

## SCHEDULES

### SCHEDULE 1

Articles 17 and 41

#### TRANSITIONAL PROVISION ON TERMINATION OF APPOINTMENTS

##### *Cases where Schedule applies*

- 1.—(1) This Schedule applies in each of the cases specified in sub-paragraphs (2) and (3).
- (2) The first case in which this Schedule applies is where—
- (a) the Department or the Authority is proposing to make an appointment or variation replacing a company as a relevant undertaker; and
  - (b) by virtue of that appointment a company (“the new appointee”) will hold an appointment as the water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which, until the relevant date, another company (“the existing appointee”) holds an appointment as the water undertaker or, as the case may be, sewerage undertaker.
- (3) The second case in which this Schedule applies is where—
- (a) the High Court has made a special administration order in relation to any company holding an appointment under Chapter I (“the existing appointee”); and
  - (b) it is proposed that on and after the relevant date another company (“the new appointee”) should, without any such appointment or variation as is mentioned in sub-paragraph (2) having been made, hold an appointment as water undertaker or sewerage undertaker for an area which is or includes the whole or any part of the area for which until that date the existing appointee holds an appointment as water undertaker or, as the case may be, sewerage undertaker.
- (4) In this Schedule—
- “existing appointee” and “new appointee” shall be construed in accordance with sub-paragraph (2) or (3) according to whether this Schedule is applying in the case mentioned in the first or second of those sub-paragraphs;
- “other appointees” means any companies, other than the existing appointee and the new appointee, which are likely on or at a time after the relevant date to be holding appointments as water undertakers or sewerage undertakers for any area which is or includes any part of the area for which the existing appointee has at any time held an appointment as water undertaker or sewerage undertaker;
- “the relevant date” means—
- (a) where this Schedule applies by virtue of sub-paragraph (2), the coming into force of the appointment or variation mentioned in head (a) of that sub-paragraph; and
  - (b) where this Schedule applies by virtue of sub-paragraph (3), such day, being a day before the discharge of the special administration order takes effect, as the High Court may appoint for the purposes of this Schedule;

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“special administrator”, in relation to a company in relation to which a special administration order has been made, means the person for the time being holding office for the purposes of Article 41(1);

“specified” means specified in a scheme under this Schedule;

“third party” means any person other than—

- (a) the existing appointee; or
- (b) the new appointee;

“the transfer” means the transfer effected by Article 270(2).

(5) References in this Schedule to any external assets or liabilities are references to any assets or liabilities as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory other than Northern Ireland (“external law”).

#### *Making and effect of scheme*

2.—(1) The existing appointee, acting with the consent of the new appointee and, in relation to the matters affecting them, of any other appointees, may make a scheme under this Schedule for the transfer of assets and liabilities from the existing appointee to the new appointee.

(2) A scheme under this Schedule shall not take effect unless it is approved by the Department or the Authority.

(3) Where a scheme under this Schedule is submitted to the Department or the Authority for its approval, the Department or the Authority may, with the consent of the new appointee, of the existing appointee and, in relation to the matters affecting them, of any other appointees, modify the scheme before approving it.

(4) A scheme under this Schedule for the transfer of the existing appointee’s assets and liabilities shall come into force on the relevant date and, on coming into force, shall, by virtue of this paragraph have effect, in accordance with its provisions and without further assurance, so as to transfer to the new appointee the assets and liabilities specified for transfer to it.

(5) If at any time after a scheme under this Schedule has come into force in relation to the assets and liabilities of any existing appointee the Department considers it appropriate to do so and the existing appointee, the new appointee and, in relation to the provisions of the order which affect them, any other appointees consent to the making of the order, the Department may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be provided for in the order.

(6) The power under sub-paragraph (5) to provide for the modification of the transfer scheme shall be exercisable for the purpose only of making provision that could originally have been made by the scheme; and an order under that sub-paragraph —

- (a) may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme; and
- (b) may, in connection with giving effect to that provision from that time, contain such supplemental, consequential and transitional provision as the Department considers appropriate.

(7) In determining, in accordance with its duties under Part II of this Order, whether and in what manner to exercise any power conferred on it by this paragraph the Department or the Authority shall have regard to the need to ensure that any provision for the transfer of assets and liabilities in accordance with a scheme under this Schedule allocates assets and liabilities to the different companies affected by the scheme in such proportions as appear to it to be appropriate in the context

of the different functions which will, by virtue of this Order, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.

