

SCHEDULES

SCHEDULE 3

Section 28

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 transferee interests in or rights over property retained by the transferor;
 - (c) create rights or liabilities between the transferor and the transferee.
- 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 an enactment or an agreement or in any other way.
- 3 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 for all purposes of that fact.

Employment contracts

- 4 (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 5.

Status: This is the original version (as it was originally enacted).

- 5 (1) Rights and liabilities under a contract of employment are not transferred under this Schedule if the employee informs the transferor or transferee that he objects to the transfer.
- (2) If the employee informs the transferor or transferee that he objects—
- (a) his contract of employment is terminated immediately before the transfer date, but
 - (b) he is not to be treated, for any purpose, as having been dismissed by the transferor.
- 6 Nothing in this Schedule affects any right a person has to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.

Civil servants treated as employed under a contract of employment etc.

- 7 (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) he 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 5 to dismissal by the transferor is 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 his contract of employment immediately before that date have effect on and after that date as if they were terms and conditions of his employment in the civil service of the State.

Compensation

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

Continuity

- 9 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.
- 10 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.
- 11 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.

- 12 (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 transferee.

Incidental provision

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