

SCHEDULES

SCHEDULE 5

Section 36.

IDENTIFICATION AND APPORTIONMENT, ETC., OF PROPERTY

Division and apportionment of property etc.

- 1 (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 subparagraph (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 Education Assets Board or determined by the Board under paragraph 3 below.
- (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

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- (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

- 2 (1) It shall be the duty of the transferor and the Education Assets Board, 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 (1) The Education Assets Board may, in the case of any matter on which agreement is required to be reached under paragraph 2(1) above—
 - (a) if it appears to them that it is unlikely that such an agreement will be reached,
or
 - (b) if such an agreement has not been reached within such period as may be prescribed by regulations,
 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).
- (2) A direction under sub-paragraph (1) above may be given before or after the operative date.
- (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 Board shall, before giving a direction under this paragraph, give the transferor and the transferee such opportunity as may be prescribed by regulations to make written representations.

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- 4 (1) The transferor or transferee, if dissatisfied with a determination under paragraph 3 above, may appeal to the Secretary of State.
- (2) An appeal under this paragraph shall be made in accordance with regulations.
- (3) The Secretary of State shall, before determining an appeal under this paragraph, give the appellant and the respondent such opportunity as may be prescribed by regulations to make written representations.
- (4) On an appeal under this paragraph the Secretary of State may—
- (a) allow or dismiss the appeal or vary the determination of the Board, and
 - (b) give a direction accordingly under paragraph 3 above.
- 5 (1) Regulations may prescribe the procedure to be followed in making any determination under paragraphs 3 and 4 above.
- (2) The regulations may in particular—
- (a) provide for a time limit within which written representations and any supporting documents must be submitted,
 - (b) empower the determining authority to proceed to a determination taking into account only such written representations and supporting documents as were submitted within the time limit, and
 - (c) empower the determining authority to proceed to a determination, after giving the transferor and the transferee or, as the case may be, the appellant and the respondent written notice of their intention to do so, notwithstanding that no written representations were made within the time limit, if it appears to the determining authority that they have sufficient material before them to enable them to make a determination.
- (3) In sub-paragraph (2) above the “determining authority” means the Board or the Secretary of State, as the case may be.

Documents of title

- 6 (1) Where a transfer to which this Schedule applies relates to registered land, it shall be the duty of the transferor to execute any such instrument under the Land Registration Acts 1925 to 1986, to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.
- (2) Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor shall be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

Third parties affected by vesting provisions

- 7 (1) Without prejudice to the generality of paragraphs 2 to 4 of Schedule 7 to this Act, any transaction effected between a transferor and a transferee in pursuance of paragraph 2(1) or of a direction under paragraph 3 above shall be binding on all other persons,

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- and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the transferor and the transferee.
- (2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the transferor and as to part by or against the transferee, the Education Assets Board shall give that person written notification of that fact.
 - (3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—
 - (a) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor 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 transferor, the transferee or both.
 - (4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.
 - (5) Where the transferor or the transferee under a transfer to which this Schedule applies purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or other property which before the operative date belonged to the transferor, or which is an interest in property which before that date belonged to the transferor, the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interest in the property conveyed or transferred.
 - (6) A court shall have the power set out in sub-paragraph (7) below if at any stage in proceedings before it to which the transferor or transferee under a transfer to which this Schedule applies and a person other than the transferor or the transferee are parties it appears to it 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 and the Education Assets Board have not yet effected, or
 - (b) raise a question of construction on the relevant provisions of this Act which would not arise if the transferor and the transferee constituted a single person.
 - (7) In any such case the court may, if it thinks fit on the application of a party to the proceedings other than the transferor or the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person.
 - (8) Any judgment or order given by a court in proceedings determined on that footing shall bind both the transferor and the transferee accordingly.
 - (9) It shall be the duty of the transferor and of the Education Assets Board to keep one another informed of any case where the transferor or the transferee under a transfer to which this Schedule applies may be prejudiced by sub-paragraph (5) above or any judgment or order given by virtue of sub-paragraph (8) above.

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- (10) If either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.

Delivery of documents to transferee

- 8 When it appears to the Education Assets Board, in the case of any transfer, that any agreements and instruments required to be made or executed in pursuance of paragraph 2(1) above or in pursuance of a direction under paragraph 3 above have been made or executed, the Board shall deliver those agreements and instruments (if any) to the transferee.