

## SCHEDULES

### SCHEDULE 3

Section 5.

#### Transfer of assets, etc

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

- 1.—(1) A scheme may designate the assets or liabilities to be transferred—
- (a) by specifying them or describing them in particular;
  - (b) by identifying them generally by reference to a specified part of the Regional Board's undertaking, or their connection with the exercise of specified functions of the Board; or
  - (c) in any other manner appearing to the Department to be appropriate in relation to the assets or liabilities in question.
- (2) A scheme may provide for the transfer of—
- (a) assets and liabilities which would not otherwise be capable of being transferred;
  - (b) assets and liabilities arising in the period after the making of the scheme and before the transfer date;
- and accordingly, a scheme has effect in relation to the assets or liabilities to which it applies in spite of any provision or rule of law which would otherwise prevent or restrict the transfer of those assets or liabilities.
- (3) A scheme may contain supplementary, incidental, transitional and consequential provisions.
- (4) A certificate issued by the Department that—
- (a) any assets or liabilities specified in the certificate have vested in a person mentioned in section 5(2) by virtue of a scheme;
  - (b) any assets or liabilities specified in the certificate have not so vested in such a person,

is conclusive evidence for all purposes of that fact.

- (5) In this Schedule—

“scheme” means a scheme under section 5;

“transferee”, in relation to any assets or liabilities transferred by a scheme, means the person to whom 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.

(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 must—

- (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 Regional Board;
- (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 the Regional Board or a transferee; or
- (b) a member of staff of the Department.

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*Status: This is the original version (as it was originally enacted).*

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### *Continuity*

**3.** A transfer by virtue of a scheme does not affect the validity of anything done by, or in relation to, the Regional Board before the transfer date.

**4.** Anything which—

(a) before the transfer date was done by or in relation to the Regional Board 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,

continues 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 Regional Board immediately before the transfer date,

may be continued by or in relation to the transferee.

**6.—(1)** In any statutory provision or statutory document—

(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 Regional Board is to be construed, in relation to any time after the transfer date, as or as including a reference to the transferee.

**(2)** Sub-paragraph (1) does not apply—

(a) to a reference if specific provision for that reference is made by or under this Act; or

(b) if the context requires otherwise.