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*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care (Reform) Act (Northern Ireland) 2009, PART 1. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 5

#### TRANSFER OF ASSETS, ETC.

#### **PART 1**

#### TRANSFER SCHEMES

##### *Transfer of assets and liabilities*

**1.—**(1) A scheme—

- (a) may provide for the transfer of assets and liabilities which would not otherwise be capable of being transferred;
- (b) shall, accordingly, have effect in relation to assets or liabilities to which it applies in spite of any provision (of whatever nature) which would otherwise prevent or restrict the transfer of those assets or liabilities;
- (c) may contain supplementary, incidental, transitional and consequential provisions.

(2) A scheme may define the assets and liabilities to be transferred by specifying or describing them (including describing them by reference to a specified part of the transferor's undertaking).

(3) A certificate issued by the Department that any assets or liabilities specified in the certificate have vested in any body by virtue of a scheme is conclusive evidence for all purposes of that fact.

(4) In this Schedule, in relation to any assets or liabilities transferred by a scheme—

“transferor” means the body from which those assets or liabilities are transferred; and

“transferee” means the body to which those assets or liabilities are transferred.

##### *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.

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(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.

### *Continuity*

3.—(1) In any statutory provision or document—

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- (a) which relates to anything transferred by virtue of the scheme, and
- (b) which is in effect immediately before the transfer date,

any reference to the transferor shall, in relation to any time after the transfer date, be construed as a reference to the transferee.

(2) Sub-paragraph (1) applies unless contrary provision is made by or under this Act or the context otherwise requires.

(3) A transfer by virtue of a scheme does not affect the validity of anything done by, or in relation to, the transferor before the transfer date.

(4) Anything which—

- (a) before the transfer date was done by or in relation to the transferor for the purposes of or otherwise in connection with anything transferred by virtue of a scheme, and
- (b) is in effect immediately before the transfer date,

shall continue to have effect to the same extent and subject to the same provisions as if it had been done by, or in relation to, the transferee.

(5) Anything (including any legal proceedings) which—

- (a) relates to anything transferred by virtue of a scheme, and
- (b) is in the process of being done by or in relation to the transferor immediately before the transfer date,

may be continued by or in relation to the transferee.

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