The Education Reform (Northern Ireland) Order 1989 (NI 20)*

- 11.—(1) In Article 69(4)(b)(i) for “relevant board” substitute “Authority”.
- (2) In Article 71 for “relevant board” (wherever occurring) substitute “Authority”.
- (3) In Article 73(3) for “relevant board” substitute “Authority”.
- (4) In Article 75 for “relevant board” (wherever occurring) substitute “Authority”.
- (5) In Article 76 for “relevant board” (wherever occurring) substitute “Authority”.
- (6) In Article 80(3) for “a board” substitute “the Authority or a board”.
- (7) In Article 83—
- (a) in paragraph (3) for “any board or person” substitute “the Authority or any other person” and for “that board or person” substitute “the Authority or that person”;
  - (b) in paragraph (5) for “person” substitute “a person”;
  - (c) in paragraph (6) for “person to which or” substitute “the person”.
- (8) In Article 84(2) for “or person” substitute “or that person”.
- (9) In Article 92(1) and (9)(b) for “relevant board” substitute “Authority”.
- (10) In Article 93(3) for “relevant board” substitute “Authority”.

- (11) In Article 95(1) for “relevant board” substitute “Authority”.
- (12) In Article 96(5) and (6)(a) for “relevant board” substitute “Authority”.
- (13) In Article 127(5) for “The board for the area in which a grammar school is situated” substitute “In relation to a grammar school, the Authority”.
- (14) In Article 135(1) for “that board or” substitute “the Authority or the”.
- (15) In Articles 137(1) and 139(4)(a) for “any board” substitute “the Authority”.
- (16) In Article 139(4)(b) for “any such board” substitute “the Authority and any such”.
- (17) In Article 140 for the words from “Article 62” to “1993” substitute “Article 72 of the Education (Northern Ireland) Order 1998”.
- (18) In Article 153 for paragraphs (2) to (4) substitute—
- “(2) A scheme under paragraph (1) may provide—
- (a) for any specified functions of the Authority under the scheme to be exercised by committees of the Authority (“teaching appointments committees”);
- (b) for a teaching appointments committee to include persons who are not members of the Authority; and
- (c) for a teaching appointments committee to exercise functions on behalf of, and in the name of, the Authority.
- (3) Before preparing or revising a scheme under paragraph (1) the Authority shall consult the Board of Governors of every controlled school.
- (4) A scheme prepared or revised under paragraph (1) does not come into force unless approved by the Department.
- (5) It shall be the duty of the Authority to give effect to a scheme or revised scheme for the time being in force under paragraph (1).”.

*The Youth Service (Northern Ireland) Order 1989 (NI 22)*

- 12.—(1) In Article 4(1)(a) for “education and library boards” substitute “the Education Authority”.
- (2) In the Schedule in paragraph 2(1) for “education and library boards” substitute “the Education Authority”.

*The Disability Discrimination Act 1995 (c. 50)*

13. In section 19(6) for paragraph (a) substitute—
- “(a) the Education Authority”.

*The Children (Northern Ireland) Order 1995 (NI 2)*

- 14.—(1) In Article 19(7) for “an education and library board” substitute “the Education Authority”.
- (2) In Article 20(2)(a) for “the appropriate education and library board” substitute “the Education Authority”.
- (3) In Article 35(2)(d)(i) for “an education and library board” substitute “the Education Authority”.
- (4) In Article 46(3)(b) for “any education and library board” substitute “the Education Authority”.

(5) In Article 47 in the title for “education and library boards” substitute “the Education Authority” and in paragraphs (1), (2) and (3) for “the appropriate education and library board” substitute “the Education Authority”.

(6) In Article 55—

- (a) in paragraph (1) for “any education and library board” substitute “the Education Authority” and for “a designated education and library board” substitute “the Education Authority”;
- (b) in paragraph (7) for “an education and library board” substitute “the Education Authority”.

(7) In Article 66—

- (a) in paragraph (5) for “the relevant education and library board” substitute “the Education Authority”;
- (b) in paragraph (11)(b) for “any education and library board” substitute “the Education Authority”.

(8) In Article 135(3) for “any education and library board” substitute “the Education Authority”.

(9) In Article 137(3)(b) for “the education and library board in whose area the performance takes place” substitute “the Education Authority”.

(10) In Article 138(1) for “The appropriate education and library board” substitute “The Education Authority”.

