

SIXTH SCHEDULE

Section 35.

DISTRIBUTION OF COMMISSION'S UNDERTAKING

Distribution of property among the Boards

- 1 (1) It shall be the duty of the Boards so far as practicable to arrive at such written agreements, and to execute such other instruments, as will effect the demarcations of boundaries and divisions and apportionments of property, rights and liabilities required under the principal sections and as will—
- (a) afford to each Board as against the other Boards such rights and safeguards as they may require for the proper discharge of their functions, and
 - (b) make such clarifications and modifications of the division of the Commission's undertaking effected by the principal sections as will best serve the proper discharge of the functions of the Boards,
- and any such agreement shall provide so far as expedient—
- (i) 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,
 - (ii) for the granting of indemnities in connection with the severance of leases and other matters,
 - (iii) for the joint holding of assets,
 - (iv) for responsibility for registration of any matter in any description of statutory register.

An agreement made in pursuance of this sub-paragraph after the vesting date shall not be invalid on that account.

- (2) If a Board represents to the Minister that it is expedient in order to facilitate the discharge of their functions, or if it appears to the Minister that it is unlikely that any of the Boards will reach agreement on any matter on which they ought to reach agreement, the Minister may, either before the vesting date or later, but not more than five years after the vesting date, give a direction determining the manner in which any property, rights or liabilities of the Commission are to be distributed and may include in the direction any provision which might have been included in an agreement under the foregoing sub-paragraph.

A direction under this sub-paragraph shall have effect notwithstanding anything in the principal sections and any transfer of property, rights or liabilities effected by such direction shall take effect by virtue of this Act without further assurance.

- (3) Where under the principal sections a Board is entitled to possession of any documents relating in part to the title to, or to the management of, any land or other property transferred under the principal sections to another Board, the first-mentioned Board shall be deemed to have given to the second-mentioned Board an acknowledgment in writing of the right of the second-mentioned Board to production of that document and to delivery of copies thereof, and section sixty-four 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.
- (4) Where by the operation of the principal sections any property or rights vest in or are transferred to a Board, or would so vest or be so transferred but for the fact that

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transfers thereof are governed otherwise than by the law of any part of Great Britain, the Commission 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 to the Board.

- (5) The Railways Board shall, not later than one year after the vesting date, and after consulting the other Boards and the Holding Company, prepare and submit to the Minister schemes for sharing among the Boards and the Holding Company the control and use of the Historical Records vested in the Railways Board by paragraph (f) of subsection (2) of section thirty-one of this Act and dealing with the other assets so vested by that paragraph.

The Minister may approve a scheme so submitted to him with or without modifications, and it shall be the duty of the Boards and the Holding Company to give effect to any scheme as so approved.

Until a scheme under this paragraph comes into force for the said Records, the Railways Board shall afford to the other Boards and to the Holding Company reasonable facilities for access to and the use of the said Records.

- (6) In the application of this paragraph to Scotland there shall be omitted, in sub-paragraph (2), the words " without further assurance " and, in sub-paragraph (3), the words from "and section sixty-four " to the end of the sub-paragraph.

Construction of Agreements, Statutory Provisions and Documents

- 2 (1) On and after the vesting date any agreement to which the Commission were a party immediately before the vesting date, whether in writing or not, and Whether or not of such nature that rights and liabilities thereunder could be assigned by the Commission, shall have effect as if—
- (a) (the successor Board had been a party to the agreement, and
 - (b) for any reference (however worded and whether express or implied) to 'the Commission there were substituted, as respects anything falling to be done on or after the vesting date, a reference to the successor Board, and
 - (c) any reference (however worded and whether express or implied) to any officer or any servant of the Commission were, as respects anything falling to be done on or after the vesting date, a reference to such person as the successor Board may appoint or, in default of appointment, to the officer or servant of the successor Board who corresponds as nearly as may be to the first-mentioned officer or servant, and
 - (d) where the agreement relates to property, rights or liabilities which under the principal sections fail to be apportioned or divided or distributed between two or more Boards, as if the agreement constituted two or more separate agreements separately enforceable by and against each of the respective Boards as regards the part of the property, rights and liabilities vesting in that Board and not as regards the other part, and paragraph (d) of this sub-paragraph shall apply in particular to the covenants, stipulations and conditions of any lease by or to the Commission.
- (2) Save as otherwise provided by any provision in this Act (whether expressly or by necessary implication), the foregoing sub-paragraph (except paragraph (a)) shall apply in relation to any statutory provision, any provision of any agreement to which the Commission were not a party, and any provision of any other document not being an agreement, as it applies in relation to an agreement to which the Commission

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were a party, and, in relation to any such statutory or other provision as aforesaid, references in paragraphs (b) and (c) of that sub-paragraph to the Commission and to any officers or servants of the Commission include references made by means of a general reference to a class of persons of which the Commission are one, without the Commission themselves being specifically referred to.

