

ANNEX B – STAFF TRANSFER SCHEME

The transfer of work and staff will be made by arrangements with all relevant Local Authorities (LA's) for the provision of probation services in respect of JACs pursuant to s3 of the Offender Management Act 2007 ("The 2007 Act").

Schedule 2 of the 2007 Act covers Transfers of Property and also Transfers of Staff. This Schedule shows that a staff transfer scheme may be made for the purposes of or in connection with the implementation of any arrangements made by the Secretary of State under s3(2) of the 2007 Act. It is intended to use these powers to make a Staff Transfer Scheme to transfer the employment contracts of existing staff who are currently working in JACs from the National Offender Management Service ("NOMS") to the relevant Local Authorities. It is also intended to use the same powers to prepare a Property Transfer Scheme.

A Staff Transfer Scheme is required as there is likely to be an organisational change on transfer to reflect the different roles of local authorities to that of NOMS. It is also required because the transfer will be the transfer of administrative functions between public administrative authorities and therefore will not be covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") as amended, by virtue of the exemption in Reg.3 (5) TUPE. As TUPE does not apply then a legal mechanism whereby contracts of employment can be transferred is required and that is provided for in the 2007 Act.

The provisions in paragraph 5 onwards of Schedule 2 which governs the content of the staff transfer scheme show that the YJB/NOMS are obliged to reflect these provisions in the Staff Transfer Scheme and this reflects, to a considerable degree, the protections that are provided by TUPE. Whilst the Secretary of State does not intend to make any directions under the 2007 Act in respect of consultation, as this is discretionary and not considered to be necessary in this particular case, the YJB/NOMS are committed to inform and consult with staff in accordance with the principles set out in TUPE and to consult fully on measures to provide a smooth transition. There will be consultation with you on the content of both Schemes and the aim is to ensure that the LA is as protected as a transferee in respect of the staff matters as it would be had TUPE applied.

The provisions of the Staff Transfer Scheme will provide that staff employed immediately before the transfer on the 1st April 2015 will transfer to a relevant Local Authority as set out in a Schedule attached to the Scheme. The staff will retain their continuity of employment and their terms and conditions of employment. The Scheme make provision so that a person will not transfer if they object to the transfer and will not be considered to have been unfairly dismissed unless the transfer would involve a substantial change in their working conditions to their material detriment.

In order to ensure that the LA has as much flexibility as possible after the transfer the YJB/NOMS believes it should include post transfer staffing

arrangements in the Scheme. This will allow, for a period of two years after the transfer, for staff to apply for a post in a JAC in a different local authority from the original Local Authority they were transferred to. The Scheme will provide for the ability to negotiate by consent harmonisation of terms and conditions post transfer. Provision will also be made for the transfer of pensions in the Scheme and we will obviously want to discuss the costs aspects of this.

The Scheme will also contain an indemnity clause that will provide protection to a LA for any claim brought against it arising out of a matter covered by the Staff Transfer Scheme. The YJB/NOMS would also wish to discuss with LAs further post transfer protections for staff including the Secretary of State covering the cost of a two year period of NOMS negotiated pay increases that transferring staff may move over with.

As a Transfer Scheme made by the Secretary of State the content and wording has to be finalised by the appropriate Government Department, however the YJB/NOMS is committed to engaging with LAs and consulting from an early stage. The Scheme does not need to go through any Parliamentary scrutiny process and is governed by the process as set out in Schedule 2 of the 2007 Act.