

Status: Point in time view as at 02/03/2016.

Changes to legislation: There are currently no known outstanding effects for the Transport Act 1968, SCHEDULE 4. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Sections 4, 5, 7, 8, 17, 28, 29 and 53.

SUPPLEMENTARY PROVISIONS AS TO CERTAIN TRANSFERS OF PROPERTY, RIGHTS AND LIABILITIES

Modifications etc. (not altering text)

- C1 Sch. 4 extended by [Transport Act 1978 \(c. 55\), s. 15\(3\)](#) and extended with modifications by [London Regional Transport Act 1984 \(c. 32, SIF 126\), ss. 27\(8\), 46\(6\), 47\(8\)](#)
- C2 Sch. 4 extended (with modifications) (E.W.S.) by [Transport Act 1985 \(c. 67, SIF 126\), s. 85\(5\)–\(7\)](#)
- C3 Sch. 4 applied (with modifications) (E.W.S.) by [Transport Act 1985 \(c. 67, SIF 126\), s. 129\(3\)–\(5\)](#)
- C4 Sch. 4 amended (E.W.S.) by [Transport Act 1985 \(c. 67, SIF 126\), s. 139\(1\), Sch. 6 para. 26](#)
- C5 Sch. 4 applied (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\), s. 75\(3\)–\(6\)](#)
- C6 Power to modify Sch. 4 conferred (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\), s. 75\(5\)](#)
- C7 Sch. 4 modified (E.W.S.) by [S.I. 1985/1903, art. 3 Sch. 1](#) and [S.I. 1986/1801 art. 3](#)
- C8 Sch. 4 applied (with modifications) by [Transport \(Scotland\) Act 1989 \(c. 23, SIF 126\), s. 6\(3\)](#)
- C9 Sch. 4 modified (6.12.1993) by [S.I. 1993/2797, art.3, Sch.](#)

Allocation of property, rights and liabilities

- 1 (1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or obligations under an agreement for the rendering of personal services.
- (2) Any property, rights or liabilities held or subsisting partly for the purpose of a part of the transferor's undertaking which is transferred and partly for the purpose of a part of that undertaking which is retained by the transferor shall, where the nature of the property, rights or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided, any rent payable under a lease in respect of that estate or interest, and any rent charged on that estate or interest, shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (3) Sub-paragraph (2) of this paragraph shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rent charged on an estate or interest in land.
- (4) Any property, rights or liabilities held or subsisting as mentioned in sub-paragraph (2) of this paragraph the nature of which does not permit their division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to which of them appear at the transfer date 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 to such arrangements for the protection of the other of them as may be

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agreed between them or, if either of them is, or on a vesting by virtue of this Act will become, a wholly-owned subsidiary of some other body, as may be agreed between them and that other body.

- (5) It shall be the duty of the transferor and the transferee, whether before or after the transfer 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 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 transfer date, as may be specified in that agreement or instrument such clarifications and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee;

and if either the transferor or the transferee is, or on a vesting by virtue of this Act will become, a wholly-owned subsidiary of some other body, references in the foregoing provisions of this sub-paragraph to the transferor or, as the case may be, the transferee shall include references to that other body.

- (6) Any such agreement 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.
- (7) If the transferor or the transferee (not being in either case a wholly-owned subsidiary of some other body), or any body of which the transferor or the transferee is, or on a vesting by virtue of this Act will become, a wholly-owned subsidiary, represents to the Minister, or if it appears to the Minister without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (5) of this paragraph that such agreement will be reached, the Minister may, whether before or after the transfer date, give a direction determining the manner in which the property, rights or liabilities in question are to be divided between the transferor and the transferee, and may include in the direction any provision which might have been included in an agreement under the said sub-paragraph (5); and any property, rights or liabilities required by the direction 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.

Rights and liabilities under agreement for rendering of personal services

- 2 (1) The provisions of this paragraph shall have effect where any rights and liabilities transferred under a transfer to which this Schedule applies are rights and liabilities under an agreement for the rendering of personal services.