(11) In Article 138—

- (a) in paragraph (3) for “the education and library board” substitute “the Education Authority” and for “the board” substitute “the Education Authority”;
- (b) in paragraph (4) for “The education and library board” substitute “The Education Authority”;
- (c) in paragraph (5) for “the education and library board” (twice), “an education and library board” and “the board” substitute “the Education Authority”.

(12) In Article 139(1) for “the appropriate education and library board” substitute “the Education Authority”.

(13) In Article 139(2)—

- (a) for “The appropriate education and library board” substitute “The Education Authority”;
- (b) for “the board” (wherever occurring) substitute “the Education Authority”;
- (c) for “the board’s” substitute “the Education Authority’s”.

(14) In Article 140(2) for “the education and library board which granted, or any education and library board which varied, the licence” substitute “the Education Authority”.

(15) In Article 143(1) for “The appropriate education and library board” substitute “The Education Authority”.

(16) In Article 143(3)—

- (a) for “The education and library board” substitute “The Education Authority”;
  - (b) for “the board” substitute “the Education Authority”.
- (17) In Article 143(4)(b) for “the education and library board” substitute “the Education Authority”.
- (18) In Article 143(5)—
- (a) for “The education and library board by which a licence under this Article is granted” substitute “The Education Authority”;
  - (b) for “the board” (wherever occurring) substitute “the Education Authority”;
  - (c) for “the board’s” substitute “the Education Authority’s”.
- (19) In Article 144(1) for “an education and library board” substitute “the Education Authority”.
- (20) In Article 144(2)—
- (a) for “the education and library board” substitute “the Education Authority”;
  - (b) in sub-paragraph (a) for “the board’s” substitute “the Education Authority’s”.
- (21) In Article 146(1) and (2) for “an education and library board” substitute “the Education Authority”.
- (22) In Article 147(9) for “an education and library board” substitute “the Education Authority”.
- (23) In Article 149(1)(c) and (5)(e) and (g) for “an education and library board” substitute “the Education Authority”.
- (24) In Article 149(5)(f) for “any education and library board” substitute “the Education Authority if it is”.
- (25) In Article 154(1) and (2) for “education and library boards” substitute “the Education Authority”.
- (26) In Article 177(1)—
- (a) for “an education and library board” and “the education and library board” substitute “the Education Authority”;
  - (b) for “the board” substitute “the Education Authority”.
- (27) In Article 177(3), (4) and (5) for “the education and library board” (wherever occurring) substitute “the Education Authority”.
- (28) In Schedule 2, in paragraph 2A(3) for paragraph (b) substitute—  
“*(b)* the Education Authority”.
- (29) In Schedule 4—
- (a) in paragraph 5(2) for “the education and library board in whose favour the order was made” substitute “the Education Authority”;
  - (b) in paragraphs 7(1)(c) and 9(1) for “the education and library board concerned” substitute “the Education Authority”.

*The Education (Northern Ireland) Order 1996 (NI 1)*

15.—(1) In Article 14(1)(b) for “the appropriate board” substitute “the Authority”.

(2) In Article 18A(5) for the words from the beginning to “Article 16” substitute “Where the Authority is required by paragraph (4)(a) to make a statement under Article 16, the Authority”.

(3) In Article 23A for “the board concerned” substitute “the Authority”.

*The Employment Rights (Northern Ireland) Order 1996 (NI 16)*

16. In Article 78(7) for sub-paragraph (a) substitute—

“(a) the Education Authority;”.

*The Race Relations (Northern Ireland) Order 1997 (NI 6)*

17.—(1) In Article 18(1), in the Table, for “Education and library board” substitute “Education Authority”.

(2) In Article 19—

(a) in the title for “education and library boards” substitute “the Education Authority”;

(b) in paragraph (a) for “an education and library board” substitute “the Education Authority”.

(3) In Article 20(2) and (4)(a) for “an education and library board” substitute “the Education Authority”.

*The Further Education (Northern Ireland) Order 1997 (NI 15)*

18.—(1) In Article 6(2) for sub-paragraph (a) substitute—

“(a) the Authority; and”.

(2) In Article 7(2) for sub-paragraph (b) substitute—

“(b) the Authority; and”.

(3) In Article 8(3) for sub-paragraph (a) substitute—

“(a) the Authority;”.

(4) In Article 9(2) for sub-paragraph (b) substitute—

“(b) the Authority; and”.

(5) In Article 21(1) for sub-paragraph (b) substitute—

“(b) the Education Authority, as the Education Authority may reasonably require for the purpose of its functions under any statutory provision.”.

