

SCHEDULE 1

Regulation 16(3)

Transfer schemes

Introduction

1. In this Schedule—

- (a) “transfer scheme” means a scheme made by a relevant undertaker under regulation 16;
- (b) a reference to an acquiring licensee is to an acquiring licensee to whom the scheme provides for the transfer of property, rights or liabilities.

Making of scheme

2.—(1) A transfer scheme does not take effect unless—

- (a) the acquiring licensee or licensees have consented to the scheme, and
 - (b) the WSRA has approved the scheme.
- (2) A transfer scheme takes effect at the time specified in the scheme.
- (3) The time so specified must not be before the exit date.

Approval and modification by the WSRA

3.—(1) The WSRA may modify a transfer scheme before approving it.

(2) After a transfer scheme has taken effect—

- (a) the WSRA may modify the scheme by notice to the relevant undertaker and each acquiring licensee, and
 - (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 2(2).
- (3) The WSRA may make incidental, supplementary, consequential, transitional or transitory provision in connection with giving effect to modifications under sub-paragraph (2).
- (4) The WSRA may modify a scheme under this paragraph only if the relevant undertaker and each acquiring licensee consent.
- (5) The WSRA may require the relevant undertaker or an acquiring licensee to provide information or other assistance for the purposes of enabling it to decide whether to approve or modify a transfer scheme.
- (6) The WSRA may refuse to approve a transfer scheme if the relevant undertaker or an acquiring licensee has failed to comply with a requirement imposed under sub-paragraph (5).
- (7) A requirement imposed under sub-paragraph (5) for the purposes of enabling the WSRA to decide whether to modify a transfer scheme is enforceable under section 18 of the 1991 Act(1).

Identification of property etc. to be transferred

4.—(1) A transfer scheme may identify the property, rights or liabilities to be transferred by specifying or describing them.

(2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

(1) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 from a date to be appointed.

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Property, rights and liabilities that may be transferred

- 5.—(1) A transfer scheme may transfer—
- (a) property, rights or liabilities that could not otherwise be transferred;
 - (b) rights or liabilities under an enactment.
- (2) A transfer scheme may transfer—
- (a) property in any part of England and Wales;
 - (b) rights or liabilities under the law of England and Wales.
- (3) A transfer scheme may transfer property, rights or liabilities acquired or arising after the scheme has been made but before it takes effect.
- (4) A transfer scheme may provide for a transfer to take effect despite any restriction arising by virtue of contract or legislation or in any other way.
- (5) In paragraph (4), “restriction” includes—
- (a) any restriction, inability or incapacity affecting what can and cannot be transferred (whether generally or by a particular person), and
 - (b) a requirement for consent (by any name).

Division of property, rights or liabilities

- 6.—(1) A transfer scheme may contain provision for the division of property, rights or liabilities, including provision to—
- (a) create for the relevant undertaker or an acquiring licensee an interest in or right over property transferred in accordance with the scheme;
 - (b) create for an acquiring licensee an interest in or right over property retained by the relevant undertaker;
 - (c) create new rights and liabilities as between the relevant undertaker and an acquiring licensee or as between acquiring licensees.
- (2) A transfer scheme that contains provision under sub-paragraph (1) may make incidental modifications of the interests, rights or liabilities of third parties.
- (3) In paragraph (2), “third parties” means persons other than—
- (a) the relevant undertaker, or
 - (b) an acquiring licensee that is a party to the transfer scheme.
- (4) Paragraph 5(1)(a) and (4) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Payments

- 7.—(1) A transfer scheme may include provision for payments to be made by an acquiring licensee to the relevant undertaker in respect of anything transferred or created by the scheme.
- (2) Provision included in a transfer scheme by virtue of sub-paragraph (1) is enforceable in the same way as if the thing had been transferred or created by agreement between the parties (and, where relevant, as if it had been capable of being transferred or created by agreement between them).

Supplementary provision

- 8.—(1) A transfer scheme may include incidental, supplementary, consequential, transitional or transitory provision.

- (2) Nothing elsewhere in this Schedule limits sub-paragraph (1).
- (3) A transfer scheme may provide, in relation to transfers in accordance with the scheme—
 - (a) for an acquiring licensee to be treated as the same person in law as the relevant undertaker,
 - (b) for agreements made, transactions effected or other things done by or in relation to the relevant undertaker to be treated as made, effected or done by or in relation to an acquiring licensee,
 - (c) for references in any document to the relevant undertaker, or to an employee or office holder of it, to have effect with such modifications as are specified in the scheme, and
 - (d) for proceedings commenced by or against the relevant undertaker to be continued by or against an acquiring licensee.
- (4) In sub-paragraph (3)—
 - (a) “document” includes an agreement or instrument but does not include an enactment;
 - (b) a reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.
- (5) A transfer scheme may make provision for disputes as to the effect of the scheme between the relevant undertaker and an acquiring licensee or between acquiring licensees to be referred to such arbitration as may be specified in or determined under the scheme.
- (6) If, in consequence of a transfer scheme, a person is entitled to possession of a document relating in part to the title to, or to the management of, land or other property in England and Wales—
 - (a) the scheme may provide for the person to be treated as having given another person an acknowledgement in writing of the other person’s right to production of the document and to delivery of copies of it; and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents)⁽²⁾ is to apply to the acknowledgement on the basis that the acknowledgement does not contain an expression of contrary intention.

Staff

9. The Transfer of Undertakings (Protection of Employment) Regulations 2006⁽³⁾ apply to a transfer under a transfer scheme of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those Regulations).

Effect of transfer scheme

- 10.—(1) At the time at which a transfer scheme takes effect—
- (a) any property, rights or liabilities to be transferred by the scheme become, by virtue of this sub-paragraph, the property, rights or liabilities of the person to whom the scheme provides for them to be transferred; and
 - (b) any interests, rights or liabilities to be created by the scheme become, by virtue of this sub-paragraph, the interests, rights or liabilities of the person in whose favour or in relation to whom the scheme provides for them to be created.
- (2) But a transfer scheme is of no effect if the relevant undertaker’s permission to withdraw from the non-household retail market lapses under regulation 15.

(2) 1925 c. 20.

(3) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

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