

SCHEDULES

SCHEDULE 2

Section 2.

ORDERS AND AGREEMENTS FOR TRANSFER OF NAVIGATION, HARBOUR AND CONSERVANCY FUNCTIONS

Modifications etc. (not altering text)

- C1** Sch. 2: Functions transferred (1.4.1996) to the Agency by 1995 c. 25, s. 2(1)(a)(vii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

Powers to transfer functions or property

- 1 (1) The [^{F1}appropriate agency] may at any time apply to the Ministers for an order under this Schedule transferring to the [^{F1}appropriate agency] any of the functions or property of a navigation authority, harbour authority or conservancy authority.
- (2) The power to make an order under this Schedule shall be exercisable by statutory instrument.
- (3) Any transfer of functions or property which could be effected by an order under this Schedule may, with the consent of the Ministers, be effected by agreement between the [^{F1}appropriate agency] and the other body concerned.
- (4) Where, in accordance with this paragraph, the [^{F1}appropriate agency] may apply for an order transferring any functions or property of another body, that body may itself apply for such an order.
- (5) For the purposes of this Schedule the references in sub-paragraph (1) above to a navigation authority, to a harbour authority and to a conservancy authority shall each include a reference to a body which no longer has any members but which, if it had members, would be such an authority

Textual Amendments

- F1** Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 306 (with Sch. 7)

Consultation with affected body

- 2 (1) Before determining whether to make an order on an application under paragraph 1 above, the Ministers shall—
- (a) consult whichever of the following is not the applicant, that is to say, the [^{F1}appropriate agency] and the body from which any functions or property are proposed in the application to be transferred; and

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- (b) consider any representations made with respect to the application by the [F1 appropriate agency] or, as the case may be, by any such body.
- (2) Sub-paragraph (1) above shall not require the Ministers to consult, or consider representations from, any body which no longer has any members.

Textual Amendments

F1 Words in [Sch. 2 paras. 1-3](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

Public consultation

- 3 (1) If the Ministers propose to make an order on an application under paragraph 1 above, they shall prepare a draft order, and shall cause notice of their intention to make an order—
 - (a) to be published in the London Gazette and in such other manner as they think best adapted for informing persons affected; and
 - (b) to be served on—
 - (i) the [F1 appropriate agency];
 - (ii) any body (other than one no longer having any members) from which any functions or property are proposed to be transferred; and
 - (iii) any such navigation authority, harbour authority or conservancy authority not falling within paragraph (ii) above as appears to the Ministers to be affected by the proposals.
- (2) A notice under sub-paragraph (1) above shall specify—
 - (a) the place where copies of the draft order, and of any map to which it refers, may be inspected and obtained; and
 - (b) the time (not being less than twenty-eight days) within which, and the manner in which, objections to the draft order may be made.
- (3) Before making any order on an application under paragraph 1 above, the Ministers—
 - (a) shall consider any objections which may be duly made to the draft order; and
 - (b) may, if they think fit, cause a local inquiry to be held with respect to any such objections;

and, in making the order, the Ministers may make such modifications in the terms of the draft as appear to them desirable.

Textual Amendments

F1 Words in [Sch. 2 paras. 1-3](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

Supplemental provisions of order

- 4 (1) An order under this Schedule may contain such incidental, supplementary, consequential and transitional provisions as the Ministers consider necessary or expedient.

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- (2) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be included in an order by virtue of that sub-paragraph shall include such provisions as the Ministers consider necessary or expedient with respect to—
- (a) the transfer of assets and liabilities, the payment of compensation and other financial adjustments;
 - (b) the amendment, adaptation or repeal of local enactments; and
 - (c) the application, subject to such modifications as may be specified in the order, of provisions corresponding to those originally made by or under Part IX of the ^{M1}Water Resources Act 1963.

Marginal Citations

M1 1963 c. 38.

Objection to final order by affected bodies

- 5 (1) After making an order under this Schedule, the Ministers, if an objection—
- (a) has been duly made by the [^{F2}appropriate agency] or any other body on which notice is required to be served under paragraph 3 above; and
 - (b) has not been withdrawn,
- shall serve notice of the making of the order and of the effect of the order on the [^{F2}appropriate agency] or, as the case may be, that body.
- (2) Where a notice is required to be served under sub-paragraph (1) above, the order shall not have effect before the end of a period of twenty-eight days from the date of service of that notice.
- (3) If, within the period of twenty-eight days mentioned in sub-paragraph (2) above, any body (including the [^{F2}appropriate agency]) on which notice has been served under sub-paragraph (1) above gives notice to one of the Ministers objecting to the order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

Textual Amendments

F2 Words in [Sch. 2 para. 5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

Public notice of order

- 6 (1) After making an order under this Schedule, the Ministers shall publish in the London Gazette, and in such other manner as they think best adapted for informing persons affected, a notice—
- (a) stating that the order has been made; and
 - (b) naming a place where a copy of the order may be seen at all reasonable hours.
- (2) In the case of an order to which sub-paragraph (1) of paragraph 5 above applies, a notice under sub-paragraph (1) above—

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- (a) shall not be published until the end of the period of twenty-eight days mentioned in sub-paragraph (2) of that paragraph; and
- (b) shall state whether or not the order is to be subject to special parliamentary procedure.