(6) In Article 23(4) for “the board for the area in which the student is ordinarily resident” substitute “the Authority”.

(7) In Schedule 3, in paragraph 2(1)(e) for “the board for the area in which the institution is situated” substitute “the Authority”.

*The Museums and Galleries (Northern Ireland) Order 1998 (NI 2)*

19. In Article 4(8)(b) for “education and library boards” substitute “the Education Authority”.

*The Education (Northern Ireland) Order 1998 (NI 13)*

20.—(1) In Article 16(7) for “boards to exercise their” substitute “the Authority to exercise its”.

(2) In Articles 56(1) and 59(1)(b) for “the board concerned” substitute “the Authority”.

(3) In Article 60(5) for “all the boards” substitute “the Authority”.

(4) In Article 60(12) for “the board concerned” substitute “the Authority”.

(5) In Articles 62 and 64 for “the relevant board” (wherever occurring) substitute “the Authority”.

(6) In Article 70(1) for “for the area in which a maintained school is situated shall” substitute “shall, in relation to a maintained school,”.

(7) In Schedule 2, in paragraph 7 for “relevant board” (wherever occurring) substitute “Authority”.

*The Education (Student Support) (Northern Ireland) Order 1998 (NI 14)*

21. In Article 4(1) for sub-paragraph (a) substitute—  
“(a) the Education Authority; or”.

*The Education and Libraries (Northern Ireland) Order 2003 (NI 12)*

22. In Article 37(5) for “A body to which this paragraph applies” substitute “The Authority”.

*The Higher Education (Northern Ireland) Order 2005 (NI 5)*

23. In Article 13(7) in the definition of “student support authority” for “any board or” substitute “the Education Authority or any”.

*The Special Educational Needs and Disability (Northern Ireland) 2005 (NI 6)*

24.—(1) Paragraph 1 above applies in relation to the Order as it applies in relation to the Education Orders.

(2) In Article 19 (1) at the end add—  
“(h) the Education Act (Northern Ireland) 2014.”.

*The Education (Northern Ireland) Order 2006 (NI 11)*

25.—(1) In Article 12(4)(a)(ii) and (8)(a) for “the relevant board” substitute “the Authority”.

(2) In Article 14(3)(c) and (4) for “the relevant board” substitute “the Authority”.

(3) In Article 22(2)(a) for “relevant board” substitute “Authority”.

(4) In Article 22(3) for “relevant board” substitute “the Authority”.

(5) In Article 31(2)(a)(i) and (3)(a) for “the relevant board” substitute “the Authority”.

(6) In Article 32(1) and (7)(d) for “the relevant board” substitute “the Authority”.

*The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (NI 11)*

26.—(1) In Article 41—

- (a) in the title, for “Education and Library Boards” substitute “The Education Authority”;
- (b) in paragraph (1) for “An Education and Library Board (“a board”)” substitute “The Education Authority”;
- (c) in paragraphs (2), (4), (5)(a) and (6) for “the board or” substitute “the Education Authority or the”;
- (d) in paragraph (5) for “A board” substitute “The Education Authority”.

(2) In Article 42—

- (a) in the title, for “Education and Library Boards” substitute “The Education Authority”;
- (b) in paragraph (2)—
  - (i) for “an education and library board” substitute “the Education Authority”;
  - (ii) for “that board or” substitute “the Authority or that”;
- (c) in paragraph (3) for “The board or” substitute “The Education Authority or the”.

(3) In Schedule 2 in paragraph 3(1)(bb) for “an education and library board” substitute “the Education Authority”.

*The Safeguarding Board Act (Northern Ireland) 2011 (c. 7)*

27.—(1) In section 1(3)(g) for “education and library boards” substitute “the Education Authority”.

(2) In section 12(1)(g) for “education and library boards” substitute “the Education Authority”.

## SCHEDULE 4

Section 5.

## REPEALS

Short Title	Extent of Repeal
The School Sites Act (Northern Ireland) 1928 (c. 8).	Section 3(2).
The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14)	In Article 2(2) the definition of “Education and Library Board”.

