

Status: Point in time view as at 01/10/2009.

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SCHEDULES

SCHEDULE 5

Section 131(4).

TRANSFER SCHEMES RELATING TO BBC TRANSMISSION NETWORK: SUPPLEMENTARY PROVISIONS

Modifications etc. (not altering text)

- C1** **Sch. 5** extended (with modifications) (22.8.1997): to Guernsey by **S.I. 1997/1755, art. 2, Sch.**; to the Isle of Man by **S.I. 1997/1756, art. 2, Sch.**; to Jersey by **S.I. 1997/1757, art. 2, Sch.**

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 BBC'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 BBC 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, 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).
- (6) In their application to Scotland, sub-paragraphs (3) and (4) shall have effect with the omission of the words “and without further assurance”.

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Division of BBC's undertaking by scheme

- 2 (1) For the purposes of making any such division as the BBC consider appropriate of any of the property, rights and liabilities of the BBC between two or more persons (including any division between the BBC and any one or more other persons), a transfer scheme may contain provision—
- (a) for the creation in favour of the BBC 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 BBC,
 - (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 BBC,
 - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) 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 as between different transferees and as between any transferee and the BBC, and
 - (g) without prejudice to paragraph (f), for imposing on any transferee or the BBC 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 BBC consider to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1), 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) 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) An obligation imposed on any person by virtue of sub-paragraph (1)(g) 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.
- (5) In this paragraph—
- (a) references, in relation to a transfer scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme, and
 - (b) the reference, in relation to such a scheme, to a third party is a reference to a person other than—

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- (i) the BBC, or
 - (ii) any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2)) is a transferee.
- (6) Sub-paragraphs (2) and (3) shall be without prejudice to the generality of paragraph 4(1).

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 BBC,
 - (b) rights and liabilities of the BBC under any agreement or arrangement for the payment of pensions, allowances and gratuities,
 - (c) 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,
 - (d) 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
 - (e) rights and liabilities under enactments.
- (2) The transfers authorised by sub-paragraph (1)(a), 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 BBC 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 BBC at the passing of this Act or acquired by the BBC 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 4(2)(a), 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), nothing in sub-paragraph (1) or (2) shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g), or

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- (b) anything done under any such agreement, 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).
- (6) A transfer scheme may provide that sub-paragraph (3) 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) to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

Supplemental provisions of schemes

- 4 (1) A transfer scheme may contain supplemental, incidental, 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 BBC,
 - (b) for agreements made, transactions effected or other things done by or in relation to the BBC 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 BBC 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 BBC 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 BBC 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 or Northern Ireland—

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- (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 ^{M1}Law of Property Act 1925 (production and safe custody of documents) or section 9 of the ^{M2}Conveyancing Act 1881 (the corresponding provision for Northern Ireland) 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 ^{M3}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 BBC in a case where the BBC are entitled to retain possession of any document following any transfer.
- (6) Sub-paragraphs (2) to (4) shall be without prejudice to the generality of sub-paragraph (1).

Marginal Citations

M1 1925 c. 20.

M2 1881 c. 41.

M3 1979 c. 33.

Certificate of Secretary of State as to vesting of property etc.

- 5 A certificate issued by the Secretary of State to the effect that any property, right or liability of the BBC vested at a particular time in accordance with a transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters stated in the certificate.

Duties in relation to foreign property etc.

- 6 (1) It shall be the duty of the BBC 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

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duty of the BBC 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) 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 BBC 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 BBC (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 BBC in respect of any other property, rights or liabilities, and
 - (b) by virtue of this paragraph the BBC hold the other property or rights for the benefit of another person or discharge 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 proceedings would have to be 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 BBC 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 BBC and the person to whom the transfer in question is made.

Modification of scheme by agreement

- 7 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the BBC 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 has given his approval to the transfer for which the agreement provides and to its terms and conditions,

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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), 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 BBC are not a party to the proposed agreement,the Secretary of State shall consult the BBC.
- (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.
- (7) In this paragraph and paragraphs 8 and 9 “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2).

Compensation

- 8 (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), the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), 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) 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 BBC 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 BBC, or
 - (c) a liability of the third party to the BBC 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 BBC.
- (3) Where—

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- (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3), 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) 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), 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),

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) on the BBC, 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), 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 BBC or any of their wholly-owned subsidiaries (as defined by ^{F1}section 1159 of the Companies Act 2006] ,
- (b) the Secretary of State, or
- (c) any person whose consent to those provisions has been given for the purposes of section 132(2) or who has agreed to those provisions by virtue of being a party to a modification agreement.

Textual Amendments

- F1** Words in [Sch. 5 para. 8\(8\)\(a\)](#) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 162\(b\)](#) (with art. 10)

Notice to persons affected by scheme

- 9 (1) It shall be the duty of the BBC, where it appears to them in the case of any transfer scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8, to give notice under this paragraph to every such person.
- (2) A notice to be given by the BBC under this paragraph shall be given as soon as reasonably practicable after they make the scheme or agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the BBC that the property, rights or liabilities of the person to whom it is given are affected.
- (4) Where it is not reasonably practicable for the notice under this paragraph to any person to be given to that person, the BBC shall, instead, take such steps for publishing the contents of the notice as they may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.

Consideration for transfer etc.

- 10 (1) A transfer in accordance with a transfer scheme may be made for consideration or for no consideration and, if it is made for consideration, the consideration may, in particular, take the form of the issue of shares or securities.
- (2) In sub-paragraph (1), “transfer” has the meaning given by paragraph 1(1) of Schedule 7.

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