

SCHEDULES

SCHEDULE 2

Article 8

TRANSFER TO THE INSTITUTE OF CERTAIN PROPERTY, RIGHTS, LIABILITIES AND STAFF OF DEPARTMENT

Transfer of certain property, rights and liabilities of the Department

1.—(1) The Department may by order provide for the transfer to the Institute on the appointed day of any property, rights and liabilities to which the Department is entitled or subject immediately before the appointed day.

(2) Sub-paragraph (1)—

(a) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than by virtue of that sub-paragraph; but

(b) does not apply to rights and liabilities under a contract of employment (which are dealt with by paragraph 2).

(3) The following sub-paragraphs apply in relation to property, rights and liabilities transferred by an order under sub-paragraph (1) and in those sub-paragraphs “the transfer” means the transfer effected by the order under sub-paragraph (1).

(4) In the construction and for the purposes of any statutory provision or other document passed or made before the appointed day, any reference to, or which is to be construed as a reference to, the Department shall, so far as may be necessary for the purposes of the transfer, be construed as a reference to the Institute.

(5) The transfer does not affect the validity of anything done by, or in relation to, the Department before the appointed day.

(6) Anything which before the appointed day was done by or in relation to the Department shall, if in effect immediately before that date, continue 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 Institute.

(7) Anything (including any legal proceedings) in the process of being done by or in relation to the Department immediately before the appointed day may be continued by or in relation to the Institute.

Transfer of certain staff of the Department

2.—(1) This paragraph applies to a person who—

(a) immediately before the appointed day is employed in the Northern Ireland civil service wholly or mainly for the purposes of functions of the Department corresponding to those exercisable after that day by the Institute; and

(b) is designated by order made by the Department for the purposes of this paragraph.

(2) The contract of employment of a person to whom this paragraph applies shall have effect from the appointed day as if originally entered into between that person and the Institute.

(3) Without prejudice to sub-paragraph (2)—

- (a) all the rights, powers, duties and liabilities of the Department under or in connection with the contract of employment are by virtue of this paragraph transferred to the Institute on the appointed day; and
 - (b) anything done before that day by or in relation to the Department in respect of that contract or the employee is to be treated from that day as having been done by or in relation to the Institute.
- (4) If a person informs the Department that he objects to the transfer of his contract of employment under this paragraph—
- (a) sub-paragraphs (2) and (3) do not apply in relation to him; and
 - (b) his employment with the Department is terminated immediately before the appointed day.
- (5) A person is not to be treated for the purposes of the [Employment Rights \(Northern Ireland\) Order 1996 \(NI 16\)](#) as having been dismissed by the Department by reason of—
- (a) his transfer under this paragraph; or
 - (b) the termination of his contract of employment under sub-paragraph (4).
- (6) This paragraph does not prejudice 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 arises by reason only that, by virtue of this paragraph, the identity of his employer changes unless the employee shows that in all the circumstances the change is a significant change and is to his detriment.
- (7) An order under this paragraph may designate a person either individually or as a member of a class or description of employees.
- (8) Before making any order under this paragraph 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.
- (9) For the purposes of this paragraph where a person is employed as mentioned in sub-paragraph (1) on terms which do not constitute a contract of employment—
- (a) he shall be regarded as employed by the Department by virtue of a contract of employment;
 - (b) the terms of his employment shall be regarded as constituting the terms of that contract; and
 - (c) the reference in sub-paragraph (5) to dismissal is to termination of his employment.