(8) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide the Department or the Authority with all such information and other assistance as it may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on it by this paragraph.

(9) A company which without reasonable excuse fails to do anything required of it by virtue of sub-paragraph (8) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(10) Without prejudice to the other provisions of this Order relating to the special administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a special administration order is in force, be effective only if it is done on the company's behalf by its special administrator.

### *Contents of scheme*

3.—(1) A scheme under this Schedule—

- (a) shall specify the assets and liabilities to be transferred to the new appointee; and
- (b) may make supplementary, incidental, transitional and consequential provisions in connection with the transfer of those assets and liabilities.

(2) The provisions of a scheme specifying the assets and liabilities to be transferred may do so—

- (a) by specifying them or describing them in particular; or
- (b) by identifying them generally by reference to a specified part of the existing appointee's undertaking, or their connection with the exercise of specified functions of that appointee; or
- (c) in any other manner appearing to the existing appointee to be appropriate in relation to the assets or liabilities in question;

and a scheme may except assets and liabilities from transfer in any corresponding manner.

(3) The assets and liabilities that may be specified by a scheme under this Schedule for transfer to the new appointee include—

- (a) assets and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;
- (b) assets acquired and liabilities arising in the period after the making of the scheme and before the relevant date;
- (c) rights and liabilities arising after the relevant date in respect of matters occurring before that date;
- (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and
- (e) rights and liabilities under a statutory provision or Community instrument.

(4) A scheme under this Schedule may make provision for the division of any assets or liabilities between the existing appointee and the new appointee; and

- (a) where any rights or liabilities under a contract are so divided, the contract shall have effect as from the relevant date as if it constituted two separate contracts separately enforceable by and against the existing appointee and the new appointee respectively as respects the part of the rights or liabilities which falls to it as a result of the division; and

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(b) where any land is so divided, any rent payable under a lease (or a fee farm grant creating the relationship of landlord and tenant) in respect of that land or charged on that land shall be correspondingly divided so that one part is payable in respect of, or charged on, only one part of the land and the other part is payable in respect of, or charged on, only the other part.

(5) For the purpose of making any division of assets or liabilities which it is considered appropriate to make in connection with the transfer of assets and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—

- (a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;
- (b) create new rights and liabilities as between any two or more of those companies; and
- (c) in connection with any provision made by virtue of sub-paragraph (a) or (b), make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.

(6) A scheme under this Schedule may include provision imposing on the new appointee the obligation to enter into specified written agreements with, or execute such other instruments in favour of, the existing appointee or any other specified person: and any obligation so imposed shall be enforceable by civil proceedings for an injunction or other appropriate relief.

(7) The transfers provided for by a scheme under this Schedule, and the rights and liabilities that may be created by virtue of sub-paragraph (5) or an agreement or instrument under sub-paragraph (6), include transfers that are to take effect, and rights and liabilities that are to arise, regardless of any contravention, liability or interference with a right that would otherwise exist by reason of a provision having effect (whether under a statutory provision or an agreement or in any other way) in relation to the terms on which the existing appointee is entitled or subject to any asset or liability.

(8) A scheme under this Schedule may contain provision for the consideration to be provided by the new appointee and by any other appointees in respect of the transfer or creation of assets and liabilities by means of the scheme; and any such provision shall be enforceable in the same way as if the assets and liabilities had been created or transferred, and (if the case so requires) had been capable of being created or transferred, by agreement between the parties.

(9) A scheme under this Schedule may include provision—

- (a) for the new appointee to be treated as the same person in law as the existing appointee for such purposes or in such circumstances as are specified;
- (b) for agreements made, transactions effected or other things done (or treated as made effected or done) by or in relation to the existing appointee to be treated, so far as may be necessary for the purposes of or in connection with the transfer, as made, effected or done in relation to the new appointee;
- (c) for references in any agreement, instrument or other document to (or references which are to be treated as references to) the existing appointee or to an officer or employee of the existing appointee to have effect, so far as may be necessary for the purposes of or in connection with the transfer, as a reference to, or to an officer or employee of, the new appointee;
- (d) for proceedings commenced (or treated as commenced) by or against the existing appointee to be continued by or against the new appointee.

