



# Transport Act 1980

## 1980 CHAPTER 34

### PART II

#### TRANSFER OF UNDERTAKING OF NATIONAL FREIGHT CORPORATION

*Transfer of undertaking of National Freight Corporation to a company limited by shares*

#### **45 Transfer of undertaking of National Freight Corporation**

- (1) On the appointed day the whole of the undertaking of the National Freight Corporation (in this Part referred to as " the Corporation ") shall, subject to subsection (4), be transferred by virtue of this section and without further assurance to a company formed for the purposes of this section and nominated under subsection (5) (in this Part referred to as " the successor company ").
- (2) In this Part " the appointed day " means such day as the Minister, with the consent of the Treasury, may appoint for the purposes of this section by order made by statutory instrument.
- (3) References in this Part to the undertaking of the Corporation are references to all the property, rights, liabilities and obligations of the Corporation, whether or not of such a nature that they could be assigned by the Corporation.
- (4) Any entitlement of the Minister and any liability of the Corporation in respect of—
  - (a) the commencing capital debt of the Corporation; and
  - (b) outstanding loans to the Corporation from the Minister,shall be extinguished immediately before the appointed day.
- (5) The Minister may by order made by statutory instrument nominate for the purposes of this section a company formed and registered under the Companies Act 1948 which on the appointed day satisfies the following requirements, that is to say
  - (a) it is a company limited by shares ; and
  - (b) all the issued shares of the company are held by the Minister or by nominees for him.

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- (6) This section shall have effect subject to the provisions of Schedule 6, being supplementary provisions with respect to the transfer by virtue of this section of the undertaking of the Corporation to the successor company; but nothing in those provisions shall be taken as prejudicing the general effect of subsection (1).

#### **46 Initial government holding in successor company**

- (1) In consideration of the transfer of the undertaking of the Corporation to the successor company by virtue of section 45, the successor company shall issue to the Minister or, if the Minister so directs, to nominees for him such securities of the company as the Minister may direct.
- (2) Any shares issued in pursuance of subsection (1)—
- (a) shall be of such nominal value as the Minister may direct; and
  - (b) shall be credited as fully paid up.
- (3) The Minister shall not give any directions for the purposes of this section without the consent of the Treasury.
- (4) Securities of the successor company held by the Minister or by nominees for him shall not be disposed of except with the consent of the Treasury and in such manner and on such terms as the Treasury may direct.
- (5) Subject to section 49(5), any dividends or other sums received by the Minister, or by nominees for him, in right of, on the disposal of, or otherwise in connection with, any securities of the successor company shall be paid into the Consolidated Fund.
- (6) Stamp duty shall not be chargeable under section 47 of the Finance Act 1973 in respect of any increase in the capital of the successor company which is certified by the Treasury as having been—
- (a) effected for the purpose of complying with the requirements of this section ; or
  - (b) where any convertible securities were issued in pursuance of this section, effected in consequence of the exercise of the conversion rights attached to those securities.

#### **47 Transitional provisions with respect to reserves, etc.**

- (1) An amount corresponding to any reserves of the Corporation immediately before the appointed day which represent accumulated profits shall be treated by the successor company as reserves of that company applicable for the same purposes as the corresponding reserves of the Corporation.
- (2) Nothing in section 56 of the Companies Act 1948 (which requires premiums received on the issue of shares to be transferred to a share premium account) shall affect the operation of subsection (1).
- (3) The successor company shall treat the reserves of any company in which the Corporation held shares which were available for distribution immediately before the appointed day as if they had arisen immediately after the appointed day.
- (4) Where any dividend is paid to the successor company in respect of shares transferred to the company by virtue of section 45, that dividend shall be available for distribution as profits of the successor company notwithstanding that it is paid out of profits of the

company paying the dividend attributable to a period falling wholly or partly before the appointed day.

- (5) In ascertaining for the purposes of section 56 of the Companies Act 1948 what amount (if any) falls to be treated as a premium received on the issue of any shares in pursuance of section 46, the amount of the net assets transferred by virtue of section 45 shall be taken to be reduced by an amount corresponding to the amount of any reserve within subsection (1).

#### **48 Dissolution and final accounts of National Freight Corporation. 6 F**

- (1) The Corporation shall cease to exist on the appointed day.
- (2) The successor company shall prepare a statement of the Corporation's accounts for the period from the end of that dealt with in the last annual statement of accounts published by the Corporation down to the appointed day (in the following provisions of this section referred to as "the final period").
- (3) The statement shall be in such form and contain such particulars, compiled in such manner, as the Minister may direct with the approval of the Treasury.
- (4) The successor company shall arrange for the accounts of the Corporation for the final period to be audited by auditors appointed by the Minister; and a person shall not be qualified to be so appointed unless he is a member of, or is a Scottish firm in which all the partners are members of, one or more bodies of accountants established in the United Kingdom and for the time being recognised by the Secretary of State for the purposes of section 161(1)(a) of the Companies Act 1948.
- (5) As soon as the accounts for the final period have been audited, the successor company shall send to the Minister a copy of the statement of accounts for that period together with a copy of the auditors' report on that statement; and the Minister shall lay a copy of the statement and report before each House of Parliament.

