

*Status: Point in time view as at 01/11/2007. This version of this schedule contains provisions that are prospective.*

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## SCHEDULES

PROSPECTIVE

### SCHEDULE 2

Section 11(2)

#### TRANSFERS OF PROPERTY ETC AND STAFF IN CONNECTION WITH PROBATION SERVICES ARRANGEMENTS

##### *Transfer schemes: preliminary*

- 1 (1) A property transfer scheme or a staff transfer scheme may be made for the purposes of or in connection with—
- (a) the abolition of a local probation board;
  - (b) the implementation or termination of any arrangements made by the Secretary of State under section 3(2) or (5); or
  - (c) the implementation or termination of any arrangements mentioned in section 3(3)(c) for anything to be done on behalf of a provider of probation services.
- (2) In this Schedule—
- “property” includes rights and interests of any description (other than those under a contract of employment);
  - “property transfer scheme” means a scheme under paragraph 2;
  - “relevant person” means—
    - (a) a probation trust;
    - (b) any other provider of probation services; or
    - (c) a person with whom any arrangements mentioned in sub-paragraph (1) (c) are made;
  - “staff transfer scheme” means a scheme under paragraph 5.

##### *Property transfer schemes*

- 2 (1) The Secretary of State may make a scheme (“the scheme”) providing for—
- (a) the transfer to the Secretary of State of—
    - (i) the property and liabilities of a local probation board; or
    - (ii) any property or liabilities of a relevant person; or
  - (b) the transfer to a relevant person of any property or liabilities of the Secretary of State (whether or not after an initial transfer to him under paragraph (a)).
- (2) The scheme may—
- (a) create rights or interests, or impose liabilities or conditions, in relation to anything transferred or acquired by virtue of the scheme;

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- (b) provide for the Secretary of State or any other person nominated by or in accordance with the scheme to determine any matter requiring determination under or in consequence of the scheme;
- (c) make supplementary, incidental, transitional and consequential provision.
- (3) Any property or liability that is the subject of the scheme is, by virtue of this paragraph, transferred at the time appointed by or under the scheme.
- (4) A certificate issued by the Secretary of State that any property or liability has, or has not, been transferred by virtue of the scheme is conclusive evidence of the transfer or the fact that it has not been transferred (as the case may be).
- 3 (1) This paragraph applies where a property transfer scheme is made.
- (2) The scheme has effect despite any provision, of whatever nature, which would otherwise prevent, penalise or restrict the transfer of anything that is the subject of the scheme.
- (3) A right of pre-emption, right of reverter or other similar right shall not operate or become exercisable as a result of any transfer of property by virtue of the scheme (but shall have effect after the transfer as if the transferee and the transferor were the same person and no transfer had taken place).
- (4) Such compensation as is just is to be paid to any person in respect of any right which would, apart from sub-paragraph (3), have operated in favour of, or become exercisable by, that person but which (in consequence of that sub-paragraph), cannot subsequently operate in his favour or become exercisable by him.
- (5) Any such compensation is to be paid by the transferor, by the transferee or by both.
- (6) The scheme may provide for the determination of disputes as to whether and, if so, how much compensation is to be paid and as to the person by whom or to whom it is to be paid.
- (7) This paragraph applies in relation to the creation of rights or interests, or the doing of anything else, in relation to property as it applies in relation to a transfer of property (and references to the transferor and transferee are to be read accordingly).
- 4 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by a property transfer scheme which is in effect immediately before the transfer is to be treated as if done by or in relation to the transferee.
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.
- (3) A reference to the transferor in any document relating to anything so transferred is to be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.
- (4) References in this paragraph to things done or being done by or in relation to the transferor include a reference to things treated by virtue of any Act or subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) as done or being done by or in relation to the transferor.

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### *Staff transfer schemes*

