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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise and New Towns (Scotland) Act 1990, Cross Heading: Staff. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 1

#### CONSTITUTION AND PROCEEDINGS ETC. OF SCOTTISH ENTERPRISE AND HIGHLANDS AND ISLANDS ENTERPRISE

##### *Staff*

- 14 In respect of each of the bodies, the Secretary of State shall, after consultation with its chairman (or chairman designate) make the first appointment of its chief executive on such terms and conditions as the Secretary of State may <sup>F1</sup> . . . determine; and thereafter the body in question may, with the approval of the Secretary of State, make subsequent appointments to the office of chief executive on such terms and conditions as it may, with the approval of the Secretary of State <sup>F1</sup> . . . determine.

##### **Textual Amendments**

**F1** Words in [Sch. 1 para. 14](#) repealed (1.7.1999) by [S.I. 1999/1820](#), arts. 1(2), 4, [Sch. 2 Pt. I para. 100\(8\)](#), Pt. IV

- 15 (1) Subject to paragraph 16 below, each of the bodies may appoint on such terms and conditions as it may, with the approval of the Secretary of State <sup>F2</sup> . . . determine, such other employees as it thinks fit.
- (2) Each of the bodies shall, as regards such of its employees as it may with the approval of the Secretary of State <sup>F2</sup> . . . determine, make such arrangements for providing pensions, allowances or gratuities (to or in respect of those employees) as it may determine; and such arrangements may include the establishment and administration, by the body in question or otherwise, of one or more pension schemes.
- (3) The reference in sub-paragraph (2) above to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.
- (4) If a person employed by either body becomes a member of the body and was by virtue of that employment a participant in a pension scheme administered by the body for the benefit of its employees the body may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 13 above; but if the body does so determine, then any discretion as to the benefits payable to or in respect of the person which the scheme confers on it shall be exercisable only with the consent of the Secretary of State <sup>F2</sup> . . .

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### Textual Amendments

**F2** Words in Sch. 1, para. 15(1)(2) and (4) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I, para. 100(8), Pt. IV

- 16 (1) Not later than such date as the Secretary of State may determine—
- (a) Scottish Enterprise shall make an offer of employment by it to each person employed immediately before that date—
    - (i) by the Scottish Development Agency;
    - (ii) by the Training Agency to work wholly or mainly in such part of Scotland as is outwith the area mentioned in section 21(1) of this Act;
  - (b) Highlands and Islands Enterprise shall make an offer of employment by it to each person employed immediately before that date—
    - (i) by the Highlands and Islands Development Board;
    - (ii) by the Training Agency to work wholly or mainly within the area so mentioned,

except that if such a person by written notice to Scottish Enterprise, or as the case may be to Highlands and Islands Enterprise, has intimated that he does not require such an offer of employment to be made by the date so determined and, in the case of a person mentioned in paragraph (a)(ii) or (b)(ii) above, has not elected secondment under sub-paragraph (6) below, such an offer may instead be made under this sub-paragraph at a later date but, subject to sub-paragraph (8) below, shall in any event be so made within seven days of receipt, before the first transfer date by Scottish Enterprise or before the second transfer date by Highlands and Islands Enterprise, of any subsequent written notice from the person requiring that it be made.
- (2) In this and the following paragraph “the Training Agency” means the part of the department of the Secretary of State for Employment which is so known, other than so much of that part as is known either as the Skills Training Agency or as the Employment Rehabilitation Service.
- (3) The terms of any offer under sub-paragraph (1) above shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (4) Any question as to what persons are employed as mentioned in sub-paragraph (1) above and, in respect of any such person, the body by which an offer is (subject to the exception mentioned in the sub-paragraph) to be made under the sub-paragraph shall be determined by the Secretary of State, whose decision in the matter in question shall be final.
- (5) For the purposes of sub-paragraph (3) above, no account shall be taken of the fact that employment with Scottish Enterprise or Highlands and Islands Enterprise is not employment in the service of the Crown.
- (6) Instead of forthwith accepting or declining an offer made to him under sub-paragraph (1)(a)(ii) or (b)(ii) above, or if he has given notice that he does not require such an offer and none has been made, a person may (without prejudice to sub-paragraph (7) below) elect to be seconded to Scottish Enterprise, or as the case may be Highlands and Islands Enterprise, on such terms as the body in question may agree

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with him and with the Training Agency; but any such secondment shall end not later than three years after—

- (a) in the case of secondment to Scottish Enterprise, the first transfer date; and
- (b) in the case of secondment to Highlands and Islands Enterprise, the second transfer date,

and if during the period of secondment the person by written notice to Scottish Enterprise, or as the case may be Highlands and Islands Enterprise, requires that such an offer be made (whether or not the secondment followed such an offer), the body in question shall within thirty days of receiving the notice comply with the requirement.

