



Railways Act 1993

1993 CHAPTER 43

PART II

RE-ORGANISATION OF THE RAILWAYS

Transfer schemes: supplemental provision

91 Transfer schemes: general

- (1) A transfer scheme may—
 - (a) define the property, rights and liabilities to be transferred to the transferee—
 - (i) by specifying or describing the property, rights and liabilities in question;
 - (ii) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking; or
 - (iii) partly in the one way and partly in the other;
 - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against the transferor or transferee (or both of them);
 - (c) impose on the transferor or transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, the transferor or transferee or such other person as may be specified in the scheme;
 - (d) make such supplemental, incidental, consequential or transitional provision as the maker of the scheme considers appropriate.
- (2) An obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above shall be enforceable by civil proceedings by the transferor or transferee or other person mentioned in that paragraph for an injunction or for interdict or for any other appropriate relief or remedy.
- (3) A transaction of any description which is effected in pursuance of such a provision as is mentioned in subsection (2) above—

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- (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 other persons, notwithstanding that it would, apart from this subsection, have required the consent or concurrence of any other person.
- (4) No right of reverter (or corresponding right in Scotland), right of pre-emption, right of forfeiture, right of re-entry, right of irritancy, option or similar right affecting land shall operate or become exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;
 - (b) by or under an agreement or instrument made or executed pursuant to any provision of Schedule 8 to this Act or pursuant to any directions given, or requirement imposed, under that Schedule; or
 - (c) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of paragraph (c) of subsection (1) above;
- and, without prejudice to paragraph 8 of Schedule 8 to this Act, any such right or option shall accordingly have effect in the case of any such transfer as if the transferee in relation to that transfer were the same person in law as the transferor and as if no transfer of the land had taken place.
- (5) Subsection (4) above shall have effect in relation to—
- (a) the grant or creation of an estate or interest in, or right over, land, or
 - (b) the doing of any other thing in relation to land,
- as it has effect in relation to a transfer of land; and any reference in that subsection or in the following provisions of this section to the transferor or the transferee shall be construed accordingly.
- (6) In any case where—
- (a) any such right or option as is mentioned in subsection (4) above would, apart from that subsection, have operated in favour of, or become exercisable by, a person, but
 - (b) the circumstances are such that, in consequence of the operation of that subsection, the right or option cannot subsequently operate in favour of that person or, as the case may be, become exercisable by him,
- such compensation as may be just shall be paid to him by the transferor or the transferee (or by both) in respect of the extinguishment of the right or option.
- (7) Any dispute as to whether any, and (if so) how much, compensation is payable under subsection (6) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—
- (a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors; or
 - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session; or
 - (c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the Lord Chancellor.
- (8) If it appears to the transferor that a person is or may be entitled to compensation under subsection (6) above, he shall—
- (a) notify that person that he is or may be so entitled, and

(b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,

or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

92 Functions under local or private legislation etc

- (1) A transfer scheme may provide that any functions of the transferor under a statutory provision—
 - (a) shall be transferred to the transferee;
 - (b) shall be concurrently exercisable by two or more transferees; or
 - (c) shall be concurrently exercisable by the transferor and one or more transferees.
- (2) Subsection (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—
 - (a) relates to any part of the transferor’s undertaking, or to any property, which is to be transferred by the scheme; or
 - (b) authorises the carrying out of works designed to be used in connection with any such part of the transferor’s undertaking or the acquisition of land for the purpose of carrying out any such works.
- (3) Subsection (1) above does not apply to any function of the Board or of any of the Board’s subsidiaries under any provision of this Act or of—
 - (a) the Transport Act 1962;
 - (b) the Transport Act 1968;
 - (c) section 4 of the Railways Act 1974; or
 - (d) sections 119 to 124 of the Transport Act 1985.
- (4) A transfer scheme may define any functions of the transferor to be transferred or made concurrently exercisable by the scheme in accordance with subsection (1) above—
 - (a) by specifying the statutory provisions in question;
 - (b) by referring to all the statutory provisions (except those specified in subsection (3) above) which—
 - (i) relate to any part of the transferor’s undertaking, or to any property, which is to be transferred by the scheme, or
 - (ii) authorise the carrying out of works designed to be used in connection with any such part of the transferor’s undertaking or the acquisition of land for the purpose of carrying out any such works; or
 - (c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.
- (5) In this section “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.

