

## SCHEDULE 1

Regulation 2

### APPLICATION OF THE REGULATIONS TO NORTHERN IRELAND

1. These Regulations shall apply to Northern Ireland, subject to the modifications in this Schedule.

2. Sub-paragraph (1)(b) of regulation 3 and any other provision of these Regulations insofar as it relates to that sub-paragraph shall not apply to Northern Ireland.

3. Any reference in these Regulations—

- (a) to an employment tribunal shall be construed as a reference to an Industrial Tribunal; and
- (b) to the Employment Appeal Tribunal shall be construed as a reference to the Court of Appeal.

4. For the words from “Paragraph (1)” to “the 1992 Act” in regulation 7(6) there is substituted—

“Paragraph (1) shall not apply in relation to a dismissal of an employee if the application of Article 126 of the Employment Rights (Northern Ireland) Order 1996(1) to the dismissal of the employee is excluded by or under any provision of that Order, the Industrial Tribunals (Northern Ireland) Order 1996(2) or the 1992 Act insofar as it extends to Northern Ireland, the Industrial Relations (Northern Ireland) Order 1992(3) or the Trade Union and Labour Relations (Northern Ireland) Order 1995(4)

5. For the words from “In this Regulation” to “Part XII of the 1996 Act” in regulation 8(4) there is substituted—

“In this Regulation the “relevant statutory schemes” are—

- (a) Chapter VI of Part XII of the Employment Rights (Northern Ireland) Order 1996 (“the 1996 Order”);
- (b) Part XIV of the 1996 Order”.

6. For paragraph (4) of regulation 9 there is substituted—

“In article 92 of the 1996 Order (time off for carrying out trade union duties) in paragraph (1), for the full stop at the end of sub-subparagraph (c) there is inserted—

- “(d) negotiations with a view to entering into an agreement under regulation 9 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 that applies to employees of the employer, or
- (e) the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under that regulation.”.

7. For the words from “Paragraph (2)” to “the employee’s employment with the transferor” in regulation 17 there is substituted—

“Paragraph (2) applies where—

- (a) by virtue of article 7(a), 7(aa) or 7(b) of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972(5) (“the 1972 Order”), the transferor is not required by that Order to effect any insurance; or
- (b) by virtue of article 7(c) of the 1972 Order, the transferor is exempted from the requirement of that Order to effect insurance.

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(1) S.I. 1996/1919 (N.I. 16).  
(2) S.I. 1996/1921 (N.I. 18).  
(3) S.I. 1992/807 (N.I. 5).  
(4) S.I. 1995/1980 (N.I. 12).  
(5) S.I. 1992/963 (N.I. 6).

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

(2) Where this paragraph applies, on completion of a relevant transfer the transferor and the transferee shall be jointly and severally liable in respect of any liability referred to in article 5(1) of the 1972 Order, in so far as such liability relates to the employee's employment with the transferor".

8. In regulation 2 for "the 1992 Act" there is substituted "the Industrial Relations (Northern Ireland) Order 1992" and for "Part XIII of the Insolvency Act 1986" there is substituted "Part XII of the Insolvency (NI) Order 1989(6)".

9. In regulation 5 for "sections 179 and 180 of the 1992 Act" there is substituted "Article 26 of the [Industrial Relations \(NI\) Order 1992 No.807 \(N.I. 5\)](#)".

10.—(1) In regulation 10 for "the Pensions Schemes Act 1993" there is substituted "the Social Security Pensions (Northern Ireland) Order 1975(7)".

(2) In regulation 11 for "the Employment Act 2002 (Dispute Resolution) Regulations 2004" there is substituted "the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (NI) 2004(8)".

(3) In regulation 12 for "Section 18 of the 1996 Tribunals Act" there is substituted "Article 20 of the [Industrial Tribunals \(NI\) Order 1996 No.1921 \(NI 18\)](#)".

(4) In regulation 16—

(a) for "Section 18 of the 1996 Tribunals Act" there is substituted "Article 20 of the [Industrial Tribunals \(NI\) Order 1996 No.1921 \(NI 18\)](#)"; and

(b) for any reference to "those Acts" there is substituted a reference to "those Orders".

