

SCHEDULES

SCHEDULE 5

TRANSFER OF ASSETS, ETC.

PART 1

TRANSFER SCHEMES

Transfer of employed staff

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

(2) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of the regulations.

(3) The scheme shall—

- (a) in relation to each transferee, identify the transferring employees (whether by name or otherwise);
- (b) include provision securing pension protection for such employees;
- (c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and
- (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.

(4) Before making the scheme the Department must consult—

- (a) in the case of a scheme which identifies transferring employees by name, those employees; and
- (b) in the case of a scheme which identifies transferring employees in any other way, such persons as appear to the Department to be representative of transferring employees.

(5) For the purposes of this paragraph—

- (a) “pension protection” is secured for a transferring employee if after the change of employer effected by the scheme the employee has, as an employee of the transferee, rights to acquire pension benefits and those

rights are the same as or (taken as a whole) no less favourable than those that the transferring employee had as an employee of the transferor;

- (b) “transferring employee” means an employee whose contract of employment becomes, by virtue of sub-paragraph (2), a contract of employment with a transferee; and
- (c) employment in the Northern Ireland civil service for the purposes of the Department is to be treated as employment by the Department under a contract of employment (and the terms of that employment are to be regarded as constituting the terms of that contract).

(6) Procedures under sub-paragraph (3)(c) must involve consideration of grievances by a person other than—

- (a) a member, or member of staff, of a transferor or transferee; or
- (b) a member of staff of the Department.