

SCHEDULES

SCHEDULE 2

Article 10.

TRANSFER OF MANAGEMENT OF INSTITUTIONS OF FURTHER EDUCATION

Interpretation

1. In this Schedule—

“former governing body”, in relation to an institution of further education, means the governing body constituted for the institution under Part VII of the 1989 Order;

“new governing body”, in relation to an institution of further education, means the governing body established for the institution under this Order;

“relevant board”, in relation to an institution of further education, means the board which, immediately before the transfer date, was responsible for the management of the institution.

Transfer of certain property, rights and liabilities

2.—(1) Subject to the following provisions of this Schedule, on the transfer date there shall be transferred to, and by virtue of this paragraph vest in, the new governing body of an institution of further education—

- (a) all land and other property which, immediately before that date, was property of the relevant board used, held or obtained by that board for or in connection with the purposes of the institution;
- (b) all rights and liabilities subsisting immediately before that date which were acquired or incurred by the relevant board for or in connection with those purposes; and
- (c) any property, rights and liabilities of the former governing body of the institution.

(2) This paragraph does not apply to—

- (a) any right or liability under a contract of employment (which is dealt with in paragraph 9);
- (b) any liability of the relevant board in respect of compensation for premature retirement of any person formerly employed by it;
- (c) any liability of the relevant board in respect of the principal of, or any interest on, any loan obtained by it;
- (d) any liability of the relevant board in tort where the cause of action accrued before the transfer date;
- (e) any liability of the relevant board under a contract of indemnity in respect of acts committed before the transfer date;
- (f) any property, right or liability excluded from this paragraph—
 - (i) by an agreement under sub-paragraph (3); or
 - (ii) by a direction under sub-paragraph (4).

Status: This is the original version (as it was originally made).

(3) If, before the transfer date, the former governing body of an institution of further education and the relevant board have agreed in writing to exclude any property, right or liability from this paragraph, that property, right or liability shall be so excluded.

(4) The Department may, at any time before the transfer date, direct that any property, right or liability specified in the direction shall be excluded from this paragraph.

(5) Subject to paragraph 3, the land and other property referred to in sub-paragraph (1)(a) includes any land or other property which was used, held or obtained—

- (a) for or in connection with the purposes of more than one institution of further education; or
- (b) partly for or in connection with the purposes of one or more such institutions and partly for or in connection with other purposes of the board,

to the extent that it was used, held or obtained for or in connection with the purposes of any such institution.

(6) Subject to paragraph 3, the rights and liabilities referred to in sub-paragraph (1)(b) include any rights and liabilities which were acquired or incurred—

- (a) for or in connection with the purposes of more than one institution of further education; or
- (b) partly for or in connection with the purposes of one or more such institutions and partly for or in connection with other purposes of the board,

to the extent that they were acquired or incurred for or in connection with the purposes of any such institution.

Apportionment of certain property, rights and liabilities

3.—(1) The land, other property, rights and liabilities mentioned in paragraph 2(5) or (6) shall, where their nature permits, be divided or apportioned between the new governing bodies of the institutions of further education concerned or (as the case may be) between the board and the new governing body of any institution or institutions concerned, in such proportions as may be appropriate.

(2) Where any estate in land falls to be divided or apportioned under sub-paragraph (1), any rent payable by or to any party in respect of that estate and any rent charged on that estate shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate.

(3) Any land, other property, right or liability the nature of which does not permit its division or apportionment shall be transferred to the new governing body of such institution or retained by the relevant board according to—

- (a) in the case of an estate in land, which of the board or the governing body of any such institution appears, as at the transfer date, to be likely to experience the greatest practical difficulty through not having that land vested in it or, where none of them appears likely to experience such difficulty to a greater extent than any other, which of them appears on that date to be likely to make use of the land to the greatest extent; or
- (b) in the case of any other property or of any right or liability, which of them appears on the transfer date to be likely to make use of the property or right or, as the case may be, to be affected by the liability to the greatest extent,

subject (in either case) to such arrangements for the protection of the other party or parties concerned as may be agreed between the relevant board and the former governing body of any such institution or determined by the Department under paragraph 5.

Identification of properly, rights and liabilities for purposes of transfer

4.—(1) In respect of each institution of further education, the relevant board and the former governing body shall, not later than the transfer date, so far as practicable, arrive at such written agreements and execute such other instruments as are necessary or expedient—

- (a) to identify or define the land, other property, rights and liabilities to be transferred to and vest in the new governing body of the institution under paragraph 2; and
- (b) for making any arrangements such as are mentioned in paragraph 3(3) as will afford to the relevant board and the new governing body as against each other such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement or instrument shall contain provision so far as it is expedient to enable the creation, variation or extinction of estates in land and for the granting of indemnities.

