

SCHEDULES

SCHEDULE 11

WATER AND SEWERAGE TRANSFER SCHEMES

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 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

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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 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.