



# Local Government etc. (Scotland) Act 1994

## 1994 CHAPTER 39

### PART II

#### WATER AND SEWERAGE REORGANISATION

##### *Transfer of property, rights and liabilities to new authorities*

#### **91 Transfer of property, rights and liabilities to new authorities**

(1) Subject to subsections (8) and (9) below, and to section 95 of this Act, on 1st April 1996 (in this Part of this Act referred to as “the transfer date”) all property, rights and liabilities to which—

- (a) the Central Scotland Water Development Board (in this Part of this Act referred to as “the Board”) are entitled or subject immediately before that date; and
- (b) the regional and islands councils, in the exercise of their functions under any enactment in relation to water supply, to the provision of sewerage and to their dealing with the contents of sewers, are so entitled or subject (in this section referred to as their “relevant” property, rights and liabilities),

shall, by virtue of this subsection, transfer to and vest in the new water and sewerage authorities and be allocated as between those authorities in accordance with such schemes as are mentioned in subsection (2) below.

(2) Subject to subsections (5) and (7) below, on or before such date as the Secretary of State may direct (in this section referred to as the “scheme submission date”), the Board and each of the regional and islands councils shall make and submit to him a scheme for the transfer under subsection (1) above of—

- (a) the Board's; or
- (b) as the case may be, the council's relevant,

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property, rights and liabilities (any such scheme so made, or made by the Secretary of State under subsection (8) below, being in the following provisions of this Part of this Act referred to as a “transfer scheme”).

- (3) The transfer scheme submitted by the Board shall, subject to section 95 of this Act, provide for all their property, rights and liabilities to be transferred to, and apportioned between, the new water and sewerage authorities in accordance with such guidance as may be given to the Board by the Secretary of State under this subsection.
- (4) The transfer scheme submitted by a regional or islands council shall, subject to subsection (5) below and to section 95 of this Act, provide in the case of—
  - (a) Lothian, Borders, Fife or Central Region, for all their relevant property, rights and liabilities to be transferred to the East of Scotland Water Authority;
  - (b) Strathclyde or Dumfries and Galloway Region, for all their relevant property, rights and liabilities to be transferred to the West of Scotland Water Authority;
  - (c) Highland or Grampian Region or an Islands Area, for all their relevant property, rights and liabilities to be transferred to the North of Scotland Water Authority; and
  - (d) Tayside Region—
    - (i) for all their relevant property, rights and liabilities except such as they are entitled or subject to in the exercise of functions in relation to the provision of sewerage, or dealing with the contents of sewers, in the first added area (within the meaning of Schedule 8 to this Act), to be transferred to the North of Scotland Water Authority; and
    - (ii) for the property, rights and liabilities excepted by sub-paragraph (i) above to be transferred to the East of Scotland Water Authority.
- (5) In preparing a transfer scheme for the purposes of subsection (1) above a council shall take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme (and in particular, but without prejudice to that generality, as to the description of relevant property, rights and liabilities it is in his view appropriate to transfer to the new water and sewerage authority or authorities in question).
- (6) The Secretary of State, after such consultation with the Board or, as the case may be, with the council which prepared the transfer scheme, as he thinks fit, may—
  - (a) approve the scheme, either with or without modifications; or
  - (b) refuse to approve it,and a transfer scheme approved under this subsection shall come into force on the transfer date.
- (7) Before the scheme submission date the Secretary of State may give notice to the Board, or as the case may be to a council, that on the basis of such information as has (or has not) been submitted to him by the body in question, he considers it unlikely that the body will be in a position, by that date, to submit a transfer scheme to him in conformity with subsections (2) to (4), or as the case may be (5), above; and a body to which such notice is given need not comply (and shall take no further steps to comply) with subsection (2) above.
- (8) If—
  - (a) the Secretary of State has given notice to the Board or to a council under subsection (7) above;

