

SCHEDULES

SCHEDULE 3

Section 39

TRANSFER SCHEMES

Introductory

- 1 In this Schedule—
- “transferor” means the person from whom any property, rights or liabilities are transferred;
 - “transferee” means the person to whom any property, rights or liabilities are transferred.

The property, rights and liabilities that may be transferred

- 2 (1) A scheme may provide for the transfer of any property, rights or liabilities, whether or not otherwise capable of being transferred or assigned.
- (2) A scheme may provide for the transfer of any property, rights or liabilities to take effect regardless of any such—
- (a) contravention,
 - (b) liability, or
 - (c) interference with an interest or right,
- as there would be (apart from this sub-paragraph) by reason of an inhibiting provision.
- (3) For the purposes of sub-paragraph (2) an “inhibiting provision” is a provision having effect (whether under an enactment or an agreement or in any other way) in relation to the terms on which the transferor is entitled to the property or right, or is subject to the liability, that is the subject of the transfer.

Creation and apportionment of property, rights or liabilities

- 3 (1) A scheme may—
- (a) create for the transferor interests in or rights over property transferred by virtue of the scheme;
 - (b) create for the transferee interests in or rights over property retained by the transferor;
 - (c) create rights or liabilities between the transferor and the transferee.
- (2) In this Schedule, any reference—
- (a) to the transfer of interests, rights or liabilities by virtue of a scheme, or
 - (b) to any interests, rights or liabilities transferred by virtue of a scheme,
- includes a reference to the creation of interests, rights or liabilities, or to interests, rights or liabilities created, by virtue of sub-paragraph (1).

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- (3) A scheme may make incidental provision as to the interests, rights and liabilities of persons other than the transferor and the transferee with respect to the subject matter of the scheme.

Vesting certificates

- 4 A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence of that fact for all purposes.

Employment contracts

- 5 (1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme.
- (2) The contract of employment—
- (a) is not terminated by the transfer, and
 - (b) has effect from the transfer date as if made between the employee and the transferee.
- (3) The rights, powers, duties and liabilities of the transferor under or in connection with the contract are transferred to the transferee on the transfer date.
- (4) Anything done before the transfer date by or in relation to the transferor 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 transferee.
- (5) This paragraph is subject to paragraph 6.

Employee expressing objection to transfer of contract of employment

- 6 (1) Rights and liabilities under a contract of employment are not transferred under this Schedule if the employee objects to the transfer and informs the transferor or transferee of that objection.
- (2) If the employee informs the transferor or transferee of an objection under subparagraph (1)—
- (a) the employee's contract of employment is terminated immediately before the transfer date, but
 - (b) the employee is not to be treated, for any purpose, as having been dismissed by the transferor.

Right to terminate contract of employment for substantial detrimental change in conditions

- 7 Nothing in this Schedule affects any right a person has to terminate a contract of employment if (apart from the change of employer) a substantial detrimental change is made in the person's working conditions.

Civil servants

- 8 (1) This Schedule applies with the following modifications in relation to employment in the civil service of the State on terms which do not constitute a contract of employment.

- (2) In the case of an individual who holds employment in the civil service of the State immediately before the transfer date—
- (a) the individual is to be treated as employed by virtue of a contract of employment,
 - (b) the terms of that employment are to be regarded as constituting the terms of that contract, and
 - (c) the reference in paragraph 6 to dismissal by the transferor is to be read as a reference to termination of that employment.
- (3) In the case of an individual who is to hold employment in the civil service of the State on and after the transfer date, the terms and conditions of the individual's contract of employment immediately before that date have effect on and after that date as if they were terms and conditions of the individual's employment in the civil service of the State.

Compensation

- 9 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by the scheme.

Validity

- 10 A transfer under this Schedule does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

Continuity

- 11 (1) Anything which—
- (a) is done by the transferor for the purposes of, or otherwise in connection with, anything transferred by virtue of a scheme, and
 - (b) is in effect immediately before the transfer date,
- is to be treated as done by the transferee.
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings)—
- (a) which relates to anything transferred by virtue of a scheme, and
 - (b) which is in the process of being done by or in relation to the transferor immediately before the transfer date.

Documents

- 12 In any document which—
- (a) relates to anything transferred by virtue of a scheme, and
 - (b) is in effect immediately before the transfer date,
- any reference to the transferor is to be read as a reference to the transferee.

Remedies

- 13 As from the date on which a transfer takes effect—
- (a) the transferee, and

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(b) any other persons,
are to have the same rights, powers and remedies with regard to any right or liability transferred as if the right or liability had at all times been a right or liability of the transferee.

Interim arrangements

- 14 (1) A scheme may include provision requiring a transferor to make available to a transferee during any interim period any of the following—
- (a) any designated premises or facilities occupied or used by the transferor;
 - (b) any designated officers or employees of the transferor.
- (2) In this paragraph “interim period”, in the case of any transfer by virtue of a scheme, means a period—
- (a) beginning with the day following the making of the scheme, and
 - (b) ending with the date on which the transfer takes effect.

Retrospective modification of schemes

- 15 (1) If, at any time after a scheme has come into force, the Secretary of State considers it appropriate to do so, the Secretary of State may direct that the scheme shall be taken to have come into force with such modifications as may be specified in the direction.
- (2) A direction under this paragraph—
- (a) may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme, and
 - (b) in connection with giving effect to that provision from that time, may contain such incidental, consequential, supplemental or transitional provision or savings as the Secretary of State thinks fit.

Incidental, consequential, supplemental or transitional provision or savings

- 16 A scheme may include such incidental, consequential, supplemental or transitional provision or savings as the Secretary of State thinks fit.