(7) An offer under sub-paragraph (1) above—

- (a) where made before the date determined under sub-paragraph (1) above, shall not be revocable during the period of three months commencing with the date on which made;
- (b) where made after the date so determined, shall not be revocable before—
  - (i) in the case of an offer by Scottish Enterprise, the first transfer date;
  - (ii) in the case of an offer by Highlands and Islands Enterprise, the second transfer date,
 or, if later, the date thirty clear days after that on which the offer is made,
- (c) where it is an offer whose recipient has elected secondment under sub-paragraph (6) above, shall not be revocable during the period of secondment (though it shall be superseded by any subsequent such offer to him).

(8) Any such subsequent written notice as is referred to in sub-paragraph (1) above shall for the purposes of that sub-paragraph be disregarded if the person is, at the time of giving it, no longer an employee of the Scottish Development Agency or as the case may be of the Highlands and Islands Development Board or the Training Agency.

17 (1) Where a person becomes an employee of Scottish Enterprise or Highlands and Islands Enterprise in consequence of his acceptance of an offer made under sub-paragraph (1) of paragraph 16 above, then, for the purposes of [<sup>F3</sup>the Employment Rights Act 1996], his period of employment in the Scottish Development Agency (including any period of employment in the Scottish Industrial Estates Corporation or the Small Industries Council for Rural Areas of Scotland which, under paragraph 6 of Schedule 3 to the <sup>M1</sup>Scottish Development Agency Act 1975, falls to be regarded as continuous with that period of employment) or as the case may be in the Highlands and Islands Development Board or the civil service of the State shall count as a period of employment in Scottish Enterprise or as the case may be Highlands and Islands Enterprise; and the change of employment shall not break the continuity of the period of employment.

(2) Where a person receives an offer under head (a)(i) or (b)(i) of sub-paragraph (1) of paragraph 16 above (whether or not by virtue of the exception to that sub-paragraph), none of the agreed redundancy procedures applicable to an employee of the Scottish Development Agency, or as the case may be of the Highlands and Islands Development Board, shall apply to him; and where the person ceases to be such an employee—

- (a) on becoming an employee of Scottish Enterprise or Highlands and Islands Enterprise in consequence of that paragraph; or
- (b) having unreasonably refused the offer,

<sup>F4</sup> . . . he shall not be treated for the purposes of any scheme provided or maintained by virtue of paragraph 10(2) of Schedule 1 to the Scottish Development Agency

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Act 1975 or paragraph 14(1)(b) of Schedule 1 to the <sup>M2</sup>Highlands and Islands Development (Scotland) Act 1965, as having been retired on redundancy.

- (3) A person who ceases to be an employee of the Training Agency on becoming an employee of Scottish Enterprise or Highlands and Islands Enterprise by virtue of paragraph 16 above, shall not be treated, for the purposes of any scheme under section 1 of the <sup>M3</sup>Superannuation Act 1972, as having been retired on redundancy.

#### Textual Amendments

- F3** Words in [Sch. 1 para. 17\(1\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 46](#) (with [ss. 191-195, 202](#)).
- F4** Words in [Sch. 1 para. 17\(2\)](#) repealed (22.8.1996) by [1996 c. 18, ss. 242, 243, Sch. 3 Pt. I](#) (with [ss. 191-195, 202](#)).

#### Marginal Citations

- M1** [1975 c. 69](#).
- M2** [1965 c. 46](#).
- M3** [1972 c. 11](#).

- 18 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 16 above complies with sub-paragraph (3) of that paragraph shall be referred to and be determined by an [<sup>F5</sup>employment tribunal].
- (2) An [<sup>F5</sup>employment tribunal] shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of three months beginning with the date on which the offer is made or within such further period as the tribunal considers reasonable in a case where satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.
- (3) Subject to sub-paragraph (4) below, there shall be no appeal from the decision of an [<sup>F5</sup>employment tribunal] under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an [<sup>F5</sup>employment tribunal] under this paragraph.

#### Textual Amendments

- F5** Words in [Sch. 1 para. 18](#) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(a\)](#) (with [s. 16\(2\)](#)); [S.I. 1998/1658, art. 2\(1\)](#), [Sch. 1](#)

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