

SCHEDULES

SCHEDULE 2

Section 1.

TRANSFER SCHEMES

Creation and apportionment of property, rights and liabilities etc.

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 Authority interests in or rights over property retained by the transferor;
 - (c) create rights or liabilities between the transferor and the Authority.

2.—(1) A scheme may provide for the transfer of property, rights or liabilities that would not otherwise be capable of being transferred or assigned.

(2) In particular, it may provide for the transfer to take effect regardless of a contravention, liability or interference with an interest or right that would otherwise exist by reason of a provision having effect in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, in question.

(3) It does not matter whether the provision referred to in sub-paragraph (2) has effect under a statutory provision or an agreement or in any other way.

3. A certificate by the Department that anything specified in the certificate has vested in the Authority by virtue of a scheme is conclusive evidence for all purposes of that fact.

Employment contract

4.—(1) This paragraph applies if rights and liabilities under a contract of employment are transferred by virtue of a scheme.

(2) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer whether or not the transfer would, apart from this paragraph, be a relevant transfer for the purposes of those regulations.

- (3) The scheme shall—
 - (a) identify the transferring employees (whether by name or otherwise);
 - (b) include provision securing pension protection for such employees;

- (c) include provision for procedures designed to resolve any grievances of such employees arising in relation to matters dealt with by the scheme; and
 - (d) include provision for the payment of compensation by the Department to any such employee who suffers loss or detriment in consequence of the scheme.
- (4) Before making the scheme the Department shall consult—
- (a) in the case of a scheme identifying the transferring employees by name, those employees; and
 - (b) in the case of a scheme identifying the transferring employees in any other way, such persons as appear to the Department to be representative of the transferring employees.
- (5) For the purposes of sub-paragraphs (3) and (4)—
- (a) “transferring employee” means an employee of an education and library board whose contract of employment becomes, by virtue of sub-paragraph (2), a contract of employment with the Authority;
 - (b) “pension protection” is secured for a transferring employee (“T”) if after the change in T’s employer T has, as an employee of the Authority, rights to acquire pension benefits and those rights are the same as or (taken as a whole) not less favourable than those which T had as an employee of the education and library board.
- (6) Procedures under sub-paragraph (3)(c) must involve consideration of grievances by a person other than—
- (a) a member, or member of staff, of an education and library board;
 - (b) a member, or member of staff, of the Authority; or
 - (c) a member of staff of the Department.

Continuity

5. A transfer by virtue of a scheme does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

6. 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 Authority

7. There may be continued by or in relation to the Authority 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.

8.—(1) This paragraph applies to any document—

(a) which relates to anything transferred by virtue of a scheme, and

(b) which is in effect immediately before the transfer date.

(2) Any references in the document to the transferor are to be read as references to the Authority.

Incidental provision

9. A scheme may include supplementary, incidental, transitional and consequential provision.

Interpretation

10. In this Schedule “transferor”, in relation to anything transferred by virtue of a scheme, means the education and library board from which it is so transferred.