

SCHEDULES

SCHEDULE 2 **N.I.**

Section 4.

TRANSFER OF ASSETS, LIABILITIES, STAFF, AND OTHER TRANSITIONAL AND SAVINGS ARRANGEMENTS

Transfer of assets and liabilities

1.—(1) All property, rights and liabilities to which each existing office is entitled or subject immediately before the transfer day are on that day transferred to, and by virtue of this paragraph vest in, the Ombudsman.

(2) Sub-paragraph (1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by that sub-paragraph.

(3) But sub-paragraph (1) does not apply to property, rights or liabilities under a contract of employment.

2 Anything (including legal proceedings) which is in the process of being done by or in relation to an existing office immediately before the transfer day and which relates to—

- (a) any function of that existing office, or
- (b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,

may, on and after the transfer day, be continued by or in relation to the Ombudsman.

3 Anything done by an existing office for the purpose of, or in connection with—

- (a) any function of that existing office, or
- (b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,

and which is in effect immediately before the transfer day is to have effect on and after the transfer day as if done by the Ombudsman.

4 On and after the transfer day, the Ombudsman is to be substituted for each existing office in any instruments, contracts or legal proceedings which relate to—

- (a) any function of that existing office, or

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(b) any property, rights or liabilities of that existing office transferred to the Ombudsman under paragraph 1,
and which are made or commenced before the transfer day.

Transfer of staff

5.—(1) This paragraph applies to persons who immediately before the transfer day are employed by the existing offices.

(2) The Department must make arrangements providing for the transfer as from the transfer day of persons to whom this paragraph applies to the employment of the Ombudsman.

(3) The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer effected by the arrangements whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those regulations.

(4) The arrangements must—

- (a) identify transferring employees,
- (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 arrangements, and
- (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of that transfer.

(5) Procedures under sub-paragraph (4)(c) must involve consideration of grievances by a person other than—

- (a) the holders of the existing offices,
- (b) a member of staff of the existing offices, or
- (c) a member of the civil service of Northern Ireland.

(6) The arrangements may include supplementary, incidental, transitional and consequential provision.

(7) Before making the arrangements the Department must consult—

- (a) the holders of the existing offices, and
- (b) the transferring employees.

(8) For the purposes of this paragraph—

- (a) “pension protection” is secured for a transferring employee if after the change of employer effected by the arrangements the employee has rights to acquire pension benefits and those rights are the same as or (taken as a

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whole) no less favourable than those that the transferring employee had as an employee of the existing offices, and

- (b) “transferring employee” means an employee of the existing offices who is transferred to the employment of the Ombudsman by the arrangements.

Transfer of seconded staff

6 Any person seconded to an existing office under an arrangement made by the existing office is to be treated on and after the transfer day as seconded to the office of the Ombudsman under a similar arrangement.

Accounts and reports: transitional arrangements

7.—(1) The Ombudsman must make arrangements for statement of accounts to be prepared in relation to the existing offices for such period ending immediately before the transfer day as the Department may determine.

(2) The statement of accounts must—

- (a) be in such form, and
(b) contain such information,

as the Department may determine.

(3) The Department must send a copy of the statement of accounts to the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General must—

- (a) examine and report on any statement of accounts received from the Department under sub-paragraph (3), and
(b) send a copy of any such report to the Department.

(5) The Department must lay a copy of the statement of accounts and the Comptroller and Auditor General's report before the Assembly.

(6) The Ombudsman must make arrangements for a general report on the performance of the functions of the existing offices for such period ending immediately before the transfer day as the Ombudsman may determine.

(7) The Ombudsman must lay this general report before the Assembly.

Pension of holders of existing offices

8.—(1) The repeal by this Act of the Commissioner for Complaints (Northern Ireland) Order 1996 and the Ombudsman (Northern Ireland) Order 1996 does not affect any entitlement to pension and other benefits payable to or in respect of persons who have been holders of the existing offices.

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(2) Accordingly, Article 4(4) to (6) of, and Schedule 1 to, the Commissioner for Complaints (Northern Ireland) Order 1996, or, as the case may be, Article 5(4) to (6) of, and Schedule 1 to, the Ombudsman (Northern Ireland) Order 1996 continue to have effect with respect to such persons.

Complaints made to an existing office before the transfer day

9.—(1) Sub-paragraph (2) applies where a complaint—

- (a) has been made or referred to an existing office before the transfer day, and
- (b) has not been determined by that office before that day.

(2) On and after the transfer day, the relevant existing statutory provision continues to apply in relation to the complaint notwithstanding the other provisions of this Act.

(3) As applied by sub-paragraph (2), the relevant existing statutory provision has effect as if for references to the existing office in relation to which that provision applies there were substituted references to the Ombudsman.

(4) In this paragraph—

“the relevant existing office” means the existing office to which the complaint was made or referred,

“the relevant existing statutory provision” means—

- (a) the Ombudsman (Northern Ireland) Order 1996, where the relevant existing office is the Assembly Ombudsman for Northern Ireland,
- (b) the Commissioner for Complaints (Northern Ireland) Order 1996, where the relevant existing office is the Northern Ireland Commissioner for Complaints,
- (c) the Commissioner for Complaints (Northern Ireland) Order 1996 and Part 9 of the Local Government Act (Northern Ireland) 2014 where the relevant existing office is the Northern Ireland Commissioner for Complaints and the complaint is in relation to Part 9.

Action taken but complaint not made to existing office before the transfer day

10.—(1) Sub-paragraph (2) applies if—

- (a) action was taken by a listed authority before the transfer day, and
- (b) a complaint could have been, but was not made or referred to an existing office before the transfer day.

(2) On and after the transfer day, the complaint may be made or referred under this Act, and the provisions of this Act apply for the purposes of making, referring, investigating and dealing with that complaint, save that if the complaint is made or referred within the time period required under—

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- (a) the Ombudsman (Northern Ireland) Order 1996, where the complaint could have been made or referred to the Assembly Ombudsman for Northern Ireland,
- (b) the Commissioner for Complaints (Northern Ireland) Order 1996, where the complaint could have been made or referred to the Northern Ireland Commissioner for Complaints,

the complaint will be deemed to comply with the time period required under this Act.

Eligibility of holders of existing offices to be appointed as Ombudsman

11 A person who has been appointed to any existing office is not disqualified from being appointed as the Ombudsman or acting Ombudsman by virtue of that fact.

Commissioner for Public Appointments

12.—(1) The repeal by this Act of the Commissioner for Complaints (Northern Ireland) Order 1996 does not affect the definition of “public appointment” in the Commissioner for Public Appointments (Northern Ireland) Order 1995.

(2) Sub-paragraph (1) does not affect the exercise of prerogative powers in respect of the Commissioner for Public Appointments referred to in section 23(3) of the Northern Ireland Act 1998.

Interpretation

13 In this Schedule—

“the transfer day” means 1 April 2016, and

“the Department” means the Department of Finance and Personnel.

Changes to legislation:

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