(3) The relevant board shall supply the former governing body of the institution with such information, including all documents relating to estates in land, as that body may require for the purposes of this Schedule.

(4) Where no such agreement is arrived at before the transfer date, the Department may prescribe a later date by which such agreement is to be arrived at; and an agreement arrived at in pursuance of this sub-paragraph shall be between the relevant board and the new governing body and, for the purposes of such an agreement, references in this Schedule to the former governing body shall be construed as references to the new governing body.

Resolution of disputes

5.—(1) Where it appears to a board or the former governing body of an institution of further education that it is unlikely, in the case of any matter in respect of which an agreement is required to be arrived at under paragraph 4, that an agreement will be arrived at, the board or governing body may refer the matter to the Department.

(2) Where a matter is so referred, the Department shall, after consulting the board and any former governing body required to arrive at such an agreement, determine the matter.

(3) The Department shall issue a determination to the board and any former governing body required to arrive at such an agreement and may include in such determination any provision which could have been included in an agreement or other instrument made under paragraph 4.

(4) A determination made under this paragraph shall have effect for all purposes as if it were an agreement made under paragraph 4.

(5) The board and the former governing body shall provide the Department with such information, including all documents relating to estates in land, as the Department may require for the purposes of the exercise of its functions under this paragraph.

(6) Where a board and a former governing body have failed to arrive at an agreement under paragraph 4 before the transfer date and neither of them has referred the matter in respect of which the agreement is required to the Department under sub-paragraph (1), the Department may act under this paragraph as if the matter had been referred to it under that sub-paragraph.

Right to production of documents of title

6.—(1) Where any land or other property is, or rights or liabilities are, transferred to and vest in the new governing body of any institution of further education under paragraph 2, the relevant board shall deliver to the new governing body all documents of title relating solely to such land or other property and all documents relating solely to such rights or liabilities.

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

(2) Without prejudice to sub-paragraph (1), the new governing body of an institution of further education to which any land or other property has, or any rights or liabilities have, been transferred under paragraph 2 shall be entitled at any time to require any person having possession of any document of title or other document relating to such land, other property, rights or liabilities to produce such documents to it.

(3) No charge may be made in respect of anything done under this paragraph.

Third parties affected by transfer

7.—(1) Any transfer of land or other property, rights or liabilities from a board to the new governing body of an institution of further education under paragraph 2 shall be binding on all other persons.

(2) Where any such transfer has an effect on the rights or liabilities of a third party—

(a) in the case of a transfer to which paragraph 4 applies, the board; and

(b) in the case of a transfer to which paragraph 5 applies, the Department,

shall give notice in writing to the third party of that transfer.

(3) Where in consequence of any such transfer or anything done under this Schedule—

(a) the rights or liabilities of any third party which were enforceable against or by the board become enforceable against or by the new governing body of one or more institutions of further education or partly against or by a board and partly against or by the new governing body of one or more institutions of further education; and

(b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by the board or the new governing body of the institution or institutions concerned.

(4) Any dispute as to whether, and if so how much, compensation is to be paid under sub-paragraph (3), or as to the person to or by whom it is to be paid, shall be referred to and determined by the Department.

Agreements concerning functional work

8.—(1) Where, immediately before the transfer date, arrangements exist for the carrying out by a board of functional work for the purposes of an institution of further education in pursuance of a bid prepared under Article 7 of the Education and Libraries (Northern Ireland) Order 1993, those arrangements shall have effect as from that date as if—

(a) they were contained in an agreement made between the board and the new governing body on the terms specified in the bid; and

(b) the agreement required the new governing body or (as the case may be) the board to make payments corresponding to the provision made in the bid in pursuance of Article 7(3) of that Order for items to be credited or (as the case may be) debited to any account.

(2) In sub-paragraph (1) “functional work” has the same meaning as in Part II of the Education and Libraries (Northern Ireland) Order 1993.

(3) This Schedule shall have effect as if the rights and liabilities of the new governing body under the agreement mentioned in sub-paragraph (1) were rights and liabilities of the board transferred to the new governing body under paragraph 2.

Transfer of staff

9.—(1) Subject to sub-paragraphs (8) to (10), this paragraph applies to any person who immediately before the transfer date—

- (a) is employed by a board to work solely at an institution of further education; or
- (b) is employed by a board to work at an institution of further education and is designated in relation to that institution by order made by the Department for the purposes of this paragraph.

