

## SCHEDULES

### SCHEDULE 10

Article 72.

#### TRANSFERS UNDER ARTICLE 69

##### *Interpretation*

1. Any reference in this Schedule to a transfer effected under a transfer scheme is a reference to a transfer effected by this Order under such a scheme.

##### *Allocation of assets and liabilities: general*

2.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) Any asset or liability comprised partly in the specified part of Northern Ireland Electricity's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the asset or liability permits, be divided or apportioned between the transferee of the specified part ("transferee A") and the transferee of the other part or each of the other parts ("transferee B") in such proportions as may be appropriate.

(3) Where any estate in land falls to be so divided—

- (a) any rent payable under a lease in respect of that estate; and
- (b) any rent charged on that estate,

shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate and the other part is payable in respect of, or charged on, only the other part of the estate.

(4) For the purposes of sub-paragraph (3), any fee farm grant creating the relation of landlord and tenant shall be treated as a lease.

(5) Any asset or liability comprised as mentioned in sub-paragraph (2) the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—

- (a) in the case of an estate in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;
- (b) in the case of any other asset or liability, whether on the transfer date transferee A or transferee B appears likely to make use of, or as the case may be, to be affected by, the asset or liability, to the greater extent,

subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

3.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland

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Electricity's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) It shall be the duty of the transferee of the specified part of Northern Ireland Electricity's undertaking ( "transferee A") and each of the other transferees ( "transferee B"), whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the assets and liabilities transferred to transferee A or transferee B and as will—

- (a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and
- (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of Northern Ireland Electricity's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.

(3) Any such agreement shall provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to an estate in land or not, and whether involving the surrender of any existing estate or the creation of a new estate or not;
- (b) for the granting of indemnities in connection with the severance of leases and other matters; and
- (c) for responsibility for registration of any matter in any statutory register.

(4) If transferee A or transferee B represents to the Department, or if it appears to the Department without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) that such agreement will be reached, the Department, whether before or after the transfer date, may—

- (a) give a direction determining that matter; and
- (b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2).

(5) Any assets or liabilities required by a direction under sub-paragraph (4) to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Order to, and by virtue thereof vested in, that transferee accordingly.

#### *Allocation of assets and liabilities: contracts of employment*

4.—(1) The provisions of this paragraph shall apply where—

- (a) the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking; and
- (b) it falls to be determined whether the assets and liabilities transferred to the transferee of that part ( "transferee A") include rights and liabilities under a particular contract of employment.

(2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of Northern Ireland Electricity's undertaking.

(3) The employee, transferee A or any of the other transferees may apply to the Department to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred to transferee A, and the decision of the Department on the application shall be final.

### *Variation of transfers by agreement*

5.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking.

(2) At any time before the end of the period of 12 months from the transfer date the transferee of the specified part and the transferee of any assets and liabilities comprised in some other part of Northern Ireland Electricity's undertaking may, with the approval of the Department, agree in writing that—

- (a) as from such date as may be specified in or determined under the agreement; and
- (b) in such circumstances (if any) as may be so specified,

there shall be transferred from the one transferee to, and vested in, the other transferee any assets and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(3) Subject to sub-paragraph (4), in the case of an agreement under sub-paragraph (2), the assets and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(4) The following provisions of this Schedule shall have effect as if—

- (a) any reference to a transfer effected under a transfer scheme included a reference to a transfer effected under an agreement under sub-paragraph (2);
- (b) any reference to a transaction effected under paragraph 3(2) or of a direction under paragraph 3(4) included a reference to such an agreement; and
- (c) any reference to a vesting by virtue of this Order included a reference to a vesting by virtue of such an agreement.