93 Assignment of employees to particular parts of undertakings

- (1) Schemes may be made—
- (a) assigning such qualifying employees, or qualifying employees of such a class or description, as may be specified in the scheme to such part of their employer's undertaking as may be so specified;
 - (b) modifying the terms and conditions of employment of those employees; and
 - (c) providing for the payment of compensation to any of those employees by his employer in respect of any overall detriment incurred by the employee in consequence of any modifications made by the scheme to his terms and conditions of employment.
- (2) A scheme shall be made only for the purpose of facilitating, or otherwise in contemplation of, or in connection with,—
- (a) the disposal of the undertaking, or part of the undertaking, of the Board or of a wholly owned subsidiary of the Board;
 - (b) the transfer, by virtue of a transfer scheme, of any property, rights or liabilities—
 - (i) from the Board or a wholly owned subsidiary of the Board to any such subsidiary or to a publicly owned railway company or a company wholly owned by the Franchising Director; or
 - (ii) from a company wholly owned by the Franchising Director to another such company;
 - (c) the provision of railway passenger services, or the operation of additional railway assets, under a franchise agreement, in circumstances where a previous franchise agreement relating to the provision of those services or the operation of those assets comes, or has come, to an end;
 - (d) the performance of any duty imposed on the Franchising Director by any provision of Part I above to secure—
 - (i) the provision of any railway passenger services;
 - (ii) the operation of any network or part of a network;
 - (iii) the operation of any station or light maintenance depot, or any part of a station or light maintenance depot; or
 - (e) the exercise of the power conferred on the Franchising Director by section 30 above to secure the operation of any additional railway assets.
- (3) The power to make a scheme shall be exercisable—
- (a) by the Board, in respect of employees of the Board or of any wholly owned subsidiary of the Board; or
 - (b) by the Franchising Director, in respect of employees of any company which is wholly owned by the Franchising Director.
- (4) Where a scheme modifies the terms and conditions of employment of any person, the person's terms and conditions of employment after the modification takes effect must overall, and taking account of the amount or value of any compensation payable to him by virtue of subsection (1)(c) above in respect of any such detriment as is there mentioned, be no less favourable to him than his terms and conditions of employment before the modification takes effect.
- (5) The duty imposed on an employer by section 4 of the Employment Protection (Consolidation) Act 1978 (requirement for written statement in respect of certain changes relating to an employee's employment) shall extend to all of the modifications

made by a scheme to a qualifying employee's terms and conditions of employment, as if those modifications were changes required to be dealt with in a written statement under that section.

- (6) If any qualifying employee whose terms and conditions of employment are modified by a scheme is aggrieved—
- (a) at the provisions made by the scheme with respect to the payment of compensation, so far as applicable in his case, or
 - (b) at the fact that the scheme does not make any such provision,
- he may make a written complaint to the maker of the scheme not later than twelve weeks after the date of issue of the written statement required by section 4 of the Employment Protection (Consolidation) Act 1978 in consequence of the modifications made by the scheme in the qualifying employee's terms and conditions of employment.
- (7) Any complaint under subsection (6) above shall be referred to, and determined by, such arbitrator as may be agreed by the qualifying employee and the person to whom the complaint was made or, at the request of either of them, by a panel of three arbitrators appointed by the Secretary of State and consisting of—
- (a) a person who appears to the Secretary of State to be representative of employers in the railway industry;
 - (b) a person who appears to the Secretary of State to be representative of employees in the railway industry; and
 - (c) an independent chairman.
- (8) A scheme may make such incidental, consequential, supplemental or transitional provision as appears necessary or expedient to the person making the scheme.
- (9) A scheme may make different provision for different qualifying employees or for qualifying employees of different classes or descriptions.
- (10) A scheme shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may, after consultation with the maker of the scheme, specify for the purpose in giving his approval.
- (11) In the application of this section in relation to Scotland, any reference to an arbitrator shall be taken as a reference to an arbiter.
- (12) In the application of this section to Northern Ireland, for any reference to section 4 of the Employment Protection (Consolidation) Act 1978 there shall be substituted a reference to section 4(4) to (6B) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965.
- (13) In this section—
- “qualifying employee”, in the case of any scheme, means a person who, immediately before the coming into force of that scheme—
- (a) is an employee of—
 - (b) the Board;
 - (ii) a wholly owned subsidiary of the Board; or
 - (iii) a company which is wholly owned by the Franchising Director; and
 - (e) is not assigned solely to duties in that part of his employer's undertaking to which he is, or is to be, assigned by that scheme;
- “scheme” means a scheme under this section;

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and expressions used in this section and in Part I above have the same meaning in this section as they have in that Part.

