

SCHEDULE 3

Paragraph 6

Protection of Employment

Interpretation

1. In this Schedule—

“the 1996 Act” means the Employment Rights Act 1996⁽¹⁾;

“contract” means any agreement which determines the terms and conditions of a person’s employment or service;

“employee” means a person who is included in the personnel schedule;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993⁽²⁾; and

“personnel schedule” means the document “Crown Estate Commissioners – Schedule of Transferring Staff” dated the day before the transfer date, a copy of which has been deposited at Her Majesty’s Treasury⁽³⁾.

Transfer of employment rights and liabilities

2. Except where an objection is made under paragraph 5, on the transfer date—

(a) an employee’s contract with the Commissioners transfers to the transferee; and

(b) all the Commissioners’ rights, powers, duties and liabilities under or in connection with the contract transfer to the transferee.

3. On and after the transfer date, a contract mentioned in paragraph 2 has effect as if originally made between the transferee and the employee.

4. Any act or omission before the transfer date, of or in relation to the Commissioners in respect of a contract mentioned in paragraph 2, is deemed to have been an act or omission of or in relation to the transferee.

Objections to transfer

5. If before the transfer date an employee informs the Commissioners or the transferee in writing that the employee objects to becoming employed by the transferee, paragraphs 2 to 4 do not operate to transfer the employee’s contract and the rights, powers, duties and liabilities under or in connection with it.

6. Where an employee so objects, the employee’s contract terminates on the transfer date and, subject to paragraphs 11 and 12, the employee is not to be treated for any other purpose as having been dismissed by the Commissioners.

7. Where the transfer involves or would involve a substantial change in working conditions to the detriment of an employee, the employee may treat the employee’s contract as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the transferee.

(1) 1996 c.18.

(2) 1993 c.48. The definition of “occupational pension scheme” was substituted by section 239(1) and (3) of the Pensions Act 2004 (c.35).

(3) The document is available for inspection at the following address; HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

Variation of contract

- 8.** Any purported variation of a contract—
- (a) by the Commissioners before the transfer date, or
 - (b) by the transferee on or after the transfer date,

is void if the sole or principal reason for the variation is the transfer.

- 9.** Paragraph 8 does not prevent a variation of a contract if—
- (a) the sole or principal reason for the variation is an economic, technical or organisational reason entailing changes in the workforce and the employee agrees to that variation; or
 - (b) the terms of that contract permit such a variation.

- 10.** Paragraph 9 does not affect any rule of law as to whether a contract is effectively varied.

Protection against dismissal

- 11.** If an employee is dismissed—
- (a) by the Commissioners before the transfer date, or
 - (b) by the transferee on or after the transfer date,

the employee is to be treated as unfairly dismissed for the purposes of Part 10 of the 1996 Act (unfair dismissal) if the sole or principal reason for the dismissal is the transfer.

- 12.** Paragraph 11 does not apply—
- (a) if the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce; or
 - (b) if the application of section 94 of the 1996 Act to the dismissal of the employee is excluded by or under any provision of—
 - (i) the 1996 Act,
 - (ii) the Employment Tribunals Act 1996(4), or
 - (iii) the Trade Union and Labour Relations (Consolidation) Act 1992(5).

Pensions

- 13.** Paragraph 2 does not apply to—
- (a) so much of a contract as relates to an occupational pension scheme; or
 - (b) any rights, powers, duties or liabilities which relate to such a scheme and which arise—
 - (i) under or in connection with a contract, or
 - (ii) otherwise in connection with the employee's employment or service.

14. For the purposes of paragraph 13, any provisions of an occupational pension scheme which do not relate to benefits for old age, invalidity or survivors must not be treated as part of the pension scheme.

15. An employee is not entitled to bring a claim against the Commissioners for breach of contract or constructive unfair dismissal under section 95(1)(c) of the 1996 Act arising out of any loss or reduction in the employee's rights under an occupational pension scheme in consequence of the transfer.

(4) 1996 c.17.
(5) 1992 c.52.

16. In relation to each employee whose contract is transferred under paragraph 2, the transferee must—

- (a) no later than one month after the transfer date, offer the employee the option of joining an appropriate pension scheme with effect from the transfer date; or
- (b) if section 3(2) (automatic enrolment) of the Pensions Act 2008⁽⁶⁾ applies in relation to the employee, ensure that the automatic enrolment scheme available to the employee in accordance with that section is an appropriate pension scheme.

17. In paragraph 16, “appropriate pension scheme” means a scheme which, in the view of the Government Actuary’s Department, provides pension benefits to the employee which are no less favourable than the pension benefits which were provided, or were available, to the employee before the transfer as a consequence of the employee’s contract with the Commissioners.

18. In considering whether a pension scheme meets the requirements of paragraph 17, the Government Actuary’s Department must take into account—

- (a) all rights and benefits which were available to the employee before the transfer date—
 - (i) under or in connection with the employee’s contract with the Commissioners, or
 - (ii) otherwise in connection with that person’s employment or service with the Commissioners; and
- (b) all rights and benefits which are available to the employee on and after the transfer date—
 - (i) under or in connection with the employee’s contract with the transferee, or
 - (ii) otherwise in connection with that person’s employment or service with the transferee.

Dis-application of the Transfer of Undertakings (Protection of Employment) Regulations 2006

19. The transfer of the existing Scottish functions to the transferee is not a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006⁽⁷⁾; and accordingly this Schedule rather than those Regulations applies to that transfer.

⁽⁶⁾ 2008 c.30.

⁽⁷⁾ S.I. 2006/246; to which there are amendments not relevant to this Scheme.