

Status: Point in time view as at 03/04/2017.

Changes to legislation: Energy Act 2013, SCHEDULE 11 is up to date with all changes known to be in force on or before 08 September 2024. 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)

SCHEDULES

SCHEDULE 11

Section 115

TRANSFERS TO THE OFFICE FOR NUCLEAR REGULATION

PART 1

INTRODUCTORY

- 1 In this Schedule—
- “the HSE” means the Health and Safety Executive;
 - “the interim ONR” means the agency of the HSE currently known as the Office for Nuclear Regulation;
 - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

PART 2

STAFF TRANSFER SCHEMES

Power to make staff transfer schemes

- 2 (1) The Secretary of State may make one or more schemes under which an employee to whom the scheme applies becomes an employee of the ONR (but this is subject to provision contained in the scheme by virtue of paragraph 6).
- (2) A scheme under sub-paragraph (1) is referred to in this Schedule as a “staff transfer scheme”.

Staff to whom a transfer may apply

- 3 (1) The employees to whom a transfer scheme may apply are those employees who fall within sub-paragraph (2).
- (2) An employee falls within this sub-paragraph if, immediately before the staff transfer scheme takes effect, the employee—
- (a) was employed by the HSE under a contract of employment, and
 - (b) was assigned to work in the interim ONR.
- (3) Sub-paragraph (4) applies for the purposes of determining whether an employee was assigned as mentioned in sub-paragraph (2) where, immediately before the transfer scheme takes effect, the employee—
- (a) is on secondment,
 - (b) is temporarily assigned to work in another part of the HSE, or
 - (c) is otherwise temporarily absent.

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- (4) That sub-paragraph is to be read as if it operated immediately before the date of the secondment or temporary assignment, or the date when the absence began, instead of immediately before the date on which the scheme takes effect.

Content of a staff transfer scheme

- 4 (1) A staff transfer scheme may make provision for giving full effect to an employee's transfer into the employment of the ONR as a result of the scheme.
- (2) Provision made by virtue of sub-paragraph (1) may include provision—
- (a) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply in relation to the transfer);
 - (b) modifying the law (including provision made by an Act or subordinate legislation) applicable to the employee's employment;
 - (c) about the pension entitlements of the employee enjoyed immediately before the transfer.
- 5 (1) A staff transfer scheme may apply to all, or to any specified class or description of, the employees falling within paragraph 3(2) or to specified employees so falling.
- (2) “Specified” means specified in the scheme.
- 6 (1) A staff transfer scheme may make provision enabling an employee to object to the transfer which would otherwise be effected by the scheme including provision as to how such an objection is to be made and as to the consequences of it.
- (2) A staff transfer scheme may make provision allowing an employee to be treated as being temporarily assigned to the ONR for a period limited by the scheme, whether at the employee's election or in the exercise of a discretion conferred on the Secretary of State by the scheme.
- (3) Provision made by virtue of sub-paragraph (2) may include provision—
- (a) allowing the employee to elect to end the period of temporary assignment by agreeing to become an employee of the ONR or by objecting to the transfer under sub-paragraph (1);
 - (b) as to the consequences of the expiry of the period of temporary assignment without such an election having been made;
 - (c) as to the employee's pay (and the liability to pay it) and the terms and conditions on which the employee is engaged.

PART 3

PROPERTY TRANSFER SCHEMES

Power to make property transfer schemes

- 7 (1) The Secretary of State may make one or more schemes transferring qualifying property, rights and liabilities of the HSE to the ONR.
- (2) The Secretary of State may make one or more schemes transferring qualifying property, rights and liabilities of the Secretary of State to the ONR.

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(3) A scheme under sub-paragraph (1) or (2) is referred to in this Schedule as a “property transfer scheme”.

8 The HSE may submit to the Secretary of State proposals about the exercise of the power to make property transfer schemes.

Qualifying property

9 (1) References in this Part to “qualifying property, rights and liabilities” are to property held, and rights and liabilities arising, in connection with—

- (a) functions under any enactment which were functions of the Secretary of State or the HSE and as a result of this Act have or are to become functions of the ONR;
- (b) functions which were functions of the Secretary of State or the HSE which have been or are to be replaced by a function of the ONR under this Act;
- (c) functions which were carried out by the HSE under an agreement under section 13 of the 1974 Act and which are to be carried out by the ONR under an agreement under section 90.

(2) Rights and liabilities arising under or in connection with a contract of employment in effect when the scheme comes into force are excluded from the rights and liabilities which may be transferred under a property transfer scheme.

Content of a property transfer scheme

10 (1) A property transfer scheme may, in particular, make provision—

- (a) for anything done by or in relation to the HSE or the Secretary of State in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the ONR;
- (b) for references to the HSE or the Secretary of State in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the ONR;
- (c) about the continuation of legal proceedings;
- (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
- (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
- (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
- (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme
- (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
- (i) for apportioning property, rights or liabilities;
- (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
- (k) for requiring the ONR to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.

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- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.
- (3) In this Part of this Schedule “property” includes interests of any description.

Compensation

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

PART 4

PROCEDURE FOR MAKING OR MODIFYING SCHEMES UNDER THIS SCHEDULE

- 12 (1) Before making a staff transfer scheme or a property transfer scheme, the Secretary of State must be satisfied that—
- (a) those persons that the Secretary of State considers likely to be affected by the making of the scheme, and
 - (b) such other persons as appear to the Secretary of State to represent the interests of such persons,
- have been consulted (whether by the Secretary of State or another person) and must have regard to the results of the consultation in determining whether to make the scheme.
- (2) Sub-paragraph (3) applies where—
- (a) the Secretary of State is proposing to make a modification to a staff transfer scheme or a property transfer scheme under section 153,
 - (b) it appears to the Secretary of State that the modification is likely to have a material effect on any person, and
 - (c) the Secretary of State is not required under subsection (3) of that section to obtain the agreement of those persons before making the modification.
- (3) Before making the modification, the Secretary of State must be satisfied that—
- (a) any person or persons falling within sub-paragraph (2)(b), and
 - (b) such other persons as appear to the Secretary of State to represent the interests of such persons,
- have been consulted (whether by the Secretary of State or another person) and must have regard to the results of the consultation in determining whether to make the modification.
- (4) For the purposes of this paragraph it does not matter whether consultation takes place before or after the passing of this Act.

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