

SCHEDULE 4

Article 17

Provisions relating to the transfer

Transfer of undertakings

1.—(1) The whole of the undertakings of the dissolved bodies are transferred to the Agriculture and Horticulture Development Board.

(2) The Board has all rights and is subject to all liabilities that the dissolved body had or to which it was subject immediately before the transfer.

Transfer of property, rights and undertakings

2.—(1) All the property of the dissolved bodies is transferred to the Agriculture and Horticulture Development Board.

(2) For the avoidance of doubt it is declared that the transfer of an interest in land by virtue of this Order does not constitute either—

- (a) a purchase or creation of that interest for the purposes of section 30(2) of the Landlord and Tenant Act 1954⁽¹⁾ (which restricts a landlord's right to oppose an application for a new tenancy of business premises in certain cases); or
- (b) an assignment, transfer, devolution, parting with possession or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession or other disposition contained in any instrument concerning that interest.

Existing agreements

3.—(1) Every agreement, trust deed and other instrument to which the dissolved body was a party, whether in writing or not and whether or not of such nature that rights and liabilities under it could be assigned by the body, has effect as if—

- (a) the Agriculture and Horticulture Development Board had been a party to the agreement, trust deed or other instrument;
- (b) a reference to the dissolved body were a reference to the Agriculture and Horticulture Development Board;
- (c) a reference to an officer or employee of the body were, as respects anything falling to be done on or after the transfer, a reference to such person as the Agriculture and Horticulture Development Board may appoint or, in default of appointment, to the officer or employee of the Agriculture and Horticulture Development Board who corresponds as nearly as may be to the officer or employee of the dissolved body; and
- (d) any other reference to the undertaking of the dissolved body were a reference to so much of the undertaking of the Agriculture and Horticulture Development Board as corresponds to the undertaking of the body.

Use of surplus

4. The Agriculture and Horticulture Development Board must use the surplus from each dissolved body for the purposes for which the body was established or for connected purposes; and “surplus” means the amount by which immediately before the transfer the assets of the body exceed its liabilities.

(1) 1954 c. 56.

Pension schemes

5.—(1) In this paragraph “existing scheme” means any pension scheme in relation to which a dissolved body is an employer or one of a number of employers.

(2) For the purposes of the Pension Schemes Act 1993⁽²⁾, the Pensions Act 1995⁽³⁾, Part 1 or section 33 of the Welfare Reform and Pensions Act 1999⁽⁴⁾ and the Pensions Act 2004⁽⁵⁾ and subordinate legislation made under those Acts the Agriculture and Horticulture Development Board shall be treated on and after the transfer as if it had at all material times been the employer in relation to any pension scheme in relation to which the dissolved body was an employer so that no employment cessation event shall occur or be deemed to occur on the transfer, and for the purpose of calculating the right to benefits under the pension scheme, service or employment with the dissolved body prior to the transfer shall be taken into account as if it were service or employment with the Agriculture and Horticulture Development Board, but the coming into force of this Order does not of itself give rise to any claim to benefit under any such scheme or operate to cause a member of it to become a member of another pension scheme.

(3) For the purpose of any provisions contained in any instrument affecting an existing scheme which has the effect of prohibiting or invalidating amendments of such instrument which would vary or conflict with the main objects or purposes of the scheme, any such admission, transfer of assets or assumption of liability as is referred to in this Schedule, whether effected by the powers conferred by this Schedule or otherwise, shall be deemed to be one of the main objects or purposes of such existing scheme.

Contracts of employment

6.—(1) Except where objection is made under the following paragraph, the transfer does not operate so as to terminate the contract of employment of any person employed by a dissolved body and assigned to the Agriculture and Horticulture Development Board that would otherwise be terminated by the transfer, but the contract has effect after the transfer as if originally made between the employee and the Agriculture and Horticulture Development Board.

(2) In respect of a contract of employment that is transferred by this Order, any purported variation of the contract is void if the sole or principal reason for the variation is—

- (a) the transfer itself; or
- (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

(3) This does not prevent the employer and employee from agreeing a variation of that contract if the sole or principal reason for the variation is—

- (a) a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce; or
- (b) a reason unconnected with the transfer.

Objection to transfer

7.—(1) This Schedule does not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs a dissolved body that he objects to becoming employed by the Agriculture and Horticulture Development Board.

(2) 1993 c. 48.

(3) 1995 c. 26.

(4) 1999 c. 30.

(5) 2004 c. 35.

(2) Where an employee so objects, the transfer operates so as to terminate his contract of employment with the dissolved body but he shall not be treated, for any purpose, as having been dismissed by the dissolved body.

(3) Where the transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred by this Schedule, the employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the dissolved body

(4) No damages are payable as a result of a dismissal falling within this paragraph in respect of any failure to pay wages to an employee in respect of a notice period which the employee has failed to work.

(5) This paragraph is without prejudice to any right of an employee arising apart from this Schedule to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer

Collective agreements

8. Where at the time of a relevant transfer there exists a collective agreement made by or on behalf of a dissolved body with a trade union recognised by that dissolved body in respect of any employee whose contract of employment is transferred by this Schedule, then—

- (a) that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if made by the Agriculture and Horticulture Development Board or on behalf of the Agriculture and Horticulture Development Board with that trade union, and accordingly anything done under or in connection with it, in its application in relation to the employee, by or in relation to the dissolved body before the transfer, shall, after the transfer, be deemed to have been done by or in relation to the Agriculture and Horticulture Development Board; and
- (b) any order made in respect of that agreement, in its application in relation to the employee, shall, after the transfer, have effect as if the Agriculture and Horticulture Development Board were a party to the agreement.

Legal proceedings and the payment of levy

9.—(1) Where any right or liability becomes a right or liability of the Agriculture and Horticulture Development Board, the Agriculture and Horticulture Development Board has 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, enforcing or resisting that right or liability as it would have had if it had been at all times a right or liability of the Agriculture and Horticulture Development Board, and any legal proceedings or applications to any authority pending immediately before the transfer by or against the body shall be continued by or against the Agriculture and Horticulture Development Board.

(2) All levy payable under legislation repealed or revoked by this Order and due immediately before the transfer is payable to the Agriculture and Horticulture Development Board, and the Agriculture and Horticulture Development Board may bring proceedings to recover that levy.

Prosecutions

10. The Agriculture and Horticulture Development Board may bring prosecutions under any enactments repealed or revoked by this Order for offences committed before the transfer, and in

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particular may bring prosecutions for matters arising out of the Cereals Marketing Act 1965⁽⁶⁾ notwithstanding the restrictions on bringing prosecutions in section 22 of that Act.

⁽⁶⁾ 1965 c. 14.