#### *Funding of certain pension obligations*

#### **49 Funding of relevant pension obligations**

- (1) If it appears to the Minister, having determined that all or any of the securities of the successor company held by him or by nominees for him should be offered for sale, that on the date on which those securities are to be so offered the relevant pension obligations will not be completely funded, he may, with the consent of the Treasury, undertake to make to the persons administering the relevant pension schemes such payments towards the funding of those obligations as he may specify in the undertaking.
- (2) An undertaking under subsection (1)—
  - (a) shall specify the aggregate amount of the payments which the Minister proposes to make in pursuance of the undertaking; and
  - (b) shall be conditional on the amount received by the Minister in consideration for the disposal of the securities being not less than that amount.
- (3) If the Minister gives an undertaking under subsection (1) but the condition mentioned in subsection (2) is not fulfilled, he may nevertheless, with the consent of the Treasury,

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make to the persons administering the relevant pension schemes such payments towards the funding of the relevant pension obligations as he thinks fit.

- (4) If no undertaking is given under subsection (1) but it appears to the Minister that, on the date on which all or any of the securities of the successor company held by him or by nominees for him are offered for sale, the relevant pension obligations are not completely funded, he may, with the consent of the Treasury, make to the persons administering the relevant pension schemes such payments towards the funding of those obligations as he thinks fit.
- (5) The aggregate amount of any payments made under subsection (3) or (4) shall not exceed the amount received in consideration for the disposal of the securities of the successor company; and the sums required for making any such payments or any payments in pursuance of an undertaking under subsection (1) shall be paid out of that amount

- (6) In this section—

" the relevant pension obligations " has the meaning given by section 50;

" the relevant pension schemes " means the National Freight Corporation (Salaried Staff) Pension Fund, the National Freight Corporation (b)ages Grades) Pension Fund and the N.F.C. (1978) Pension Fund ;

and for the purposes of this section the N.F.C. (1978) Pension Fund shall be taken to comprise the pension schemes specified or described in the Schedule to the Central Trust deed within the meaning of the National Freight Corporation (Central Trust) Order 1978.

## **50 Meaning of " the relevant pension obligations "**

- (1) In section 49 "the relevant pension obligations" means, subject to subsection (2)—
- (a) any obligations of the successor company or a relevant subsidiary which were owed on 1st April 1975 (" the operative date ") in connection with any of the relevant pension schemes; and
  - (b) where any such obligation is one to pay or secure the payment of pensions, any obligation of the successor company or a relevant subsidiary arising after the operative date to pay or secure the payment of increases of those pensions ; and
  - (c) any obligation of the successor company or a relevant subsidiary arising after the operative date to pay or secure the payment of increases payable under any of the relevant pension schemes, being increases of pensions payable under any other pension scheme established before that date (whether one of the relevant pension schemes or not); and
  - (d) any obligation of the successor company or a relevant subsidiary which results from an amendment made to any of the relevant pension schemes by virtue of section 74 of the Transport Act 1962 after the operative date and before 1st January 1980.
- (2) The definition in subsection (1) does not include—
- (a) any obligation which, in relation to one of the relevant pension schemes, is a relevant pension obligation for the purposes of Part III;
  - (b) any obligation to pay or secure the payment of increases of pensions in excess of increases payable on official pensions under the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975;

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- (c) any obligation to pay contributions in respect of current periods of employment of a member of a scheme; id) any obligation to pay expenses incurred in connection with a scheme which is specifically imposed on the body by which it is owed;
  - (e) any obligation owed by a body in their capacity as the trustees of a scheme or the persons administering a scheme: and
  - (f) any obligation in respect of which the body by which it is owed have a right to be indemnified by any other body.
- (3) In this section—
- " pension", in relation to any of the relevant pension schemes, has the same meaning as in Part III;
  - " the relevant pension schemes " has the same meaning as in section 49;
  - " relevant subsidiary " means any subsidiary of the successor company other than National Carriers Limited and any subsidiary of National Carriers Limited;
  - " subsidiary " has the same meaning as in the Transport Act 1962.
- (4) For the purposes of this section—
- (a) any increase in an obligation which results from an amendment made to a scheme after the operative date shall be treated as a separate obligation; and
  - (b) where at any time, whether before or after the operative date, any pensions or increases payable under any of the relevant pension schemes are or have been paid by any person, that person shall be treated as being or having been under an obligation at that time to make those payments.

### *Supplementary*

## **51 Interpretation of Part II and consequential amendments**

- (1) In this Part—
- " the appointed day" has the meaning given by section 45(2);
  - " the Corporation " has the meaning given by section 45(1);
  - " securities" of the successor company includes shares, debentures, debenture stock, bonds and other securities of the company, whether or not constituting a charge on the assets of the company ;
  - " shares " includes stock ;
  - " the successor company " has the meaning given by section 45(1); and references to the undertaking of the Corporation shall be construed in accordance with section 45(3).
- (2) The enactments mentioned in Schedule 7 shall have effect subject to the amendments there specified, being amendments consequential on the provisions of this Part.