

SCHEDULES

SCHEDULE 11

Section 95.

WATER AND SEWERAGE TRANSFER SCHEMES

Allocation of property, rights and liabilities

- 1 (1) The provisions of this paragraph and of paragraphs 2 and 3(1) below shall have effect where a transfer to which this Schedule applies is a transfer of property, rights and liabilities of a regional or islands council and the question of allocation of the property, rights and liabilities as between the regional council's successor, or the islands council, and the transferee arises.
- (2) Any property, right or liability referable partly to the functions of the council which are transferred and partly to the functions which are retained for the regional council's successor, or the islands council, shall (where the nature of the property, right or liability permits) be divided or apportioned between the successor, or council, and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided, any rent payable by or to any party in respect of that land and any feu-duty, stipend or other outgoing running with the land or right shall be divided or apportioned correspondingly.
- (3) Any property, right or liability referable as mentioned in sub-paragraph (2) above but the nature of which does not permit its division or apportionment as so mentioned, shall be transferred to the transferee or retained for the regional council's successor, or the islands council, according to—
- (a) in the case of an estate or interest in land, whether on the transfer date the successor, or islands council, or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether as from that date the successor, or islands council, or the transferee appears likely to make use of the land to the greater extent;
 - (b) in the case of any other property or any right or liability, whether as from the transfer date the successor, or islands council, or the transferee appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,
- subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.
- 2 (1) It shall be the duty of the council (or as the case may be the council's successor) and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained for the successor, or islands council, and as will—
- (a) afford to the successor, or islands council, and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and

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- (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the council's property, rights and liabilities as will best serve the proper discharge of the respective functions of the successor, or the islands council, and the transferee.
- (2) Any such agreement shall provide so far as it is expedient—
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
 - (b) for the granting of indemnities in connection with the severance of leases and other matters; and
 - (c) for responsibility for registration of any matter in any statutory register.
- (3) If the council (or as the case may be the successor) or the transferee represent to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (1) above that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining that matter and may include in the direction any provision which might have been included in an agreement under sub-paragraph (1) above; and any property, rights or liabilities required by the direction to be transferred to the transferee shall accordingly be regarded as having been transferred to, and vested in, the transferee by virtue of the scheme (but not until the date of the direction if that is after the transfer date).

Variation of transfers by agreement

- 3 (1) At any time before the end of the period of twelve months beginning with the transfer date, the regional council's successor, or the islands council, and the transferee may, with the approval of the Secretary of State, agree in writing that—
- (a) as from such date as may be specified in or determined under the agreement, and
 - (b) in such circumstances (if any) as may be so specified,
- there shall be transferred from the transferee to, and vested in, the successor, or the islands council, any property, rights and liabilities specified in the agreement.
- (2) Subject to sub-paragraph (3) below, in the case of an agreement under sub-paragraph (1) above, the property, rights and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.
- (3) The following provisions of this Schedule shall have effect as if—
- (a) any reference to a transfer to which this Schedule applies included a reference to a transfer effected in pursuance of an agreement under sub-paragraph (1) above;
 - (b) any reference to a transaction effected in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above included a reference to such an agreement; and
 - (c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement.

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Right to production of documents of title

- 4 Where, on any transfer to which this Schedule applies, a regional council's successor or an islands council is entitled to retain possession of any document relating in part to the title to, or to the management of, any land or other property transferred from the council in question, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words "unless specially qualified" were omitted.

Certificate of vesting

- 5 (1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor (or the transferor's successor) and the transferee that—
- (a) any property specified in the certificate;
 - (b) any such interest in or right over any such property as may be so specified; or
 - (c) any right or liability so specified,
- is, by virtue of this Act, vested in such one of them as may be so specified, or was at a date so specified thus vested, shall be conclusive evidence for all purposes of that fact.
- (2) If on the expiration of one month after a request from either the transferor (or the successor) or the transferee for the preparation of such a joint certificate as respects any property, interest, right or liability they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as he may direct.

Restrictions on dealing with certain land

- 6 (1) If, as regards a transfer to which this Schedule applies from an islands or regional council, the Secretary of State is satisfied on the representation of the regional council's successor, or the islands council, or the transferee—
- (a) that, in consequence of the transfer, different interests in land, whether the same or different land, are held by the successor or islands council and by the transferee; and
 - (b) that the circumstances are such that this paragraph should have effect,
- the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction.
- (2) While the direction mentioned in sub-paragraph (1) above remains in force—
- (a) neither the successor, or islands council, nor the transferee shall dispose of any interest to which they may respectively be entitled in any of the specified land, except with the consent of the Secretary of State;
 - (b) if, in connection with any proposal to dispose of any interest of either the successor (or council) or the transferee in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—
 - (i) require either the successor (or council) or the transferee to dispose of any interest to which they may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;

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- (ii) require either the successor (or council) or the transferee to acquire from the other any interest in any of the specified land to which that other is entitled; or
 - (iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.
- (3) A person other than the successor (or islands council) or the transferee dealing with, or with a person claiming under, either the successor (or council) or the transferee shall not be concerned—
- (a) to see or enquire whether this paragraph applies, or has applied, in relation to any land to which the dealing relates; or
 - (b) as to whether the provisions of this paragraph have been complied with in connection with that, or any other, dealing with that land;
- and no transaction between persons other than the successor (or council) and the transferee shall be invalid by reason only of a failure to comply with those provisions.

