

Frequently asked Questions on the new Code of Practice on Workforce Matters in Local Authority Service Contracts

1. When does the Code come into effect?

The Code took effect immediately on March 13th 2003 in England and on 2nd April 2003 in Wales. Any contracts advertised after those dates are covered, including re-tenders.

2. What does the Code cover?

Local authority service contracts that involve a TUPE transfer of staff, either from the local authority to a contractor or where staff that were originally transferred from the local authority, transfer to another contractor, or back to the local authority. This includes arrangements with the private, voluntary or community sector such as PFIs, PPPs, and Strategic Partnerships.

First, the Code refers to the treatment of transferees and makes absolutely clear that TUPE is expected to apply in all situations unless there are genuine exceptional reasons for it not to apply, and that the pensions of transferees must be protected, either through admitted body status or broadly comparable pensions. Provisions in the Local Government Bill currently going through Parliament will make these provisions statutory.

Second, the Code specifies that new joiners who work beside transferred staff should be employed on terms and conditions which are 'fair and reasonable ...[and]...overall no less favourable than those of transferred employees' and which offer reasonable pension arrangements

3. What must authorities do?

Local authorities are now required to include the Code in the service specification and conditions for all new contracts or re-tenders of contracts for services. Authorities will need to refer to the code in advertisements for new contracts where staff are transferred and in the tender documentation for those contracts, and are required to monitor compliance with the conditions set out in the Code. In addition, authorities will be required to certify in their Performance Plans that individual contracts comply with these requirements. The authority's arrangements to ensure compliance will be audited by the Audit Commission's auditor who can take action if concerned about the authority's compliance with the Code.

4. Is there formal guidance or a formula for how to weigh up or compare the different terms in a package?

No, what is 'overall no less favourable' (ONLF) will emerge from practice and from the 'quasi' case Law that will emerge from the Independent Person's judgements in disputes (see question 16 below).

What is clear is that the comparison should be made by weighing up the whole package, not looking at specific elements in it one by one and making sure they are comparable. The Government has stressed that the process is not to stand in the way of increased flexibility. 'Overall, no less favourable' is not meant to mean the same, nor to prevent improving productivity or services. Contractors will be able to offer different packages of terms and conditions so long as overall they are not less favourable.

5. What types of terms and conditions are included in the package?

Other than pensions that are outside the package, the terms and conditions are the same as covered for TUPE transferred staff - contractual or implied contractual terms and conditions. Presumably contractors, however, are free to bring in new terms and conditions to offer to new recruits that could be put into the balance, for example, company vehicles.

6. If pensions aren't included, what happens about them?

Contractors must offer reasonable pension arrangements. The options are:

- Membership of the LGPS
- Membership of a 'good quality' employer pension scheme, either final salary or defined contribution. The Employer's contribution must match the employee's up to 6% (though either side can pay more if they wish)
- A stakeholder pension scheme with matched contributions up to 6% again (though either side can pay more if they wish).

These obligations also apply to contractors who transfer staff to subcontractors.

While these pension provisions are a considerable improvement, they do not, except in the case of membership of the LGPS, provide for sufficient employer contributions to generate the same level of pension as would LGPS membership.

7. What about a contract which is mainly about transfers of assets (such as LSVTs, ALMOs, or transfer of a council leisure facilities to a Trust) but where some staff are transferred?

The view of the ODPM is that this is not primarily a service contract because of the transfer of assets, so the Code would not apply. The guidance for ALMOs, for example, makes it clear that new staff can be appointed on different though not worse terms and conditions than transferred staff, and that the ALMO is expected to harmonise and make its staff's terms and conditions broadly comparable, although ALMOs do not have to match any future improvements to national terms and conditions that transferred staff may enjoy.

The Code could be applied in these circumstances if the authority could justify it as best value.

This is also a question where there is disagreement over its answer, with the unions arguing that the Code should be applicable.

8. What happens when an authority enters a contract with employment agencies?

Contracts with employment agencies are not covered as there is no transfer of staff involved.

