

*DE – 17 November 2009 – Version 5*

**REVIEW OF PUBLIC ADMINISTRATION**

**DEPARTMENT OF EDUCATION (DE)  
STAFF TRANSFER ARRANGEMENTS**

**COMMUNICATION TO STAFF**

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## **DE STAFF TRANSFER ARRANGEMENTS**

### **Overview**

This communication to staff details the arrangements under which NI Civil Service staff from the DE will transfer either by a time-limited temporary transfer or a TUPE transfer to the Education and Skills Authority (ESA).

This document therefore incorporates 2 sections as follows:

**Section 1 - Arrangements for Temporary Transfer of Staff**

**Section 2 - Staff Transfer Scheme - (TUPE Transfer)**

### **Background**

With effect from 1 January 2010 the ESA will be established and operational functions currently undertaken by the DE will be transferred to the ESA. To ensure continuity of service to the public, the majority of staff undertaking these functions at 31 December 2009 will transfer either on a temporary or TUPE transfer to the ESA.

Staff will be asked to complete a Transfer Options Form (Annex 1) by 4 December 2009 to indicate their intentions for 1 January 2010 to either:

- temporary transfer; or
- TUPE transfer

Staff who opt to temporary transfer will be subject to the arrangements as detailed in Section 1: staff will have the opportunity during the temporary transfer period to opt to switch to a TUPE transfer.

Staff who opt to TUPE transfer will be subject to the arrangements as detailed in Section 2.

**REVIEW OF PUBLIC ADMINISTRATION**

**SECTION 1**

**DE**

**ARRANGEMENTS FOR TEMPORARY  
TRANSFER**

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## **Arrangements for Temporary Transfer of Staff from the NICS**

### **1. Scope**

The arrangements that will apply to staff who will transfer from the DE to the ESA on a temporary basis from 1 January 2010 have been developed in agreement with DE, Central Personnel Group, DFP, the NICS RPA Central Committee and DEs Departmental Trade Union Side (TUS).

### **2. Introduction**

- 2.1 In line with the aim to provide flexibility and choice to staff, Ministers have approved arrangements being made to enable those NI Civil Service staff within DE, undertaking functions being transferred to ESA, to transfer temporarily for a period of up to 3 years to the ESA.
- 2.2 This section details the arrangements which will apply to staff who opt to transfer on a temporary basis with effect from 1 January 2010.

### **2 Identification of Staff**

- 3.1 Details of staff transferring from the Department on a temporary or a TUPE transfer to the ESA are listed at Annex 2.
- 3.2 DE envisages that the ESA may restructure their internal arrangements to meet future service requirements. Where proposed changes affect the current posts of staff on temporary transfer the ESA will consult with individuals affected and their trade union representatives. Where redeployment of any staff on temporary transfer is required to an alternative post within the ESA, this will be undertaken in line with normal NI Civil Service arrangements and contractual terms and conditions of employment.

### **4. Location**

- 4.1 Staff currently based in Rathgael House who temporary transfer from DE on 1 January 2010 to the ESA will be based in their current location.
- 4.2 Staff currently based in Waterside House who temporary transfer from DE on 1 January 2010 to the ESA will be based in their current location.

## **5. Temporary Transfer Arrangements**

5.1 Staff in all grades can choose to temporary transfer at 1 January 2010 for a period of up to three years. While on temporary transfer staff will continue with their NICS pay, grading and other terms and conditions of service. Staff will also continue to be subject to all provisions of the NICS Handbook/NICS Pay and Conditions of Service Code (as appropriate) including those sections governing conduct and discipline.

5.2 Staff who opt to temporary transfer at 1 January 2010 will be given the opportunity to formally review their position after:

- 12 months service i.e. 1 January 2011; and
- 24 months service i.e. 1 January 2012,

and asked to confirm their intentions on whether they wish to remain on temporary transfer or to make the decision to TUPE transfer with immediate effect to the new organisation with the protections of the TUPE Regulations as detailed in Section 2. Staff can, also, request a TUPE transfer at any other time within the three year period in accordance with the Staff Transfer Scheme as detailed in section 2.

