

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/07 – JUNE 2014
Scheme of Transfer for Local Government Staff

LGRJF

facilitating local government reorganisation

COVER LETTER TO: CIRCULAR LGRJF/07 – JUNE 2014

To: Chief Executives of District Councils and arc21

Cc: DoE Local Government Division, Public Service Commission

Dear Colleague

1. The attached circular detailing the Scheme of Transfer for Local Government Staff has been agreed by the Local Government Reform Joint Forum (LGRJF) and is promulgated under the authority of the Local Government Staff Commission under Section 40(4) (f) of the Local Government Act (NI) 1972.
2. It is therefore issued by the Local Government Staff Commission as a statutory recommendation for adoption by councils from 04 June 2014.
3. In accordance with the Northern Ireland Executive's Guiding Principles all employing authorities should immediately engage with their local NIJC recognised Trade Unions to consider application and implementation arrangements.
4. Schemes of Transfer for Staff from Central Government and other bodies (NIHE) are being produced by the relevant Departments and bodies. The Joint Forum will ensure that there is consistency across all Transfer Schemes.
5. Further advice will be issued as necessary.
6. This Scheme covers those staff employed on 31 March 2015 who will transfer on 01 April 2015 to a new or different local government organisation as a result of the reform of Local Government and in accordance with the Local Government Act (Northern Ireland) 2014.

7. It includes provisions to:
- Enable the transfer of staff employed by the existing 26 councils (including Environmental Health and Building Control Group Committees) to the new 11 council structures.
 - Enable the transfer of staff employed in arc21, SWaMP 2008 and North West Region Waste Management Group, etc to the 11 new council structures.
 - Enable the transfer of staff employed by the Local Government Staff Commission.
8. In the event that interpretation matters arise or clarification is necessary contact should in the first instance be made with the Staff Commission, or the Joint Forum Side Leads.
9. An Awareness Seminar will be provided for councils in mid to late November in order that real examples can be considered and the usefulness of the procedure in practice can be examined.



A KERR
LGSC



B GRAHAM
LGRJF TUS Lead



R WILSON
LGRJF Employers' Lead

04 June 2014

LGRJF

facilitating local government reorganisation

CIRCULAR LGRJF/07 – June 2014

**SCHEME OF TRANSFER
FOR LOCAL GOVERNMENT STAFF**

CONTENTS

	Page
1. SCOPE	1
2. INTRODUCTION	1
3. SCHEME OF TRANSFER FOR STAFF	2
3.1 Identification of Staff	2
3.2 Date of Transfer, Substantive Post/Grade and Location	3
3.3 Contractual Terms and Conditions	3
3.4 Pension Provision	3
3.5 Dispute Resolution Arrangements	4
3.5.1 Disputes arising from the implementation of the RPA (excluding disputes about pension provision)	4
3.5.2 Time Limit for RPA Dispute Resolution Arrangements	5
3.5.3 Payment of Compensation for Actual Loss	5
3.6 Disputes about Pension Provision	5
3.7 Joint Employer and Trade Union Arrangements	5
APPENDICES	
Appendix 1 NI Executive's Third Guiding Principle and Associated Recommendations on Staff Transfers (RPA Circular 1/2007) as recommended by the Public Service Commission	6
Appendix 2 Addendum to the Third Guiding Principle - Selection of Staff for Transfer (RPA Circular 10/2007)	8
Appendix 3 Template Proforma	9
Appendix 4 Extract RPA Code of Practice: 3 rd Guiding Principle - Staff Transfers	10

1. SCOPE

This Scheme covers those staff employed on *31 March 2015* who will transfer on *01 April 2015* to a new or different local government organisation as a result of the reform of Local Government and in accordance with the Local Government Act 2014. It includes provisions to:

- Enable the transfer of staff employed by the existing 26 councils (including Environmental Health and Building Control Group Committees) to the new 11 council structures.
- Enable the transfer of staff employed in arc21, SWaMP 2008 and the North West Region Waste Management Group, etc to the new council structures.
- Enable the transfer of staff employed by the Local Government Staff Commission.

Schemes of Transfer for staff from Central Government and other bodies (e.g. NIHE, NICS) are being produced by the relevant Departments and bodies. However existing councils and new Councils should immediately make every effort to secure information on the implications of such transfer schemes, particularly the numbers and levels of staff that might transfer with the additional functions.

2. INTRODUCTION

This Scheme of Transfer for Local Government Staff is made under Part 16 section 122 of the Local Government Act (Northern Ireland) 2014 and Schedule 8 sets in place the arrangements for the transfer of staff to the 11 new council structures. Schedule 8 confirms that existing contractual terms and conditions will be protected in accordance with current employment legislation such as TUPE^[1] and the Acquired Rights Directive on which TUPE is based as detailed in paragraph 2 of that Schedule, and also the Northern Ireland Executive's Guiding Principles.