- 5 (1) The Secretary of State may make a scheme (“the scheme”) for—
- (a) the transfer of employees of a local probation board to a relevant person or so as to become employed in the civil service of the state;
  - (b) the transfer of employees of one relevant person to another relevant person or so as to become employed in the civil service of the state;
  - (c) the transfer of persons employed in the civil service of the state so as to become employees of a relevant person.
- (2) The scheme may—
- (a) be expressed to apply to any description of person (or, in the case of a transfer from a local probation board or relevant person, all its employees) or to any individual person;
  - (b) provide for the Secretary of State or any other person nominated by or in accordance with the scheme to determine any matter requiring determination under or in consequence of the scheme;
  - (c) make supplementary, incidental, transitional and consequential provision.
- (3) The scheme may not be made unless any directions about consultation given by the Secretary of State have been complied with in relation to each person to be transferred by virtue of the scheme.
- 6 (1) This paragraph applies to an employee of a probation board or a relevant person who is to be transferred to a relevant person by virtue of a staff transfer scheme.
- (2) The contract of employment is not terminated by the transfer and has effect from the date of transfer as if originally made between the employee and the transferee.
- (3) Where the employee is transferred under the scheme—
- (a) all the rights, duties and liabilities of the transferor under or in connection with the contract of employment are by virtue of this sub-paragraph transferred to the transferee on the date of the transfer; and
  - (b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.
- This sub-paragraph does not prejudice the generality of sub-paragraph (2).
- (4) But if the employee informs the transferor or the transferee that he objects to the transfer—
- (a) sub-paragraphs (2) and (3) do not transfer the contract of employment (or the rights, powers, duties and liabilities under or in connection with it); and
  - (b) the contract of employment is terminated immediately before the date of transfer.
- (5) The employee is not to be treated, for the purposes of the Employment Rights Act 1996 (c. 18), as having been dismissed by the transferor by reason of—
- (a) the transfer of the contract of employment under the scheme; or
  - (b) the termination of the contract of employment under sub-paragraph (4)(b).
- (6) In this paragraph “transferor” and “transferee” refer to the employer from whom or to whom the employee is or would be transferred under the scheme.

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- 7 (1) This paragraph applies where an employee of a probation board or a relevant person is to become employed in the civil service of the state by virtue of a staff transfer scheme.
- (2) The employee's period of employment with the transferor counts as a period of employment in his Crown employment and the change of employment does not break the continuity of that employment.
- (3) So far as may be consistent with employment in the civil service of the state, the terms and conditions of his employment have effect after the transfer as if they were terms and conditions of his Crown employment.
- (4) Where the employee is transferred under the scheme—
- (a) all the rights, duties and liabilities of the transferor under or in connection with the contract of employment are by virtue of this sub-paragraph transferred to the Crown on the date of the transfer; and
  - (b) anything done before that date by, or in relation to, the transferor in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the Crown.
- This sub-paragraph does not prejudice the generality of sub-paragraphs (2) and (3).
- (5) But if the employee informs the transferor or the Secretary of State that he objects to the transfer—
- (a) the transfer shall not take place (and so sub-paragraphs (2) to (4) do not apply); and
  - (b) the contract of employment is terminated immediately before the date of transfer.
- (6) The employee is not to be treated, for the purposes of Part 9 of the Employment Rights Act 1996, as having been dismissed by reason of—
- (a) his transfer to Crown employment; or
  - (b) the termination of the contract of employment by virtue of sub-paragraph (5)
- (b).
- (7) In this paragraph “transferor” refers to the employer from whom the employee is or would be transferred under the scheme.
- 8 (1) This paragraph applies to an individual who is to be transferred from employment in the civil service of the state so as to become an employee of a relevant person by virtue of a staff transfer scheme.
- (2) The individual's employment is not terminated by the transfer.
- (3) The terms and conditions of the individual's Crown employment (so far as consistent with employment under a contract of employment with a person other than the Crown) have effect from the date of transfer as the terms and conditions of a contract of employment originally made between the individual and the transferee.
- (4) Where the individual is transferred under the scheme—
- (a) all the rights, duties and liabilities of the Crown under or in connection with his employment are by virtue of this sub-paragraph transferred to the transferee on the date of the transfer; and

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- (b) anything done before that date by, or in relation to, the Crown in respect of that employment or the individual is to be treated from that date as having been done by or in relation to the transferee.

This sub-paragraph does not prejudice the generality of sub-paragraphs (2) and (3).

- (5) But if the individual informs the Secretary of State or the transferee that he objects to the transfer—
- (a) the transfer shall not take place (and so sub-paragraphs (2) to (4) do not apply); and
  - (b) his employment is terminated immediately before the date of transfer.
- (6) For the purposes of Part 9 of the Employment Rights Act 1996, the individual is not to be regarded as having been dismissed by reason of—
- (a) his transfer from Crown employment under the scheme; or
  - (b) the termination of his employment by virtue of sub-paragraph (5)(b).
- (7) In this paragraph “transferee” refers to the employer to whom the person is or would be transferred under the scheme.
- 9 (1) Nothing in this Schedule prejudices any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.
- (2) But no such right arises by reason only that (by virtue of paragraph 6, 7 or 8) 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.
- 10 (1) Where an employee's contract of employment with—
- (a) a local probation board,
  - (b) a probation trust which is to be dissolved,
- is not transferred under a staff transfer scheme, it is terminated immediately before the date on which the board or probation trust ceases to exist (and the employee is to be treated, for the purposes of the Employment Rights Act 1996 (c. 18), as having been dismissed by the board or probation trust).
- (2) Sub-paragraph (1) has effect subject to paragraphs 6(5), 7(6) and 8(6).

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