

SCHEDULES

SCHEDULE 1

Section 1(5).

TRANSFER SCHEMES: SUPPLEMENTARY PROVISIONS

Contents and effect of scheme

- 1 (1) A transfer scheme may define the property, rights and liabilities to be transferred to a particular person—
- (a) by specifying or describing the property, rights and liabilities in question,
 - (b) 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 Authority's undertaking, or
 - (c) partly in one way and partly in the other.
- (2) A transfer scheme shall appoint the day on which it is to come into force.
- (3) This Act shall have effect, in relation to any provision of a transfer scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the scheme, and without further assurance, from the Authority to the person to whom they are allocated under the scheme and to vest them in that person; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (4) This Act shall have effect, in relation to any provision of a transfer scheme for the creation, by virtue of paragraph 2 below, of any interest or right, so as to create the specified interests and rights, at the beginning of the day appointed for the coming into force of the scheme and without further assurance.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of a transfer scheme as provides for—
- (a) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme, or
 - (b) the creation of any of the rights or interests to be created in accordance with the scheme,
- to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) below.
- (6) In their application to Scotland, sub-paragraphs (3) and (4) above shall have effect with the omission of the words “and without further assurance”.

Division of Authority's undertaking by scheme

- 2 (1) For the purposes of making any such division as the Authority consider appropriate of any of the property, rights and liabilities of the Authority between two or more

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persons (including any division between the Authority and any one or more other persons), a transfer scheme may contain provision—

- (a) for the creation in favour of the Authority of an interest or right in or in relation to property transferred in accordance with that scheme to any person,
- (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another,
- (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the Authority,
- (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the Authority,
- (e) for rights and liabilities enforceable against more than one person in accordance with any provision falling within paragraph (d) above to be enforceable in different or modified respects by or against each or any of them,
- (f) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between any transferee and the Authority, and
- (g) without prejudice to paragraph (f) above, for imposing on any transferee or the Authority an obligation—
 - (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph of this Schedule (whether in the same or a different scheme), or
 - (ii) to execute such instruments in favour of any such person,
 as may be specified or described in the scheme.

- (2) A transfer scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the Authority consider to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1) above, or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (2) above shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified or determined under the scheme.
- (4) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (1)(f) above shall include the creation of such rights and liabilities as the Authority think fit for the purpose of converting into a contract between the transferee under the scheme and the Authority any arrangements between different parts of the Authority's undertaking which exist immediately before the day on which the scheme comes into force.
- (5) An obligation imposed on any person by virtue of sub-paragraph (1)(g) above shall be enforceable by the bringing, by any person with or in favour of whom the agreement or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.

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- (6) In relation to any transfer scheme made by the Secretary of State by virtue of section 2(3) of this Act, the first reference to the Authority in sub-paragraph (1) above, the reference to the Authority in sub-paragraph (2) above and the first such reference in sub-paragraph (4) above shall have effect as references to the Secretary of State.

Property to which a scheme may relate

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a transfer scheme shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Authority,
 - (b) property acquired at a time after the making of the scheme and before it comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme,
 - (c) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom, and
 - (d) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a) above, and the interests and rights that may be created in accordance with a transfer scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person’s consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the Authority are entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act, to terminate, modify, acquire or claim an interest or right which is vested in the Authority at the passing of this Act or acquired by the Authority after that time, or to treat any such interest or right as modified or terminated, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme, and
 - (b) without prejudice to the preceding provisions of this paragraph or to paragraph 5(2)(a) below, that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains provision for it to be transferred subject to the provisions conferring that entitlement.
- (4) Subject to sub-paragraphs (5) and (6) below, nothing in sub-paragraph (1) or (2) above shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, or
 - (b) anything done under any such agreement,

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to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made by or under that agreement or instrument.