This Scheme has been developed in accordance with the following:

- the NI Executive's Third Guiding Principle and associated recommendations on Staff Transfers (RPA Circular 1/2007) as recommended by the Public Service Commission (PSC) (Copy attached at Appendix 1).
- the Addendum to the Third Guiding Principle - Selection of Staff for Transfer (RPA Circular 10/2007) as recommended by the PSC (Copy attached at Appendix 2). It confirms that existing contractual terms and conditions will be protected in accordance with current employment and equality legislation such as Transfer of Undertakings TUPE and the Acquired Rights Directive on which TUPE is based. These transfers are relevant under the terms of TUPE.
- the NI Executive's RPA Code of Practice: 3rd Guiding Principle - Staff Transfers.

It is likely that the new councils will need to restructure their internal arrangements and implement Local Government Reform Joint Forum (Joint Forum) agreements to deliver the agreed vision for local government and to meet service needs. Nonetheless it is envisaged that the majority of staff will retain their current jobs, however in a small number of situations staff may be redeployed to a different post and/or location.

TUPE^[1] 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. This Scheme of Transfer relies on the TUPE 2006 Regulations as applied at (insert date).

Some may also avail of voluntary early retirement under the provisions of the RPA Staff Severance Scheme (Circular LGRF/05, accessible at the Joint Forum section of the Local Government Staff Commission website - www.lgsc.org.uk).

Where changes are proposed to roles and responsibilities which impact on posts, individuals and their trade union representatives will be consulted. In recognition of the importance of retaining valuable skills and experience, it is anticipated that a balance of vacancy controls, suitable alternative employment, early retirements and voluntary severance schemes will be sufficient to effect restructuring.

Staff who undertake new roles and responsibilities as a result of the transfer to a new or different organisation will be provided with appropriate training and support.

3. SCHEME OF TRANSFER FOR STAFF

This Scheme fully reflects the NI Executive's Third Guiding Principle on Staff Transfers and the addendum as recommended by the PSC as well as the elements identified in the RPA Code of Practice on Staff Transfers. The contents are as follows:

- Identification of staff
- Date of transfer, substantive post/grade and location
- Contractual terms and conditions
- Pension arrangements
- Dispute resolution arrangements
- Provision of payment of compensation for actual loss
- Recognition of Trade Unions

Councils will adhere to the NI Executive Principles and associated recommendations as recommended by the Public Service Commission in relation to staff transfer matters.

Where staff consider they have experienced a material detriment to their existing terms and conditions they will have access to the internal grievance procedure and ultimately the RPA Independent Third Party Dispute Resolution as outlined in Section 3.5.

3.1 Identification of Staff

Details of staff transferring from the 26 councils, specified joint committee structures and Local Government Staff Commission to the new 11 council structures under the provisions of Schedule 10 of the Local Government (Northern Ireland) 2014) will be updated/available not less than 14 days prior to the date of transfer. A proforma template for completion is attached at Appendix 3.

Details of staff transferring will be provided to the NIJC recognised trade unions through the medium of summarised computerised records no later than 14 days before the date of transfer. Any changes subsequent to the provision of this information, which occur prior to the effective date of transfer on 01 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.

3.2 Date of Transfer, Substantive Post/Grade and Location

The effective date of transfer is 01 April 2015.

All staff will initially transfer in their current location and post in existing organisations except for those staff who have already been appointed to posts in the new council structure. The latter group will be covered by the arrangements pertaining to those posts.

It is envisaged that the majority of staff will remain in their current locations. However for some staff the initial location and post on transfer may be a temporary measure until decisions by the new organisations are made on the location of the new councils' headquarters and other services and full organisational design.

Longer term decisions on the location of councils' headquarters, etc will be subject to service requirements and will take account of relevant statutory and policy requirements including the NI Executive's Seventh Guiding Principle on Location and equality considerations in line with the requirements of the Northern Ireland Act 1998.

Where staff have disputes about initial or future location as a result of the reform of local government they will have access the internal grievance procedure and ultimately to the Independent Third Party Disputes Resolution Procedure as outlined in Section 3.5.

3.3 Contractual Terms and Conditions

The new councils and any joint committee structures will take over the existing contracts of employment, (including those on Fixed Term Contracts that go beyond 01 April 2015) in accordance with TUPE regulations, of all staff identified in the detailed transfer arrangements and transferred on 01 April 2015.

This Scheme of Transfer 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 new council or joint committee structure.

The new organisations will take over all rights and obligations arising from the contracts of employment of transferred staff except for criminal liabilities, this includes all liabilities in respect of equal pay claims.

3.4 Pension Provision

All existing staff who are members of the scheme administered by the Northern Ireland Local Government Officers Superannuation Committee (NILGOSC) will transfer as members of the Local Government Pension Scheme for Northern Ireland. Those who are not existing NILGOSC members will be eligible to join the Scheme.

The Local Government Pension Scheme for Northern Ireland will continue within the new councils.