5.3 Officers who opt for the temporary transfer arrangements will be eligible to be considered available for redeployment to suitable posts in the NICS and can be redeployed at any time from 1 January 2010 up to 31 December 2012 (a maximum of 3 years). This will be done in consultation with the ESA, DE, the individual and NICS Workforce Planning.

5.4 During the period of the temporary transfer officers will be considered for vacancies at the appropriate grade level that become available within the NICS. DE will be responsible for ensuring that arrangements are in place for officers to receive details of service wide promotion boards, trawls, interest circulars, etc issued within the NICS

5.5 In seeking to identify a suitable post for officers returning, the Department will take into account factors such as location, previous experience and personal preference. No guarantees can be given that personal preferences can be accommodated, however consideration will be given to any particular difficulties or circumstances which officers may have.

5.6 The DE in conjunction with DFP Central Personnel Group undertakes to do everything practical to secure redeployment back to the NICS within the three year period for those staff who remain on temporary transfer. With effect from 1 February 2010, the Department will review progress on a monthly basis and will provide a position report to Trade

Union Side on a quarterly basis. In addition, at 1 July 2012 there will be a formal assessment, in consultation with Trade Union Side, with a view to informing staff of the situation and the likelihood of securing a post back within the NICS before the 1 January 2013.

- 5.7 If the outcome of the formal assessment under paragraph 5.6 is that the NICS is unable to offer an officer a return posting within the NICS, or the officer has not accepted an offer of a post in the NICS prior to the 1 January 2013, then the officer will be permanently transferred to the ESA with the protections of the TUPE Regulations and will be subject to the provisions of the Staff Transfer Scheme (TUPE Transfers) as detailed at section 2, including the arrangements of the RPA Independent Third Party Dispute Resolution. After this staff will only be able to join the NICS through open external competitions.
- 5.8 During the three year period officers will be expected to accept redeployment when a suitable vacancy in the NICS is offered. Officers who refuse to accept a post offered, without being able to provide a reason acceptable to DE, will be liable to be transferred to the ESA under the terms of the Staff Transfer Scheme set out in section 2.
- 5.9 Where an officer is to be TUPE transferred to the ESA under paragraphs 5.7 or 5.8 above he or she will have a right to appeal in line with the normal NICS Grievance and Appeal Procedures.

## **6. HR ARRANGMENTS FOR STAFF ON TEMPORARY TRANSFER FROM DE TO THE ESA**

### **6.1 Applying for Posts/Promotion:**

- 6.1.1 Staff on temporary transfer listed on Departmental/Service-wide Promotion/Trawl/Interest Circular/ICT Stage 1 lists will remain eligible to be placed back in the NICS up to and including 31 December 2012.
- 6.1.2 Staff who accept a return posting to the NICS from a promotion/Trawl/Interest Circular/ICT Stage 2 competition will no longer be considered eligible to TUPE transfer to the ESA under the terms of the Staff Transfer Scheme.
- 6.1.3 Staff will remain eligible to apply (where appropriate) for NICS Promotion Boards/Trawls/Interest Circulars/ICT pool competitions. DE will arrange for details of competitions/circulars and other relevant information to be forwarded to staff throughout the period of the temporary transfer.
- 6.1.4 Staff will remain eligible to apply for Lateral Movement in accordance with the NICS procedures during the period of the temporary transfer.

6.1.5 Staff will be eligible to apply for posts in the ESA that are advertised in accordance with the Public Service Commission (PSC) 4<sup>th</sup> Guiding Principle on filling new or substantively new posts in new organisations being created as a result of the RPA (The 4<sup>th</sup> guiding principle is available from the PSC website <http://www.pscni.gov.uk>). If successful in a competition within the ESA, staff will cease to be on temporary transfer from the NICS and will immediately before taking up the post be deemed to have TUPE transferred. They will take up the post on the terms and conditions of the post as advertised. Staff may, however, retain their Principal Civil Service Pension Scheme (NI) [PCSPS(NI)] membership as long as the ESA is already listed under the Superannuation Order (NI) 1972 and there is no break in service.