- (3) On and after the vesting date any statutory provision passed or made, and any agreement or other instrument executed, before the date of transfer under Part II of the Transport Act, 1947, which by virtue of that Act contains a reference to the Commission instead of a reference to some other body shall have effect as if—
- (a) for any reference (however worded and whether express or implied) which before the said date of transfer was a reference to the directors or any director of the body were, as respects anything falling to be done on or after the vesting date, a reference to such person as the successor Board may appoint, and
 - (b) subject to the foregoing provisions of this paragraph, any reference (however worded and whether express or implied) which before the said date of transfer was a reference to the undertaking of the body were, as respects a period beginning with the vesting date, a reference to so much of the undertaking of the successor Board as corresponds to the undertaking of the first-mentioned body.
- (4) Without prejudice to the generality of the foregoing provisions of this paragraph, where by the operation of this Act any right or liability becomes a right or liability of a Board, the Board and all other persons shall, as from the date when the right or liability is transferred, 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 that right or liability as they would have had if it had at all times been a right or liability of the Board, and any legal proceedings or applications to any Authority pending on the said date by or against the Commission, in so far as they relate to any property, right or liability transferred to the Board under or in pursuance of this Act, or to any agreement or enactment to which this Act applies, shall be continued by or against the Board to the exclusion of the Commission.
- (5) If 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 the Second Schedule to this Act, which was executed before the passing of this Act and to which any Board is by virtue of this Act a party depends on whether that Board 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 this Act has been authorised by such a consent.
- (6) In this paragraph " the successor Board " means—
- (a) so far as the relevant agreement, statutory provision or other document relates to property, rights or liabilities or functions transferred under or in pursuance of this Act to one of the Boards, that Board,
 - (b) so far as the agreement, statutory provision or other document relates to property, rights or liabilities or statutory functions transferred under or in pursuance of this Act to two or more of the Boards, those Boards, but taken as a reference to both or all of those bodies, or to either or any of them separately, as the context may require, and
 - (c) in any other case, such Board as the Minister may direct,

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and in this paragraph references to agreements to which the Commission were a party and to statutory provisions, include in particular references to agreements to which the Commission became a party by virtue of the Transport Act, 1947, and statutory provisions which applied to the Commission by virtue of that Act.

- (7) In this paragraph references to the Boards include references to the Holding Company.
- (8) The provisions of this paragraph 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.
- (9) In this paragraph references to the Commission include references to any Executive of the Commission.

Third parties affected by vesting provisions

- 3 (1) Without prejudice to the provisions of the last foregoing paragraph, any transaction effected between the Boards in pursuance Of paragraph 1 of this Schedule not more than five years after the vesting date 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 Boards who effect any transaction in pursuance of paragraph 1 of this Schedule to notify any person who has rights or liabilities which thereby become enforceable as to part by or against one Board and as to part by or against another Board, and if such a person applies to the Minister and satisfies him that the division or apportionment operated unfairly against him, the Minister may give such directions to the Boards as appear to him appropriate for varying the division or apportionment.
- (3) It shall also be the duty of the Boards to notify any person who has rights or liabilities which become enforceable as to part by or against one Board and as to part by or against another Board in consequence of a direction given by the Minister under sub-paragraph (2) of paragraph 1 of this Schedule.
- (4) If in consequence of the provisions of the principal sections and this Schedule, or of anything done in pursuance of those provisions, the rights or liabilities of any person other than a Board or the Holding Company or any subsidiary of a Board or of the Holding Company which were enforceable against or by the Commission become enforceable as to part against or by one Board and as to part against or by another Board, and the value of any property or interest of that person is thereby diminished, the Boards shall pay to that person such compensation as may be just, 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.
- (5) A conveyance or transfer whereby a Board purport to transfer to some person other than a Board or the Holding Company for consideration any land or any other property which belonged to the Commission, or which is an interest in property which belonged to the Commission, shall be as effective as if all the other Boards had been parties to the conveyance or transfer and had thereby conveyed or transferred all their interest in the property conveyed or (transferred).

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- (6) If at any stage of any court proceedings which have been instituted before the vesting date or later, but not more than five years after the vesting date, and which are proceedings to which a Board and a person other than a Board are parties, it appears to the court that the issues in the proceedings depend on any demarcation of boundaries or division or apportionment under the principal sections or this Schedule which the Boards have not yet effected, or raise a question of construction on those provisions which would not arise if all the Boards constituted a single person, the court may if it thinks fit on the application of a parity to the proceedings other than a Board hear and determine the proceedings on the footing that the Board or Boards who are parties to the proceedings represent and are answerable for all the Boards, and that the Boards constitute a single person, and any judgment or order given by the court shall bind all the Boards accordingly.
- (7) It shall be the duty of each Board to keep any other of the Boards informed of any case where that other Board may be prejudiced by sub-paragraph (5) or sub-paragraph (6) of this paragraph, and if a Board claim that they have been so prejudiced and that some other Board ought to indemnify or make a payment to them on that account, and that the other Board have unreasonably failed to meet that claim, they may refer the matter to the Minister for determination by him.