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- (b) the Board or council do not submit a transfer scheme under subsection (2) above; or
  - (c) the Board or council submit a transfer scheme which (either or both)—
    - (i) has not been prepared in accordance with the provisions of this Part of this Act; or
    - (ii) could not reasonably be approved by the Secretary of State even after the exercise by him, as extensively as he considers appropriate, of his powers of modification under subsection (6)(a) above,he may, in respect of the property, rights and liabilities of the Board or as the case may be of the relevant property, rights and liabilities of the council in question, himself make a transfer scheme to take effect on the transfer date.
- (9) There shall not transfer or vest by virtue of subsection (1) above—
- (a) any right as respects—
    - (i) a charge or rate mentioned in sub-paragraphs (a) to (c) of paragraph 1 of Schedule 11 to the Local Government Finance Act 1992 (charges or rate out of which expenditure incurred by local authority in meeting requisition under Part IV or VIII of the 1980 Act, or in the exercise of functions in relation to water supply, to be met);
    - (ii) a community charge or community water charge (within the meaning of the Abolition of Domestic Rates Etc. (Scotland) Act 1987) or council tax (within the meaning of Part II of the said Act of 1992); or
    - (iii) a non-domestic sewerage rate (whether levied under paragraph 19 of Schedule 5 to the said Act of 1987 or under paragraph 20 of the said Schedule 11); or
  - (b) any right or liability arising under a contract of employment.
- (10) Where the Secretary of State makes a transfer scheme under subsection (8) above, he may recover his reasonable expenses in so doing, or such proportion of those expenses as he thinks fit—
- (a) before the transfer date, from the Board or as the case may be from the council in question; or
  - (b) on or after the transfer date, from the authority to which property, rights and liabilities of the council have transferred by virtue of paragraph (a), (b), (c) or as the case may be (d)(i) of subsection (4) above or, in the case of the Board, from the authority mentioned in the said paragraph (a),
- by such means as appear to him to be appropriate; and without prejudice to the generality of this subsection those means may include, as respects a council, setting off the expenses payable by them against revenue support grant or non-domestic rate income payable by him to them under paragraph 3 of Schedule 12 to the Local Government Finance Act 1992.

## **92 Transfer schemes: general**

- (1) A transfer scheme may—
- (a) define the property, rights and liabilities to be transferred to the transferee—
    - (i) by specifying the property, rights and liabilities in question;
    - (ii) by specifying all the property, rights and liabilities referable to a particular part of the transferor's functions; or
    - (iii) partly in the one way and partly in the other;

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- (b) provide that any rights or liabilities specified, or described, in the scheme shall be enforceable by or against either the transferor's successor or the transferee or by or against both the successor and the transferee;
  - (c) impose on the successor or the transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, as the case may be, the transferee or the successor or such other person as may be specified in the scheme;
  - (d) make appropriate supplemental, incidental, consequential or transitional provision.
- (2) An obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above shall be enforceable by civil proceedings by the successor or the transferee or the other person for an interdict or for any other appropriate remedy.
- (3) A transaction of any description which is effected in pursuance of any such provision as is mentioned in subsection (2) above—
- (a) shall have effect subject to any enactment which provides for transactions of that description to be registered in a statutory register; and
  - (b) subject to paragraph (a) above, shall be binding on all other persons notwithstanding the transaction would, apart from this subsection, have required the consent or concurrence of any other person.
- (4) A right of pre-emption, right of irritancy or similar right affecting land (including, without prejudice to the generality of the expression "similar right", any right under a clause providing for return or reversion in specified circumstances) shall not operate or become exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;
  - (b) by or under an agreement or instrument made or executed pursuant to any provision of Schedule 11 to this Act or pursuant to any directions given, or requirement imposed, under that Schedule; or
  - (c) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above;
- and, without prejudice to paragraph 8 of that Schedule, any such right shall accordingly have effect in the case of any such transfer as if the transferee in relation to that transfer were the same person in law as the transferor and as if no transfer of the land had taken place.
- (5) Subsection (4) above shall have effect in relation to—
- (a) the grant or creation of an estate or interest in, or right over, land; or
  - (b) the doing of any other thing in relation to land,
- as it has effect in relation to a transfer of land; and any reference in that subsection or in the following provisions of this section to the transferor or the transferee shall be construed accordingly.
- (6) In any case where any such right as is mentioned in subsection (4) above would, apart from that subsection, have operated in favour of, or become exercisable by, a person, but the circumstances are such that, in consequence of the operation of that subsection, the right cannot subsequently operate in favour of that person or, as the case may be, become exercisable by him, such compensation as may be just shall be paid to him by the transferor, the transferor's successor or the transferee (or, in so far as the particular

application of these provisions admits, by any two or by all of them) in respect of the extinguishment of the right.