## **6.2 Leave:**

6.2.1 Annual leave entitlement will continue to be in accordance with the NICS terms and conditions, however any annual leave taken during the period of the temporary transfer must be agreed by the ESA. The ESA will notify the DE of any leave taken by staff throughout the period of the temporary transfer arrangements.

6.2.2 The ESA will consider any request for special leave during the period of the temporary transfer arrangements. The granting of special leave will be in accordance with NICS procedures.

## **6.3 Sick Absence:**

6.3.1 Staff on temporary transfer to the ESA who are unable to attend work due to sickness must contact the line manager within the ESA. The ESA must forward self-certification forms signed by the ESA manager and any medical certificates to the DE Departmental Human Resource Branch in accordance with NICS procedures.

6.3.2 The ESA will notify the DE at the commencement and end of any periods of sick absence during the period of the temporary transfer.

6.3.3 Staff will remain subject to DE sickness absence procedures and sick pay scheme and will attend any medical examinations required by the DE.

6.3.4 DE will retain responsibility for any statutory sick pay, statutory maternity pay (if relevant) or any statutory sums payable to the officer while on temporary transfer.

## **6.4 Conduct:**

6.4.1 Staff will remain subject to the NICS rules governing conduct and behaviour.

- 6.4.2 Staff will be required to abide by the ESA organisations working practices and financial regulations.
- 6.4.3 The DE is responsible for any formal/informal action against an officer in relation to misconduct or inefficiency. The ESA will inform the DE of any instances of alleged misconduct.
- 6.4.4 Staff will continue to have the right to invoke the NICS grievance procedures for the period of the temporary transfer.

## **6.5 Performance:**

- 6.5.1 Staff will be required to carry out diligently all reasonable instructions, given by the ESA in connection with their work. The ESA line manager will manage the staff on temporary transfer and submit a report on individual officer's performance to DE, in accordance with the NICS appraisal procedures. In line with NICS requirements ESA line managers will require to be trained in NICS appraisal procedures.

## **6.6 Staff Development:**

- 6.6.1 In addition to business-specific or other training provided by the ESA, staff will continue to have access to the range of core training provided by DE for the period of the temporary transfer arrangements.

## **6.7 Pay and Expenses:**

- 6.7.1 The DE will continue to be responsible for the payment of staff salaries while on temporary transfer in accordance with the pay, grading, allowances and other terms and conditions applicable to NICS staff at all times.
- 6.7.2 Travel expenses, overtime claims, and other allowances arising from officer's employments with the ESA and incurred on their behalf will be paid by the DE in accordance with normal NICS policies.
- 6.7.3 All amounts for salaries and expenses will be reclaimed from the ESA.
- 6.7.4 No payments can be made to staff on temporary transfer by the ESA.

## **6.8 Alternative Working Patterns:**

- 6.8.1 Staff on an alternative working pattern i.e part-time or reduced hours or job-sharing, will retain this pattern on transfer to the ESA. Applications for alternative working arrangements during the period of the temporary transfer should be made through line management, to the HR function in the ESA and subsequently notified to the DE.

**REVIEW OF PUBLIC ADMINISTRATION**

**SECTION 2**

**DE**

**STAFF TRANSFER SCHEME**

**TUPE Transfers**

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## **STAFF TRANSFER SCHEME – TUPE Transfer**

### **1. Scope**

This Staff Transfer Scheme has been developed in accordance with the Education Bill and the other legislative requirements arising from the 3<sup>rd</sup> Guiding Principle, issued by the Public Service Commission (PSC) and accepted by Government. It will be updated as necessary in line with the Executive's Code of Practice on Staff Transfers for the implementation of the RPA and with any relevant legislation and any further principles issued by the PSC. The Scheme has been developed by DE in consultation with Central Personnel Group, DFP, the NICS RPA Central Committee and DEs Departmental Trade Union Side (TUS).

