

SCHEDULE 5

(introduced by section 19)

TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

Staff transfer schemes

- 1 (1) The Scottish Ministers may make a staff transfer scheme.
- (2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of persons who are—
 - (a) employed by the Royal Commission on the Ancient and Historical Monuments of Scotland,
 - (b) subject to sub-paragraph (3), members of the staff of the Scottish Ministers employed in the Executive Agency of the Scottish Ministers known as Historic Scotland.
- (3) Sub-paragraph (2)(b) does not apply to members of the staff of the Scottish Ministers on secondment or loan to Historic Scotland from another part of the Scottish Administration.
- (4) A staff transfer scheme may in particular—
 - (a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,
 - (b) provide that specified persons, or classes of specified person, are to become employees of Historic Environment Scotland.
- (5) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of Historic Environment Scotland’s functions.
- (6) In this paragraph “specified” means specified in a staff transfer scheme.

Staff transfer schemes: general

- 2 (1) This paragraph applies in relation to a staff transfer scheme under paragraph 1.
- (2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
- (3) The scheme may—
 - (a) specify different dates for different purposes,
 - (b) make different provision in relation to different cases or classes of case.

Transfers under paragraph 1: effect on contract of employment

- 3 (1) This paragraph applies where—
 - (a) a person is to be transferred by virtue of a staff transfer scheme, and
 - (b) immediately before the transfer date the person has a contract of employment with—
 - (i) the Royal Commission on the Ancient and Historical Monuments of Scotland, or
 - (ii) the Scottish Ministers.

Status: This is the original version (as it was originally enacted).

- (2) The contract of employment has effect on and after the transfer date as if originally made between the person and Historic Environment Scotland.
- (3) The rights, powers, duties and liabilities of the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers under or in connection with the contract of employment are by virtue of this paragraph transferred to Historic Environment Scotland on the transfer date.
- (4) Anything done before the transfer date by or in relation to the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers in respect of the contract of employment or the person is to be treated on and after that date as having been done by or in relation to Historic Environment Scotland.
- (5) If, before the transfer date, the person informs the Royal Commission on the Ancient and Historical Monuments of Scotland or, as the case may be, the Scottish Ministers that the person does not wish to become an employee of Historic Environment Scotland—
 - (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
 - (b) the person's contract of employment is terminated on the day before the transfer date.
- (6) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.
- (7) Nothing in this paragraph affects any right of a person to terminate the person's contract of employment if a substantial detrimental change in the person's working conditions is made.
- (8) No such right arises by reason only that, by virtue of this paragraph, the identity of the person's employer changes.

Property transfer schemes

- 4 (1) The Scottish Ministers may make a property transfer scheme.
- (2) A property transfer scheme is a scheme making provision for or in connection with the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of—
 - (a) the Royal Commission on the Ancient and Historical Monuments of Scotland,
 - (b) the Scottish Ministers.
- (3) A property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to Historic Environment Scotland's functions.
- (4) The Royal Commission on the Ancient and Historical Monuments of Scotland must provide the Scottish Ministers with such information or assistance as Ministers may reasonably require for the purposes of or in connection with the making of a property transfer scheme.
- (5) On the transfer date—
 - (a) any property or rights to which a property transfer scheme applies transfer to and vest in Historic Environment Scotland,

- (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of Historic Environment Scotland.
- (6) A property transfer scheme may make provision for the payment by Historic Environment Scotland of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer schemes: general

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- (1) This paragraph applies in relation to a property transfer scheme under paragraph 4.
 - (2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
 - (3) The scheme may—
 - (a) specify different dates in relation to different property, rights, liabilities and obligations,
 - (b) make different provision in relation to different cases or classes of case.
 - (4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
 - (5) The scheme may make provision requiring Historic Environment Scotland to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.
 - (6) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.
 - (7) The scheme may make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

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- A staff transfer scheme under paragraph 1 or a property transfer scheme under paragraph 4 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.