



Regulation of Care (Scotland) Act 2001

2001 asp 8

PART 1

THE COMMISSION AND CARE SERVICES

Transfer of staff

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- (1) The Scottish Ministers shall by order make a scheme for the transfer to the Commission of persons who are employed, under a contract of employment with a local authority or Health Board, on work which would have continued but for the provisions of this Part.
- (2) Such a scheme may apply to all, or any description of, such employees or to any individual such employee.
- (3) Such a scheme may be made only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under it.
- (4) The contract of employment of an employee transferred under such a scheme—
 - (a) is not terminated by the transfer; and
 - (b) has effect from the date of transfer as if originally made between the employee and the Commission.
- (5) Without prejudice to the generality of subsection (4) above, where an employee is transferred under such a scheme—
 - (a) all the rights, powers, duties and liabilities of the transferor under or in connection with the employee's contract of employment are by virtue of this subsection transferred to the Commission on the date of transfer; and
 - (b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by, or in relation to, the Commission.
- (6) Subsections (4) and (5) above do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if the employee objects to the transfer and so informs the transferor or the Commission.

Status: This is the original version (as it was originally enacted).

- (7) Where an employee objects as mentioned in subsection (6) above, the contract of employment with the transferor is terminated immediately before the date of transfer; but the employee is not to be treated, for any purposes, as having been dismissed by the transferor.
- (8) This section does not prejudice any right of an employee to terminate the contract of employment if a substantial detrimental change in the employee's working conditions is made; but no right to terminate that contract arises by reason only that, by virtue of this section, the identity of the employer changes unless it is shown that, in all the circumstances, the change is both—
- (a) significant; and
 - (b) detrimental,
- to the employee.
- (9) In this section—
- “date of transfer” means the date of transfer determined under the scheme in relation to the employee;
 - “Health Board” means a Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29); and
 - “transferor” means the local authority, or as the case may be the Health Board, from whom the employee is or would be transferred under the scheme.