



# Public Bodies Act 2011

## 2011 CHAPTER 24

### PART 1

#### GENERAL ORDER-MAKING POWERS

#### *Transfer of property, rights and liabilities*

#### 23 Transfer schemes

- (1) A scheme for the transfer of property, rights and liabilities (a “transfer scheme”) may be made by—
  - (a) a Minister, in connection with an order under sections 1 to 5;
  - (b) the Welsh Ministers, in connection with an order under section 13 or 14.
- (2) In the case of a transfer scheme under subsection (1)(a), property, rights and liabilities must be transferred to —
  - (a) a Minister, where the scheme is made in connection with an order under section 3 or 4 (modification of constitutional or funding arrangements), or
  - (b) an eligible person or a body corporate, in any other case.
- (3) In the case of a transfer scheme under subsection (1)(b), property, rights and liabilities must be transferred to—
  - (a) the Welsh Ministers,
  - (b) a person exercising Welsh devolved functions, or
  - (c) a body corporate.
- (4) A transfer scheme may not transfer anything to a charity unless it has consented.
- (5) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.

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*Status: This is the original version (as it was originally enacted).*

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- (6) A transfer scheme may make consequential, supplementary, incidental or transitional provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (7) A transfer scheme may provide—
- (a) for modification by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (8) For the purposes of this section—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- (9) In this section—
- “civil service” means the civil service of the State;
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
  - references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - references to the transfer of property include the grant of a lease.

## **24 Transfer schemes: procedure**

- (1) A transfer scheme made by a Minister under section 23(1)(a) may be included in an order under sections 1 to 5; but if not so included must be laid before Parliament after being made.
- (2) A transfer scheme made by the Welsh Ministers under section 23(1)(b) may be included in an order under section 13 or 14; but if not so included must be laid before the National Assembly for Wales after being made.
- (3) The Secretary of State’s consent is required for a transfer scheme under section 23(1)(b) transferring anything from or to the Environment Agency, the Forestry Commissioners or a cross-border operator.

## 25 Transfer schemes: taxation

- (1) The Treasury may by order make provision varying the way in which a relevant tax has effect in relation to—
  - (a) anything transferred under a scheme under section 23, or
  - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision which may be made under subsection (1)(a) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the person making the scheme to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision which may be made under subsection (1)(b) includes in particular provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of or in relation to the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the person making the scheme to be required or permitted, with the consent of the Treasury, to determine, or specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) An order under this section is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this section—
  - “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax;
  - “tax provision” means a provision of an enactment about a relevant tax;references to the transfer of property include the grant of a lease.