

SCHEDULES

SCHEDULE 1

Article 3

TRANSFER OF MANAGEMENT OF THE COLLEGE

Interpretation

1.—(1) In this Schedule “relevant department” means—

- (a) the Department;
- (b) the Department of Education;
- (c) the Department of Finance and Personnel.

(2) Subject to sub-paragraphs (3) and (4), in this Schedule “relevant employee” means a person who, immediately before the transfer date, is employed by a relevant department as a member of staff at the college.

(3) A person is not a relevant employee if his contract of employment with a relevant department terminates on the day immediately before the transfer date.

(4) A person shall be treated as a relevant employee if—

- (a) he has, prior to the transfer date, entered into a contract of employment with a relevant department which is to come into effect on or after that date; and
- (b) he would, if the contract had come into effect before that date, have been a relevant employee.

(5) For the purposes of this Schedule anything done before the transfer date by persons appointed by a relevant department in relation to the management of the college shall have effect as if done by that department.

Transfer of certain property, rights and liabilities

2.—(1) Subject to the following provisions of this Schedule, on the transfer date there shall be transferred to the governing body—

- (a) all land and other property which, immediately before that date, was property of a relevant department held by that department for or in connection with the purposes of the college;
- (b) all rights and liabilities subsisting immediately before that date which were acquired or incurred by a relevant department for or in connection with those purposes.

(2) Sub-paragraph (1) does not apply to—

- (a) any right or liability under a contract of employment (which is dealt with in paragraph 3);
- (b) any liability of a relevant department in tort where the cause of action accrued before the transfer date;
- (c) any liability of a relevant department under a contract of indemnity in respect of acts committed before the transfer date;
- (d) any property, right or liability excluded from that sub-paragraph by an order under sub-paragraph (3).

Changes to legislation: The Colleges of Education (Northern Ireland) Order 2005, SCHEDULE 1 is up to date with all changes known to be in force on or before 19 August 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(3) The Department may, at any time before the transfer date, by order provide that any property, right or liability specified in the order shall be excluded from sub-paragraph (1).

(4) Where an order under sub-paragraph (3) provides that any land is excluded from sub-paragraph (1), the order may—

- (a) create for a relevant department interests in or rights over land transferred under this paragraph;
- (b) create for the governing body interests in or rights over land excluded by the order,
- (c) create rights or liabilities between a relevant department and the governing body.

(5) Sub-paragraph (1) has effect in relation to property, rights and liabilities—

- (a) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer; and
- (b) without any instrument or other formality being required.

(6) A certificate issued by the Department and stating that any land or other property specified in the certificate, or any right or liability so specified, was or was not transferred under this paragraph to the governing body shall be evidence for all purposes of that fact.

(7) A transfer or order under this paragraph does not give rise to any liability to stamp duty or stamp duty land tax.

Transfer of staff

3.—(1) On the transfer date each relevant employee transfers to and becomes a member of the staff of the governing body.

(2) The contract of employment of a relevant employee transferred under this paragraph—

- (a) is not terminated by the transfer;
- (b) has effect from the transfer date as if originally made between the employee and the governing body.

(3) Accordingly—

- (a) all rights, powers, duties and liabilities of a relevant department under or in connection with the contract of employment are transferred to the governing body on the transfer date; and
- (b) anything done before that date by or in relation to a relevant department in respect of that contract or the relevant employee is to be treated as from that date as having been done by or in relation to the governing body.

(4) But if a relevant employee informs a relevant department before the transfer date that he objects to the transfer of his contract of employment under this paragraph—

- (a) sub-paragraphs (1) to (3) do not apply in relation to him; and
- (b) the contract of employment is terminated immediately before the transfer day, but the relevant employee is not to be treated, for any purpose, as having been dismissed by a relevant department.

(5) Sub-paragraph (4) does not affect any right of a relevant employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.

Transfers: continuity

4.—(1) A transfer does not affect the validity of anything done by or in relation to a relevant department before the transfer takes effect.

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(2) Anything which—

- (a) is done by a relevant department for the purpose of, or in connection with any property, rights or liabilities transferred from that department under paragraph 1; and
- (b) is in effect immediately before the transfer date,

is to be treated as from that date as if done by the governing body.

(3) Anything (including legal proceedings) which is in the process of being done by or in relation to a relevant department immediately before the transfer date and which relates to any property, rights or liabilities transferred from that department under paragraph 1 may, as from that date, be continued by or in relation to the governing body.

(4) In any document which—

- (a) relates to any property, rights or liabilities transferred from a relevant department under paragraph 1; and
- (b) is in effect immediately before the transfer date,

any reference to that department is to be read as a reference to the governing body.

Power to amend trust deeds, etc.

5.—(1) The Department may by order make such modifications as it thinks fit in any trust deed or other instrument—

- (a) relating to or regulating the college; or
- (b) relating to any land or other property held by any person for the purposes of the college.

(2) Before making any modifications under sub-paragraph (1) of any trust deed or other instrument, the Department shall, so far as it appears to the Department practicable to do so, consult—

- (a) the governing body;
- (b) where any other person is empowered, by whatever means, to modify the trust deed or instrument, that person; and
- (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in head (a) or (b), the trustees.

Power to make further provision in relation to transfers

6.—(1) The Department may by order make such further provision as appears to the Department to be necessary or expedient in consequence of, or for the purpose of facilitating, or otherwise related to, any transfer under this Schedule.

(2) An order under this paragraph may—

- (a) amend or repeal any statutory provision; or
- (b) provide for any statutory provision to have effect for any period specified in the order with such modifications as may be so specified.

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Commencement Orders yet to be applied to the The Colleges of Education (Northern Ireland) Order 2005

Commencement Orders bringing legislation that affects this Order into force:

- [S.R. 2015/35 art. 2 commences \(2014 c. 12 \(N.I.\)\)](#)