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- (2) Where the transfer is of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, the rights and liabilities under any agreement for the rendering of personal services by any person (hereafter in this paragraph referred to as "an employee") shall be transferred only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the part of the transferor's undertaking which is transferred.
- (3) The transferor, the transferee or the employee may apply to the Minister to determine whether or not rights and liabilities in respect of the employee's services under any particular agreement are transferred, and the Minister's decision on the application shall be final.
- (4) Any right to services transferred shall have effect on and after the transfer date as a right not only to the services to which the agreement relates but also to any reasonably comparable services under the transferee to be selected by the transferee; and any dispute between the transferee and the employee as to what are reasonably comparable services for the purposes of this sub-paragraph may be reported to the Secretary of State for Employment and Productivity by the transferee and, if a dispute so reported is not otherwise disposed of, that Secretary of State shall refer it for determination by the industrial court.

Right to production of documents of title

- 3 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, or to the management of, any land or other property transferred to the transferee, the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies thereof; and, in England and Wales, section 64 of the ^{M1}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.

Marginal Citations

M1 1925 c. 20.

Perfection of vesting of certain property or rights

- 4 Where in the case of any transfer to which this Schedule applies any property or rights which fall to be transferred to the transferee cannot be properly vested in the transferee by virtue of this Act because transfers thereof are governed otherwise than by the law of a part of Great Britain, the transferor shall take all practicable steps for the purpose of securing that the ownership of the property or, as the case may be, the right is effectively transferred.

Proof of title by certificate

- 5 In the case of any transfer to which this Schedule applies, a joint certificate . . . ^{F1} by or on behalf of the Railways Board [^{F2}and the Scottish Group] , that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is by virtue of this Act

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for the time being vested in, or in such wholly-owned subsidiary of, such one of the certifying authorities as may be so specified shall be conclusive evidence for all purposes of that fact; and if on the expiration of one month after a request from one of those authorities for the preparation of such a joint certificate as respects any property, interest, right or liability, the authorities concerned have failed to agree on the terms of the certificate, they shall refer the matter to the Minister and issue the certificate in such terms as the Minister may direct.

Textual Amendments

- F1** Words repealed by [Transport Act 1980 \(c. 34, SIF 126\)](#), [Sch. 9 Pt. III](#)
F2 Words in Sch. 4 para. 5 repealed (S.) (7.6.2002) by [S.S.I. 2002/263, art. 5\(2\)](#), [Sch.](#)

Restrictions on dealing with certain land

- 6 If the Minister is satisfied on the representation of the Railways Board, . . . ^{F3}
or the Scottish Group that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by, or by a wholly-owned subsidiary of, that authority and by, or by a wholly-owned subsidiary of, another of those authorities and that the circumstances are such that this paragraph should have effect, the Minister may direct that this paragraph shall apply to such of that land as may be specified in the direction, and while that direction remains in force—
- (a) none of those authorities or their subsidiaries entitled to any interest in any of the specified land shall dispose of that interest except with the consent of the Minister;
 - (b) if in connection with any proposal to dispose of an interest of one of those authorities or their subsidiaries in any of the specified land it appears to the Minister to be necessary or expedient for the protection of any other of them, the Minister may—
 - (i) require any of those authorities or their subsidiaries entitled to an interest in any of the specified land to dispose of that interest to such person and in such manner as may be specified in the requirement; or
 - (ii) require any of those authorities or their subsidiaries to acquire from any other of them any interest in any of the specified land to which that other authority or subsidiary is entitled; or
 - (iii) consent to the proposed disposal subject to compliance with such conditions as the Minister may see fit to impose;
- but a person other than one of those authorities or their subsidiaries dealing with, or with a person claiming under, one of those authorities or subsidiaries shall not be concerned to see or inquire whether this paragraph applies or has applied in relation to any land to which the dealing relates or as to whether the provisions of this subsection have been complied with in connection with that or any other dealing with that land, and no transaction with or between persons other than those authorities or subsidiaries shall be invalid by reason of any failure to comply with those provisions.