- (7) Any dispute as to whether any, and (if so) how much, compensation is payable under subsection (6) above, or as to the person to whom or authority by whom it shall be paid, shall be referred to and determined by an arbiter appointed by the Lord President of the Court of Session.
- (8) Subject to subsection (10) below, if it appears to the regional council, or as the case may be to the islands council or the Board, that a person is, or may be, entitled to compensation under subsection (6) above—
- (a) they shall by written notice inform the person that he is, or may be, so entitled and shall invite him to make such representations as he wishes to them within fourteen days after the date of issue of the notice; or
  - (b) where they do not know (either or both)—
    - (i) the name of the person concerned;
    - (ii) his address,they shall publish, in such manner as they consider appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is, or may be, entitled to compensation in respect of the interest to make such representations as he wishes to them by a date which they shall specify in the notice, being a date not less than twenty-eight days after the date of publication.
- (9) Any reference in this Part of this Act to a transferor's successor is inapplicable where the transferor is the Board and is otherwise to be construed as a reference to the council for any local government area named in column 1 of Schedule 1 to this Act which is wholly or partly conterminous with the area of the transferor.
- (10) Where the last of the fourteen days after the date of issue of a notice under paragraph (a) of subsection (8) above falls on or after the transfer date, or the date specified in a notice published under paragraph (b) of that subsection so falls, and the representations are invited by—
- (a) a transferor other than the Board, the notice shall direct that any such representations be made to the transferor or, on or after that date, to the transferor's successor;
  - (b) the Board, the notice shall direct that any such representations be made to the Board or, on or after that date, to a specified transferee of the Board (the transferee in question being that which appears to the Board to be the most appropriate in the circumstances).

### **93 Preparations for transfer of functions etc. to new authorities**

- (1) Subject to the provisions of this Act, a regional or islands council or the Board may do anything which is calculated to facilitate, or is conducive or incidental to, the prospective transfer—
- (a) of their property, rights and liabilities which is provided for in section 91(1) of this Act; or
  - (b) of their rights and liabilities under contracts of employment which is provided for by virtue of section 97 of this Act.
- (2) All the regional or islands councils whose areas fall, wholly or partly, within either or both of the areas mentioned in—

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- (a) paragraph (a) of subsection (1) of section 62 of this Act may jointly establish, or be required by the Secretary of State jointly to establish, a committee to consider any matter which it is expedient should be considered before 1st April 1996 in order to ensure the effective operation of the East of Scotland Water Authority thereafter;
  - (b) paragraph (b), or as the case may be paragraph (c), of that subsection, may so establish or be required by the Secretary of State so to establish, a committee to consider as respects, respectively, the West of Scotland Water Authority or the North of Scotland Water Authority any such matter as a committee established under paragraph (a) above is to consider as respects the East of Scotland Water Authority
- (3) A committee established under subsection (2) above shall consist of such number (and respective numbers) of representatives of the councils by whom it is established as may be agreed between the councils or, in default of agreement, as may be determined by the Secretary of State.
- (4) Any expenses incurred by a committee established under subsection (2) above shall be defrayed by the councils by whom the committee was established in such proportions respectively as may be agreed between them or, in default of agreement, as may be determined by the Secretary of State.

#### **94 Power to require provision of information and assistance as respects transfer schemes**

- (1) The Secretary of State may direct the Board or any regional or islands council to furnish him, within such period as he may specify (being a period of not less than twenty-one days from the giving of the direction), with such information and assistance as he may require for the purposes of, or in connection with, his functions under section 91 of this Act.
- (2) Without prejudice to the generality of subsection (1) above, the assistance mentioned in that subsection includes allowing a person who is authorised for the purposes of this section by the Secretary of State (and who need not be an officer of the Secretary of State) access to land or premises of the Board, or as the case may be of the council, at such reasonable times as that person may request.
- (3) For the purposes of subsection (2) above—
- (a) the period of not less than twenty-one days mentioned in subsection (1) above shall be the period by the end of which access must be allowed if requested in accordance with subsection (2); and
  - (b) a consecutive following period shall be specified in the direction under subsection (1) above, during which requests by the person for access (which may include access at the reasonable times for the whole or any part of so much of that period as for the time being remains) shall continue to be allowed.

#### **95 Supplementary provision as to transfer schemes**

Schedule 11 to this Act shall apply to transfers under this Part of this Act.

**96 Transfer schemes: exemption from stamp duty and stamp duty reserve tax**

- (1) Stamp duty shall not be chargeable on a transfer scheme or, subject to subsection (2) below, on any instrument which is certified to the Commissioners of Inland Revenue by the Secretary of State as having been made in pursuance of such a scheme.
- (2) No instrument which is certified as mentioned in subsection (1) above shall be taken to be duly stamped unless—
  - (a) it is stamped with the duty to which it would but for that subsection be liable;  
or
  - (b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.
- (3) Stamp duty shall not be chargeable on any instrument which is made for the purposes of Schedule 11 to this Act.
- (4) No agreement made for the purposes of, or for purposes connected with, a transfer scheme shall give rise to a charge to stamp duty reserve tax; and no agreement which is made in pursuance of the said Schedule 11 shall give rise to such a charge.