

Status: Point in time view as at 01/02/1991.

Changes to legislation: Environmental Protection Act 1990, SCHEDULE 10 is up to date with all changes known to be in force on or before 02 May 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 10 **E+W+S**

Sections 135, 136 and 137.

TRANSFER SCHEMES AND STAFF OF EXISTING COUNCILS

PART I E+W+S

TRANSFER SCHEMES: NATURE CONSERVANCY COUNCIL

Making and approval of schemes

- 1 (1) Before such date or dates as the Secretary of State may direct, the Nature Conservancy Council shall make, and submit to the Secretary of State for his approval, their transfer scheme or schemes under section 135 of this Act (in this Part of this Schedule referred to as a “transfer scheme”).
- (2) A transfer scheme shall not take effect unless approved by the Secretary of State, who may modify such a scheme before approving it.
- (3) The Secretary of State may make a transfer scheme himself if—
 - (a) he decides not to approve a scheme which has been submitted to him before the due date (with or without modifications); or
 - (b) no scheme is submitted to him for approval before the due date;but nothing in this sub-paragraph shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (4) A scheme made by the Secretary of State shall be treated for all purposes as having been made by the Council and approved by him.

Modification of schemes

- 2 (1) If at any time after a transfer scheme has come into force the Secretary of State considers it appropriate to do so, having consulted any of the Councils established by section 128 of this Act (in this Schedule referred to as “the new Councils”) which may be affected, 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 may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme and in connection with giving effect to that provision from that time may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

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Provision of information to Secretary of State

- 3 It shall be the duty of the Nature Conservancy Council and the new Councils to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of or in connection with the exercise of any power conferred on him by paragraphs 1 and 2 above.

Contents of schemes

- 4 A transfer scheme may—
- (a) define the property, rights and liabilities to be allocated to a particular new Council by specifying or describing them or by referring to all the property, rights and liabilities comprised in a specified part of the undertaking of the Nature Conservancy Council (or partly in one way and partly in the other);
 - (b) create in favour of a new Council—
 - (i) an interest in or right over property transferred in accordance with the scheme (or any earlier scheme) to another new Council;
 - (ii) new rights and liabilities as between that Council and the others;
 - (c) provide that any rights or liabilities specified or described in the scheme shall, or shall to any extent, be enforceable either by or against each of the new Councils or by or against any two of the new Councils which are so specified;
 - (d) require a new Council to enter into written agreements with, or execute other instruments in favour of, another new Council;

and a scheme may make such supplemental, incidental and consequential provision as the Nature Conservancy Council considers appropriate (including provision as to the order in which transfers or transactions are to be regarded as having occurred).

- 5 For the avoidance of doubt property, rights and liabilities of the Nature Conservancy Council may be allocated to a new Council notwithstanding—
- (a) that they would not, or would not without the consent or concurrence of another person, otherwise be capable of being transferred or assigned;
 - (b) that, in the case of foreign property, steps must be taken by the Council to secure its effective vesting under the relevant foreign law.

PART II **E+W+S**

TRANSFER SCHEMES: THE COUNTRYSIDE COMMISSION

Making and approval of schemes

- 6 (1) Before such date or dates as the Secretary of State may direct, the Countryside Commission shall make, and submit to the Secretary of State for his approval, their transfer scheme or schemes under section 136 of this Act (in this Part of this Schedule referred to as a “transfer scheme”).

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- (2) A transfer scheme shall not take effect unless approved by the Secretary of State, who may modify such a scheme before approving it.
- (3) The Secretary of State may make a transfer scheme himself if—
 - (a) he decides not to approve a scheme which has been submitted to him before the due date (with or without modifications); or
 - (b) no scheme is submitted to him for approval before the due date;but nothing in this sub-paragraph shall prevent the Secretary of State from approving any scheme which may be submitted to him after the due date.
- (4) A scheme made by the Secretary of State shall be treated for all purposes as having been made by the Countryside Commission and approved by him.

Modification of 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, having consulted the Countryside Council for Wales and the Countryside Commission, 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 may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme and in connection with giving effect to that provision from that time may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

Provision of information to Secretary of State

- 8 It shall be the duty of the Countryside Council for Wales and the Countryside Commission to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of or in connection with the exercise of any power conferred on him by paragraphs 6 and 7 above.