11. For a reference to a provision of the 1996 Act in column one of Table 1 there is substituted the corresponding reference to the Employment Rights (Northern Ireland) Order 1996 in column two of Table 1—

**Table 1**

<i>Column 1</i> <b>Provision of the Employment Rights Act 1996</b>	<i>Column 2</i> <b>Equivalent Provision in the Employment Rights (Northern Ireland) Order 1996</b>
Part X	Part XI
Section 98(4)	Article 130(4)
Section 98(1)	Article 130(1)
Section 135	Article 170(I)
Section 98(2)(c)	Article 130(2)(c)
Section 95(1)(c)	Article 127(1)(c)
Section 1	Article 33
Section 205(1)	Article 247(I)
Sections 220-228	Articles 16-24
Section 139	Article 174

(6) [S.I. 1989/2405 \(N.I. 19\)](#).

(7) [S.I. 1995/1503 \(N.I. 15\)](#).

(8) [S.R. 2004 No. 521](#).

<i>Column 1</i> <b>Provision of the Employment Rights Act 1996</b>	<i>Column 2</i> <b>Equivalent Provision in the Employment Rights (Northern Ireland) Order 1996</b>
Section 155	Article 190
Section 95(1)	Article 127(1)
Section 95(2)	Article 127(2)
Section 97	Article 129
Section 203	Article 245
Section 104	Article 135

**12.** Any expression used in this Schedule which is defined in the Interpretation Act (Northern Ireland) 1954<sup>(9)</sup> shall have the meaning assigned by that Act.

## SCHEDULE 2

Regulation 20

### CONSEQUENTIAL AMENDMENTS

#### *References to the 1981 Regulations*

**1.** In the following provisions, for “Transfer of Undertakings (Protection of Employment) Regulations 1981” or “Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794)” there is substituted “Transfer of Undertakings (Protection of Employment) Regulations 2006”—

- (a) section 2(2) of the Property Services Agency and Crown Suppliers Act 1990<sup>(10)</sup>;
- (b) paragraph 8 of Schedule 1 to the New Roads and Street Works Act 1991<sup>(11)</sup>;
- (c) paragraph 5 of Schedule 1 to the Ports Act 1991<sup>(12)</sup>;
- (d) section 9(1) of the Export and Investment Guarantees Act 1991<sup>(13)</sup>;
- (e) section 168(1)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(14)</sup>;
- (f) paragraph 8 of Schedule 2 to the Roads (Northern Ireland) Order 1993<sup>(15)</sup>;
- (g) paragraph 6 of Schedule 1 to the Ports (Northern Ireland) Order 1994<sup>(16)</sup>;
- (h) section 129(1)(b) of the Education Act 2002<sup>(17)</sup>;
- (i) section 102(8) of the Local Government Act 2003<sup>(18)</sup>;
- (j) sections 3(6)(a) and 32(6)(b) of, and paragraph 12(1) of Schedule 3 to, the Horserace Betting and Olympic Lottery Act 2004<sup>(19)</sup>;

<sup>(9)</sup> 1954 c. 33 (N.I.).

<sup>(10)</sup> 1990 c. 12.

<sup>(11)</sup> 1991 c. 22.

<sup>(12)</sup> 1991 c. 52.

<sup>(13)</sup> 1991 c. 67.

<sup>(14)</sup> 1992 c. 52.

<sup>(15)</sup> S.I. 1993/3160 (N.I. 15).

<sup>(16)</sup> S.I. 1994/2809 (N.I. 16).

<sup>(17)</sup> 2002 c. 32.

<sup>(18)</sup> 2003 c. 26.

<sup>(19)</sup> 2004 c. 25.

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

- (k) section 90(4) of the Clean Neighbourhoods and Environment Act 2005**(20)**;
- (l) section 39(5) of the Equality Act 2006.

*Industrial Training Act 1982*

**2.—**(1) Section 3B of the Industrial Training Act 1982**(21)** (transfer of staff employed by industrial training boards) is amended as follows.

(2) In subsection (2), for “Transfer of Undertakings (Protection of Employment) Regulations 1981” there is substituted “Transfer of Undertakings (Protection of Employment) Regulations 2006”.

