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F¹ SCHEDULES

SCHEDULE 10

Section 70.

TRANSFERS UNDER SECTIONS 66 AND 67

Modifications etc. (not altering text)

- C1** Sch. 10 applied (with modifications) (8.11.1995) by 1995 c. 25, ss. 17(1), 18(2)(c), Sch. 5 Pt. I paras. 1, 7(1)
- C2** Sch. 10 applied (with modifications) (16.5.2001) by 2000 c. 27, s. 108, Sch. 7 para. 7; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

Allocation of property, rights and liabilities: general

- 1 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include 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 liabilities under a contract of employment.
- (2) Any property, right or liability comprised partly in the specified part of the transferor's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferee of the specified part ("transferee A") and the transferee of the other part or each of the other parts ("transferee B") in such proportions as may be appropriate.
- (3) 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 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.
- (4) Sub-paragraph (3) above 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 rents charged on an estate or interest in land.
- (5) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—
- (a) in the case of an estate or interest in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;

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- (b) in the case of any other property or any right or liability, whether on the transfer date transferee A or transferee B appears 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 of them as may be agreed between them.
- 2 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include 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 liabilities under a contract of employment.
- (2) It shall be the duty of the transferee of the specified part of the transferor's undertaking ("transferee A") and each of the other transferees ("transferee B"), 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 transferee A or transferee B and as will—
- (a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and
- (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.
- (3) 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; and
- (c) for responsibility for registration of any matter in any statutory register.
- (4) If transferee A or transferee B represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) above that such agreement will be reached, the Secretary of State, whether before or after the transfer date, may—
- (a) give a direction determining that matter; and
- (b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2) above.
- (5) Any property, rights or liabilities required by a direction under sub-paragraph (4) above to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Act to, and by virtue thereof vested in, that transferee accordingly.

Allocation of rights and liabilities: contracts of employment

- 3 (1) The provisions of this paragraph shall apply where—

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- (a) the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking; and
 - (b) it falls to be determined whether the rights and liabilities transferred to the transferee of that part ("transferee A") include rights and liabilities under a particular contract of employment.
- (2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of the transferor's undertaking.
- (3) The employee, transferee A or any of the other transferees may apply to the Secretary of State to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred to transferee A, and the Secretary of State's decision on the application shall be final.

Variation of transfers by agreement

- 4 (1) The provisions of this paragraph shall apply where the transfers effected in pursuance of a transfer scheme include a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking.
- (2) At any time before the end of the period of twelve months beginning with the transfer date the transferee of the specified part and the transferee of any property, rights and liabilities comprised in some other part of the transferor's undertaking may, with the approval of the Secretary of State, agree in writing that—
 - (a) as from such date as may be specified in or determined under the agreement; and
 - (b) in such circumstances (if any) as may be so specified,there shall be transferred from the one transferee to, and vested in, the other transferee any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.
- (3) Subject to sub-paragraph (4) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.
- (4) The following provisions of this Schedule shall have effect as if—
 - (a) any reference to a transfer effected in pursuance of a transfer scheme included a reference to a transfer effected in pursuance of an agreement under sub-paragraph (2) above;
 - (b) any reference to a transaction effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above included a reference to such an agreement; and
 - (c) any reference to a vesting by virtue of this Act included a reference to a vesting by virtue of such an agreement.

Right to production of documents of title

- 5 (1) The provisions of this paragraph shall apply where the transferee under a transfer effected in pursuance of a transfer scheme ("transferee A") is entitled to possession

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of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected in pursuance of that scheme (“transferee B”).

- (2) Where the land or other property is situated in England and Wales—
- (a) transferee A shall be deemed to have given to transferee B an acknowledgment in writing of the right of transferee B to production of the document and to delivery of copies thereof; and
 - (b) 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.
- (3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the ^{M2}Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.

Marginal Citations

M1 1925 c. 20.

M2 1979 c. 33.

Proof of title by certificate

- 6 (1) Where two or more transfers are effected in pursuance of a transfer scheme, a certificate issued by either or any of the transferees (“transferee A”) with the concurrence of the other or others of them that—
- (a) any property specified in the certificate;
 - (b) any such interest in or right over any such property as may be so specified; or
 - (c) any right or liability so specified,
- is by virtue of this Act for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact, and shall constitute a link of title for the purposes of section 5(1) of the ^{M3}Conveyancing (Scotland) Act 1924 (deduction of title).
- (2) If, on the expiration of one month after a request from either or any of the transferees (“transferee A”) for the other or one of the others of them (“transferee B”) to concur in the issue of such a certificate, transferee B has failed so to concur—
- (a) transferee A may refer the matter to the Secretary of State; and
 - (b) the Secretary of State may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.

Marginal Citations

M3 1924 c. 27.

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Restrictions on dealing with certain land

- 7 (1) Where two or more transfers are effected in pursuance of a transfer scheme and the Secretary of State is satisfied, on the representation of either or any of the transferees (“transferee A”), that—
- (a) in consequence of those transfers, different interests in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees (“transferee B”); and
 - (b) the circumstances are such that the provisions of this paragraph should have effect,
- the Secretary of State may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.
- (2) Neither transferee A nor transferee B shall dispose of any interest to which they may respectively be entitled in any of the specified land except with the consent of the Secretary of State.
- (3) If, in connection with any proposal to dispose of any interest of either transferee A or transferee B in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—
- (a) require either transferee A or transferee B to dispose of any interest to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
 - (b) require either transferee A or transferee B to acquire from the other any interest in any of the specified land to which that other is entitled; or
 - (c) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.
- (4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—
- (a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or
 - (b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,
- and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

Third parties affected by vesting provisions

- 8 (1) A transaction of any description which, in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, is effected between transferee A and transferee B—
- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
 - (b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- (2) If any transaction is effected in pursuance of paragraph 2(2) above or of a direction under paragraph 2(4) above, transferee A and transferee B shall notify any person

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who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.

- (3) If, within 28 days of being notified, such a person as is mentioned in sub-paragraph (2) above applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to transferee A and transferee B as appear to him appropriate for varying the transaction.
- 9 (1) If in consequence of two or more transfers effected in pursuance of a transfer scheme or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the transferor and the transferees which were enforceable against or by the transferor become enforceable as to part against or by one transferee and as to part against or by another 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 one or more of the transferees.
- (2) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1) above, or as to the person to or by whom it shall be paid, shall be referred to and determined—
- (a) by an arbitrator appointed by the Lord Chancellor; or
 - (b) where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- [^{F1}(3) A person shall not be appointed after the day on which he attains the age of 70 to be an arbitrator or arbiter under sub-paragraph (2) above.]

Textual Amendments

F1 Sch. 10 para. 9(3) added (31.3.1995) by 1993 c. 8, s. 26, **Sch. 6 para.66** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

Modifications etc. (not altering text)

C3 Sch. 10 para. 9(2) restricted (31.3.1995) by 1993 c. 8, s. 26(8)(g) (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

Interpretation

- 10 Any reference in this Schedule to a transfer effected in pursuance of a transfer scheme is a reference to a transfer effected by this Act in pursuance of such a scheme.

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