

SCHEDULE 2

Article 21

TRANSITIONAL PROVISIONS

1. In this Schedule—

“the Act” means the Health and Safety at Work etc. Act 1974 as amended by this Order;

“the appointed day” means the day on which this Order comes into force;

“the Chairman” means the chairman of the Commission;

“Commission” means the Health and Safety Commission abolished by article 2 of this Order;

“Commissioner” means a member of the Commission;

“the existing Act” means the Health and Safety at Work etc. Act 1974 before the appointed day;

“the former Executive” means the Health and Safety Executive abolished by article 2 of this Order;

“instrument of appointment” means the letter of appointment and terms and conditions of appointment under which a Commissioner or the Chairman, or the director or other members of the former Executive were appointed;

“the new Executive” means the Health and Safety Executive as established under section 10 of the Act;

“relevant statutory provisions” has the meaning given by section 53(1) of the Act;

“servant of the former Executive” means a civil servant on the staff of the former Executive.

Transfer of Chairman and members of the Commission

2.—(1) The person who immediately before the appointed day was the Chairman shall on the appointed day become the Chair of the new Executive as if duly appointed under paragraph 2 of Schedule 2 to the Act.

(2) Any other person who before the appointed day was a Commissioner shall on the appointed day become a member of the new Executive as if duly appointed under paragraph 2 of that Schedule.

(3) While a person holds office as the Chair or other member of the new Executive by virtue of this paragraph, he shall hold that office on the terms on which he held office as the Chairman or as a Commissioner immediately before the appointed day.

(4) Sub-paragraph (3) is subject to—

(a) sub-paragraph (5), and

(b) any necessary modifications to the terms in question.

(5) A person’s term of office as a member of the new Executive shall expire on the date set out in the instrument under which he was appointed as the Chairman or as a Commissioner for the expiry of his term of office as a member of the Commission.

(6) No compensation shall be paid to either the Chairman or a Commissioner as a result of the operation of this paragraph .

Transfer of officers and staff

3.—(1) Where immediately before the appointed day a person holds appointment under paragraph 11 of Schedule 2 to the existing Act as a servant of the former Executive, his appointment shall continue in effect on and after the appointed day in the service of the new Executive as if made by the new Executive under paragraph 8(2) of Schedule 2 to the Act.

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(2) The person who immediately before the appointed day was the director of the former Executive shall on the appointed day become the Chief Executive of the new Executive as if appointed by the new Executive under paragraph 8(1) of Schedule 2 to the Act.

(3) Where immediately before the appointed day a person holds appointment as a member (but not as the director) of the former Executive under section 10(5) of the existing Act, his appointment shall continue to have effect on and after the appointed day, but as a member of staff of the new Executive as if made by the new Executive under paragraph 8(2) of Schedule 2 to the Act.

(4) A person referred to in sub-paragraph (3) shall not be paid any compensation as a result of the operation of this paragraph.

First annual report and statement of accounts of the new Executive

4.—(1) This paragraph applies if there is a period of one or more days which—

- (a) began on the day after the end of the last year for which the Commission made a report under paragraph 15 of Schedule 2 to the existing Act, and
- (b) ended on the day before the appointed day.

(2) The first report published by the new Executive under paragraph 10 of Schedule 2 to the Act shall also be a report on the operations of the Commission and the former Executive during the period mentioned in sub-paragraph (1).

(3) The first statement of accounts prepared by the Chief Executive under paragraph 10 of Schedule 2 to the Act shall also contain statements of accounts for the Commission and for the former Executive for the period mentioned in sub-paragraph (1).

Investigations and special reports

5.—(1) This paragraph applies where, before the appointed day, the Commission authorised a person to investigate and make a special report under section 14(2) of the existing Act.

(2) For the purposes of carrying out or continuing the investigation and the making of a special report on or after the appointed day, the authorisation shall be treated as an authorisation by the new Executive.

(3) If—

- (a) the person to whom the Commission gave the authorisation has made a special report to the Commission, but
- (b) the Commission has not yet caused the report, or a part of it, to be made public under section 14(5) of the existing Act,

the report shall be treated as if it had been made to the new Executive under section 14(2) of the Act.

(4) If the person to whom the Commission gave the authorisation has not yet made a special report to the Commission, the new Executive may direct that person to—

- (a) abandon the investigation without making a special report, or
- (b) continue the investigation in such manner as the new Executive may direct.

(5) Where the Commission agreed before the appointed day to exercise its power under section 14(6)(a) or (c) of the existing Act to pay remuneration or expenses to any person in respect of the investigation and special report, or to defray costs of the investigation and report, the new Executive shall pay such remuneration or expenses or defray the costs of the investigation and report as agreed.

