
Changes to legislation: National Institutions Measure 1998, SCHEDULE 3 is up to date with all changes known to be in force on or before 07 April 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 3

Section 6(1).

TRANSFER OF OFFICERS

Effect of transfer on contracts of employment, etc.

- 1 (1) Except where objection is made under subsection (6) below, a transfer shall not operate so as to terminate a contract of employment, but any contract which would otherwise have been terminated by the transfer shall have effect after the transfer as if originally made between the transferred officer concerned and the common employer.
- (2) Without prejudice to sub-paragraph (1) above, but subject to sub-paragraphs (3) and (6) below, on the completion of a transfer—
 - (a) all the transferor body's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this paragraph to the common employer, and
 - (b) anything done before the transfer is completed by or in relation to the transferor body in respect of that contract shall be deemed to have been done by or in relation to the common employer.
- (3) Any rights, powers, duties and liabilities of the transferor body in respect of the provision of old age, invalidity or survivors' benefits under a pension scheme shall be transferred only to the extent that those benefits relate to a period of employment of the transferred officer after the transfer or to any voluntary contribution to the scheme made by him after the transfer.
- (4) Sub-paragraph (2) above shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted of and sentenced for any offence.
- (5) In the case of an officer transferred from the Church Commissioners or the Pensions Board, sub-paragraph (2) above shall not operate to transfer rights and powers in connection with any loan made to that officer.
- (6) Sub-paragraphs (1) and (2) above shall not operate to transfer a contract of employment and the rights, powers, duties and liabilities under or in connection with it if the employee to whom it relates informs the transferor body or the common employer that he objects to becoming employed by the common employer.
- (7) Where an employee so objects this paragraph shall operate so as to terminate his contract of employment with the transferor body but he shall not be treated, for any purpose, as having been dismissed by that body.
- (8) Sub-paragraphs (1) and (6) above are without prejudice to any right of an employee arising apart from this paragraph to terminate his contract of employment without notice if a substantial change is made in his working conditions to his detriment; but no such right shall arise by reason only that, by virtue of this paragraph, the identity

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of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

Effect of transfer on collective agreement

- 2 Where at the time of the transfer of an officer there exists a collective agreement as defined in the ^{M1}Trade Union and Labour Relations (Consolidation) Act 1992 made by or on behalf of the transferor body with a trade union recognised by that body in respect of that officer, then without prejudice to sections 179 and 180 of that Act (collective agreements presumed to be enforceable in specified circumstances) that agreement, in its application in relation to that officer, shall, after the transfer, have effect as if made by or on behalf of the common employer with that trade union, and accordingly anything done under or in connection with it, in its application as aforesaid, by or in relation to the transferor body before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the common employer.

Marginal Citations

M1 1992 c. 52.

Dismissal of an officer because of transfer

- 3 (1) Where either before or after a transfer, an officer of the transferor body or the common employer is dismissed, that officer shall be treated for the purpose of Part X of the ^{M2}Employment Rights Act 1996 (unfair dismissal) as unfairly dismissed if the transfer or a reason connected with it is the reason for the dismissal.
- (2) Where an economic, technical or organisational reason entailing changes in the workforce of either the transferor body or the common employer before or after a transfer is the reason or principal reason for dismissing an officer—
- (a) sub-paragraph (1) above shall not apply to the dismissal, but
 - (b) without prejudice to the application of section 98(4) of the said Act of 1996 (test of fair dismissal), the dismissal shall for the purpose of section 98(1) of that Act (substantial reason for dismissal) be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an officer holding the position which that officer held.

Marginal Citations

M2 1996 c. 18.

Continuity of employment

- 4 For the purpose of any enactment any period during which the transferred officer was employed by the transferor body before the transfer shall count as a period of employment with the common employer, and the change of employer shall not break the continuity of the period of employment.

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Interpretation

- 5 In this Schedule— “common employer” in relation to a transfer means the body to whom the transfer is made; “transfer” means a transfer of employment in pursuance of an agreement such as is mentioned in section 6 above; “transferor body” in relation to an officer means the person or body by whom the officer was employed immediately before the transfer.

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Changes and effects yet to be applied to the whole Measure associated Parts and Chapters:

Whole provisions yet to be inserted into this Measure (including any effects on those provisions):

- Sch. 1 para. 4A inserted by [2010 No. 1 s. 8](#)