9. Are temporary staff working for the contractor alongside transferred staff covered too?

In our view (ODPM), they should be treated in the same way. If normally temporary staff are entitled to the same terms and conditions as permanent staff, they should be treated in the same way as permanent new joiners.

10. What about sub-contractors' staff, are they covered too?

Yes, if the main contractor transfers staff who originally worked for the local authority to a subcontractor as part of that local authority's work, the contractor has to ensure that the sub-contractor observes the Code.

11. What about staff who work for more than one client for the contractor?

One view is that if employees work the majority of their time for the authority in question, they should be covered. Where the pattern varies and the authority concerned is not always the main source of the employee's work, the contractor will need to make a judgement how best to handle it. Harmonisation seems the best solution, but could create problems in terms of how the contractor will manage any

increases in costs which would flow to the other contracts that the employee works on.

Another view is that service providers will have to deal with different packages for the different parts of an employee's job.

None of this is satisfactory for contractors or easy for local authorities to monitor. This issue is being looked at and further guidance will be forthcoming.

Meanwhile, the authority could ask as part of tendering whether this will be an issue for the contractor and how the contractor intends to deal with it, in order to be satisfied that the contractor is neither evading his/her responsibilities or passing on unjustified costs to the authority.

12. What about when a re-tender brings back staff from a number of authorities or other clients with differing terms and conditions. Who should the comparison be for new joiners?

Again, the contractor should be asked at tendering how they intend to deal with this, and the authority should be looking for evidence of harmonisation or another well-thought out response.

13. What else can we ask when we are selecting contractors to invite to tender. Can we insist that they give us the details of their package for new joiners?

You can't insist that they produce all the information at this stage. You can, however, as part of your assessment of how they handle workforce matters, ask questions about their employee relations generally within their organisation, any relevant history (eg their handling of TUPE for other contracts), and how broadly they intend to deal with this issue. Over time, contractors will have actual experience to point to.

14. At what stage does the contractor have to consult the unions about the package to be offered?

In our view, this should be done when the recruitment is going to happen and it is decided what terms and conditions to offer new recruits. The unions are likely to disagree with this, as they would like consultation to take place as early as possible, even at preferred bidder stage. While a contractor is free to do this, our view is that the main reason that an authority ought to be outsourcing is because a contractor can offer improved services and thus is likely to want to make changes to when and how services are carried out. Contractors should be careful not to be bounced into a situation too early before they have had time to get to know the service and the staff. The key is to keep maximum scope for flexibility so that they can improve and modernise services.

The Code says that the contractor must consult with the aim of reaching agreement but does not say that agreement has to be reached. The package only has to be compliant with Code. If it is, the unions may not like the new package but would have to accept it. Clearly it is preferable to reach agreement, but this may not always be possible.

15. What if the unions still are unhappy and claim the package does not meet the Code's requirements?

The Code is accompanied by a disputes resolution procedure, known as the ADR, which has been negotiated by the unions, contractors and local government. This sets out how disputes will be handled if they cannot be resolved locally, first, in the usual way between the contractor and the staff, and if there still is not agreement, by the local authority and the contractor. If there is still disagreement about whether the package meets the ONLF rule, the dispute goes to the ADR procedure.

16. How will the ADR work?

The ADR is in three stages. Full details are at: http://www.lg-employers.gov.uk/improvement/hr_procurement/code.html. Basically it has three stages and is intended to be a last resort, with an emphasis on everyone making genuine efforts to resolve problems by agreement.

In Stage 1, the dispute goes to an ACAS-appointed independent person (IP) who checks whether the dispute is within scope of the procedure and then whether all local procedures have been exhausted. If these conditions are met, the IP then makes a judgement about the package offered. If the IP is satisfied that the terms and conditions are ONLF, the unions or employees involved must accept the package and that is the end of the matter. If not, the dispute goes to Stage 2.

In Stage 2, the parties are invited to resolve the matter through further discussion, knowing that the package as it stands is not ONLF. Mediation can be used if all parties agree.