### *Right to production of documents of title*

6. Where the transferee under a transfer effected under a transfer scheme ( “transferee A”) is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected under that scheme ( “transferee B”)—

- (a) transferee A shall be deemed to have given to transferee B an acknowledgement in writing of the right of transferee B to production of the document and to delivery of copies thereof; and
- (b) section 9 of the Conveyancing Act 1881<sup>F1</sup> shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

**F1** 1881 c. 41

### *Proof of title by certificate*

7.—(1) Where 2 or more transfers are effected under a transfer scheme, a certificate issued by either or any of the transferees ( “transferee A”) with the concurrence of the other or others of them that—

- (a) any asset specified in the certificate;
- (b) any such interest in or right over any such asset as may be so specified; or
- (c) any liability so specified,

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is by virtue of this Order for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact.

(2) If, on the expiration of one month from a request from either or any of the transferees ( “transferee A”) for the other or one of the others of them ( “transferee B”) to concur in the issue of such a certificate, transferee B has failed so to concur—

- (a) transferee A may refer the matter to the Department; and
- (b) the Department may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.

### *Restrictions on dealing with certain land*

**8.—**(1) Where 2 or more transfers are effected under a transfer scheme and the Department is satisfied, on the representation of either or any of the transferees ( “transferee A”), that—

- (a) in consequence of those transfers, different estates in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees ( “transferee B”); and
- (b) the circumstances are such that the provisions of this paragraph should have effect,

the Department may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.

(2) Neither transferee A nor transferee B shall dispose of any estate to which they may respectively be entitled in any of the specified land except with the consent of the Department.

(3) If, in connection with any proposal to dispose of any estate of either transferee A or transferee B in any of the specified land, it appears to the Department to be necessary or expedient for the protection of either of them, the Department may—

- (a) require either transferee A or transferee B to dispose of any estate to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
- (b) require either transferee A or transferee B to acquire from the other any estate in any of the specified land to which that other is entitled; or
- (c) consent to the proposed disposal subject to compliance with such conditions as the Department may see fit to impose.

(4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—

- (a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or
- (b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

### *Third parties affected by vesting provisions*

**9.—**(1) A transaction of any description which, under paragraph 3(2) or a direction under paragraph 3(4), is effected between transferee A and transferee B—

- (a) shall have effect subject to the provisions of any statutory provision which provides for transactions of that description to be registered in any statutory register; but
- (b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) If any transaction is effected under paragraph 3(2) or a direction under paragraph 3(4), transferee A and transferee B shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.

(3) If, within 28 days from being notified, such a person as is mentioned in sub-paragraph (2) applies to, and satisfies, the Department that the transaction operated unfairly against him, the Department may give such directions to transferee A and transferee B as appear to the Department appropriate for varying the transaction.

**10.**—(1) If in consequence of 2 or more transfers effected under a transfer scheme or anything done under the provisions of this Schedule—

(a) the rights or liabilities of any person other than Northern Ireland Electricity and the transferees which were enforceable against or by Northern Ireland Electricity become enforceable as to part against or by one transferee and as to part against or by another transferee; and

(b) the value of any property or interest of that person is thereby diminished,  
such compensation as may be just shall be paid to that person by one or more of the transferees.

(2) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1), or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Department.

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**Changes and effects yet to be applied to :**

- Instrument am. (ot.prosp.) by [1998 c. 41 s.66\(5\)Sch.10 Pt.III para.7](#)
- Instrument am. (prosp.) by [1998 c. 41 s.66\(5\)Sch.10 Pt.V para.17](#)
- Instrument rev. in pt. (prosp.) by [1998 c. 41 ss.66\(5\),74\(3\), Sch.10, Pt.V, para.17, Sch.14, Pt.II](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 10E(7) inserted by [S.I. 2019/530 reg. 89\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10F(9)(10) inserted by [S.I. 2019/530 reg. 90\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10K(8A) inserted by [S.I. 2019/530 reg. 94\(7\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 11B(6)(7) inserted by [S.I. 2019/530 reg. 99\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 18(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 5(2)(b) (as substituted) by [S.I. 2019/1245 reg. 22](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- art. 31A(1A) inserted by [S.I. 2019/530 reg. 100\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 65(1A) inserted by [S.I. 2006/2955 \(N.I.\) art. 3\(2\)](#)
- art. 65(3)-(5) added by [S.I. 2006/2955 \(N.I.\) art. 3\(3\)](#)