

SCHEDULES

SCHEDULE 2

TRANSFER OF MANAGEMENT OF INSTITUTIONS OF FURTHER EDUCATION

Transfer of staff

9.—(1) Subject to sub-paragraphs (8) to (10), this paragraph applies to any person who immediately before the transfer date—

- (a) is employed by a board to work solely at an institution of further education; or
- (b) is employed by a board to work at an institution of further education and is designated in relation to that institution by order made by the Department for the purposes of this paragraph.

(2) In this paragraph “relevant governing body” means—

- (a) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(a), the new governing body of the institution of further education at which he is employed to work;
- (b) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(b), the new governing body of the institution of further education in relation to which he is designated by an order under that sub-paragraph.

(3) A contract of employment between a person to whom this paragraph applies and a board shall have effect from the transfer date as if originally made between that person and the relevant governing body.

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

- (a) all the board’s rights, powers, duties and liabilities under or in connection with a contract to which that sub-paragraph applies shall by virtue of this paragraph be transferred to the relevant governing body on the transfer date; and
- (b) anything done before that date by or in relation to the board in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the relevant governing body.

(5) Sub-paragraphs (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this paragraph.

(6) An order under sub-paragraph (1)(b) may designate a person either individually or as a member of a class or description of employees.

(7) Before making any order under sub-paragraph (1)(b) the Department shall consult—

- (a) in the case of an order designating a person individually, that person; and
- (b) in the case of an order designating a class or description of employees, such persons as appear to the Department to be representative of the class or description of employees concerned.

(8) This paragraph does not apply to a person if—

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

- (a) his contract of employment terminates on the day immediately before the transfer date;
- (b) prior to the transfer date he is appointed or assigned by the board to work exclusively at some place other than the institution of further education and the appointment or assignation is to take effect on that date;
- (c) the board, with effect from the transfer date, withdraws him from work at the institution; or
- (d) he is employed by a board to work at an institution of further education—
 - (i) in pursuance of arrangements such as are mentioned in paragraph 8(1); or
 - (ii) for the purpose of otherwise carrying out functional work falling within a defined activity.

(9) Where a person—

- (a) has, prior to the transfer date, entered into a contract of employment with a board which is to come into effect on or after that date; and
- (b) would, if the contract had come into effect before that date, have been a person to whom this paragraph applies,

he shall be treated as if he were a person to whom this paragraph applies.

(10) For the purposes of this paragraph—

- (a) a person employed by a board is to be regarded as employed to work at an institution of further education if his employment with the board for the time being involves work at that institution;
- (b) a person employed by a board is to be regarded as employed to work solely at an institution of further education if his only employment with the board (disregarding any employment under a separate contract with the board) is for the time being at that institution; and
- (c) “functional work” and “defined activity” have the same meanings as in Part II of the Education and Libraries (Northern Ireland) Order 1993.