If agreement is not reached, the dispute goes to Stage 3 where the IP will proceed to make a final binding arbitration and will impose a revised package of terms and conditions, which will cover the relevant employees.

17. What happens next?

The contractor is required to implement the package. A model clause to cover has been developed .

18. Who can access the ADR procedure?

Individual employees, the unions or staff reps or the contractor can write to the local authority if they are unable to resolve matters locally, but only the local authority, the service provider or the recognised unions or staff representatives can access the ADR procedure.

19. What is the Audit Commission's role in all this?

Authorities are required to certify in their Performance Plans that individual contracts comply with best value requirements, including the requirements in the Code. The auditors will, as part of their audit of the Performance Plan, check that authorities are meeting their statutory duty, receive complaints about any concerns with the authority's compliance and investigate if they feel it is appropriate. If still concerned, they can produce a written recommendation or go to the Secretary of State.

20. Can an authority terminate a contract because a contractor fails to implement the Code?

The Code makes it clear that a contractor can be excluded from future shortlists if it does not comply, but is silent on termination of contracts.

21. What can the authority ask to monitor the contractor's performance against the Code?

The authority can ask for the terms and conditions of both transferred staff and for new employees recruited to work on the contract after the transfer. This information can be provided by group or by grade to avoid Data Protection problems. The frequency of returns and their format should be set out in a contract clause and designed to be neither burdensome nor to endanger commercial confidentiality. However, the local authority should be able to ask for information within a specified number of days if a dispute has arisen which has not been resolved locally. A model clause is being developed.

22. What is the legal basis for the Code and guidance?

First, TUPE and comparable pensions provisions for transferees will be firmly backed by the new Local Government Act, currently going through Parliament. S102 and 103 give the Secretary of State powers to make direction to implement this. Second, he also has powers under the Local Government Act 1999, s.19 to issue statutory guidance where he believes it will 'secure best value'. The Government believes that proper handling of workforce matters will secure better, more reliable services. Local authorities must have regard to such guidance, but could argue that have decided not to follow it where to do so is not 'best value'. The risk is that the Audit Commission could challenge this approach.

Code of Practice on Handling Workforce Issues: Alternative Dispute Resolution Procedure

1 Introduction

This paper is presented jointly by the LGA, the Employers' Organisation for Local Government, the TUC and the CBI. It sets out a procedure for resolving disputes arising from the application of the Code of Practice on Handling Workforce Issues. All the parties agree that the procedure should be a last resort and all will make their best efforts to resolve problems by agreement. It also supports the Government criteria that the ADR should be fast, efficient and cost-effective.

2 The need to exhaust local procedures

The parties must exhaust all normal local procedures as required by paragraph 9 and paragraph 13 of the Code before invoking the Alternative Dispute Resolution procedure (ADR) provided for in paragraph 14.

3 Who is responsible for resolving disputes?

The ADR procedure will be under the supervision of an independent person appointed from an approved list supplied by ACAS. If the parties so agree, they may appoint two "wing members" with an employer and trade union background to assist the independent person.

4 The dispute resolution process

Disputes will be resolved using the following three-stage procedure.

Stage 1: Initial reference to the independent person.

The independent person will be invited to answer three questions:

- (i) Is this a dispute about the application of the Code?

If the answer is no, the matter can proceed no further. If yes, then the independent person will move to question (ii).

- (ii) Have the parties exhausted local procedures?

If the answer is no, then the parties will be invited to make further local efforts to resolve the dispute. If yes, then the independent person will conduct an independent assessment, by answering question (iii) and giving reasons for the answer.

- (iii) Do the terms and conditions of employment on offer to new employees comply with the Code?

If the answer is yes, then the matter is deemed to be concluded and the contractor can continue to offer the same package of conditions to new employees. If the answer is no, then the dispute will proceed to Stage 2.

Time limit: Twenty working days.

Stage 2: Discussions with a view to reaching an agreement on compliant terms and conditions

Stage 2 begins with the parties being invited to seek to resolve the matter through further discussions.

The independent person will make themselves available to the parties to facilitate the process. The parties also have the option of establishing other arrangements for mediation.

