

Changes to legislation: There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 4.

SCHEMES PROVIDING FOR THE INITIAL TRANSFERS

Modifications etc. (not altering text)

- C1** Sch. 2 applied (Isles of Scilly) (with modifications) (1.11.2019) by [The Isles of Scilly \(Application of Water Legislation\) Order 2019 \(S.I. 2019/1259\)](#), arts. 2(1), **3(1)(e)(4)-(8)**

Making and modification of schemes

- 1 (1) Each of the water authorities shall make a scheme under this Schedule for the division of all their property, rights and liabilities between their successor company and the Authority.
- (2) Where a scheme under this Schedule is made by a water authority it shall not take effect unless it is approved by the Secretary of State.
- (3) Where a scheme under this Schedule is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (4) If—
- (a) a water authority fail, before such time as may be notified by the Secretary of State to that water authority as the latest time for the submission of a scheme under this Schedule, to submit such a scheme for the approval of the Secretary of State; or
 - (b) the Secretary of State decides not to approve a scheme that has been submitted to him by a water authority (either with or without modifications),
- the Secretary of State may himself make a scheme under this Schedule for the division of that water authority's property, rights and liabilities between the water authority's successor company and the Authority.
- (5) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any water authority the Secretary of State considers it appropriate to do so and either—
- (a) the water authority's successor company has consented to the making of the order; or
 - (b) that company is for the time being wholly owned by the Crown and has been consulted by the Secretary of State,
- the Secretary of State may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (6) An order under sub-paragraph (5) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been

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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.

- (7) In determining whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State shall have regard to the need to ensure—
- (a) that any division of property, rights and liabilities between a successor company and the Authority which is effected under this Schedule allocates property, rights and liabilities to them in such proportions as appear to him to be appropriate in the context of the different functions which will, by virtue of this Act, be carried out by the company and the Authority; and
 - (b) that the scheme contains all such provision as he considers should take effect on the transfer date in relation to the property, rights or liabilities allocated by the scheme as provision contained in arrangements under section 126 of this Act.
- (8) It shall be the duty of a water authority 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.

Transfers by scheme

- 2 (1) Where a scheme under this Schedule for the division of a water authority's property, rights and liabilities comes into force on the transfer date, this paragraph shall have effect on that date so as, in accordance with the scheme's provisions and without further assurance—
- (a) to transfer to the Authority such of the property, rights and liabilities as are allocated to the Authority for the purposes of the division made by the scheme; and
 - (b) to transfer to the water authority's successor company the remainder of the property, rights and liabilities;
- and accordingly the said remainder shall be treated for the purposes of this Act as allocated to that company.
- (2) For the purpose of making a division of any property, rights or liabilities between a successor company and the Authority the provisions of a scheme under this Schedule may—
- (a) allocate to the Authority such property, rights and liabilities to which the water authority may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme;
 - (b) create for the successor company or the Authority an interest in or right over property transferred in accordance with the scheme to the other;
 - (c) create new rights and liabilities as between the successor company and the Authority; and
 - (d) in connection with any provision made by virtue of paragraph (b) or (c) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the division.
- (3) The property, rights and liabilities of a water authority that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the water authority;

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- (b) property situated anywhere in the United Kingdom or elsewhere;
 - (c) rights and liabilities under enactments, including—
 - (i) such rights and liabilities as may arise after the transfer date by virtue of enactments amended or repealed by this Act and, in pursuance of provision contained in Schedule 26 to this Act, may be the subject of an allocation made by a scheme under this Schedule; and
 - (ii) other rights and liabilities under enactments which are amended or repealed by this Act subject to a saving;
 - (d) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (4) The rights and liabilities that may be created by virtue of paragraph (c) of sub-paragraph (2) above shall include rights and liabilities which, with effect from the transfer date, shall have effect as if contained in arrangements under section 126 of this Act; and the provision that may be made by virtue of that paragraph includes—
- (a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies thereof; and
 - (b) provision applying section 64 of the ^{M1}Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect.
- (5) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (3) 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 virtue of this Schedule, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which a water authority is entitled or subject to the property, right or liability in question.
- (6) Where apart from this sub-paragraph any person would have power, in consequence of anything done or likely to be done by or under this Act, to terminate or modify an interest or right which is vested in a water authority at the passing of this Act, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a scheme under this Schedule, that power shall not be exercisable in relation to that interest or right at any time before its transfer in accordance with such a scheme; and
 - (b) without prejudice to the preceding provisions of this paragraph or to paragraph 3(2)(a) below, that power shall be exercisable in relation to the interest or right after its transfer only in so far as the scheme provides for it to be transferred subject to the power.

Marginal Citations

M1 1925 c. 20.

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Supplemental provisions of schemes

- 3 (1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the division or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—
- (a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) a body to which anything is transferred in accordance with the scheme is to be treated as the same person in law as the water authority from which it is transferred;
 - (b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things done by or in relation to a water authority from which anything is transferred in accordance with the scheme are to be treated as made, effected or done by or in relation to the body to which it is transferred;
 - (c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, a water authority from which anything is transferred in accordance with the scheme are to have effect with such modifications as are specified in the scheme;
 - (d) that proceedings commenced by or against a water authority are to be continued by or against the water authority's successor company or the Authority;
 - (e) that the effect of any transfer under the scheme in relation to contracts of employment with a water authority is not to be to terminate any of those contracts but is to be that periods of employment with that authority are to count for all purposes as periods of employment with the water authority's successor company or, as the case may require, with the Authority;
 - (f) that disputes as to the effect of the scheme between the Authority and the successor company to which property, rights and liabilities are transferred in accordance with the scheme are to be referred to such arbitration as may be specified in or determined under the scheme;
 - (g) that determinations on such arbitrations and certificates given jointly by the Authority and a successor company as to the effect of the scheme as between the Authority and that company are to be conclusive for all purposes.

Duties of water authorities after the scheme comes into force

- 4 (1) A scheme under this Schedule may provide for the imposition of duties on the water authority from which transfers are made by virtue of the scheme, and on the successor company of that authority and on the Authority, to take all such steps as may be requisite to secure that the vesting in the successor company or the Authority, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a scheme under this Schedule may require a water authority to comply with any directions of their successor company or of the Authority in performing any duty imposed on the water authority by virtue of a provision included in the scheme under sub-paragraph (1) above.

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- (3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of a water authority in the successor company of that authority or in the Authority is effective under the relevant foreign law, it shall be the duty of the water authority to hold that property or right for the benefit of, or to discharge that liability on behalf of, the successor company or, as the case may be, the Authority.
- (4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in a successor company, or in the Authority, of any foreign property, right or liability.
- (5) A water authority shall have all such powers as may be requisite for the performance of any duty imposed on them by any provision included by virtue of this paragraph in a scheme under this Schedule; but such a scheme may require a successor company or the Authority to act on behalf of a water authority (so far as possible) for the purposes of, or in connection with, the performance of any such duty.
- (6) A scheme under this Schedule may provide that any foreign property, rights or liabilities that are acquired or incurred by a water authority after the scheme comes into force are immediately to become property, rights or liabilities of the water authority's successor company or of the Authority; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in a water authority when the scheme comes into force.
- (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (8) Any expenses incurred by a water authority in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met, in such proportions as may be determined by or under the scheme, by the water authority's successor company and the Authority.

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