

2022 No. (WG22-29)

LOCAL GOVERNMENT, WALES

**Direction under section 101 of the Local Government Act 2003
– The Welsh Authorities Staff Transfers (Pensions) Directions
2022**

1. The Welsh Ministers make this direction using their powers under section 101(1) of the Local Government Act 2003⁽¹⁾.

2. This Direction applies to relevant authorities.

Definitions

3. In this Direction:

- (a) “relevant authorities” (“*awdurdodau perthnasol*”) are those specified in section 101(7A) (aa), (ab), (ac) and (ad) of the Local Government Act 2003⁽²⁾ and community councils in Wales;
- (b) references to “authority” (“*awdurdod*”) are to authorities and councils to which this Direction applies;
- (c) “The TUPE regulations” (“*rheoliadau TUPE*”) means the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽³⁾ or any regulations replacing those regulations, as from time to time amended;
- (d) any expression which is also used in the TUPE regulations has the same meaning in this Direction.

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

4. Paragraph 5 applies where—

- (a) an authority enters into a contract with a person for the provision of services; and
- (b) 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—

- (a) that the contractor is required to secure pension protection for each transferring employee; and
- (b) that the pension protection provided is enforceable by the transferring employee.

(1) 2003 c. 26.

(2) 2003 c. 26. This means: county councils and county borough councils; National Park authorities; fire and rescue authorities in Wales; and corporate joint committees.

(3) S.I. 2006/246 (amended by SIs 2009/592, 2010/93, 2011/1941, 2014/16, 2014/386, 2019/724, 2020/384 and the Crime and Courts Act 2013).

6. For the purposes of paragraph 5—

- (a) “transferring employee” (“*cyflogai sy’n trosglwyddo*”) 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
- (b) “pension protection” (“*diogeliad pensiwn*”) is secured for the transferring employee if after that change in employer the employee has, as an employee of the new employer, rights to acquire pension benefits and those rights—
 - (i) are the same as; or
 - (ii) count as being broadly comparable to or better than,

those that the employee had 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—

- (a) an authority has contracted with a person (“the first contractor”) for the provision of services;
- (b) the application of the TUPE regulations or the Transfer of Undertakings (Protection of Employment) Regulations 1981⁽¹⁾ 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
- (c) 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—

- (a) that the subsequent contractor is required to secure pension protection for any transferring original employees; and
- (b) that the pension protection provided is enforceable by the employee.

9. For the purposes of paragraph 8—

- (a) “transferring original employee” (“*cyflogai gwreiddiol sy’n trosglwyddo*”) means an employee of the authority—
 - (i) 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
 - (ii) 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 purposes of carrying out the intervening contract, a contract of employment with someone other than the existing employer;
- (b) “pension protection” (“*diogeliad pensiwn*”) is secured for the transferring original employee if after the change in the employer referred to in sub-paragraph (a)(i) the employee has, as an employee of the new employer, rights to acquire pension benefits and those rights—
 - (i) are the same as; or
 - (ii) count as being broadly comparable to or better than,

(1) S.I. 1981/1794.

those that the employee had before that change of employer.

10. For the purposes of paragraph 9(a)(ii) an “intervening contract” (“*contract yn y cyfamser*”) means a contract with the 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.

Revocation

11. The Welsh Authorities Staff Transfers (Pensions) Direction 2012 is revoked.

Timing

12. This Direction takes effect from 16 July 2022.

Rebecca Evans

Minister for Finance and Local Government, one of the Welsh Ministers

At 1.53 p.m. on 15 July 2022