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The Secretary of State makes this Transfer Scheme (the “Scheme”) in exercise of the powers conferred by Section 1(7)(b) of the Financial Guidance and Claims Act 2018:

Citation, commencement and application

1. (1) This Scheme may be cited as the Financial Guidance and Claims Act 2018 (Staff) Transfer Scheme 2019.

   (2) This Scheme is made in connection with the administrative arrangements for the creation of a new corporate body to be known as the Single Financial Guidance Body. The Single Financial Guidance Body is established to provide the public with financial information and guidance (including debt advice and pensions guidance), to aid understanding of financial matters and to engage in consumer protection.

   (3) The consumer financial education body, known as the Money Advice Service will be abolished and its functions transferred to the Single Financial Guidance Body. This Scheme provides for the transfer of employees from MAS to the Single Financial Guidance Body; a further scheme shall detail the transfer of property and assets from MAS to the Single Financial Guidance Body.

Interpretation

2. In this Scheme –

   “collective agreement”, “collective bargaining” and “trade union” have the same meanings respectively as in the 1992 Act;
   “contract of employment” means any agreement between an employee and the transferor determining the terms and conditions of the employee’s employment;
   “Transferring Employee” means a person who immediately before the transfer date is employed by the Transferor, who the Transferor and Transferee agreed in advance in writing would transfer on the transfer date and who has not objected to transfer in accordance with sub-paragraph 4(5) and Transferring Employees shall be construed accordingly;
   “recognised” has the meaning given to the expression by section 178(3) of the 1992 Act;
“the transfer date” means 1 January 2019 or such other date as the Secretary of State may designate;

“the Transferor” means the consumer financial education body, known as The Money Advice Service (“MAS”);

“the Transferee” means the Single Financial Guidance Body;

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992;

“the 1996 Act” means the Employment Rights Act 1996;

“the 1996 Tribunals Act” means the Employment Tribunals Act 1996

**Transfer of Transferring Employees to the Transferee**

3. (1) The Transferring Employees are, on and from the transfer date, transferred to the employment of the Transferee.

   (2) The contract of employment of any Transferring Employee—

   (a) is not terminated by the transfer; and

   (b) has effect on and after the transfer date as if originally made between that Transferring Employee and the Transferee.

(3) Without prejudice to sub-paragraph (2)—

   (a) all the rights, powers, duties and liabilities of the Transferor under, or in connection with, a contract to which that sub-paragraph applies are, by virtue of this paragraph, to be transferred to the Transferee on the transfer date; and

   (b) any act or omission before the transfer date of, or in relation to, the Transferor in respect of that contract of employment is, on or after the transfer date, deemed to have been an act or omission of, or in relation to, the Transferee.

(4) Nothing in this Scheme will prevent or fetter the lawful right of the Transferee from negotiating by consent any change to contractual terms and conditions (including those incorporating a term or condition from a collective agreement) with Transferring Employees.

(5) Sub-paragraphs (1) to (3) do not operate to transfer the contract of employment of a person to whom this paragraph applies, or any rights, powers, duties and liabilities under or in connection with it, if that person has objected to becoming employed by the Transferee and had informed the Transferor or the Transferee of that objection before the transfer date.

(6) Subject to sub-paragraphs (7) and (9), where an employee so objects, the transfer shall operate so as to terminate the contract of employment with the Transferor but the employee shall not be treated, for any purpose, as having been dismissed by the Transferor.

(7) Where the transfer involves, or would involve, a substantial change in the working conditions to the material detriment of a person whose contract of employment is, or would have, transferred under sub-paragraphs (1) to (3), that person may treat the contract of employment as having been terminated, and that person is to be treated for any purpose as having been dismissed by that person’s employer.

(8) No damages are payable by an employer as a result of a dismissal falling within sub-paragraph (7) in respect of any failure by that employer to pay wages to a person in respect of a notice period which that person has failed to work.

(9) Sub-paragraphs (1), (2), (5), (6) and (7) are without prejudice to any right of a person arising apart from under this paragraph to terminate their contract of employment without notice in acceptance of a repudiatory breach of contract by that person’s employer.
Effect of relevant transfer on contracts of employment which incorporate provisions of collective agreements

4. (1) Where a contract of employment, which is transferred by paragraph 3(2), incorporates provisions of collective agreements as may be agreed from time to time, regulation 3(3) does not transfer any rights, powers, duties and liabilities in relation to any provision of a collective agreement if the following conditions are met—

(a) the provision of the collective agreement is agreed after the date of the transfer; and

(b) the Transferee is not a participant in the collective bargaining for that provision.

(2) For the purposes of paragraph 3(2), the contract of employment has effect after the transfer as if it does not incorporate provisions of a collective agreement which meet the conditions in paragraph 4(1).

Effect of relevant transfer on collective agreements

5. (1) Where at the transfer date there exists a collective agreement made by or on behalf of the Transferor with a trade union recognised by the Transferor in respect of any employee whose contract of employment is preserved by sub-paragraphs 4(1) and 4(2) above, then—

(a) without prejudice to sections 179 and 180 of the 1992 Act (collective agreements presumed to be unenforceable in specified circumstances) that agreement, in its application in relation to the Transferring Employee, shall, after the transfer, have effect as if made by or on behalf of the Transferee with that trade union, and accordingly anything done under or in connection with it, in its application in relation to the employee, by or in relation to the Transferor before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Transferee; and

(b) any order made in respect of that agreement, in its application in relation to the Transferring Employee, shall, after the transfer, have effect as if the Transferee were a party to the agreement.

Effect of relevant transfer on trade union recognition

6. (1) Where after the transfer date a transferred organised grouping of resources or employees maintains an identity distinct from the remainder of the Transferee's undertaking, paragraph 6(2) shall apply.

(2) Where before such a transfer an independent trade union is recognised to any extent by the Transferor in respect of Transferring Employees of any description who in consequence of the transfer become employees of the Transferee, then, after the transfer—

(a) the trade union shall be deemed to have been recognised by the Transferee to the same extent in respect of employees of that description so employed; and

(b) any agreement for recognition may be varied or rescinded accordingly.

Dismissal of employee because of transfer

7. (1) Where a person whose contract of employment is transferred by paragraph 4 above is dismissed by the Transferee, that person is to be treated, for the purposes of Part 10 of the 1996 Act (unfair dismissal), as having been unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This sub-paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of the transferee after the transfer.
(3) Where sub-paragraph (2) applies—

(a) sub-paragraph (1) does not apply;
(b) without prejudice to section 98(4) of the 1996 Act (general: test of fair dismissal), the dismissal is, for the purposes of sections 98(1) (reason for dismissal) and 135 (the right to a redundancy payment) of that Act, to be regarded as having been for redundancy where section 98(2)(c) of that Act applies, or in any other case for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) In sub-paragraph (2), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

(5) Sub-paragraph (1) does not apply in relation to a dismissal of an employee if the application of section 94 (right not to be unfairly dismissed) of the 1996 Act to that dismissal is excluded by or under any provision of the 1996 Act, the 1996 Tribunals Act or the 1992 Act 1992.

Supplementary provision: general

8. So far as is required for giving effect to this Scheme, any reference in any document to MAS shall be construed as a reference to the Single Financial Guidance Body.

Power to make modifications

9. This Scheme may be modified by agreement and any such agreement may provide for the modifications to have effect from the date on which this Scheme came into effect.

Signed by authority of the Secretary of State for the Department for Work and Pensions

[Signature]

Name: Charlotte Ali

A Senior Civil Servant in the Department for Work and Pensions

Date: 19/12/18