

The Best Value Authorities Staff Transfers (Pensions) Direction 2007

1. The Secretary of State makes this direction under section 101 of the Local Government Act 2003¹.

Application

2. This direction applies to best value authorities in England and police authorities in Wales.

Definitions

3. In this direction:

(i) “best value authorities” are those listed in section 1 of the Local Government Act 1999²;

(ii) references to “authority” are to authorities to which this direction applies;

(iii) “The TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006³ or any regulations replacing those regulations, as from time to time amended;

(iv) any expression used which is also used in the TUPE regulations, has in this direction the meaning that it has in the TUPE regulations.

Pension protection for authority employees where the provision of services are contracted-out

4. Paragraph 5 applies where an authority -

(i) enters into a contract with a person for the provision of services, and

¹ 2003 c.26.

² 1999 c. 27

³ S.I.2006/246

(ii) those services are, in the period immediately before the contract is entered into, provided by the authority and carried out by employees of that authority.

5. The contract must provide –

(i) that the contractor shall secure pension protection for each transferring employee and

(ii) that the provision of pension protection is enforceable by the transferring employee.

6. For the purposes of paragraph 5 –

(i) “transferring employee” means an employee of the authority whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the contractor, a contract of employment with someone other than the authority; and

(ii) “pension protection” is secured for the transferring employee if after that change in employer he has, as an employee of his new employer, rights to acquire pension benefits and those rights –

(a) are the same as, or

(b) count as being broadly comparable to or better than,

those that he had, or had a right to acquire, as an employee of the authority.

Pension protection for an employee of the authority in respect of a subsequent contract for the provision of services

7. Paragraph 8 applies where-

(i) an authority has contracted with a person (“the first contractor”) for the provision of services,

(ii) the application of the TUPE regulations or the Transfer of Undertakings (Protection of Employment) Regulations 1981⁴ in relation to what was done for the purposes of carrying out the contract between the authority and the first contractor resulted in employees of the authority becoming the employees of someone other than the authority, and

(iii) the authority is contracting with a person (“the subsequent contractor”) for the provision of any of the services.

8. The contract between the authority and the subsequent contractor must provide-

(i) that the subsequent contractor secure pension protection for any transferring original employees; and

(ii) that the pension protection provided is enforceable by the employee.

9. For the purposes of paragraph 8-

(i) “transferring original employee” means an employee of the authority –

(a) whose contract of employment becomes, by virtue of the application of the TUPE regulations in relation to what is done for the purposes of carrying out the contract between the authority and the subsequent contractor, a contract of employment with someone other than the authority; and

(b) whose contract of employment on each occasion when an intervening contract was carried out became, by virtue of the application of the TUPE regulations or the Transfer of Undertakings (Protection of Employment) Regulations 1981 in relation to what was done for the

⁴ S.I.1981/1794

purposes of carrying out the intervening contract, a contract of employment with someone other than the existing employer;

(ii) “pension protection” is secured for the transferring original employee if after the change in his employer referred to in paragraph (i)(a) he has, as an employee of his new employer, rights to acquire pension benefits and those rights –

(a) are the same as, or

(b) count as being broadly comparable to or better than,

those that he had, or had a right to acquire, before that change of employer.

10. For the purposes of paragraph 9(i)(b) an “intervening contract” means a contract with the best value authority for the provision, at times after they are provided under the contract with the first contractor and before they are provided under a contract with the subsequent contractor, of the services to be provided under the contract with the subsequent contractor.

Timing

11 This direction takes effect from 1 October 2007.

Signed by authority of the Secretary of State.

Date