

SCHEDULES

SCHEDULE 3

Section 10

TRANSFER SCHEMES UNDER SECTION 10

Transfer of property, rights and liabilities

- 1 (1) On the transfer date, the designated property, rights and liabilities that are to be transferred from the transferor to the transferee are transferred and vest in accordance with the transfer scheme.
- (2) The rights and liabilities that may be transferred by a transfer scheme include those arising under or in connection with a contract of employment.
- (3) A certificate by the Secretary of State that anything specified in the certificate has vested in a person by virtue of a transfer scheme is conclusive evidence of that fact for all purposes.

Provision that may be made by a transfer scheme

- 2 (1) A transfer scheme may make provision—
 - (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
 - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
 - (c) about the continuation of legal proceedings;
 - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
 - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme;

Status: This is the original version (as it was originally enacted).

- (l) which is the same as or similar to that made by the TUPE regulations, in a case where those regulations do not apply in relation to the transfer.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or subordinate legislation.

Compensation

- 3 A transfer scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

Foreign property

- 4 (1) Where a transfer scheme transfers foreign property or a foreign right or liability, the transferor and the transferee must take all necessary steps to ensure that the vesting of the foreign property, right or liability in the transferee by this Schedule is effective under the applicable foreign law.
- (2) Until the vesting of the foreign property, right or liability is effective under the applicable foreign law, the transferor must—
 - (a) hold the property or right for the benefit of the transferee, or
 - (b) discharge the liability on behalf of the transferee.
- (3) Nothing in sub-paragraph (1) or (2) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a transfer scheme.
- (4) Where—
 - (a) any foreign property, right or liability is acquired or incurred by the transferor in respect of any other property, right or liability, and
 - (b) by virtue of this paragraph, the transferor holds the other property or right for the benefit of another person or is required to discharge the liability on behalf of another person,the property, right or liability acquired or incurred immediately becomes the property, right or liability of that other person.
- (5) Sub-paragraphs (1) to (4) have effect in relation to foreign property, rights or liabilities transferred to a person under sub-paragraph (4) as they have effect in relation to property, rights or liabilities transferred in accordance with a transfer scheme.
- (6) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Expenses incurred by a transferor under this paragraph must be met by the transferee.
- (8) An obligation imposed under this paragraph in relation to property, rights or liabilities is enforceable as if contained in a contract between the transferor and the transferee.

Incidental etc provision

- 5 A transfer scheme may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different purposes;
 - (d) make provision subject to exceptions.

Modification of transfer schemes

- 6 (1) The Secretary of State may modify a transfer scheme.
- (2) But if a transfer under the scheme has taken effect, any modification that relates to the transfer may be made only with the agreement of the person affected by the modification.
- (3) A modification takes effect from a date specified by the Secretary of State (which may be the date the original scheme came into effect).

Interpretation etc

- 7 In this Schedule—
- “designated”, in relation to a transfer scheme, means specified in or determined in accordance with the scheme;
- “primary legislation” means—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of the National Assembly for Wales, or
 - (d) Northern Ireland legislation;
- “subordinate legislation” means—
- (a) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
 - (b) an instrument made under primary legislation of the kind mentioned in paragraph (b), (c) or (d) of the definition of primary legislation above;
- “the transfer date” means a date specified by a transfer scheme as the date on which the scheme is to have effect;
- “transferee”, in relation to a transfer scheme, means a person who is a transferee in respect of property, rights or liabilities for whose transfer the scheme provides;
- “transferor”, in relation to a transfer scheme, means the person for the transfer of whose property, rights or liabilities the scheme provides.