Contents of schemes

- 9 (1) A transfer scheme may—
 - (a) define the property, rights and liabilities to be allocated to the Countryside Council for Wales by specifying or describing them or by referring to all the property, rights and liabilities comprised in a specified part of the undertaking of the Countryside Commission (or partly in one way and partly in the other);
 - (b) create in favour of the Countryside Commission an interest in or right over property transferred in accordance with the scheme (or any earlier scheme) to the Countryside Council for Wales;
 - (c) require the Countryside Council for Wales to enter into written agreements with, or execute other instruments in favour of, the Countryside Commission;

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and a scheme may make such supplemental, incidental and consequential provision as the Countryside Commission consider appropriate (including provision as to the order in which transfers or transactions are to be regarded as having occurred).

(2) Paragraph 5 above shall apply to transfer schemes under section 136 of this Act.

PART III **E+W+S**

EMPLOYMENT OF STAFF OF EXISTING BODIES

Proposals for staff of Nature Conservancy Council

- 10 Not later than such date or dates as the Secretary of State may determine, the Nature Conservancy Council shall prepare and submit to the Secretary of State for approval proposals that would secure that an offer is made by one of the new Councils to each person who will be entitled to receive an offer under section 137 of this Act.
- 11 (1) The Secretary of State may, after consultation with the new Councils—
- (a) approve the proposals submitted to him under paragraph 10 above or modify the proposals before approving them;
 - (b) if he decides not to approve the proposals or if the Nature Conservancy Council fail to submit the proposals by the due date, make his own proposals;
- and any proposals made by the Secretary of State shall be treated for all purposes as if they were made by the Council and approved by him.
- (2) It shall be the duty of the Nature Conservancy Council and the new Councils to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of or in connection with the exercise of any power conferred on him by this paragraph.

Proposals for certain staff of the Countryside Commission

- 12 Not later than such date or dates as the Secretary of State may determine, the Countryside Commission shall prepare and submit to the Secretary of State for approval proposals as to which of their employees are to receive offers of employment from the Countryside Council for Wales under section 137 of this Act.
- 13 (1) The Secretary of State may, after consultation with the Countryside Council for Wales—
- (a) approve the proposals submitted to him under paragraph 12 above or modify the proposals before approving them;
 - (b) if he decides not to approve the proposals or if the Countryside Commission fail to submit the proposals by the due date, make his own proposals;
- and any proposals made by the Secretary of State shall be treated for all purposes as if they were made by the Commission and approved by him.

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- (2) It shall be the duty of the Countryside Commission and the Countryside Council for Wales to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of or in connection with the exercise of any power conferred on him by this paragraph.

Offers of employment

- 14 (1) Each new Council shall, before such date as the Secretary of State may direct, make offers of employment in accordance with this paragraph to those persons allocated to that Council by the proposals under paragraph 10 above as approved by the Secretary of State.
- (2) The Countryside Council for Wales shall, before such date as the Secretary of State may direct, make offers of employment in accordance with this paragraph to those persons who are the subject of proposals under paragraph 12 above as approved by the Secretary of State.
- (3) The terms of employment to be offered shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (4) An offer under this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

Continuity of employment, redundancy etc.

- 15 Where a person becomes an employee of a new Council in consequence of an offer made under paragraph 14(1) or (2) above, then, for the purposes of the ^{M1}Employment Protection (Consolidation) Act 1978, his period of employment with the Nature Conservancy Council, or as the case may be, the Countryside Commission shall count as a period of employment by the new Council and the change of employment shall not break the continuity of the period of employment.

Marginal Citations

M1 1978 c. 44.

- 16 Where an offer is made to a person in pursuance of paragraph 14(1) or (2) above, none of the redundancy procedures applicable to such a person shall apply to him; and where that person ceases to be employed by the Nature Conservancy Council or, as the case may be, the Countryside Commission—
- (a) on becoming employed by a new Council, or
- (b) having unreasonably refused an offer,
- Part VI of the ^{M2} Employment Protection (Consolidation) Act 1978 shall not apply to him and he shall not be treated for the purposes of any superannuation or other pension scheme as having been retired on redundancy.

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M2 1978 c. 44.

Disputes

- 17 (1) Any dispute as to whether an offer under paragraph 14(1) or (2) above complies with sub-paragraph (3) of that paragraph shall be referred to and determined by an industrial tribunal.
- (2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer or, where the tribunal is satisfied that it was not reasonably practicable for that to be done, within such further period as the tribunal considers reasonable.
- (3) Subject to sub-paragraph (4) below, there shall be no appeal from the decision of an industrial tribunal under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a point of law arising from a decision of, or in proceedings before, an industrial tribunal under this paragraph.

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