94 Accounting provisions

- (1) This section applies where any property, rights or liabilities are transferred by virtue of a transfer scheme between—
 - (a) the Board and any company which, at the time of the transfer, is either—
 - (i) a wholly owned subsidiary of the Board; or
 - (ii) wholly owned by the Crown; or
 - (b) any two companies which, at the time of the transfer, fall within paragraph (a) above.
- (2) Where this section applies, the transfer scheme may state—
 - (a) the value at which any asset transferred to the transferee by virtue of the scheme is to be entered in the opening accounts of the transferee; or
 - (b) the amount at which any liability so transferred is to be entered in those accounts.
- (3) The value or amount (if any) stated by virtue of subsection (2) above shall be—
 - (a) in a case where the whole of the asset or liability in question is transferred by the transfer scheme, the value or amount at which the asset or liability appeared in the last full accounts of the transferor, or
 - (b) in a case where part only of the asset or liability is so transferred, such part of the value or amount at which the asset or liability appeared in the last full accounts of the transferor as may be determined by or in accordance with the transfer scheme,unless the maker of the transfer scheme considers that some other amount or value is appropriate in all the circumstances of the case, in which case the amount or value stated by virtue of subsection (2) above shall be that other amount or value.
- (4) Where this section applies, the transfer scheme may provide that the amount to be included in the opening accounts of the transferee in respect of any item shall be determined as if so much of anything done (or treated as done) by the transferor (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) as may be determined by or in accordance with the transfer scheme had been done by the transferee.
- (5) Without prejudice to the generality of the preceding provisions of this section, where this section applies, the transfer scheme may provide—
 - (a) that the amount to be included from time to time in any reserves of the transferee as representing its accumulated realised profits shall be determined as if such proportion of any profits realised and retained by the transferor as may be determined by or in accordance with the transfer scheme, had been realised and retained by the transferee;
 - (b) that the amount to be included from time to time in the opening accounts and any subsequent statutory accounts of the transferee as representing its accumulated realised losses shall be determined as if such proportion of any accumulated realised losses of the transferor as may be determined by or in accordance with the transfer scheme had been losses realised by the transferee.

(6) In this section—

“accounting year” means—

- (a) in the case of the Board, the period of twelve months ending with 31st March in any year; and
- (b) in the case of any company, its financial year, within the meaning of the Companies Act 1985;

“the last full accounts”, in connection with any transfer scheme, means—

- (a) where the Board is the transferor, the annual accounts prepared by the Board in accordance with section 24 of the Transport Act 1962 for the accounting year last ended before the making of the transfer scheme; and
- (b) where any other person is the transferor, the statutory accounts of that person for the accounting year last ended before the making of the transfer scheme;

“the opening accounts of the transferee” means any statutory accounts prepared by the transferee for the accounting year next ending after the transfer date;

“statutory accounts” means any accounts prepared by a company for the purpose of any provision of the Companies Act 1985 (including group accounts).

95 Power of the Secretary of State or the Franchising Director to require provision of information in connection with transfer schemes

(1) Where, in exercise of any functions conferred on him by section 86 above or transferred to him by an order under section 87 above, the Franchising Director or the Secretary of State (in this section referred to as “the relevant authority”) proposes to make a transfer scheme, he may direct any person to whom this section applies—

- (a) to furnish him with such information as the relevant authority considers necessary to enable him to make the scheme; and
- (b) to do so within such time (being not less than 28 days from the giving of the direction) as may be specified in the direction;

and the persons to whom this section applies are the Regulator, the Board, any wholly owned subsidiary of the Board, any publicly owned railway company, any franchise company and any company which is wholly owned by the Franchising Director.

(2) If a person fails to comply with a direction under subsection (1) above, the relevant authority may serve a notice under subsection (3) below on that person.

(3) A notice under this subsection is a notice signed by the relevant authority and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the relevant authority or to any person appointed by the relevant authority for the purpose, any documents which are specified or described in the notice and are in that person’s custody or under his control; or
- (b) requiring that person to furnish, at a time and place and in the form and manner specified in the notice, to the relevant authority such information as may be specified or described in the notice.

(4) No person shall be required under this section to produce any documents which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

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- (5) A person who without reasonable excuse fails to do anything required of him by notice under subsection (3) above is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under subsection (3) above to produce is guilty of an offence and shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (7) If a person makes default in complying with a notice under subsection (3) above, the court may, on the application of the relevant authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (8) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (9) In this section “the court” means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

96 Functions of the Secretary of State in relation to transfer schemes

- (1) A transfer scheme made by the Board or the Franchising Director, otherwise than under section 86 above, shall not come into force unless it has been approved by the Secretary of State or until such date as the Secretary of State may specify for the purpose in giving his approval.
- (2) The Secretary of State shall not make a transfer scheme except after consultation with the transferor.
- (3) Before approving a transfer scheme made by the Franchising Director or the Board, the Secretary of State, after consultation with the transferor and, in the case of a scheme made by the Franchising Director, with the Franchising Director, may modify the scheme.
- (4) It shall be the duty of the transferor to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on him by this section.

97 Supplementary provisions as to transfers by transfer scheme

The provisions of Schedule 8 to this Act shall apply to any transfer by virtue of a transfer scheme; and sections 85(6) and 86(4) above shall have effect subject to the provisions of that Schedule.