

*Status: Point in time view as at 01/11/2007.*

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## SCHEDULES

### SCHEDULE 2

#### 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 <sup>M1</sup>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 [<sup>F1</sup>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 [<sup>F2</sup>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 <sup>M2</sup>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](#))

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### 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\(c\)](#)

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### Marginal Citations

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

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