The Sex Discrimination (Northern Ireland) Order 1976 (NI 15)	In Article 2(2) the definition of “Education and Library Board”.
The Education and Libraries (Northern Ireland) Order 1986 (NI 3)	<p>In Article 2(2) in the definition of “contributory school” the words “responsible for the management of the controlled secondary school”.</p> <p>In Article 2(2) in the definition of “managers” in paragraph (a) the words “responsible for its management”.</p> <p>Part 2.</p> <p>In Article 6(1) the words “in its area” and “for an area”.</p> <p>In Article 6(1A) the words “in its area” and subparagraph (b) and the word “and” immediately before it.</p> <p>In Article 7 the words “within its area” and “by Article 7(2) of the 1972 Order”.</p> <p>In Article 9B(1) the words “under the management of the board”.</p> <p>In Article 9B(3) the words “by which the school is maintained”.</p> <p>In Article 9C(6)(c) the words “or boards by which any such school is maintained”.</p> <p>In Article 10(1) the words “under its management”.</p> <p>In Article 14(2)(i) and (ii) the words “for the area in which the school is, or is to be, situated”.</p> <p>In Article 16(1) and (2) the words “for the area in which the school is situated”.</p> <p>Article 17(7).</p> <p>In Article 22(1) and (2) the words “which controls the school”.</p> <p>In Article 37(1) the words “for its area” and “any other board or”.</p> <p>In Article 37(2) the words “other boards and by”.</p> <p>Article 37(4).</p> <p>In Article 46A(4)(a) the words “for the area in which he resides”.</p>

In Article 46A(9) the definition of “relevant board”.

In Article 49(5)(a) the words “responsible for the management of the school”.

In Article 49(6)(a) the words “situated in the area of the board”.

In Article 49(12) the words “in like manner as it applies to members of a board”.

In Article 53(1) the words “and is ordinarily resident within its area”.

In Article 54 the words “and is ordinarily resident within its area”.

In Article 58(3) the words “in its area”.

In Article 69(5) (a) and (e) the words “by which they are employed”.

In Article 73(2) the words “in its area”.

In Article 79(2) the words “in like manner as it applies to members of a board”.

Article 79(3).

Articles 80 to 86.

In Article 88(1) the words “which manages the controlled school or, as the case may be, is responsible for the maintenance of the maintained school”.

Article 90.

Article 91A.

Articles 92 and 93.

In Article 94(5) the words “in the area of the board making the bye-law”.

In Article 94(6) the words “by which the bye-laws were made”.

Articles 95 to 99.

In Article 106(4)(a) the words “in paragraph (5)” and the words from “and the reference” to the end.

In Article 107(2) the words “by virtue of the said Article 96(1)”.

Article 112.

In Article 119A(2) the definition of “responsible board”.

Article 130.

Article 131(a).

Schedules 1 to 3.

In Schedule 4 in paragraph 2(2)(c) the words “responsible for the management of the school or schools”.

In Schedule 4, in paragraphs 3(2)(c), 4(a) and 5(1)(b) and (3)(b) the words “responsible for the management of the school”.

In Schedule 4, in paragraph 6(5) the words “in the area of the board as a whole”.

In Schedule 5, in paragraph 7(1) the definition of “board”.

In Schedule 6, in paragraph 1(2) the words from “for the area in which the school is situated” to the end.

In Schedule 13, in paragraph 1(1) the words “in its area”.

In Schedule 13, in paragraph 5(3) the words “who is for the time being in its area”.

Schedule 15.

In Part 2 of Schedule 16, in paragraph 1 the words “or the board”.

The Disabled Persons  
(Northern Ireland) Act  
1989 (c. 10)

In section 5(9) the definition of “the responsible education and library board” and the word “and” immediately before it.

In section 6(1)(a) the words “for whom that education and library board is responsible for the purposes of the Education Order and” and the words “(whether it was given to that education and library board or not)”.

In section 6(1)(b) the words “for whom that education and library board was so responsible immediately before they ceased to receive full time education at school and”.

