

Status: Point in time view as at 01/04/2007.

Changes to legislation: Environment Act 1995, SCHEDULE 2 is up to date with all changes known to be in force on or before 13 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Sections 3 and 22.

TRANSFERS OF PROPERTY ETC: SUPPLEMENTAL PROVISIONS

PART I

INTRODUCTORY

Interpretation

1 In this Schedule—

“the chief inspector”—

- (a) in the application of this Schedule in relation to transfers by or under section 3 of this Act, means any of the inspectors or chief inspectors mentioned in section 2(1) of this Act;
- (b) in the application of this Schedule in relation to transfers by or under section 22 of this Act, means any of the inspectors or chief inspectors mentioned in section 21(1) of this Act;

and any reference to the chief inspector for England and Wales or the chief inspector for Scotland shall be construed accordingly;

“the relevant new Agency” means—

- (a) in the application of this Schedule in relation to transfers by or under section 3 of this Act, the Agency; and
- (b) in the application of this Schedule in relation to transfers by or under section 22 of this Act, SEPA;

“transfer scheme” means a scheme under section 3 or 22 of this Act;

“the transferor”, in relation to transfers by or under section 3 of this Act, means—

- (a) in the case of any transfer by section 3(1)(a) of this Act, the National Rivers Authority or the London Waste Regulation Authority, as the case may be; or
- (b) in the case of any transfer scheme, or any transfer by transfer scheme—
 - (i) the Secretary of State,
 - (ii) the chief inspector, or
 - (iii) any waste regulation authority,

(as the case may be) from whom any property, rights or liabilities are, or are to be, transferred by that scheme;

“the transferor”, in relation to transfers by or under section 22 of this Act, means—

- (a) in the case of any transfer by section 22(1)(a) of this Act, the river purification board in question; or

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- (b) in the case of any transfer scheme, or any transfer by transfer scheme—
- (i) the Secretary of State;
 - (ii) the chief inspector; or
 - (iii) any local authority,

(as the case may be) from whom any property, rights or liabilities are, or are to be, transferred by that scheme; and, as respects any such local authority which is a district or islands council, includes, in relation to any time on or after 1st April 1996, the council for any local government area named in column 1 of Schedule 1 to the ^{M1}Local Government etc. (Scotland) Act 1994 which is wholly or partly conterminous with the area of that council.

Commencement Information

- II** [Sch. 2](#) wholly in force at 12.10.1995; [Sch. 2](#) not in force at Royal Assent see [s. 125\(3\)](#); [Sch. 2](#) in force for specified purposes at 28.7.1995 by [S.I. 1995/1983](#), [art. 2](#); [Sch. 2](#) in force for further specified purposes at 12.10.1995 by [S.I. 1995/2649](#), [art. 2\(c\)](#)

Marginal Citations

- M1** [1994 c. 39](#).

The property etc. which may be transferred

- 2 (1) The property, rights and liabilities which are transferred by, or may be transferred by transfer scheme under, section 3 or 22 of this Act include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
 - (b) in the case of a transfer scheme, such property, rights and liabilities to which the transferor may become entitled or subject after the making of the scheme and before the transfer date as may be specified in the scheme;
 - (c) property situated anywhere in the United Kingdom or elsewhere;
 - (d) rights and liabilities under enactments;
 - (e) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (2) The transfers authorised by paragraph (a) of sub-paragraph (1) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than by or under section 3 or 22 of this Act, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to the property, right or liability in question.
- (3) This paragraph is subject to paragraph 3 below.

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Commencement Information

- I2** Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Contracts of employment