(3) In subsection (3)(a), for “within the meaning of those Regulations” there is substituted “to which those Regulations apply”.

*Ordnance Factories and Military Services Act 1984*

**3.—**(1) Paragraph 2 of Schedule 2 to the Ordnance Factories and Military Services Act 1984**(22)** (application of 1981 Regulations to ordnance factories transfer schemes) is amended as follows.

(2) In sub-paragraph (1), for the words from “for” to the end there is substituted “for a transfer that is a relevant transfer for the purposes of the 2006 regulations”.

(3) In sub-paragraphs (2) and (6), for “1981 regulations”, in both places where it occurs, there is substituted “2006 regulations”.

(4) In sub-paragraph (3) for the words from “the 1981 regulations” to the end there is substituted “the 2006 regulations as if, immediately before the appointed day, they were employed in the entity subject to the transfer”.

(5) In sub-paragraph (4)(b)–

(a) for “with the undertaking or part” there is substituted “with the entity subject to the transfer”, and

(b) for the words from “the 1981 regulations” to “or part” there is substituted “the 2006 regulations as if he were employed in the entity subject to the transfer”.

(6) In sub-paragraph (7), for the definition of “the 1981 regulations” there is substituted—

““the 2006 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.”

*Dockyard Services Act 1986*

**4.—**(1) Section 1 of the Dockyard Services Act 1986**(23)** (transfer of persons engaged in dockyard services) is amended as follows.

(2) In subsection (4)–

(a) for the words from the beginning to “Regulations 1981” there is substituted “The Transfer of Undertakings (Protection of Employment) Regulations 2006”,

(b) for the words from “an undertaking” to “those Regulations” there is substituted “an undertaking to whose transfer those Regulations apply”, and

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**(20)** 2005 c. 16.

**(21)** 1982 c. 10.

**(22)** 1984 c. 59.

**(23)** 1986 c. 52.

- (c) for the words from “a part” to “a business” there is substituted “a part of that undertaking to whose transfer those Regulations apply”.
- (3) In subsection (5)—
  - (a) for the words from the beginning to “Regulations 1981” there is substituted “The Transfer of Undertakings (Protection of Employment) Regulations 2006”,
  - (b) for “regulation 10”, in both places where it occurs, there is substituted “regulation 13”, and
  - (c) for “regulation 11” there is substituted “regulations 15 and 16”.

#### *Dartford-Thurrock Crossing Act 1988*

**5.—(1)** Schedule 5 to the Dartford-Thurrock Crossing Act 1988<sup>(24)</sup> (transfers of staff) is amended as follows.

(2) In paragraphs 3(1) and 4, for “the Employment Transfer Regulations”, in both places where it occurs, there is substituted “the Transfer of Undertakings (Protection of Employment) Regulations 2006”.

(3) In paragraph 4, for “Regulation 7” there is substituted “Regulation 10”.

(4) In paragraph 6—

(a) in sub-paragraph (2), for “this Schedule”, in both places where it occurs, there is substituted “Part 1 of this Schedule”, and

(b) after that sub-paragraph there is inserted—

“(3) Expressions used in Part 2 of this Schedule to which a meaning is given by the Transfer of Undertakings (Protection of Employment) Regulations 2006 have the same meaning in Part 2 of this Schedule.”

#### *Atomic Weapons Establishment Act 1991*

**6.—(1)** Section 2 of the Atomic Weapons Establishment Act 1991<sup>(25)</sup> (provisions applying to the transfer of certain employees) is amended as follows.

(2) In subsection (1)—

(a) for the words from the beginning to “Regulations 1981” there is substituted “The Transfer of Undertakings (Protection of Employment) Regulations 2006”, and

(b) for the words from “an undertaking” to “those Regulations” there is substituted “an undertaking to whose transfer those Regulations apply”.

(3) In subsection (2), for the words from “a part” to “a business” there is substituted “a part of that undertaking to whose transfer those Regulations apply”.

#### *Railways Act 1993*

**7.** In section 151 of the Railways Act 1993<sup>(26)</sup> (general interpretation), in subsection (6), for the words from “the Transfer” to the end there is substituted “the Transfer of Undertakings (Protection of Employment) Regulations 2006, in their application in relation to a relevant transfer within the meaning of those regulations”.