(2) In this paragraph “relevant governing body” means—

- (a) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(a), the new governing body of the institution of further education at which he is employed to work;
- (b) in relation to a person to whom this paragraph applies by virtue of sub-paragraph (1)(b), the new governing body of the institution of further education in relation to which he is designated by an order under that sub-paragraph.

(3) A contract of employment between a person to whom this paragraph applies and a board shall have effect from the transfer date as if originally made between that person and the relevant governing body.

(4) Without prejudice to sub-paragraph (3)—

- (a) all the board’s rights, powers, duties and liabilities under or in connection with a contract to which that sub-paragraph applies shall by virtue of this paragraph be transferred to the relevant governing body on the transfer date; and
- (b) anything done before that date by or in relation to the board in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the relevant governing body.

(5) Sub-paragraphs (3) and (4) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this paragraph.

(6) An order under sub-paragraph (1)(b) may designate a person either individually or as a member of a class or description of employees.

(7) Before making any order under sub-paragraph (1)(b) the Department shall consult—

- (a) in the case of an order designating a person individually, that person; and
- (b) in the case of an order designating a class or description of employees, such persons as appear to the Department to be representative of the class or description of employees concerned.

(8) This paragraph does not apply to a person if—

- (a) his contract of employment terminates on the day immediately before the transfer date;
- (b) prior to the transfer date he is appointed or assigned by the board to work exclusively at some place other than the institution of further education and the appointment or assignation is to take effect on that date;
- (c) the board, with effect from the transfer date, withdraws him from work at the institution; or
- (d) he is employed by a board to work at an institution of further education—
 - (i) in pursuance of arrangements such as are mentioned in paragraph 8(1); or
 - (ii) for the purpose of otherwise carrying out functional work falling within a defined activity.

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

(9) Where a person—

- (a) has, prior to the transfer date, entered into a contract of employment with a board which is to come into effect on or after that date; and
- (b) would, if the contract had come into effect before that date, have been a person to whom this paragraph applies,

he shall be treated as if he were a person to whom this paragraph applies.

(10) For the purposes of this paragraph—

- (a) a person employed by a board is to be regarded as employed to work at an institution of further education if his employment with the board for the time being involves work at that institution;
- (b) a person employed by a board is to be regarded as employed to work solely at an institution of further education if his only employment with the board (disregarding any employment under a separate contract with the board) is for the time being at that institution; and
- (c) “functional work” and “defined activity” have the same meanings as in Part II of the Education and Libraries (Northern Ireland) Order 1993.

Restrictions on boards entering into contracts

10.—(1) This paragraph applies to any contract which—

- (a) is entered into by a board after 31st August 1996 and before the transfer date; and
- (b) would by virtue of paragraph 2 or 9 be binding on the new governing body of an institution of further education with effect from the transfer date.

(2) A board shall not enter into a contract to which this paragraph applies without the prior consent, given in writing, of the former governing body of the institution of further education.

(3) A board shall not enter into a contract to which this paragraph applies in respect of which the consideration or, where the consideration is not expressed as an amount of money, the value of the consideration exceeds £50,000 without the prior consent, given in writing, of the Department.

(4) For the purposes of sub-paragraph (3), the consideration or value of the consideration in respect of a contract of employment exceeds £50,000 if, in respect of any period of 12 months, the aggregate amount of the remuneration payable to and value of other benefits receivable by the employee exceeds £50,000.

(5) Any consent for the purposes of this paragraph may be given in respect of a particular contract or in respect of contracts of any class or description; and such consent may be given unconditionally or subject to conditions.

(6) Where any contract entered into by a board whether on, before or after 31st August 1996 is varied after that date and the effect of such variation is as mentioned in paragraph (1)(b), the contract shall be treated, for the purposes of this paragraph, as if it were a contract entered into after that date.

(7) Any signification of consent for the purposes of this paragraph, or of such consent subject to conditions, given by the former governing body of an institution of further education or the Department before the coming into operation of this Schedule in respect of any contract to which this paragraph applies shall be treated for the purposes of this paragraph as a consent, or a consent subject to the conditions, given under this paragraph.

(8) Where—

- (a) a board has entered into a contract in contravention of this paragraph; and
- (b) the contract has not been performed, or has been performed only in part,

the new governing body may, in accordance with sub-paragraph (9), repudiate the contract to the extent that it has not been performed.