- 3 (1) The rights and liabilities that may be transferred by and in accordance with a transfer scheme include (subject to the following provisions of this paragraph) any rights or liabilities of the employer under the contract of employment of any person—
- (a) who is employed—
 - (i) in the civil service of the State;
 - (ii) by a body which is a waste regulation authority in England or Wales;
or
 - (iii) by a local authority in Scotland;
 - (b) who appears to the appropriate authority to be employed for the purposes of, or otherwise in connection with, functions which are by virtue of this Act to become functions of a new Agency; and
 - (c) whom the appropriate authority considers it necessary or expedient to transfer into the employment of that new Agency;
- and in the following provisions of this paragraph any reference to a “qualifying employee” is a reference to such a person.
- (2) A transfer scheme which provides for the transfer of rights or liabilities under the contracts of employment of qualifying employees must identify those employees—
- (a) by specifying them;
 - (b) by referring to persons of a description specified in the scheme (with or without exceptions); or
 - (c) partly in the one way and partly in the other.
- (3) A transfer scheme shall not operate to transfer rights or liabilities under so much of a contract of employment as relates to an occupational pension scheme, other than any provisions of such a pension scheme which do not relate to benefits for old age, invalidity or survivors.
- (4) Where a transfer scheme provides for the transfer of rights or liabilities under the contract of employment of a qualifying employee—
- (a) all the employer’s rights, powers, duties and liabilities under or in connection with the contract of employment shall be transferred to the relevant new Agency on the transfer date by and in accordance with the scheme, and
 - (b) anything done by or in relation to the employer in respect of the qualifying employee before the transfer date shall be treated on and after that date as done by or in relation to the relevant new Agency,
- except in a case where objection is made by the qualifying employee as mentioned in sub-paragraph (8)(b) below.
- (5) Sub-paragraphs (6) and (7) below shall have effect in any case where rights or liabilities under the contract of employment of a qualifying employee are transferred by and in accordance with a transfer scheme.

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- (6) In a case falling within sub-paragraph (5) above—
- (a) the transfer shall be regarded for the purposes of [^{F1}section 138 of the Employment Rights Act 1996] (renewal of contract or re-engagement) as a renewal of the qualifying employee’s contract of employment, or a re-engagement of the qualifying employee, falling within subsection (1) of that section; and
 - (b) the qualifying employee shall accordingly not be regarded as having been dismissed by virtue of the transfer.
- (7) In a case falling within sub-paragraph (5) above, for the purposes of [^{F2}Chapter I of Part XIV of the Employment Rights Act 1996] (ascertainment of the length of an employee’s period of employment and whether that employment is continuous)—
- (a) so much of the qualifying employee’s period of continuous employment as ends with the day preceding the transfer date shall be treated on and after that date as a period of employment with the relevant new Agency; and
 - (b) the continuity of the period of employment of the qualifying employee shall be treated as not having been broken by the transfer.
- (8) Sub-paragraph (9) below shall have effect in any case where—
- (a) a transfer scheme contains provision for the transfer of rights or liabilities under the contract of employment of a qualifying employee, but
 - (b) the qualifying employee informs the appropriate authority or the relevant new Agency that he objects to becoming employed by that new Agency.
- (9) In a case falling within sub-paragraph (8) above—
- (a) the transfer scheme—
 - (i) shall not operate to transfer any rights, powers, duties or liabilities under or in connection with the contract of employment; but
 - (ii) shall operate so as to terminate that contract on the day preceding the transfer date; and
 - (b) the qualifying employee shall not, by virtue of that termination, be treated for any purpose as having been dismissed.
- (10) In this paragraph—
- “the appropriate authority” means—
- (a) in the case of a person employed in the civil service of the State, the Secretary of State;
 - (b) in the case of a transfer scheme under section 3 of this Act and a person employed by a body which is a waste regulation authority, that body;
 - (c) in the case of a transfer scheme under section 22 of this Act and a person employed by a local authority, that authority;
- “occupational pension scheme” has the meaning given by section 1 of the ^{M2}Pension Schemes Act 1993.
- (11) This paragraph shall apply in relation to any qualifying employee as if, as respects any time before the transfer date,—
- (a) any reference to a person’s contract of employment included a reference to his employment in the civil service of the State or to the terms of that employment, as the case may require; and
 - (b) any reference to the dismissal of a person included a reference to the termination of his employment in that service.

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Textual Amendments

- F1** Words in [Sch. 2 para. 3\(6\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 68\(a\)](#) (with [ss. 191-195, 202](#))
- F2** Words in [Sch. 2 para. 3\(7\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 68\(b\)](#) (with [ss. 191-195, 202](#))

Commencement Information

- I3** [Sch. 2](#) wholly in force at 12.10.1995; [Sch. 2](#) not in force at Royal Assent see [s. 125\(3\)](#); [Sch. 2](#) in force for specified purposes at 28.7.1995 by [S.I. 1995/1983, art. 2](#); [Sch. 2](#) in force for further specified purposes at 12.10.1995 by [S.I. 1995/2649, art. 2\(c\)](#)

Marginal Citations

- M2** [1993 c. 48.](#)

PART II

TRANSFER SCHEMES

Description of the property etc. to be transferred by scheme

- 4 A transfer scheme may define the property, rights and liabilities to be transferred by the scheme—
- (a) by specifying or describing the property, rights and liabilities in question;
 - (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor; or
 - (c) partly in the one way and partly in the other.

