

SCHEDULES

SCHEDULE 4

Section 38

TRANSFER OF EMPLOYEES AND PROPERTY ETC OF LEGAL SERVICES COMMISSION

PART 1

TRANSFER OF EMPLOYEES ETC

Transfer

- 1 (1) An individual who is an employee of the Legal Services Commission (“the LSC”) immediately before the transfer day becomes employed in the civil service of the State on that day.
- (2) The terms and conditions of the individual’s contract of employment immediately before the transfer day have effect, on and after that day, as if they were terms and conditions of the individual’s employment in the civil service of the State, subject to paragraph 4(1) and (2).
- (3) All of the rights, powers, duties and liabilities of the LSC in connection with the individual’s employment are transferred to the Crown on the transfer day, subject to paragraph 4(1) and (2).
- (4) Anything done (or having effect as if done) before the transfer day—
 - (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraphs (1) to (3),is to have effect, so far as necessary for continuing its effect on and after that day, as if done by or in relation to the Crown.
- (5) Anything which is in the process of being done immediately before the transfer day—
 - (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraphs (1) to (3),may be continued by or in relation to the Crown.
- (6) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraphs (1) to (3) is to have effect, so far as is necessary for giving effect to those sub-paragraphs, as a reference to the Crown.

Continuity of employment

- 2 A transfer under paragraph 1 does not break the continuity of the individual’s employment and accordingly—

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- (a) the individual is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (redundancy) as having been dismissed by reason of that transfer, and
- (b) the individual's period of employment with the LSC counts as a period of employment in the civil service of the State for the purposes of that Act.

Right to object to transfer

- 3 (1) This paragraph has effect where, before the transfer day, an individual who is an employee of the LSC informs the LSC or the Lord Chancellor that the individual objects to becoming employed in the civil service of the State by virtue of paragraph 1(1).
- (2) Where this paragraph has effect—
- (a) the individual does not become employed in the civil service of the State by virtue of paragraph 1(1),
 - (b) the rights, powers, duties and liabilities under the individual's contract of employment do not transfer by virtue of paragraph 1(3),
 - (c) the individual's contract of employment terminates immediately before the transfer day, and
 - (d) the individual is not to be treated, for any purpose, as having been dismissed by the LSC by reason of the termination of the contract under this paragraph.

Pension schemes and compensation schemes

- 4 (1) On and after the transfer day, the terms and conditions of employment of an individual who is employed in the civil service of the State by virtue of paragraph 1(1) do not include any term or condition that was part of the individual's contract of employment immediately before the transfer day and that relates to—
- (a) an occupational pension scheme,
 - (b) a compensation scheme, or
 - (c) rights, powers, duties or liabilities under or in connection with such a scheme.
- (2) Accordingly, paragraph 1(3) does not apply in relation to rights, powers, duties or liabilities under or in connection with an occupational pension scheme or a compensation scheme.
- (3) The Lord Chancellor may make one or more schemes providing for the transfer to the Lord Chancellor or the Secretary of State of the LSC's rights, powers, duties and liabilities under or in connection with—
- (a) an occupational pension scheme, or
 - (b) a compensation scheme,
- whether the rights, powers, duties and liabilities arise under the occupational pension scheme or compensation scheme, under an enactment, under a contract of employment or otherwise.
- (4) A transfer scheme may provide that anything done (or having effect as if done) before the day on which the transfer scheme takes effect—
- (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of the transfer scheme,

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is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the transferee.

- (5) A transfer scheme may provide that anything which is in the process of being done immediately before the day on which the transfer scheme takes effect—
- (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of the transfer scheme,
- may be continued by or in relation to the transferee.
- (6) A transfer scheme may provide that a reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of the scheme is to have effect, so far as is necessary for giving effect to that scheme, as a reference to the transferee.
- (7) A transfer scheme may, so far as is necessary for giving effect to that scheme, provide that an enactment that applies in relation to compensation schemes or occupational pension schemes applies to a compensation scheme or occupational pension scheme that is the subject of the transfer scheme, the members of such a scheme or the transferee with modifications specified in the transfer scheme.
- (8) A transfer scheme may—
- (a) amend or otherwise modify a compensation scheme that is the subject of the transfer scheme, and
 - (b) create, modify or remove rights, powers, duties or liabilities under or in connection with such a scheme.
- (9) The powers under sub-paragraph (8) include power to amend or otherwise modify any instrument relating to the constitution, management or operation of a compensation scheme.
- (10) Transfer schemes amending or otherwise modifying a compensation scheme have effect in spite of any provision (of any nature) which would otherwise prevent or restrict the amendment or modification.
- (11) A transfer scheme may include consequential, incidental, supplementary, transitional, transitory and saving provision.
- (12) In this paragraph—
- “compensation scheme” means so much of any scheme as makes provision for payment by way of compensation on or in respect of termination of employment;
 - “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;
 - “transfer scheme” means a scheme made under sub-paragraph (3).

