

SCHEDULES

SCHEDULE 11

Article 270

THE TRANSFER SCHEME

Interpretation

1.—(1) In this Schedule—

“specified” means specified in the transfer scheme;

“third party” means any person other than—

- (a) the Department; or
- (b) the successor company;

“the transfer” means the transfer effected by Article 270(2).

(2) References in this Schedule to any external assets or liabilities are references to any assets or liabilities as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory other than Northern Ireland (“external law”).

Contents of transfer scheme

2.—(1) The transfer scheme—

- (a) shall specify the assets and liabilities to be transferred to the successor company; and
- (b) may make such supplementary, incidental, transitional and consequential provisions in connection with the transfer of those assets and liabilities as the Department considers appropriate.

(2) The provisions of the scheme specifying the assets and liabilities to be transferred may do so—

- (a) by specifying them or describing them in particular; or
- (b) by identifying them generally by reference to a specified part of the Department’s undertaking, or their connection with the exercise of specified functions of the Department; or
- (c) in any other manner appearing to the Department to be appropriate in relation to the assets or liabilities in question;

and the scheme may except assets and liabilities from transfer in any corresponding manner.

(3) The assets and liabilities that may be specified by a transfer scheme for transfer to the successor company include—

- (a) assets and liabilities that would not otherwise be capable of being transferred or assigned by the Department;
- (b) assets acquired and liabilities arising in the period after the making of the scheme and before the transfer date;

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- (c) rights and liabilities arising after the transfer date in respect of matters occurring before that date;
 - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and
 - (e) rights and liabilities under a statutory provision or Community instrument.
- (4) The transfer scheme may make provision for the division of any asset or liability between the Department and the successor company; and
- (a) where any rights or liabilities under a contract are so divided, the contract shall have effect as from the transfer date as if it constituted two separate contracts separately enforceable by and against the Department and the successor company respectively as respects the part of the rights or liabilities which falls to it as a result of the division; and
 - (b) where any land is so divided, any rent payable under a lease (or a fee farm grant creating the relationship of landlord and tenant) in respect of that land or charged on that land shall be correspondingly divided so that one part is payable in respect of, or charged on, only one part of the land and the other part is payable in respect of, or charged on, only the other part.
- (5) The transfer scheme may include provision for the creation—
- (a) in favour of the Department, of rights or liabilities over or in respect of assets transferred to the successor company;
 - (b) in favour of the successor company, of rights or liabilities over or in respect of assets retained by the Department;
 - (c) of other rights and liabilities between the Department and the successor body.
- (6) The transfer scheme may include provision imposing on the successor company the obligation to enter into specified written agreements with, or execute such other instruments in favour of, the Department or any other specified person: and any obligation so imposed shall be enforceable by civil proceedings for an injunction or other appropriate relief.
- (7) The transfers provided for by a transfer scheme, and the rights and liabilities that may be created by virtue of sub-paragraph (5) or an agreement or instrument under sub-paragraph (6), include transfers that are to take effect, and rights and liabilities that are to arise, regardless of any contravention, liability or interference with a right that would otherwise exist by reason of a provision having effect (whether under a statutory provision or an agreement or in any other way) in relation to the terms on which the Department is entitled or subject to any asset or liability.
- (8) The transfer scheme may include provision—
- (a) for the successor company to be treated as the same person in law as the Department for such purposes or in such circumstances as are specified;
 - (b) for agreements made, transactions effected or other things done (or treated as made effected or done) by or in relation to the Department to be treated as made, effected or done by or in relation to the successor company;
 - (c) for references in any agreement, instrument or other document to (or references which are to be treated as references to) the Department or to an officer or employee of the Department to have effect as a reference to, or to an officer or employee of, the successor company;
 - (d) for proceedings commenced (or treated as commenced) by or against the Department to be continued by or against the successor company.
- (9) Paragraph (8) (c) does not apply in relation to references in a statutory provision.
- (10) The transfer scheme may include provision—

- (a) for treating the Department as having given to the successor company an acknowledgement in writing of the right of that company to production of any document relating in part to the title to, or to the management of, any asset transferred to it and to delivery of copies of that document; and
 - (b) applying section 9 of the Conveyancing Act 1881 (c. 41) (with any specified modifications) in relation to any such case.
- (11) A transfer scheme may include provision for disputes between the Department and the successor company—
- (a) as to the effect of the scheme; and
 - (b) arising at any time after the successor company has ceased to be wholly owned by the Crown,
- to be referred to such arbitration as may be specified in or determined under the scheme.