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<sup>(24)</sup> 1988 c. 20.

<sup>(25)</sup> 1991 c. 46.

<sup>(26)</sup> 1993 c. 43.

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

*Employment Tribunals Act 1996*

**8.** In section 4 of the Employment Tribunals Act 1996(**27**) (composition of a tribunal), in subsection (3)(ca), for the words from “regulation 11(5)” to “Regulations 1981” there is substituted “regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.

*Industrial Tribunals (Northern Ireland) Order 1996*

**9.** In Article 6 of the Industrial Tribunals (Northern Ireland) Order 1996(**28**) (composition of a tribunal), in paragraph (3)(ab), for the words from “regulation 11(5)” to “Regulations 1981” there is substituted “regulation 15(10) of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.

*Employment Rights Act 1996*

**10.** In each of the following provisions of the Employment Rights Act 1996(**29**), for the words from “Regulations 10” to “Regulations 1981” there is substituted “regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006”—

- (a) section 47(1)(a) and (1A);
- (b) section 61(1)(a);
- (c) section 103(1)(a) and (2).

*Employment Rights (Northern Ireland) Order 1996*

**11.** In each of the following provisions of the Employment Rights (Northern Ireland) Order 1996(**30**) for the words from “Regulations 10” to “Regulations 1981” there is substituted “regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006”—

- (a) Article 70(1)(a) and (1A);
- (b) Article 89(1)(a);
- (c) Article 134(1)(a) and (2).

*Income Tax (Earnings and Pensions) Act 2003*

**12.—(1)** The Income Tax (Earnings and Pensions) Act 2003(**31**) is amended as follows.

(2) In section 498 (no charge on shares ceasing to be subject to share incentive plan in certain circumstances), in subsection (2)(c), for the words from “a transfer” to the end there is substituted “a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.

(3) In Schedule 2 (approved share incentive plans), in paragraph 32(2)(c), for the words from “a transfer” to the end there is substituted “a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006”.

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(27) 1996 c. 17.

(28) S.I. 1996/1921 (N.I. 18).

(29) 1996 c. 18.

(30) S.I. 1999/1919 (N.I. 16).

(31) 2003 c. 1.

*Pensions Act 2004*

**13.**—(1) Section 257 of the Pensions Act 2004(**32**) (conditions for pension protection) is amended as follows.

(2) In subsection (1), for paragraph (a) there is substituted—

“(a) there is a relevant transfer within the meaning of the TUPE regulations,”.

(3) Subsection (6) is omitted.

(4) In subsection (8), in the definition of the “TUPE Regulations”, for the words from “Transfer” to the end there is substituted “Transfer of Undertakings (Protection of Employment) Regulations 2006”.

*Energy Act 2004*

**14.**—(1) Paragraph 10 of Schedule 5 to the Energy Act 2004(**33**) (supplementary provisions about nuclear transfer schemes) is amended as follows.

(2) In sub-paragraphs (1), (2) and (3), in each place where it occurs, for “1981 regulations” there is substituted “2006 regulations”.

(3) In sub-paragraph (1)—

(a) after “an undertaking”, in both places where it occurs, there is inserted “or business”, and

(b) for “that undertaking or part” there is substituted “that undertaking or business or that part of an undertaking or business”.

(4) After sub-paragraph (1), there is inserted—

“(1A) The 2006 regulations apply to a service provision change—

(a) in accordance with a nuclear transfer scheme, or

(b) in accordance with a modification agreement,

as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person by whom the activities affected by the service provision change were carried out immediately before the coming into force of the service provision change.”

(5) In sub-paragraph (2), after “a transfer” there is inserted “(or service provision change)”.

(6) In sub-paragraph (3), after “transfer”, in both places where it occurs, there is inserted “(or service provision change)”.

(7) In sub-paragraph (4), for the definition of “undertaking” there is substituted—

“references to a service provision change are references to a service provision change falling within regulation 3(1)(b) of the 2006 regulations.”

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**(32)** 2004 c. 35.

**(33)** 2004 c. 20.