Commencement Information

- I4** [Sch. 2](#) wholly in force at 12.10.1995; [Sch. 2](#) not in force at Royal Assent see [s. 125\(3\)](#); [Sch. 2](#) in force for specified purposes at 28.7.1995 by [S.I. 1995/1983, art. 2](#); [Sch. 2](#) in force for further specified purposes at 12.10.1995 by [S.I. 1995/2649, art. 2\(c\)](#)

Division of property etc. to be transferred by scheme: creation of new rights and interests

- 5 (1) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities by and in accordance with a transfer scheme, any such scheme may—
- (a) create in favour of the transferor an interest in, or right over, any property transferred by the scheme;
 - (b) create in favour of the relevant new Agency an interest in, or right over, any property retained by the transferor;
 - (c) create new rights and liabilities as between the relevant new Agency and the transferor; or
 - (d) in connection with any provision made by virtue of paragraph (a), (b) or (c) above, make incidental provision as to the interests, rights and liabilities of

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persons other than the transferor and the relevant new Agency with respect to the subject-matter of the transfer scheme;

and references in the other provisions of Part I of this Act to the transfer of property, rights or liabilities (so far as relating to transfers by and in accordance with transfer schemes) shall accordingly be construed as including references to the creation of any interest, right or liability by virtue of paragraph (a), (b) or (c) above or the making of provision by virtue of paragraph (d) above.

- (2) The provision that may be made by virtue of paragraph (c) of sub-paragraph (1) above includes—
- (a) provision for treating any person who is entitled by virtue of a transfer scheme to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies of it; and
 - (b) in the case of a transfer scheme under section 3 of this Act, provision applying section 64 of the ^{M3}Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect.

Commencement Information

I5 Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Marginal Citations

M3 1925 c. 20.

Transfer schemes: incidental, supplemental and consequential provision

- 6 (1) A transfer scheme may make such incidental, supplemental and consequential provision—
- (a) as the Secretary of State considers appropriate, in the case of a scheme made by him,
 - (b) as a body which is a waste regulation authority considers appropriate, in the case of a scheme made by that body under section 3 of this Act, or
 - (c) as a local authority considers appropriate, in the case of a scheme made by that authority under section 22 of this Act.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide—
- (a) that disputes as to the effect of the scheme between the transferor and the relevant new Agency are to be referred to such arbitration as may be specified in or determined under the transfer scheme;
 - (b) that determinations on such arbitrations and certificates given jointly by the transferor and the relevant new Agency as to the effect of the scheme as between them are to be conclusive for all purposes.

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Commencement Information

- I6** Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Modification of transfer schemes

- 7 (1) If at any time after a transfer scheme has come into force the Secretary of State considers it appropriate to do so, he may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (2) An order under sub-paragraph (1) above—
- (a) may make, with effect from the coming into force of the transfer scheme in question, such provision as could have been made by the scheme; and
 - (b) in connection with giving effect to that provision from that time, may contain such supplemental, consequential or transitional provision as the Secretary of State considers appropriate.
- (3) The Secretary of State shall not make an order under sub-paragraph (1) above except after consultation with—
- (a) the relevant new Agency; and
 - (b) if the transfer scheme in question is—
 - (i) a scheme under section 3 of this Act which transferred property, rights or liabilities of a waste regulation authority, or
 - (ii) a scheme under section 22 of this Act which transferred property, rights or liabilities of a local authority,the body which was the transferor in the case of that scheme.
- (4) The power to make an order under sub-paragraph (1) above shall be exercisable by statutory instrument; and a statutory instrument containing any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

- I7** Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Provision of information and assistance to the Secretary of State and the new Agencies in connection with transfer schemes

- 8 (1) It shall be the duty of each of the following, that is to say—
- (a) the chief inspector for England and Wales,
 - (b) any body which is a waste regulation authority in England or Wales, and
 - (c) any officer of such a body,
- to provide the Secretary of State or the Agency with such information or assistance as the Secretary of State or, as the case may be, the Agency may reasonably require

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for the purposes of, or in connection with, the exercise of any powers of the Secretary of State or the Agency in relation to transfer schemes.

(2) It shall be the duty of each of the following, that is to say—

- (a) the chief inspector for Scotland,
- (b) any local authority, and
- (c) any officer of a local authority,

to provide the Secretary of State or SEPA with such information or assistance as the Secretary of State or, as the case may be, SEPA may reasonably require for the purposes of, or in connection with, the exercise of any powers of the Secretary of State or SEPA in relation to transfer schemes.