The Education Reform (Northern Ireland) Order 1989 (NI 10)	<p>In Article 79(1) the words “for the area in which the school is situated”.</p> <p>In Article 80(2), (4) and (6) the words “for the area in which the school is situated”.</p> <p>In Article 83 (1)(a) the words “which is to manage the school”.</p> <p>In Article 83(4) the words “by which the controlled school mentioned in that subparagraph was managed”.</p> <p>In Article 87(3) the definition of “relevant board”.</p> <p>In Article 92(5) the words “making the proposal”.</p> <p>Article 99(1)(c).</p> <p>In Article 135(2) and (3) the words “who is ordinarily resident in its area” and “to another board or”.</p> <p>In Article 151(5)(a) and (e) the words “by which they are employed”.</p> <p>Article 160.</p>
The Education and Libraries (Northern Ireland) Order 1993 (NI 12)	<p>Part 3.</p> <p>Article 44.</p>
The Children (Northern Ireland) Order 1995 (NI 2)	<p>Article 47(4).</p> <p>Article 55(6).</p> <p>Article 138(2) and (7).</p> <p>Article 139(3), (4) and (5).</p> <p>Article 143(2).</p>
The Education (Northern Ireland) Order 1996 (NI 1)	<p>In Article 6(2)(a) the words “in its area”.</p> <p>Article 6(2)(b).</p> <p>In Article 9(2)(a) the words “for the area in which the school is situated”.</p> <p>In Article 10(1) the words “in its area”.</p> <p>In Article 13(3) the words “he is in the area of the board and”.</p> <p>In Article 21(1) the words “in its area”.</p> <p>In Articles 21A and 21B the words “in its area” wherever occurring.</p>

	<p>In Article 42(1) the words “in its area”.</p> <p>Article 42(5)(c).</p> <p>In Schedule 2, paragraph 6(3)(b) and the word “and” immediately before it.</p> <p>In Schedule 2, paragraph 10(2).</p> <p>In Schedule 4, in paragraph 3(2)(b) the words “responsible for the management of the school”.</p> <p>In Schedule 4, in paragraph 4(3)(c) the words “responsible for the management of the schools in question”.</p>
The Education (Northern Ireland) Order 1997 (NI 5)	<p>In Article 9(1) the words “resident in the area of the board”.</p> <p>Article 9(3).</p> <p>In Articles 11(7)(b) and 12(7)(b) the words “for the area in which the school is situated”.</p> <p>In Article 15(1) the words “situated in the area of the board”.</p> <p>In Article 16(2)(a) the words “responsible for the management of the school”.</p> <p>In Article 17(1)(b) and (4) the words “in its area”.</p> <p>In Article 17(5) the words “situated in the area of the board”.</p> <p>In Article 25(1) in the Table the words “by which the school is managed”.</p>
The Further Education (Northern Ireland) Order 1997 (NI 15)	<p>Article 2(3) and (8).</p>
The Education (Northern Ireland) Order 1998 (NI 13)	<p>In Article 3(2)(b)(ii) the words “for the area in which the school is situated”.</p> <p>In Article 6(2)(a), (5)(b) and (6)(b) the words “situated in its area”.</p> <p>Article 6(5)(a).</p> <p>In Article 13(2)(b)(i) the words “for the area in which the school is situated”.</p> <p>In Article 14(4)(b) the words “for the area in which the school is situated”.</p> <p>In Article 17(1) the words “resident in the area of</p>

the board”.

In Article 23(1) the words “resident in the area of the board”.

Article 23(3).

In Article 25(8) the words “for the area in which the school is situated”.

In Article 27(1) the words “situated in the area of the board”.

In Article 29(8)(b) the words “for the area in which the school is situated”.

In Article 31(1) the words “situated in the area of the board”.

In Article 33(1)(b) and (4) the words “in its area”.

In Article 33(5) the words “situated in the area of the board”.

In Article 41 in paragraphs (a) and (d) of the definition of “employing authority” the words “by which they are employed”.

In Article 61(1) and (3) the words “situated in its area”.

In Article 62(13) the definition of “relevant board”.

In Article 64(13) the definition of “relevant board”.

In Article 67A(3) the definition of “the board”.

In Article 70(7) the words “situated in its area”.

In Article 83(2)(b) the words “is resident in its area and”.

In Article 87(3) the words “in its area”.

Article 87(6)(c).

In Schedule 2, paragraph 7(6).

In Schedule 2, in paragraph 10(1)(a) the words “responsible for the management of the school”.

In Schedule 2, in paragraph 10(1)(c) and (d) the words “by which the school is maintained”.

In Schedule 4, in paragraph 1(8) the words “or by Article 20 of the Education and Libraries (Northern Ireland) Order 1993.”.