Challenge of order

- 7 (1) Subject to sub-paragraph (3) below, if any person aggrieved by an order under this Schedule desires to question its validity on the ground—
- (a) that it is not within the powers of this Schedule; or
 - (b) that any requirement of this Schedule has not been complied with in relation to the order,
- he may, within six weeks after the first publication of the notice required by paragraph 6 above, make an application for the purpose to the High Court.
- (2) Where an application under sub-paragraph (1) above is duly made to the High Court, that Court, if satisfied—
- (a) that the order is not within the powers of this Schedule; or
 - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Schedule not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) The preceding provisions of this paragraph—
- (a) shall not apply to any order which is confirmed by Act of Parliament under section 6 of the ^{M2}Statutory Orders (Special Procedure) Act 1945; and
 - (b) shall have effect in relation to any other order which is subject to special parliamentary procedure by virtue of the provisions of this Schedule as if, for the reference to the first publication of the notice required by paragraph 6 above, there were substituted a reference to the date on which the order becomes operative under that Act of 1945.
- (4) Except as provided by this paragraph, the validity of an order under this Schedule shall not, either before or after the order has been made, be questioned in any legal proceedings whatsoever.

Marginal Citations

M2 1945 c. 18 (9 & 10 Geo 6).

Effect of order or agreement

- 8 (1) Where, by virtue of an order or agreement under this Schedule, property is transferred to the [^{F3}appropriate agency] on the terms that—
- (a) the body from which it is transferred shall continue liable for the repayment of, and payment of interest on, any sum borrowed in connection with the property; and
 - (b) the [^{F3}appropriate agency] shall make payments to that body in respect of amounts paid by that body by reason of its continuing so liable,

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any payment so made by the shall be deemed to be a capital payment or an annual payment, according as the amount in respect of which it is made was paid in or towards repayment of the loan or by way of interest thereon.

- (2) Property vested in the [^{F3}appropriate agency] by virtue of an order or agreement under this Schedule shall not be treated as so vested by way of sale for the purpose of section 12 of the ^{M3}Finance Act 1895 (which provides for charging stamp duty in the case of certain statutory transfers by way of sale).
- [^{F4}(3) A land transaction by which property is vested in the [^{F3}appropriate agency] by virtue of an order or agreement under this Schedule is exempt from charge for the purposes of stamp duty land tax.
- (4) Relief under sub-paragraph (3) must be claimed in a land transaction return or an amendment of such a return.
- (5) In this paragraph—

“land transaction” has the meaning given by section 43(1) of the Finance Act 2003;

“land transaction return” has the meaning given by section 76(1) of that Act.]

Textual Amendments

- F3** Words in [Sch. 2 para. 8](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))
- F4** [Sch. 2 para. 8\(3\)-\(5\)](#) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, [Sch. para. 17](#)

Marginal Citations

- M3** [1895 c. 16](#).

Ministers' expenses

- 9 (1) The costs incurred by the Ministers in connection with the making and notification of an order under this Schedule shall be paid by the applicant for the order; and, if there is more than one, the Ministers may apportion the costs between the applicants.
- (2) The Ministers may require any applicant for an order under this Schedule to give security for the payment of any costs payable by the applicant under this paragraph.
- (3) The reference in sub-paragraph (1) above to any costs incurred in connection with the making and notification of an order under this Schedule includes a reference to any costs incurred in relation to any such order under the Statutory Orders (Special Procedure) Act 1945.

Compensation for officers and staff

- 10 (1) The Ministers shall by regulations make provision requiring the payment by the [^{F5}appropriate agency], subject to such exceptions or conditions as may be prescribed, of compensation to or in respect of persons who—
 - (a) are, or but for any military or other designated service of theirs would be, the holders of any such situation, place or employment as may be prescribed; and

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- (b) suffer loss of employment, or loss or diminution of emoluments, in consequence of any order or agreement under this Schedule.
- (2) Regulations under this paragraph may be so framed as to have effect as from a date earlier than that on which they are made; but so much of any regulations as provides that any provision is to have effect as from a date earlier than that on which they are made shall not place any person other than the [^{F5}appropriate agency] in a worse position than he would have been in if the regulations had been so framed as to have effect only as from the date on which they are made.
- (3) Regulations made under this paragraph may include provision as to the manner in which, and the person to whom, any claim for compensation under this paragraph is to be made, and for the determination of all questions arising under the regulations.
- (4) In this paragraph “military or other designated service” means any such service in any of Her Majesty’s forces or other employment (whether or not in the service of Her Majesty) as may be prescribed by regulations under this paragraph.

Textual Amendments

- F5** Words in [Sch. 2 para. 10](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

Power to amend local enactments

- 11 (1) If it appears to the Ministers by whom an order is made under this Schedule that any local enactment passed or made before the relevant date—
- (a) is inconsistent with any of the provisions of that order; or
 - (b) requires to be amended or adapted, having regard to any of the provisions of that order,
- those Ministers may by order repeal, amend or adapt that enactment to such extent, or in such manner, as they may consider appropriate.
- (2) Any order under this paragraph may include such transitional, incidental, supplementary and consequential provisions as the Ministers may consider necessary or expedient.
 - (3) The power to make an order under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
 - (4) In this paragraph “relevant date” means the date which was the second appointed day for the purposes of section 133 of the ^{M4}Water Resources Act 1963.
 - (5) The provisions of this paragraph shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

Marginal Citations

- M4** [1963 c. 38.](#)

Changes to legislation: There are currently no known outstanding effects for the
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Interpretation

- 12 (1) In this Schedule “local enactment” means—
- (a) a local or private Act;
 - (b) a public general Act relating to London;
 - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
 - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme.
- (2) References in this Schedule to the Ministers, in a case in which all the functions in question are exercisable in Wales and all the property in question is situated there, shall have effect as references to the Secretary of State.

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