If the parties can reach an agreement consistent with the Code then the matter is closed and the new package of conditions of employment will be applied both to new starters and to those employed during the dispute.

If no agreement can be reached within the allotted time then the dispute will proceed to Stage 3.

Time limit: Ten working days, with the possibility that this might be extended by the agreement of the parties and with the consent of the independent person.

Stage 3: Final Reference to the Independent Person

The independent person invites the parties to make final submissions. If the independent person then believes it would be worthwhile, the parties may be given a short period of further discussion.

If there is no value in giving the parties more time - or if during any discussion the parties were unable to agree on how to bring the matter to a successful conclusion - then the independent person will proceed to a final binding arbitration. Having heard the evidence and reached a conclusion the independent person will impose a revised package of terms and conditions applicable to each of the affected employees.

Time limit: Ten working days

4Ps/IDEA/EO**WORKFORCE MATTERS CODE OF PRACTICE - CONTRACT CLAUSES¹****1.0 TUPE COMPLIANCE (GENERAL) EMPLOYEES AND EMPLOYMENT MATTERS****1.1 Application of TUPE²**

1.2 The Authority and the Contractor agree that where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Services is changed pursuant to this Agreement (including upon termination of this Agreement) then the change shall constitute a Relevant Transfer.

1.3 On the occasion of each Relevant Transfer except a Relevant Transfer upon termination of this Agreement, the Contractor shall and shall procure that any new contractor of the relevant service shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees.

2.0 Emoluments and outgoings

2.1 The Authority shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

2.2 The Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.

3.0 Pensions

3.1 The Contractor shall ensure that all Transferring Employees and/or Transferring Original Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date or are afforded pension rights which are certified by the Government Actuary Department [or by a professionally qualified actuary] as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date.

4.0 Provision of information

4.1 The Authority warrants that the information set out in Schedule [•] relating to the [Relevant] [Transferring] Employees is accurate and complete as at the date of this Agreement and undertakes to advise the Contractor on a monthly basis up to the Transfer Date of any changes to the information provided.

5.0 Contractor to inform Authority of any Measures

5.1 The Contractor shall within 10 working days of receiving a request from the Authority, furnish to the Authority any information deemed by the Authority necessary concerning any measures

¹ The relevance and application of these clauses will vary according to the nature of the Agreement. The clauses should be amended appropriately, taking into account the nature of the services to be provided under the Agreement, the size of the Contractor, and the relationship between the parties.

² There may be exceptional circumstances where TUPE will not apply. In such cases the parties shall agree TUPE does not apply and that the employees will not transfer. Different drafting will be required as appropriate.

(within the meaning of the Regulations and the Directive) that the Contractor intends to take in relation to any Relevant Employee and shall indemnify the Authority against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

6.0 Indemnities

- 6.1** The Authority shall indemnify the Contractor from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Contractor shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Authority in relation to any Relevant Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer.
- 6.2** The Contractor shall indemnify the Authority from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.
- 6.3** The Contractor shall indemnify and hold harmless the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.
- 6.4** The Contractor shall indemnify the Authority from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Contractor or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-Contractor or any proposed measures of the Contractor or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

7.0 TUPE COMPLIANCE ON TERMINATION

8.0 Handover on termination

- 8.1** During the 12 months preceding the expiry of this Agreement or after the Authority has given notice to terminate this Agreement or at any other time as directed by the Authority, and within 15 working days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:
- 8.2** a list of employees employed by the Contractor;

- 8.3 a list of agency workers, agents and independent contractors engaged by the Contractor ;
- 8.4 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- 8.5 the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 8.6 The Contractor shall warrant the accuracy of all the information provided to the Council pursuant to clause 8.1 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- 8.7 During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Contractor shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.
- 8.8 During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Contractor shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:
- 8.9 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- 8.10 [materially] increase or decrease the number of employees employed in connection with the Services; or
- 8.11 assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

9.0 Indemnities

- 9.1 The Contractor shall indemnify the Authority and any new contractor appointed by the Authority and keep the Authority and any new contractor appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Authority and any new contractor appointed by the Authority shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Authority or any new contractor appointed by the Authority as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or termination of this Agreement.

