

Status: Point in time view as at 01/11/2018. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: Investigatory Powers Act 2016, SCHEDULE 5 is up to date with all changes known to be in force on or before 14 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

VALID FROM 05/02/2019

SCHEDULE 5

Section 83(5)

TRANSFER AND AGENCY ARRANGEMENTS WITH PUBLIC AUTHORITIES: FURTHER PROVISIONS

Particular safeguards in connection with operation of section 69

- 1 (1) The following provisions apply where the functions of the Secretary of State under section 67 are exercisable by a public authority by virtue of regulations under section 83(1).
- (2) The measures adopted or arrangements made by the public authority for the purpose of complying with the requirements of section 69 must be such as are approved by the Secretary of State.
- (3) Any report required by section 69(6)(b) or (8) must be made to the Secretary of State as well as to the Investigatory Powers Commissioner.

Requirement for public authority to provide reports to Secretary of State

- 2 (1) A public authority, when exercising functions by virtue of regulations under section 83(1), must at least once in each calendar year make a report to the Secretary of State on—
- (a) the discharge of the functions, and
 - (b) such other matters as the Secretary of State may by regulations require.
- (2) Regulations under section 83(1) may, in particular, modify sub-paragraph (1) as it has effect in relation to the calendar year in which the regulations come into force or are revoked.
- (3) The Secretary of State may agree to a report under this paragraph being combined with any other report which the public authority concerned is required to, or may, make to the Secretary of State.

Transfer schemes in connection with transfer of functions

- 3 (1) The Secretary of State may, in connection with regulations under section 83(1), make a scheme for the transfer of property, rights or liabilities.
- (2) The things that may be transferred under a transfer scheme include—
- (a) property, rights and liabilities which could not otherwise be transferred,
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme.

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- (3) A transfer scheme may make consequential, supplementary, incidental, transitional, transitory or saving provision and may, in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred,
 - (b) make provision about the continuing effect of things done by, on behalf of or in relation to the transferor in respect of anything transferred,
 - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred,
 - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee,
 - (e) make provision for the shared ownership or use of property,
 - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (4) A transfer scheme may provide—
- (a) for modification by agreement,
 - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) A transfer scheme may confer a discretion on the Secretary of State to pay compensation to any person whose interests are adversely affected by the scheme.
- (6) A transfer scheme may be included in regulations under section 83(1) but, if not so included, must be laid before Parliament after being made.
- (7) For the purposes of this paragraph references to rights and liabilities include references to—
- (a) rights and liabilities relating to a contract of employment, and
 - (b) rights and liabilities of the Crown relating to the terms of employment of individuals in the civil service.
- (8) Accordingly, a transfer scheme may, in particular, provide—
- (a) for—
 - (i) an individual employed in the civil service to become an employee of the transferee, or
 - (ii) an employee of the transferor to become an employee of the transferee or an individual employed in the civil service,
 - (b) for—
 - (i) the individual's terms of employment in the civil service to have effect (subject to any necessary modifications) as the terms of the individual's contract of employment with the transferee, or
 - (ii) (as the case may be) the individual's contract of employment to have effect (subject to any necessary modifications) as the terms of the individual's contract of employment with the transferee or, where the transferee is the Secretary of State, the individual's terms of employment with the civil service,
 - (c) for the transfer of rights and liabilities of the Crown or another public authority under or in connection with the individual's terms of employment.

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(9) In this paragraph—

“civil service” means the civil service of the State,

“TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246),

and references to the transfer of property include the grant of a lease.

Tax in connection with transfer schemes

4 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—

- (a) anything transferred under a transfer scheme, or
- (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme.

(2) The provision which may be made under sub-paragraph (1)(a) includes, in particular, provision for—

- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred,
- (b) anything transferred to be treated in a specified way for the purposes of a tax provision,
- (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.

(3) The provision which may be made under sub-paragraph (1)(b) includes, in particular, provision for—

- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer,
- (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way,
- (c) the Secretary of State to be required or permitted to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.

(4) In this paragraph—

“relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax or stamp duty land tax,

“tax provision” means any provision—

- (a) about a relevant tax, and
- (b) made by an enactment,

“transfer scheme” means a transfer scheme under paragraph 3,
and references to the transfer of property include the grant of a lease.

Supplementary and other general provision

5 The power to make regulations under section 83(1) includes, in particular, power to—

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- (a) modify any enactment about a public authority for the purpose of enabling or otherwise facilitating any function under sections 67 to 69 to be exercisable by the public authority,
- (b) impose requirements or confer other functions on a public authority in connection with functions transferred by the regulations.

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The power to make regulations under—

- (a) section 83, or
- (b) paragraph 4 above,

including that power as extended (whether by section 267(1) or otherwise) may, in particular, be exercised by modifying any enactment (including this Act).

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