

SCHEDULE 2

regulation 8(2)

Provisions of section 36 of and Schedule 5 to the 1992 Act as modified by regulations 8, 10 and 11 of these Regulations (applying to property transfers under the 1992 Act)

“ Section 36

(6) In carrying out the functions conferred or imposed on them by that Schedule the Secretary or State in relation to England or the National Assembly in relation to Wales—

- (i) shall not act on behalf of the transferor, the transferee or any other interested person, but
- (ii) shall seek to ensure that all such persons' interests are protected.”

“SCHEDULE 5

Identification and apportionment, etc, of property

Division and apportionment of property etc

(1) Any property, rights and liabilities of a transferor authority held or used, or subsisting—

- (a) for the purposes of more than one relevant institution, or
- (b) partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority,

shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or (as the case may be) between the transferor authority and the transferee or transferees, in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be so divided—

- (a) any rent payable under a lease in respect of that estate or interest, and
- (b) any rent charged on that estate or interest,

shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any property, right or liability held or used, or subsisting, as mentioned in sub-paragraph (1) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority according to—

- (a) in the case of an estate or interest in land, whether on the operative date the transferor authority or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent, or
- (b) in the case of any other property or any right or liability, which of them appears on the operative date to be 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 person or persons concerned as may be agreed between the transferor authority and the transferee or determined by the Secretary of State in relation to England or the National Assembly in relation to Wales under paragraph 3 below.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(4) In this paragraph—

- (a) references to a relevant institution are references to—
 - (i) any institution a body corporate is established under this Act to conduct; and
 - (ii) any institution in relation to which section 32 of this Act has effect, and
- (b) references to a transferor authority are references to a local authority who are the transferor for the purposes of any transfer to which this Schedule applies;

Identification of property, rights and liabilities

(1) It shall be the duty of the transferor and the transferee, whether before or after the operative 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 by the transferor or for making any such arrangements as are mentioned in paragraph 1(3) above and as will—

- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
- (b) make as from such date, not being earlier than the operative date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of this Act under which the transfer is required on the property, rights and liabilities of the transferor as will best serve the proper discharge of the respective functions of the transferor and the transferee.

(2) Any such agreement or instrument 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,
- (c) for responsibility for registration of any matter in any description of statutory register.

(3) If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State in relation to England or the National Assembly in relation to Wales shall—

- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities and transferred to the transferee or retained by the transferor;
- (b) advise such persons as to the terms of any agreement or instrument falling to be made under sub-paragraph (1) above;
- (c) prepare drafts of any such agreement or instrument; and
- (d) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Within 6 months after the operative date the transferor shall send the Secretary of State in relation to England or the National Assembly in relation to Wales a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it.

(1) In the case of any matter on which agreement is required to be reached under paragraph 2(1) above, if such an agreement has not been reached within a period of 6 months from the operative date, the Secretary of State in relation to England or the National Assembly in relation to Wales may give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under paragraph 2(1) above.

(3) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee shall be regarded as having been transferred to, and by virtue of this Act vested in, the transferee accordingly.

(4) The Secretary of State in relation to England or the National Assembly in relation to Wales shall consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.”