

OFFENDER MANAGEMENT ACT 2007

EXPLANATORY NOTES

COMMENTARY ON THE SCHEDULES

Schedule 2: Transfers of property etc and staff in connection with probation services arrangements

174. *Schedule 2* covers certain matters relating to the abolition of local probation boards or the making or termination of any arrangements for the delivery of probation services.
175. *Paragraph 1* states that transfer schemes may be made in connection with this and defines “property transfer scheme”, “property”, “relevant person” and “staff transfer scheme”.
176. *Paragraphs 2 to 4* deal with property transfer schemes.
177. *Paragraph 2* enables the Secretary of State to make a property transfer scheme to transfer to the Secretary of State the property and liabilities of a local probation board, or a relevant person, or to transfer to a relevant person any property or liabilities of the Secretary of State.
178. *Paragraph 3* states that a property transfer scheme takes precedence over any other provisions which might restrict transfers. Such compensation for loss of rights or reverter is to be paid by the transferor and/or transferee as appropriate, and the scheme may include a mechanism for resolving disputes over compensation.
179. *Paragraph 4* states that any ongoing proceedings or activities relating to the transferor are to be treated as if relating to the transferee when the transfer has taken place.
180. *Paragraphs 5 to 10* deal with staff transfer schemes. The policy intention is that staff who transfer between providers of probation services should have their terms and conditions protected by law. In many cases the Transfer of Undertakings (Protection of Employment) Regulations 2006 will provide the appropriate protection. But, in cases where TUPE does not apply, these paragraphs enable the Secretary of State to make equivalent provision.
181. *Paragraph 5* enables the Secretary of State to make a staff transfer scheme to transfer:
- employees of a local probation board to a relevant person;
 - employees of one relevant person to another; or
 - transfers from providers to the civil service and vice versa.
- A scheme may not be made unless any directions about consultation given by the Secretary of State have been complied with.
182. *Paragraph 6* deals with transfers between relevant persons or between probation boards and relevant persons and it provides that, when an employee is transferred under the scheme, his continuity of employment is maintained and the rights, duties and liabilities of his previous employer are transferred to the new one. If an employee does not wish

*These notes refer to the Offender Management Act 2007
(c.21) which received Royal Assent on 26 July 2007*

to transfer to the new employer, his contract is terminated and he is not to be treated as having been dismissed for the purposes of the Employment Rights Act 1996.

183. *Paragraph 7* makes similar provision in relation to employees of probation boards who transfer to the civil service.
184. *Paragraph 8* makes similar provision in relation to civil servants who transfer to the employment of a probation trust or other provider.
185. *Paragraph 9* makes clear that the Schedule does not prejudice an employee's right to terminate his employment if his working conditions are changed substantially to his detriment.
186. *Paragraph 10* states that, if a contract of employment with either a board or a trust is not transferred to a new employer, the contract is terminated and the employee is treated as having been dismissed for the purposes of the Employment Rights Act 1996.