3.5 Dispute Resolution Arrangements

3.5.1 Disputes arising from the implementation of the RPA (excluding disputes about pension provision)

The new councils will operate an internal dispute resolution procedure (internal grievance procedure which relates to the individual's terms and conditions of service) which complies with the Labour Relation Agency's Code of Practice on Disciplinary and Grievance Procedures and the RPA Code of Practice: 3rd Guiding Principle - Staff Transfers. Staff will have access to these internal arrangements if they have a grievance about:

- Non-adherence to this scheme of transfer associated with the transfer of functions
- A change in workplace location which has been made as a result of the implementation of the RPA decisions
- Designated employer.

Staff accessing the internal grievance procedure will have a right to be accompanied by a trade union representative recognised by the Northern Ireland Joint Council for Local Government Services (NIJC) or by a work colleague.

Staff accessing the internal grievance procedure will also be advised that they have a right to access the RPA Independent Third Party Dispute Resolution Procedure.

Where a council has an external, independent final stage of appeal built into its grievance procedure the RPA Independent Third Party Dispute Resolution Procedure will replace the existing external final stage.

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 scheme of transfer associated with the transfer of functions
- A change in workplace location which has been made as a result of the implementation of the RPA decisions
- Designated employer.

Staff accessing the RPA Independent Third Party Dispute Resolution Procedure will have a further right to be accompanied by a work colleague or trade union representative recognised by the NIJC. Appendix 4 details an extract from the RPA Code of Practice: 3rd Guiding Principle - Staff Transfers: RPA Independent Third Party Dispute Resolution: non pension matters.

Staff will be advised that they are expected to utilise and exhaust the internal stages of the internal grievance process before progressing to the RPA Independent Third Party Dispute Resolution.

Staff should be advised that accessing the RPA Independent Third Party Dispute Resolution Procedure does not affect their statutory right to lodge a claim with the Office of the Industrial Tribunals and Fair Employment Tribunal.

3.5.2 Time Limit for RPA Dispute Resolution Arrangements

In respect of non-pension related disputes staff will be made aware that any appeal lodged under the RPA Independent Third Party Dispute Resolution Procedure must be received by the Labour Relations Agency (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 circumstance of the case, that it was not reasonably practicable to lodge the appeal in time.

3.5.3 Payment of Compensation for Actual Loss

Where a complaint is upheld, the RPA Independent Third Party Dispute Resolution Panel will make a determination to the employing council 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.

The level of compensation, which will reflect actual loss incurred, will be determined by the Panel upon consideration of the individual facts of the particular case. In some cases compensation is already provided for in existing terms and conditions and these will be followed when they arise.

Any compensation determined by the RPA Independent Third Party Dispute Resolution Panel will be paid by the particular employer involved. The determination will not be subject to any further appeal through the RPA mechanism.

3.6 Disputes about Pension Provision

The Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996 require pension schemes to operate an internal dispute resolution procedure for pensions. For members of the Local Government Pension Scheme (NI) Scheme administered by NILGOSC further details about this procedure can be found at www.nilgosc.org.uk

Disputes in respect of maladministration, if unresolved by the internal dispute resolution procedure may be referred to the Pensions Advisory Service. If the dispute remains unresolved it can be further referred to the Pensions Ombudsman.

Staff should be made aware that the Pensions Ombudsman will normally only investigate a complaint within three years of the date the scheme members knew or reasonably ought to have known of it happening.

3.7 Joint Employer and Trade Union Arrangements

The new councils and any joint committee structures will recognise the existing NIJC recognised trade unions in respect of their transferred staff to the same extent and for the same purposes as before the transfer took place.

The new councils and any joint committee structures will establish appropriate employer and trade union arrangements to ensure the effective management of HR issues, as determined by the Joint Forum, following transfer in line with an associated recommendation, made in the Third Guiding Principle recommended by the PSC and accepted by Government.



THIRD GUIDING PRINCIPLE AND ASSOCIATED RECOMMENDATIONS

STAFF TRANSFERS

Introduction

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.

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."

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

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

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.

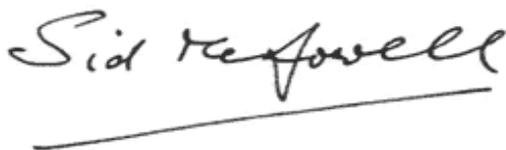
The setting up of appropriate joint employers and trade union arrangements to ensure the effective management of HR issues following transfer and which would complement the already established Central Joint Forum.

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

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.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is positioned above a horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
04 12 2006

RPA CIRCULAR 10/2007

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.

A handwritten signature in black ink that reads "Sid McDowell". The signature is written in a cursive style and is positioned above a solid horizontal line.

SID McDOWELL
CHAIRMAN
PUBLIC SERVICE COMMISSION
12 October 2007

Extract RPA Code of Practice on Staff Transfers

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. 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 of the implementation of RPA decisions are dealt with by a decision making authority.
- 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.

- 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.
- 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.
- 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.