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Textual Amendments

F3 Words repealed by [Transport Act 1980 \(c. 34, SIF 126\)](#), [Sch. 9 Pt. III](#)

Construction of agreements, statutory provisions and documents

7 Where in the case of any transfer to which the Schedule applies any of the rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities thereunder could be assigned by the transferor, that agreement shall have effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement, and
- (b) for any reference (however worded and whether express or implied) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee, and
- (c) any reference (however worded and whether express or implied) to any officer or any servant of the transferor were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to the officer or servant of the transferee who corresponds as nearly as may be to that officer or servant of the transferor, and
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, as if the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee respectively as regards the part of the property, rights and liabilities retained by the transferor or, as the case may be, the part thereof vesting in the transferee and not as regards the other part;

and sub-paragraph (d) of this paragraph shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

8 Save as otherwise provided by any provision of this Act (whether expressly or by necessary implication) paragraph 7 of this Schedule, except sub-paragraph (a) thereof, shall apply in relation to any statutory provision, any provision of any agreement to which the transferor was not a party, and any provision of any document other than an agreement, if and so far as the provision in question relates to any of the transferred rights and liabilities, as it applies in relation to an agreement to which the transferor was a party, and, in relation to any such statutory or other provision as aforesaid, references in sub-paragraphs (b) and (c) of that paragraph to the transferor and to any officers or servants of the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.

9 On and after the transfer date for any transfer to which this Schedule applies, any statutory provision to which paragraph 2(3) of Schedule 6 to the Act of 1962 applies if and so far as the provision in question relates to any of the transferred rights and liabilities, shall have effect as if—

- (a) any of the references modified by paragraph (a) of the said paragraph 2(3) were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint, and

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- (a) any of the references modified by paragraph (b) of the said paragraph 2(3) were, as respects a period beginning with the transfer date, a reference to so much of the undertaking of the transferee as corresponds as mentioned in the said paragraph (b).
- 10 Without prejudice to the generality of the provisions of paragraphs 7 to 9 of this Schedule, the transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of this Act as he would have had if that right or liability had at all times been a right or a liability of the transferee, and any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of this Act, or to any agreement or enactment to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.
- 11 If, in the case of any transfer to which this Schedule applies the effect of any agreement, and in particular any agreement under the Railway Road Transport Acts of 1928 mentioned in paragraph 1 of Part II of Schedule 2 to the Act of 1962, which was executed before the passing of this Act and to which the transferee is by virtue of this Act a party depends on whether the transferee has power to carry on any activity, it shall be assumed for the purposes of the agreement that any activity which requires the consent of the Minister under the Act of 1962 or this Act has been authorised by such a consent.
- 12 (1) References in paragraphs 7 to 11 of this Schedule to agreements to which the transferor was a party and to statutory provisions include in particular references to agreements to which the transferor became a party by virtue of the Act of 1962 and statutory provisions which applied to the transferor by virtue of that Act.
- (2) The provisions of the said paragraphs 7 to 11 shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

Third parties affected by vesting provisions

- 13 (1) Without prejudice to the provisions of paragraphs 7 to 12 of this Schedule, any transaction effected between a transferor and a transferee in pursuance of paragraph 1(5) or of a direction under paragraph 1(7) of this Schedule 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 transferor and transferee, if they effect any transaction in pursuance of the said paragraph 1(5) or a direction under the said paragraph 1(7), to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee, and if such a person applies to the Minister and satisfies him that the transaction operated unfairly against him the Minister may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.
- (3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule the rights or liabilities of any person

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other than one of the Boards or new authorities or a wholly-owned subsidiary thereof 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 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, and any dispute as to whether and if so how much compensation is so payable, 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 or, where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

- (4) 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 one of the Boards or new authorities or a wholly-owned subsidiary thereof for consideration any land or any other property which before the transfer 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 thereto and had thereby conveyed or transferred all their interest in the property conveyed or transferred.
- (5) If at any stage of any court proceedings to which the transferor or transferee under a transfer to which this Schedule applies and a person other than one of the Boards or new authorities or a wholly-owned subsidiary thereof are parties, it appears to the court that the issues in the proceedings depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or to 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, the court may, if it thinks fit on the application of a party to the proceedings other than such a body as aforesaid, 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, and any judgment or order given by the courts, shall bind both the transferor and the transferee accordingly.
- (6) It shall be the duty of the transferor and the transferee under any transfer to which this Schedule applies to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (4) or (5) of this paragraph, and 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 Minister for determination by the Minister.

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