Modification of the transfer scheme

3.—(1) If, at any time after the transfer date but before the successor company has ceased to be wholly owned by the Crown, it appears to the Department that it is appropriate to do so, it may by order provide for the scheme to be deemed for all purposes to have been made with such modifications as may be provided for in the order.

(2) At any time after the successor company has ceased to be wholly owned by the Crown, the Department and the successor company may agree in writing that the scheme shall be deemed to have been made with such modifications as may be provided for in the agreement; and on the making of such agreement the scheme shall be deemed for all purposes to have been made with such modifications.

(3) The power under this paragraph to provide by order or agreement for the modification of the transfer scheme shall be exercisable for the purpose only of making provision that could originally have been made by the scheme.

Proof of title by certificate

4. A certificate issued by the Department to the effect that—
- (a) any asset or liability vested in the successor company in pursuance of the scheme; or
 - (b) any asset or liability did not so vest,
- shall for all purposes be conclusive evidence of the matters specified in the certificate.

Employment contracts

5.—(1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme.

- (2) The contract of employment—
- (a) is not terminated by the transfer, and
 - (b) has effect from the transfer date as if made between the employee and the successor company.
- (3) Except as provided by the scheme, the rights, powers, duties and liabilities of the Department under or in connection with the contract are transferred to the successor company on the transfer date.

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(4) Except as so provided, anything done before the transfer date by or in relation to the Department in respect of the contract or the employee is to be treated from that date as having been done by or in relation to the successor company.

(5) But if an employee informs the Department before the transfer date that he objects to the transfer of his contract of employment under the scheme—

- (a) sub-paragraphs (2) to (4) do not apply in relation to his contract of employment; and
- (b) his employment with the Department is terminated immediately before the transfer date.

(6) A person is not to be treated as having been dismissed by the Department by reason of—

- (a) the transfer of his contract of employment under this paragraph; or
- (b) the termination of his employment under sub-paragraph (5).

(7) This paragraph does not affect any right a person has 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.

(8) For the purposes of this paragraph, if a person is employed in the civil service on terms which do not constitute a contract of employment—

- (a) he is to be treated as employed by the Department by virtue of a contract of employment;
- (b) the terms of that employment are to be regarded as constituting the terms of that contract.

Effect on third parties

6.—(1) Sub-paragraph (2) applies where (apart from that sub-paragraph) a third party would be entitled, in consequence of anything done or likely to be done by or under this Order in connection with the transfer scheme—

- (a) to terminate, modify, acquire or claim any asset; or
- (b) to treat any asset as modified or terminated.

(2) That entitlement—

- (a) shall not be enforceable in relation to that asset, until after the transfer of the asset; and
- (b) shall then be enforceable in relation to the asset only in so far as the scheme contains provision for the asset to be transferred subject to whatever confers that entitlement.

Compensation

7.—(1) Where, in consequence of any provision included in a transfer scheme, or anything done under this Schedule—

- (a) the rights or liabilities of a third party which were enforceable against or by the Department become enforceable as to part against or by the Department and as to part against or by the successor company; and
- (b) the value of any asset of that party is thereby diminished,

such compensation as may be just shall be paid to the third party by the successor company.

(2) Where—

- (a) a third party would, apart from any provision of a transfer scheme or paragraph 6, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any assets or liabilities, and

- (b) the provisions of that scheme or of paragraph 6 have the effect of preventing that party's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in head (a), and
- (c) provision is not made by the transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the transfer date,

such compensation as may be just in respect of the extinguishment of the interest or right shall be paid to the third party by the successor company.

(3) Any dispute as to whether any compensation is to be paid under this paragraph, and any dispute as to the amount of compensation to be paid, shall be referred to and determined by an arbitrator appointed by the Department.

External assets etc.

8.—(1) This paragraph applies in any case where the transfer scheme provides for the transfer of any external assets or liabilities.

(2) It shall be the duty of the Department and the successor company to take, as and when the successor company considers appropriate, all such steps as may be requisite to secure that the vesting in the successor company by virtue of the transfer of any external assets or liabilities is effective under the relevant law.

(3) Until the vesting in the successor company, by virtue of the transfer, of any external assets or liabilities is effective under the relevant external law, it shall be the duty of the Department to hold those assets for the benefit of, or to discharge those liabilities on behalf of, the successor company.

(4) Nothing in sub-paragraphs (2) and (3) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in the successor company by virtue of the transfer of any external assets or liabilities.

(5) The Department shall have all such powers as may be requisite for the performance of its duty under this paragraph, but it shall be the duty of the successor company to act on behalf of the Department (so far as possible) in performing the duty imposed on the Department by this paragraph.

(6) Duties imposed on the Department or the successor company by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the Department and that company.

(7) Any expenses incurred by the Department under this paragraph shall be met by the successor company.