10.0 Sub-contractors

- 10.1 In the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this clause 7.0 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

11.0 APPLICATION OF CODE TO NEW EMPLOYEES

12.0 New Employees

- 12.1** The Authority and the Contractor shall have regard to the Code in interpreting and applying the Code Obligations.
- 12.2** Subject to clause 12.4, the Contractor shall employ New Employees on terms and conditions of employment which are, overall no less favourable than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.
- 12.3** The Contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to clause 12.2.
- 12.4** In addition to its obligations under clause 12.2 above, the Contractor shall procure that the New Employees are offered either:
- 12.5** membership of the Local Government Pension Scheme; or
- 12.6** membership of a good quality employer pension scheme, being a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to 6 per cent; or
- 12.7** a stakeholder pension scheme, under which the employer matches employee contributions up to 6 per cent.

13.0 ADR and other code obligations relating to new employees

- 13.1** During the term of this Agreement, the Contractor shall on request by the Authority provide the Authority with accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Contractor's compliance with its Code Obligations.
- 13.2** The Contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Authority provide the Authority with accurate and complete information as soon as reasonably practicable in order to assist the Authority in doing this.
- 13.3** The Authority and the Contractor shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Contractor of its Code Obligations.
- 13.4** Where it appears to the Authority or the Contractor that it is not possible to resolve the matter by continuing discussions between them pursuant to clause 13.3 or where an employee of the Contractor or any recognised trade union writes to the Authority to confirm that it has been unable to resolve its complaint directly with the Contractor in relation to the Contractor's Code Obligations:
- 13.5** the Authority shall first write to the Contractor to seek an explanation for the alleged failure by the Contractor to comply with its Code Obligations. The Contractor shall provide such an explanation in writing within 5 working days of receipt of the request from the Authority;

- 13.6** if the response provided by the Contractor satisfies the Authority that the Code Obligations have been met, then the Authority will inform the complainant of this and the matter will be deemed to have been concluded;
- 13.7** in the event that the Authority is not satisfied with the response provided by the Contractor the Authority shall write to the Contractor within 5 working days to require the Contractor to take immediate action to resolve this dispute; and
- 13.8** if, following such a request by the Authority the Contractor still appears to the Authority not to be complying with its Code Obligations, the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

DEFINITIONS

“Code”

means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D;

“Code Obligations”

means the express obligations of the Contractor in Clause 7.0 (other than that in Clause 12.1) which derive from the Code;

"Directive"

means the EC Acquired Rights Directive 77/187 as amended;

“Dispute Resolution Procedure”

means [the procedure set out in Schedule []] [the ADR agreed under the Code];

"First Contractor"

means the person with whom the Authority initially contracted for the provision of services which are similar to the Services;

"Intervening Contract"

means a contract with the Authority for the provision of services which are similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;

“Local Government Pension Scheme”

means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

“New Employees”

means those new employees employed by the contractor to provide the services who will be working alongside the transferring employees;

“Original Employee”

means those employees of the authority who as a result of the application of the regulations, in relation to what was done for the purposes of carrying out the contract between the authority and the first contractor, became employees of someone other than the authority;

“Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended or modified from time to time;

"Relevant Employees"

means the employees who are the subject of a Relevant Transfer;

"Relevant Transfer"

means a relevant transfer for the purposes of the Regulations;

"Services"

means [the whole of the services or any of them to be provided by the contractor pursuant to this agreement or such of them as may from time to time remain the subject of this agreement];

"Sub-Contractor"

means a person to whom the contractor sub-contracts any of its obligations under this agreement

"Transfer Date"

means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor;

"Transferring Employee"

means an employee of the Authority whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out this contract between the Authority and the Contractor, a contract of employment with someone other than the Authority;

"Transferring Original Employee"

means an Original Employee

- (a) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out a contract between the Authority and the Contractor, a contract of employment with someone other than his existing employer, and
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Regulations in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer.