### **2. Introduction**

- 2.1 The contract of employment of transferred employees from the DE to the ESA will be protected in accordance with current employment and equality legislation such as the Transfer of Undertakings (TUPE)\* and the Acquired Rights Directive on which TUPE is based, Schedule 5 of the Education Bill and the provisions of the PSC's 3<sup>rd</sup> Guiding Principle, addendum and recommendations as accepted by Government.
- 2.2 The DE envisages that the ESA may restructure their internal arrangements. Where changes are proposed to the organisation roles and responsibilities to meet service requirements which involve changes to current posts, the ESA will consult with individuals and their trade union representatives about such changes. In recognition of the importance of keeping valuable skills and experience in the ESA, it is envisaged that a balance of vacancy controls, suitable alternative employment, early retirements and voluntary severance arrangements will be sufficient to effect restructuring.

### **3. Staff Transfer Scheme – TUPE Transfer**

- 3.1 This Staff Transfer Scheme includes the elements identified in the 3<sup>rd</sup> Guiding Principle issued by the PSC and accepted by Government and RPA Code of Practice on Staff Transfers.  
These include:

- Identification of staff transferring
- Date of transfer, post, grade and location
- Contractual terms and conditions
- Pension arrangements

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\* The transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006 are designed to protect the rights of employees when a transfer occurs from one employer to another.

- Disputes resolution arrangements
- Provision for the payment of compensation for actual loss
- Recognition of Trades Unions

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

Details of staff transferring from the Department to the ESA either by temporary or TUPE transfer at 1 January 2010 are listed at Annex 2 attached to this document. Staff may be identified by location, business unit or post as appropriate. The Annex will be updated/available not less than the statutory requirement of 14 days prior to the day of transfer. Any changes subsequent to the provision of this information, which occur prior to the effective date of transfer on 1 January 2010 will be notified. All other necessary information being transferred under TUPE arrangements, such as liabilities arising from employment contracts, will transfer at this time.

#### **5. Date of Transfer, post and location**

- 5.1 The effective date of transfer is 1 January 2010. For those staff who TUPE transfer to the ESA during the three year period to 31 December 2012, it will be considered that the TUPE transfer took effect as of 1 January 2010 in accord with the terms and provisions of this Staff Transfer Scheme.
- 5.2 Staff currently based in Rathgael House transferring from DE on 1 January 2010 to the ESA will be based in their current location.
- 5.3 Staff currently based in Waterside House transferring from DE on 1 January 2010 to the ESA will be based in their current location.

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

- 6.3.1 The ESA will assume responsibility for the contracts of employment for those staff who will TUPE transfer, in accordance with Section 22 (4) and Schedule 5 of the Education Bill and the TUPE Regulations.
- 6.3.2 Continuity of service is protected. Therefore, the contract of employment of each individual has effect from the date recognised by DE as if originally made between the individual and the ESA. The NICS contractual terms and conditions of transferred staff will be protected.
- 6.3.3 The ESA will assume responsibility for all the liabilities of the DE arising from the contracts of employment for those transferred staff except for criminal liabilities; this includes all liabilities in respect of equal pay claims.

## **7. Pension Arrangements**

- 7.1 In complying with paragraph 2.(7)(b) of Schedule 5 of the Education Bill, to provide the employee with pension benefits that are the same as or (taken as a whole) no less favourable than those before the transfer, the Executive has agreed that for all staff transferring under TUPE Regulations, who are members of the Principal Civil Service Pension Scheme (Northern Ireland) (PCSPS (NI)), will be allowed to remain as members of that scheme.
- 7.2 Staff opting to remain in the PCSPS (NI) will also be allowed to remain in the PCSPS(NI) in the event that they obtain an alternative post or promotion in ESA, providing that ESA is already mentioned in the Superannuation (Northern Ireland) Order 1972 and there has been no break in service.

## **8. Disputes Resolution**

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

- 8.1.1 The new employing body will operate an internal dispute resolution procedure (internal grievance procedure) which complies with the Employment (NI) Order 2003 and the RPA Code of Practice on Staff Transfers.