(9) A repudiation under sub-paragraph (8) shall be effected by serving notice in writing of the repudiation on—

- (a) the board; and
- (b) the other party to the contract.

(10) A repudiation under sub-paragraph (8) shall have effect as if made by the board.

Construction of agreements

11.—(1) Where any rights or liabilities transferred under this Schedule are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement shall, unless the context otherwise requires, have effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement,
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee,
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement,
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part,

and head (d) shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

Enforcement of transferred rights, etc.

12.—(1) Without prejudice to the generality of paragraph 11, the transferee under a transfer made under this Schedule and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee under this Schedule as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee under this Schedule, or to any agreement relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

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

(3) Where any land or other property or rights transferred under this Schedule were immediately before the transfer date held on trust for any particular purpose, they shall, subject to any provision made under paragraph 17, continue to be so held by the transferee.

Certification of transfer by Department

13. A certificate issued by the Department and stating that any land or other property specified in the certificate, or any right or liability so specified, was or was not transferred by virtue of this Schedule to any body so specified shall be conclusive evidence for all purposes of that fact.

Provision of information to new governing bodies

14. The relevant board shall as soon as reasonably practicable after the transfer date provide to the new governing body of an institution of further education all such information held by the board, or available to it, as relates to the institution, its administration, management, fabric, students and staff.

Stamp duty

15. Stamp duty shall not be chargeable in respect of any agreement made or transfer effected under this Schedule.

Attribution of surpluses and deficits

16.—(1) Not later than such date as the Department may direct, the relevant board and the new governing body shall, in respect of each institution of further education, arrive at a written agreement as to—

- (a) the amount of any surplus or deficit in the accounts of the institution as at the day immediately before the transfer date;
- (b) if there is a surplus, the arrangements for the payment of a sum equal to the amount of that surplus by the relevant board to the new governing body;
- (c) if there is a deficit, the arrangements for the payment of a sum equal to the amount of that deficit by the new governing body to the relevant board.

(2) Where a board and a new governing body have failed to arrive at an agreement as mentioned in sub-paragraph (1), the matter shall be referred to the Department which shall—

- (a) after consulting the board and the new governing body, determine the matter; and
- (b) issue a determination to the board and the new governing body.

(3) A determination under sub-paragraph (2) shall have effect for all purposes as if it were an agreement under sub-paragraph (1).

(4) The board and the new governing body shall provide the Department with all such information as the Department may require for the exercise of its functions under this paragraph.

Power to amend trust deeds, etc.

17.—(1) The Department may by order make such modifications as it thinks fit in any trust deed or other instrument—

- (a) relating to or regulating an institution of further education; or
- (b) relating to any land or other property held by any person for the purposes of an institution of further education.

(2) Before making any modifications under sub-paragraph (1) of any trust deed or other instrument, the Department shall, so far as it appears to the Department practicable to do so, consult—

- (a) the new governing body of the institution concerned;
- (b) where any other person is empowered, by whatever means, to modify the trust deed or instrument, that person; and
- (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in head (a) or (b), the trustees.

Amendment of memorandum or articles of association of certain companies

18.—(1) This paragraph applies to a company formed by the former governing body of an institution of further education by virtue of Article 119A of the 1989 Order and in existence immediately before the transfer date.

(2) The Department may, after consultation with the new governing body of the institution, give to the persons who appear to it to have effective control over a company to which this paragraph applies such directions as it thinks fit for securing that the memorandum or articles of association of the company are amended in such manner as may be specified in the direction.

Power to make further provision in relation to transfers

19.—(1) The Department may by order make such further provision as appears to the Department to be necessary or expedient in consequence of, or for the purpose of facilitating, or otherwise related to, any transfer under this Schedule.

(2) An order under this paragraph may—

- (a) amend or repeal any statutory provision; or
- (b) provide for any statutory provision to have effect for any period e specified in the order with such modifications as may be so specified.

Powers of former governing bodies

20.—(1) The former governing body of an institution of further education shall have such of the powers to be conferred by this Order on the new governing body of the institution—

- (a) as are necessary or expedient to enable the former governing body to do anything it is required or enabled to do under this Schedule in connection with the transfer of the management of the institution from the relevant board to the new governing body; and
- (b) as will facilitate or enable the effective carrying on by the new governing body of its functions after the transfer date.

(2) Nothing in Part VII of the 1989 Order or any instrument made thereunder shall prevent or restrict the exercise by a former governing body of the powers conferred by this paragraph.

(3) In exercising such powers a former governing body shall not be taken to be acting on behalf of, or in the name of, the relevant board.