Construction of agreements, statutory provisions and documents

- 7 (1) This paragraph applies where, in the case of any transfer to which this Schedule applies, any rights or liabilities transferred are rights or liabilities under an agreement, whether in writing or not, to which the transferor was a party immediately before the transfer date and whether or not the agreement was of such a nature that rights and liabilities under it could be assigned by the transferor.
- (2) So far as relating to property, rights or liabilities transferred to the transferee, the agreement shall have effect on and after the transfer date as if—
- (a) the transferee had been the party to it;
 - (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
 - (c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the functions of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such a person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the functions of, the transferee who corresponds as nearly as may be to the first-mentioned person;
 - (d) any reference in general terms (however worded) to persons employed by, persons engaged in the functions of, or agents of, the transferor were, as respects anything to be done on or after the transfer date, a reference to persons employed by, persons engaged in the functions of, or agents of, the transferee.
- 8 (1) Except as otherwise provided in any provision of this Part of this Act (whether expressly or by necessary implication), paragraph 7 above shall, so far as applicable, apply in relation to—
- (a) any statutory provision,
 - (b) any provision of an agreement to which the transferor was not a party, and
 - (c) any provision of a document other than an agreement,
- if and in so far as the provision in question relates to any of the transferred property, rights and liabilities, as it applies in relation to an agreement to which the transferor was a party.

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- (2) In relation to any such statutory or other provision as is mentioned in sub-paragraph (1) above, references in sub-paragraph (2)(b), (c) and (d) of paragraph 7 above to the transferor and to any persons employed by, persons engaged in the functions of, or agents of, the transferor include references made by means of a general reference to a class of persons of which the transferor is one, though not specifically referred to.
- 9 (1) The transferee under a transfer to which this Schedule applies 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 vested in the transferee by virtue of the scheme as they would have had if that right or liability had at all times been a right or liability of the transferee.
- (2) Any legal proceedings, or applications to any authority, pending on the transfer date by or against the transferor, in so far as they relate—
- (a) to any property, right or liability vested in the transferee by virtue of the scheme, or
 - (b) to any agreement or enactment relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor or the transferor's successor.
- (3) This paragraph is without prejudice to the generality of the provisions of paragraphs 7 and 8 above.
- 10 The provisions of paragraphs 7 to 9 above shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

Third parties affected by vesting provisions

- 11 (1) Without prejudice to the provisions of paragraphs 7 to 10 above, any transaction effected between the council (or the council's successor) and the transferee in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- (2) It shall be the duty of the council (or successor) and the transferee, if they effect any transaction in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above, to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the regional council's successor, or the islands council, and as to part by or against the transferee; and if, within twenty-eight days of being notified, such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to the successor, or the islands council, and the transferee as appear to him appropriate for varying the transaction.
- (3) As respects a transfer to which this Schedule applies which is a transfer of property, rights and liabilities of a regional or islands council, if in consequence of the transfer or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the regional council's successor, or the islands council, and the transferee which are enforceable

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against or by the successor, or council, become enforceable as to part against or by the successor, or council, and as to part against or by the transferee, and

(b) the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the successor (or council), the transferee or both.

(4) Subject to sub-paragraph (5) below, if it appears to the regional or islands council that a person is, or may be, entitled to compensation under sub-paragraph (3) 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.

(5) Where the last of the fourteen days after the date of issue of a notice under head (a) of sub-paragraph (4) above falls on or after the transfer date, or the date specified in a notice published under head (b) of that sub-paragraph so falls, the notice shall direct that the representations be made to the transferor or, on or after that date, to the transferor's successor.

(6) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph (3) above, or as to the person to or 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.

(7) If, in the case of any transfer to which this Schedule applies, it appears to the court, at any stage in any court proceedings to which the transferor (or successor) or the transferee and a person other than the transferor (or successor) or the transferee are parties, that the issues in the proceedings—

(a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor (or successor) and the transferee have not yet effected, or

(b) raise a question of construction of the relevant provisions of this Act which would not arise if the transferor (or successor) and the transferee constituted a single person,

the court may, if it thinks fit on the application of a party to the proceedings other than the transferor (or the successor) or the transferee, hear and determine the proceedings on the footing that such one of the transferor (or successor) and the transferee as is party to the proceedings represents and is answerable for the other of them, and that the transferor (or successor) and the transferee constitute a single person; and any judgment or order given by the court shall bind both the transferor (or successor) and the transferee accordingly.

(8) In the case of any transfer to which this Schedule applies, it shall be the duty of the transferor (or successor) and the transferee to keep one another informed of any case where either of them may be prejudiced by virtue of sub-paragraph (7) above; and if it

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is claimed by either the transferor (or successor) or the transferee there has been such prejudice and that the other of them ought to indemnify or make a repayment on that account but that there has been unreasonable failure to meet that claim, whichever of them so claims may refer the matter to the Secretary of State for determination by him.

Interpretation

12 In this Schedule—

“islands council” shall, as the context may require, be construed either as a reference to the islands council of Orkney, Shetland or the Western Isles as the council in question exist or existed before 1st April 1996 or as a reference to Orkney Islands Council, Shetland Islands Council or Western Isles Council;

“statutory provision” means a provision, whether of a general or of a special nature, contained in, or in any document made or issued under, any Act and irrespective of whether the Act itself is of a general or of a special nature; and

“successor” shall be construed in accordance with section 92(9) of this Act.