Staff will have access to these internal arrangements if they have a grievance about

- non-adherence to this staff transfer scheme associated with the transfer of functions;
- a change in workplace location resulting from the implementation of Review of Public Administration decisions;
- designated employer.

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

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

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

- non-adherence to this staff transfer scheme associated with the transfer of functions;
- a change in workplace location resulting from the implementation of Review of Public Administration decisions;
- designated employer.

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

- 8.1.3 Staff will be advised that they are required to utilize and exhaust the internal grievance procedure before turning to the RPA Independent Third Party Dispute Resolution Procedure.
- 8.1.4 The new employing body will advise those staff that accessing the RPA third party dispute resolution procedure does not affect their statutory right to lodge a claim with the Office of the Industrial Tribunal and Fair Employment Tribunals.

## **8.2 Disputes about pension provision**

- 8.2.1 Staff who are members of a pension scheme will have access to an internal dispute resolution procedure provided by their pension scheme by virtue of the Pensions (Northern Ireland) Order 1995.
- 8.2.2 Disputes in respect of maladministration, if unresolved by the internal dispute resolution procedure, in line with current statutory provisions may be referred to third party dispute resolution in the form of The Pension Advisory Service (TPAS). If after the Internal Dispute Resolution stages 1 and 2 the dispute remains unresolved the member may request the Pensions Ombudsman to investigate. This includes claims of maladministration arising as a result of RPA.
- 8.2.3 Staff accessing the internal dispute resolution procedure will have a right of appeal under the RPA Independent Third Party Dispute Resolution Procedure, based upon the principles and core procedures of the LRA Arbitration Scheme for resolution of unfair dismissal disputes. The RPA Third Party Dispute Resolution Procedure does not cover claims in respect of maladministration that fall within the remit of the Pensions Advisory Service and the Pensions Ombudsman. Further details of this procedure may be found on [www.pensionservice.gov.uk](http://www.pensionservice.gov.uk) or <http://www.pensions-ombudsman.org.uk>

## **Time-limit for RPA Disputes**

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

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

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

## **10 Joint Employer and trade union arrangements**

- 10.1 The ESA will recognise any collective agreements made by (or on behalf of) those existing employers in relation to any transferring staff and which are in force immediately before the transfer in line with TUPE.
- 10.2 In line with the PSC Guiding Principles the ESA will ensure appropriate joint employer/trade union mechanisms are established to transfer all the negotiating and consultation rights of the appropriate trade unions in respect of transferred staff.

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**TRANSFER OPTIONS FORM**  
**Statement of Intention**

**Name:** \_\_\_\_\_

**Branch:** \_\_\_\_\_

**Payroll  
Number:** \_\_\_\_\_

**Grade:** \_\_\_\_\_ **Acting up Grade:** \_\_\_\_\_  
**(If applicable)**

**Status:** \_\_\_\_\_  
**(Full-time (F/T) or  
Part-time (P/T))**

**Please delete as appropriate:**

- (i) I wish to be subject to a **temporary transfer arrangement** with effect from 1 January 2010 in line with the provisions of Section 1 of this document. I have read and accept the conditions associated with this arrangement for my grade.
  
- (ii) I wish to **TUPE transfer** to the Education & Skills Authority with effect from 1 January 2010 in line with the provisions of Section 2 of this document.

**Signed:**

**Date:**

**Please print this document, sign and date it and forward the original copy by 4 December 2009 to Wendy McConnell, Organisation Design & Implementation Project, Department of Education, Rathgael House, Balloo Road, Bangor, Co Down, BT19 7PR.**

**STAFF TRANSFERRING FROM DE TO THE EDUCATION AND SKILLS AUTHORITY  
WITH EFFECT FROM 1 JANUARY 2010**

<b>BUSINESS AREA</b>	<b>LOCATION</b>	<b>GRADE</b>	<b>TEMP PROM GRADE (If Applicable)</b>	<b>POST HOLDER</b>	<b>JOB PATTERN</b>	<b>TUPE or Temporary Transfer</b>
<b>Total</b>						