Power to merge LSC occupational pension schemes

- 5 (1) The Lord Chancellor may make a scheme providing for the merger of LSC occupational pension schemes.
- (2) A scheme under this paragraph may in particular—
- (a) provide for the assets and liabilities of one LSC occupational pension scheme to become assets and liabilities of another,

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- (b) create, modify or remove rights, powers, duties or liabilities under or in connection with an LSC occupational pension scheme,
 - (c) provide for the winding up of an LSC occupational pension scheme,
 - (d) provide for references to one LSC occupational pension scheme in a document, including an enactment, to have effect as references to another, and
 - (e) include consequential, incidental, supplementary, transitional, transitory and saving provision.
- (3) A scheme under this paragraph may in particular amend or otherwise modify—
- (a) the trust deed of an LSC occupational pension scheme,
 - (b) rules of an LSC occupational pension scheme, and
 - (c) any other instrument relating to the constitution, management or operation of an LSC occupational pension scheme.
- (4) A scheme under this paragraph must ensure that the merger of the LSC occupational pension schemes does not, to any extent, deprive members of the LSC occupational pension schemes, or other beneficiaries under those schemes, of rights that accrue to them under those schemes before the merger takes effect.
- (5) Subject to sub-paragraph (4), a scheme under this paragraph has effect in spite of any provision (of any nature) which would otherwise prevent the merger of the LSC occupational pension schemes.
- (6) In this paragraph—
- “LSC occupational pension scheme” means an occupational pension scheme under which—
 - (a) the LSC has rights, powers, duties or liabilities, or
 - (b) the Lord Chancellor or the Secretary of State has rights, powers, duties or liabilities by virtue of a scheme under paragraph 4(3);
 - “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993.

PART 2

TRANSFER OF PROPERTY ETC

Transfer of interests in land

- 6 (1) The LSC’s interests in land are by virtue of this sub-paragraph transferred to the Secretary of State for Communities and Local Government on the transfer day.
- (2) Anything done (or having effect as if done) before the transfer day—
- (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),
- is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the Secretary of State for Communities and Local Government.
- (3) Anything which is in the process of being done immediately before the transfer day—

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- (a) by or in relation to the LSC, and
- (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),

may be continued by or in relation to the Secretary of State for Communities and Local Government.

- (4) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraph (1) is to have effect, so far as is necessary for giving effect to that sub-paragraph, as a reference to the Secretary of State for Communities and Local Government.
- (5) In this paragraph—
 - “interest in land” means—
 - (a) an estate or interest in land, and
 - (b) any rights, powers, duties or liabilities of the LSC in connection with such an estate or interest,
but does not include a charge on an estate or interest in land;
 - “land” includes buildings and other structures.

Transfer of other property, rights and liabilities

- 7 (1) The property, rights, powers, duties and liabilities of the LSC are by virtue of this sub-paragraph transferred to the Lord Chancellor on the transfer day.
- (2) Sub-paragraph (1) does not apply to—
 - (a) property, rights, powers, duties and liabilities transferred by virtue of paragraph 1 or 6, or
 - (b) rights, powers, duties and liabilities described in paragraph 4(3).
- (3) Anything done (or having effect as if done) before the transfer day—
 - (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the Lord Chancellor.
- (4) Anything which is in the process of being done immediately before the transfer day—
 - (a) by or in relation to the LSC, and
 - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),may be continued by or in relation to the Lord Chancellor.
- (5) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraph (1) is to have effect, so far as is necessary for giving effect to that sub-paragraph, as a reference to the Lord Chancellor.

PART 3

SUPPLEMENTARY

Disapplying restrictions on transfer

- 8 Paragraphs 1, 6 and 7 and schemes under paragraph 4 have effect in relation to property, rights, powers, duties and liabilities in spite of any provision (of any nature) which would otherwise prevent or restrict their transfer.

Certificate

- 9 A certificate issued by the Lord Chancellor stating that anything specified in the certificate has vested in a person specified in the certificate by virtue of any of paragraphs 1, 6 and 7 or a scheme under paragraph 4 is conclusive evidence of that fact for all purposes.

Validity

- 10 The transfer of property, rights, powers, duties or liabilities by any of paragraphs 1, 6 and 7 or a scheme under paragraph 4 does not affect the validity of anything done by or in relation to the LSC before that paragraph or scheme has effect.

Power to make further provision

- 11 (1) The Lord Chancellor may by regulations make consequential, supplementary, incidental, transitional, transitory or saving provision in connection with—
(a) transfers effected by this Schedule, or
(b) schemes made under this Schedule.
- (2) The regulations may, in particular, include provision modifying an enactment (whenever passed or made), including this Schedule.

Interpretation

- 12 (1) In this Schedule—
“the LSC” means the Legal Services Commission;
“the transfer day” means the day on which section 38(1) comes into force (subject to regulations under sub-paragraph (2));
“enactment” means an enactment contained in an Act or an instrument made under an Act (and “Act” includes an Act or Measure of the National Assembly for Wales).
- (2) The Lord Chancellor may by regulations amend or otherwise modify the definition of “the transfer day” in sub-paragraph (1).