(6) Sub-paragraph (5) does not affect the new Executive's power under section 14(6) of the Act to make other payments of remuneration or expenses or to defray costs.

Inquiries

6.—(1) This paragraph applies where, before the appointed day, the Commission directed an inquiry to be held under section 14(2) of the existing Act.

(2) Section 14 of the Act shall continue to apply in relation to that inquiry on or after the appointed day but as if all things done or required to be done by or in relation to the Commission under that section were done or required to be done by or in relation to the new Executive.

(3) Where the Commission agreed before the appointed day to exercise its power under section 14(6)(b) or (c) of the existing Act to pay remuneration or expenses to any person in respect of the inquiry or to defray costs of the inquiry, the new Executive shall pay such remuneration or expenses or defray the costs of the inquiry as agreed.

(4) Sub-paragraph (3) does not affect the new Executive's power under section 14(6) of the Act to make other payments of remuneration or expenses or to defray costs.

Agreements entered into with other public bodies

7.—(1) This paragraph applies where, before the appointed day, the Commission either—

- (a) entered into an agreement under section 13(1)(a) of the existing Act with any government department or person for that department or other person to perform any of the Commission's functions; or
- (b) entered into an agreement under section 13(1)(b) of the existing Act with any Minister of the Crown, government department or other public authority to perform their functions.

(2) Any agreement to which this paragraph applies shall continue to have effect on and after the appointed day as if it had been duly entered into between that Minister of the Crown, government department, person or public authority concerned and the new Executive.

Approval of Codes of Practice

8.—(1) This paragraph applies where, before the appointed day, the Commission—

- (a) approved or issued a code of practice under section 16(1) of the existing Act; or
- (b) revised, or approved a revision (or proposed revision) of, a code of practice or part of a code of practice, under section 16(4) of the existing Act.

(2) On and after the appointed day—

- (a) any code of practice to which this paragraph applies shall have effect as if the code, and any revision of the code, had been approved or issued by the new Executive;
- (b) any withdrawal under section 16(5) of the existing Act of the Commission's approval of any code of practice to which this paragraph applies shall have effect as if it had been done by the new Executive; and
- (c) any notices issued by the Commission under section 16(3) or (6) shall have effect as if they had been issued by the new Executive.

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Information

9.—(1) This paragraph applies where, before the appointed day, the Commission served a notice under section 27(1) of the Act requiring any person to furnish information to the Commission.

(2) Any notice to which this paragraph applies shall have effect on and after the appointed day as if requiring such information to be furnished to the new Executive.

(3) Information obtained by a notice to which this paragraph applies shall on the appointed day be transferred to the new Executive, and shall be treated for the purposes of section 28 to the Act as if it had been obtained by or as the case may be, furnished or disclosed to the new Executive.

Other provisions

10. Subject to paragraphs 5 to 9, anything done by, on behalf of or in relation to the Commission or the former Executive, in particular but not limited to—

- (a) any proposals submitted under section 11(2)(d) of the existing Act;
- (b) any direction given by the Secretary of State under section 12(b) of the existing Act;
- (c) any guidance given under section 18(4)(b) of the existing Act;
- (d) any appointment of inspectors made under section 19 of the existing Act;
- (e) any consultation undertaken under section 50(3) of the existing Act; or
- (f) any exercise of powers conferred on them by the relevant statutory provisions,

which is in effect immediately before the appointed day shall, so far as is necessary for continuing its effect after that day, have effect on and after the appointed day as if duly done by, on behalf of or in relation to the new Executive.

General transfer

11.—(1) By virtue of this paragraph, the property, rights and liabilities to which the Commission or the former Executive was entitled or subject immediately before the appointed day, shall become on that day the property, rights and liabilities of the new Executive.

(2) Sub-paragraph (1) has effect in relation to property, rights and liabilities—

- (a) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer by the Commission or by the former Executive; and
- (b) without any instrument or other formality being required.

(3) So far as is necessary or appropriate in consequence of sub-paragraph (1), on or after the appointed day a reference to the Commission or to the former Executive in an instrument or other document shall be treated as a reference to the new Executive.

(4) Anything (including any legal proceedings) which—

- (a) relates to anything transferred by sub-paragraph (1); and
- (b) is in the process of being done by, on behalf of or in relation to the Commission or the former Executive,

may be continued on and after the appointed day by, on behalf of or in relation to the new Executive.

(5) Nothing in this paragraph affects the validity of anything done by the new Executive.