Minister's power to alter distribution of property and functions

- 4 (1) The Minister shall have power—
- (a) for the purpose of removing any difficulties or uncertainties in the application of sections thirty-one and thirty-two of this Act, or of reconciling the operation of those sections, or
 - (b) for the purpose of facilitating the discharge of the Boards' functions,
- by order to direct that notwithstanding those sections any property, rights or liabilities of the Commission, and any functions of the Commission under any local enactments, shall be transferred to such Board or Boards as may be specified in the order.
- (2) An order under this paragraph may adapt or modify any local enactment so far as appears to the Minister expedient for the purpose of regulating the manner in which functions of the Commission thereunder are distributed and may contain such other transitional and supplemental provisions as appear to the Minister expedient, including provisions which might be included in an agreement between the Boards under paragraph 1 of this Schedule and provisions having retrospective effect.
- (3) An order under this paragraph shall by virtue of this Act have effect to vest any property, rights or liabilities transferred by the order without further assurance.
- (4) An order under this paragraph shall not be made more than five years after the vesting date unless it is one which relates, and is expressed to relate, only to a local enactment which authorises the carrying out of works.
- (5) An order made under this paragraph may be varied or revoked by a subsequent order so made, and unless the order relates, and is expressed to relate, only to a local enactment which authorises the carrying out of works, shall be made by statutory instrument.
- (6) In the application of sub-paragraph (3) of this paragraph to Scotland, the words " without further assurance " shall be omitted.

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Special provisions relating to transferred heritage in Scotland

- 5 (1) This paragraph applies to any heritable property or right in Scotland which is transferred to any of the Boards by or under the principal sections or this Schedule ; and in this paragraph " transferred heritage " means any property or right to which this paragraph applies, and " vesting provision ", in relation to any transferred heritage, includes such of the provisions of the principal sections or of this Schedule, and such of the directions given and orders made thereunder and the agreements made in pursuance thereof as effect the transfer.
- (2) In relation to any transferred heritage the vesting provision shall have effect for the purposes of any enactment relating to the completion of title to land or heritable rights as if it were a general disposition or assignation of the transferred heritage granted by the Commission in favour of the Board in question on the vesting date or, if the vesting provision takes effect on a subsequent date, on that subsequent date.
- (3) Where any transferred heritage is immediately before the vesting date, or becomes at any time thereafter, the subject of a lease granted by the Commission, or, as the case may be, the Board to whom the heritage is transferred, the lease shall not be challengeable (notwithstanding any rule of law to the contrary effect) on the ground that the Commission, or, as the case may be, the Board, were not at the time of the granting of the lease infest in the transferred heritage.
- (4) This paragraph shall apply to any heritable property or right in Scotland transferred to two or more of the Boards jointly or to the Holding Company as it applies to any such property or right transferred to a Board, and references therein to a Board shall be construed accordingly.

Transitory protection for Boards affected by works carried out by another Board

- 6 (1) This paragraph applies in relation to works which a Board are authorised to carry out by a local enactment passed or made before the vesting date, including works begun but not completed by the Commission.
- (2) It shall be the duty of a Board who at any time begin or continue with works to which this paragraph applies to afford to any other Board such rights and safeguards in relation to the works and, where necessary, in relation to the carrying out of those works, as may be required in order to facilitate the proper discharge of their functions by that other Board; and it shall be the duty of any other Board to afford to the Board beginning or continuing with the works such rights and safeguards as may be required for the proper carrying out and operation of the works.
- (3) A Board who claim that another Board should in pursuance of their duty under the last foregoing sub-paragraph afford to the claimant Board any rights or safeguards shall give particulars of their claim by notice in writing to the other Board, and if within three months the Boards fail to agree on the claim, the claim shall be referred to an arbitrator appointed by the Boards or, in default of appointment by them, appointed by the Minister.
- (4) If it appears to a Board who are proposing to begin or continue with works to which this paragraph applies that another Board may wish to consider whether to make a claim under this paragraph regarding the works, they shall not without the consent of that other Board begin or continue with the works—

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- (a) until one month after they have served a notice on that other Board of their proposal with sufficient particulars of the works, and any necessary plans and specifications, and
- (b) if within one month of the service of the notice the other Board make a claim under this paragraph regarding the works, until the two Boards have agreed on the claim or the claim has been referred to an arbitrator appointed under sub-paragraph (3) of this paragraph and been finally determined:

Provided that the Minister may authorise a Board without compliance with paragraph (b) of this sub-paragraph to continue works begun by the Commission.

- (5) Any agreement concluded between any of the Boards under this paragraph, and any award of an arbitrator under this paragraph, may itself provide for the reference of any issue to arbitration.
- (6) In this paragraph references to affording rights and safeguards to a Board include references to granting to the Board interests in and rights over land, and undertaking to give to the Board appropriate notices.