The Education and Libraries (Northern Ireland) Order 2003 (NI 12)	<p>In Article 3(6)(a) the words “in its area”.</p> <p>In Article 7(1)(a) the words “in its area”.</p> <p>In Article 8(2) the definition of “the board”.</p> <p>Part 3.</p> <p>In Article 18(1)(c) the words “for the area in which the school is situated”.</p> <p>In Article 22(1) the words “in its area”.</p> <p>Article 29(3) to (6).</p> <p>Articles 30 and 31.</p> <p>Article 37(2)(f), (6) and (8)(a).</p> <p>Article 38.</p> <p>In Schedule 2, paragraphs 1 to 4.</p>
The Special Educational Needs and Disability (Northern Ireland) Order 2005 (NI 6)	<p>In Article 13(2) the word “board”.</p> <p>In Article 14(5)(a) the words “for the area in which the school is situated”.</p>
The Education (Northern Ireland) Order 2006 (NI 11)	<p>In Article 3(1) the definition of “relevant board”.</p> <p>In Article 23(1) the words “in its area”.</p> <p>In Article 23(2)(d) the word “board” in the second place where it occurs.</p> <p>In Article 25(1) the words “in its area”.</p> <p>In Article 25(11) the words “as it applies to members of a board”.</p> <p>Article 31(6).</p>

### Definition of “Substantive”

#### 1 Introduction

1.1 In an environment where many employees have been moved around the system over recent years and may now be working in very different roles or for different organisations, an explanation of ‘substantive’ is required to avoid confusion and to ensure fair and equitable treatment of employees through the transition to and restructuring process in the EA. This is specifically about defining an individual’s substantive post at the point of transfer for the purposes of implementing the Staff Transfer Scheme and providing staff with protection of terms and conditions of employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”) and protection of their rights to acquire pension benefits.

1.2 The guidance will not be able to cover every situation affecting individual employees and HR advisers will need to assess the appropriate course of action on a case-by-case basis, taking legal advice as necessary. Therefore this appendix has been provided as guidance to assist with interpretation and consistency.

#### 2 The explanation of Substantive

2.1 An individual’s “substantive employer” is their originating employer i.e. the organisation with which they have entered into their substantive or only contract of employment and their “substantive post” is the job specified in that contract of employment. The contract must denote a post that no other

employee has a right of return to. It must be a post which he/she can vacate and to which a successor can be appointed because the post still exists.

- 2.2 Substantive employers should review fixed term, acting up/temporary promotion and secondments, in accordance with Vacancy Control Policy, to ensure they are addressed where possible, before the date of transfer.

### **3 Seconded Employees**

- 3.1 In the majority of cases the secondee's originating (substantive) employer will have ceased to exist upon the creation of the EA. In such circumstances the secondee will transfer to the EA on the basis of their substantive contractual employment in accordance with this Scheme.

- 3.2 Following the staff transfer to the EA secondees will continue with their secondment where there is a continuing need for the work to be done and this temporary arrangement will be recorded in the staff transfer data provided to the EA by the host employer.

### **4 Acting Up / Temporary Promotions**

- 4.1 Employees acting up/on temporary promotion will transfer to the EA on the basis of their substantive contractual employment, in accordance with this Scheme.

- 4.2 Following the staff transfer to the EA such employees will continue with their acting up/temporary promotion where there is a continuing need for the work to be done and this temporary arrangement will be recorded in the staff transfer data provided to the EA by the host employer.

## **5 Fixed Term Employees**

- 5.1 Fixed term employees are those employees who do not have a permanent contract of employment to revert to.
- 5.2 Substantive employers need to establish if their employees are genuinely engaged on a fixed term basis. In accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 those employees who have been continually re-engaged through successive fixed term contracts for a period of four or more years shall be permanent, unless the employment on a fixed term contract is justified on objective grounds, for example where another employee has a contractual right of return to the post.
- 5.3 The substantive post for a fixed term employee is the post in which they are currently engaged at the date of transfer. Fixed term employees will transfer to the EA and be protected, in accordance with the TUPE Regulations, on the terms and conditions of employment relating to the substantive post.
- 5.4 Following the transfer, the EA will review all fixed term contracts in accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, to determine:
- (i) whether there is a need for the fixed term contract to continue;
  - (ii) whether the contract can be permanent in accordance with Vacancy Control Policy;
- 5.5 Fixed term employees do not have a right to be given a permanent contract by virtue of the transfer. The EA will obtain legal advice, where required, on any fixed term contract expiries or renewals that need to be considered.

## **6 Transition Roles**

- 6.1 A variety of roles and working arrangements have been agreed with individuals to support the transition to the EA. Whilst it may not be possible or necessarily helpful to try to deal with every different scenario for the staff transfer, the advice provided above should help employers to assess their particular arrangements to determine whether an individual's post should be counted as substantive or not. Employers are advised to take their own legal advice on their own circumstances, as appropriate.