Commencement Information

- 18** [Sch. 2](#) wholly in force at 12.10.1995; [Sch. 2](#) not in force at Royal Assent see [s. 125\(3\)](#); [Sch. 2](#) in force for specified purposes at 28.7.1995 by [S.I. 1995/1983](#), [art. 2](#); [Sch. 2](#) in force for further specified purposes at 12.10.1995 by [S.I. 1995/2649](#), [art. 2\(c\)](#)

PART III

GENERAL PROVISIONS WITH RESPECT TO TRANSFERS BY OR UNDER SECTION 3 OR 22

Consideration

- 9 No consideration shall be provided in respect of the transfer of any property, rights or liabilities by or under section 3 or 22 of this Act; but—
- (a) a transfer scheme may contain provision for consideration to be provided by the relevant new Agency in respect of the creation of interests, rights or liabilities by means of the transfer scheme; and
 - (b) any such provision shall be enforceable in the same way as if the interests, rights or liabilities had been created, and (if the case so requires) had been capable of being created, by agreement between the parties.

Commencement Information

- 19** [Sch. 2](#) wholly in force at 12.10.1995; [Sch. 2](#) not in force at Royal Assent see [s. 125\(3\)](#); [Sch. 2](#) in force for specified purposes at 28.7.1995 by [S.I. 1995/1983](#), [art. 2](#); [Sch. 2](#) in force for further specified purposes at 12.10.1995 by [S.I. 1995/2649](#), [art. 2\(c\)](#)

Continuity

- 10 (1) This paragraph applies in relation to—
- (a) any transfer of property, rights or liabilities by section 3 or 22 of this Act; or
 - (b) subject to any provision to the contrary in the transfer scheme in question, any transfer of property, rights or liabilities by a transfer scheme.
- (2) Where this paragraph applies in relation to a transfer, then, so far as may be necessary for the purposes of, or in connection with, the transfer—

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- (a) any agreements made, transactions effected or other things done by or in relation to the transferor shall be treated as made, effected or done by or in relation to the relevant new Agency;
- (b) references (whether express or implied and, if express, however worded) to the transferor in any agreement (whether in writing or not) or in any deed, bond, instrument or other document relating to the property, rights or liabilities transferred shall, as respects anything falling to be done on or after the transfer date, have effect as references to the relevant new Agency.

Commencement Information

I10 Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Remedies

- 11 (1) Without prejudice to the generality of paragraph 10 above, a new Agency and any other person shall, as from the transfer date, have the same rights, powers and remedies (and, in particular, the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to that new Agency by or under this Act as that new Agency or that person would have had if that right or liability had at all times been a right or liability of that new Agency.
- (2) Without prejudice to the generality of paragraph 10 above, any legal proceedings or applications to any authority pending immediately before the transfer date by or against a transferor, in so far as they relate to any property, right or liability transferred to the relevant new Agency by or under this Act or to any agreement relating to any such property, right or liability, shall be continued by or against the relevant new Agency to the exclusion of the transferor.

Commencement Information

I11 Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

Perfection of vesting of foreign property, rights and liabilities

- 12 (1) This paragraph applies in the case of any transfer by or under section 3 or 22 of this Act of any foreign property, rights or liabilities.
- (2) It shall be the duty of the transferor and the relevant new Agency to take, as and when that new Agency considers it appropriate, all such steps as may be requisite to secure that the vesting in that new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability is effective under the relevant foreign law.
- (3) Until the vesting in the relevant new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the transferor to hold that property or

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right for the benefit of, or to discharge that liability on behalf of, the relevant new Agency.

- (4) Nothing in sub-paragraphs (2) and (3) above shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the relevant new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability.
- (5) The transferor shall have all such powers as may be requisite for the performance of his duty under this paragraph, but it shall be the duty of the relevant new Agency to act on behalf of the transferor (so far as possible) in performing the duty imposed on the transferor by this paragraph.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Duties imposed on the transferor or the relevant new Agency by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the transferor and that new Agency.
- (8) Any expenses reasonably incurred by the transferor under this paragraph shall be met by the relevant new Agency.

Commencement Information

I12 Sch. 2 wholly in force at 12.10.1995; Sch. 2 not in force at Royal Assent see s. 125(3); Sch. 2 in force for specified purposes at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 2 in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, art. 2(c)

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