- (5) A transfer scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
 - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2) above.
- (6) A transfer scheme may provide that sub-paragraph (3) above shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3) (b) above to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

Certain debts owed to Secretary of State

- 4 No liability of the Authority in respect of the Authority's commencing capital debt under section 1 of the Atomic Energy Act 1986 or in respect of any loan made to them under section 4 of that Act shall be transferred by a transfer scheme except to a company which—
- (a) is wholly owned by the Crown, or
 - (b) is a wholly-owned subsidiary of the Authority.

Supplementary provisions of schemes

- 5 (1) A transfer scheme may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A transfer scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transferee to be treated as the same person in law as the Authority,
 - (b) for agreements made, transactions effected or other things done by or in relation to the Authority to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee,
 - (c) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the Authority to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme,
 - (d) for proceedings commenced by or against the Authority to be continued by or against the transferee, and
 - (e) for any such disputes as to the effect of the scheme as arise between different transferees, or between any transferee on the one hand and the Authority

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on the other, to be referred to such arbitration as may be specified in or determined under the scheme.

- (3) Where any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales—
 - (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to production of the document and to delivery of copies of the document, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) 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 any person is entitled, in consequence of any transfer made in accordance with a transfer scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a transfer scheme, subsections (1) and (2) of section 16 of the Land Registration (Scotland) 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.
- (5) In this paragraph—
 - (a) references to a transfer include references to the creation in any person’s favour of any interest or right, and references to a transferee shall be construed accordingly, and
 - (b) references to a person who is entitled, in consequence of any transfer, to possession of a document include references to the Authority in a case where the Authority are entitled to retain possession of any document following any transfer.
- (6) Sub-paragraphs (2) to (4) above shall be without prejudice to the generality of sub-paragraph (1) above.

Proof of title by certificate

- 6 (1) The Authority and any person to whom anything has been transferred in accordance with a transfer scheme may issue a joint certificate stating that—
 - (a) any property specified in the certificate, or
 - (b) any such interest in or right over any such property as may be so specified, is property, or (as the case may be) an interest or right, which was intended to be and was vested by virtue of the scheme in such one of them as may be so specified; and any such certificate shall be conclusive evidence for all purposes of that fact.
- (2) The Authority and any person to whom anything has been transferred in accordance with a transfer scheme may issue a joint certificate stating that any liability specified in the certificate is a liability which was intended to be, and was, vested by virtue of the scheme in such one of them as may be so specified.
- (3) Any certificate under sub-paragraph (2) above—

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- (a) shall, if given with the concurrence of every person who is entitled to enforce the liability at the time of the giving of the certificate, be conclusive evidence for all purposes of the fact referred to in that sub-paragraph, and
 - (b) shall, in any other case, be conclusive evidence of that fact as between the persons giving or concurring in the giving of the certificate.
- (4) If, after the end of the period of one month beginning with the date of a request from either the Authority or a transferee under a transfer scheme for the preparation of a joint certificate under sub-paragraph (1) or (2) above as respects any property, interest, right or liability, they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as he may direct.
- (5) In this paragraph—
- (a) references to a transfer include references to the creation in any person's favour of any interest or right, and references to a transferee shall be construed accordingly, and
 - (b) references to a transfer scheme include references to a modification agreement as defined in paragraph 8(7) below.

Duties in relation to foreign property etc.

- 7 (1) It shall be the duty of the Authority and of any person to whom any foreign property, right or liability is transferred to take all such steps as may be requisite to secure that the vesting in the transferee, in accordance with the scheme, of the foreign property, right or liability is effective under the relevant foreign law.
- (2) Until the vesting in the transferee in accordance with the scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the Authority to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.
- (3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the transferee in accordance with the scheme of any foreign property, right or liability.
- (4) The Authority shall have all such powers as may be requisite for the performance of their duties under this paragraph, but it shall be the duty of a person to whom a transfer is made in accordance with a transfer scheme to act on behalf of the Authority (so far as possible) in performing the duties imposed on them by this paragraph.
- (5) Where—
- (a) any foreign property, rights or liabilities are acquired or incurred by the Authority in respect of any other property, rights or liabilities, and
 - (b) by virtue of this paragraph the Authority holds the other property or rights for the benefit of another person or discharges the liability on behalf of another person,
- the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any

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proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

- (7) Any expenses incurred by the Authority under this paragraph shall be met by the person to whom the transfer in question is made.
- (8) Any obligation imposed under this paragraph shall be enforceable as if contained in a contract between the Authority and the person to whom the transfer in question is made.