(10) Sub-paragraph (9)(c) does not apply in relation to references in a statutory provision.

(11) A scheme under this Schedule may include provision—

- (a) for treating the existing appointee as having given to the new appointee an acknowledgement in writing of the right of the new appointee to production of any

document relating in part to the title to, or to the management of, any asset transferred to it and to delivery of copies of that document; and

- (b) applying section 9 of the Conveyancing Act 1881 (c. 41) (with any specified modifications) in relation to any such case.

(12) A scheme under this Schedule may include provision for disputes as to the effect of the scheme to be referred to such arbitration as may be specified in or determined under the scheme.

#### *Transfer of appointment*

4.—(1) Where a scheme under this Schedule is made in the case specified in paragraph 1(3), the scheme may provide for the transfer to the new appointee, with such modifications as may be specified in the scheme, of the appointment under Chapter I of Part III which is held by the existing appointee.

(2) In such a case different schemes under this Schedule may provide for the transfer of such an appointment to different companies as respects different parts of the area to which the appointment relates.

#### *Employment contracts*

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

(2) The contract of employment—

- (a) is not terminated by the transfer, and
- (b) has effect from the relevant date as if made between the employee and the new appointee.

(3) The rights, powers, duties and liabilities of the existing appointee under or in connection with the contract are transferred to the new appointee on the relevant date.

(4) Anything done before the relevant date by or in relation to the existing appointee in respect of the contract or the employee is to be treated from that date as having been done by or in relation to the new appointee.

(5) But if an employee informs the existing appointee before the relevant date that he objects to the transfer of his contract of employment under the scheme—

- (a) sub-paragraphs (2) to (4) do not apply in relation to his contract of employment; and
- (b) his employment with the existing appointee is terminated immediately before the relevant date.

(6) A person is not to be treated as having been dismissed by the existing appointee by reason of—

- (a) the transfer of his contract of employment under this paragraph; or
- (b) the termination of his employment under sub-paragraph (5).

(7) This paragraph does not affect any right a person has to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.

#### *Effect on third parties*

6.—(1) Sub-paragraph (2) applies where (apart from that sub-paragraph) a third party would be entitled, in consequence of anything done or likely to be done by or under this Order in connection with a scheme under this Schedule—

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- (a) to terminate, modify, acquire or claim any asset; or
  - (b) to treat any asset as modified or terminated.
- (2) That entitlement—
- (a) shall not be enforceable in relation to that asset, until after the transfer of the asset; and
  - (b) shall then be enforceable in relation to the asset only in so far as the scheme contains provision for the asset to be transferred subject to whatever confers that entitlement.

*External assets, etc.*

7.—(1) This paragraph applies in any case where a scheme under this Schedule provides for the transfer of any external assets or liabilities.

(2) It shall be the duty of the existing appointee and the new appointee to take, as and when the new appointee considers appropriate, all such steps as may be requisite to secure that the vesting in the new appointee by virtue of the transfer of any external asset or liability is effective under the relevant law.

(3) Until the vesting in the new appointee, by virtue of the transfer, of any external asset or liability is effective under the relevant external law, it shall be the duty of the existing appointee to hold that asset or right for the benefit of, or to discharge that liability on behalf of, the new appointee.

(4) Nothing in sub-paragraphs (2) and (3) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in the new appointee by virtue of the transfer of any external asset or liability.

(5) The existing appointee shall have all such powers as may be requisite for the performance of its duty under this paragraph, but it shall be the duty of the new appointee to act on behalf of the existing appointee (so far as possible) in performing the duty imposed on the existing appointee by this paragraph.

(6) Duties imposed on the existing appointee or the new appointee by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between them.

(7) Any expenses incurred by the existing appointee under this paragraph shall be met by the new appointee.

*Further transitional provision*

8.—(1) The Department may, if it thinks it appropriate to do so for the purposes of, or in connection with, any appointment or variation replacing a company as a relevant undertaker or any scheme under this Schedule, by order make any provision which—

- (a) corresponds, in relation to any statutory provision, to any provision made by an order under Article 1 or 306; or
- (b) has similar effect in relation to any other statutory provision.

(2) An order under this paragraph may contain such supplemental, consequential and transitional provision as the Department considers appropriate.