Modification of scheme by agreement

- 8 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the Authority or another person to whom anything has been transferred in accordance with that or any other transfer scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying the effect of either or both of the schemes—
 - (a) any of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
 - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,should be transferred from one to the other as from a date appointed by the agreement.
- (2) If—
 - (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a transfer scheme of property, rights or liabilities to any of its parties comes into force, and
 - (b) the Secretary of State, with the consent of the Treasury, has given his approval to the transfer for which the agreement provides and to its terms and conditions,then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a transfer scheme.
- (3) Subject to the approval of the Secretary of State and to sub-paragraph (4) below, the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a transfer scheme provides, in that scheme.
- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) Before—
 - (a) refusing his approval for the purposes of this paragraph, or
 - (b) giving his approval for those purposes in a case where the Authority are not a party to the proposed agreement,the Secretary of State shall consult the Authority.
- (6) In this paragraph references to a transfer in accordance with a transfer scheme include references to the creation of any interest, right or liability in accordance with such a scheme.

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- (7) In this paragraph and the following provisions of this Schedule “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2) above.

The Transfer of Undertakings (Protection of Employment) Regulations 1981

- 9 (1) The 1981 regulations shall apply to any transfer of any undertaking or part of an undertaking in accordance with a transfer scheme or modification agreement as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person in whom that undertaking or part was vested immediately before the coming into force of the transfer.
- (2) It shall be the duty of the Secretary of State, before—
- (a) giving a direction under subsection (1) of section 2 of this Act,
 - (b) modifying a transfer scheme by virtue of subsection (2) of that section,
 - (c) making a transfer scheme by virtue of subsection (3) of that section, or
 - (d) approving a modification agreement,
- to give such notice of his proposals to such persons as he considers appropriate for enabling any provisions of the 1981 regulations applicable to any transfer in accordance with the scheme or agreement to be complied with by the person who for the purposes of the regulations is the transferor in relation to that transfer.
- (3) In this paragraph—
- (a) “the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981, and
 - (b) “undertaking” has the same meaning as in the 1981 regulations.

Compensation

- 10 (1) Where, in consequence of any provisions included in a transfer scheme for the purposes of any such division as is mentioned in paragraph 2(1) above, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2) below, the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights, or
 - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) above are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
 - (i) an interest in only part of that property, or
 - (ii) separate interests in different parts of that property,
 - (b) a right of the third party against the Authority is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the Authority, or
 - (c) a liability of the third party to the Authority is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the Authority.

- (3) Where—
- (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3) above, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
 - (b) the provisions of that scheme or of paragraph 3(3) above have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a) above, and
 - (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,
- the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.
- (4) A liability to pay compensation under this paragraph shall fall on the persons not being themselves third parties who, as the case may be—
- (a) have interests in the whole or any part of the property affected by the modification in question,
 - (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
 - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or
 - (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3) above,
- and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.
- (5) Where any liability falls by virtue of sub-paragraph (4) above on the Authority, that sub-paragraph shall have effect subject to so much of any transfer scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.
- (6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall be referred to and determined—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
 - (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, and to any modification agreement, as it has effect in relation to the provisions of a transfer scheme.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—

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- (a) the Authority or any of their wholly-owned subsidiaries,
- (b) the Secretary of State,
- (c) any successor company which is wholly owned by the Crown at the time in relation to which those provisions have effect, or
- (d) any person whose consent to those provisions has been given for the purposes of section 2(5) of this Act or who has agreed to those provisions by virtue of being a party to a modification agreement.