

SCHEDULES

SCHEDULE 2

Sections 1 and 12

TRANSFER SCHEMES

Application and commencement of scheme

- 1 (1) A scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
 - (a) by specifying or describing them in particular;
 - (b) by identifying them generally by reference to an undertaking from which they are to be transferred; or
 - (c) by identifying them by reference to a specified part of such an undertaking.
- (2) A scheme comes into force on the date appointed by the scheme.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
 - (b) property acquired in the period after the making of the scheme and before it comes into force and rights and liabilities arising in that period;
 - (c) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
 - (d) rights and liabilities under an enactment, Community instrument or subordinate legislation.
- (2) The transfers to which effect may be given by a scheme include transfers that are to take effect in accordance with the scheme as if there were—
 - (a) no such requirement to obtain a 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 a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a scheme under section 1(2)—
 - (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject; or
 - (b) to treat such an interest or right as modified or terminated.

Status: This is the original version (as it was originally enacted).

- (5) That entitlement shall be enforceable in relation to the interest or right—
 - (a) in consequence of what is done or likely to be done by or under this Act, and
 - (b) in corresponding circumstances arising after the transfer,
 to the extent only that the scheme provides for it to be so enforceable.
- (6) Sub-paragraphs (2) to (5) have effect where shares in a subsidiary of the transferor are or are to be transferred—
 - (a) as if the reference in sub-paragraph (3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
 - (b) as if the reference in sub-paragraph (4) to the transferor included a reference to the subsidiary.

Dividing and modifying transferor's property, rights and liabilities

- 3 (1) A scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property to be transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees, or between a transferee and a transferor.
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor; and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) In sub-paragraph (4) “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
- (6) Paragraph 2(2) and (3) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

Obligation to effect transfers etc. under a scheme

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
 - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) An obligation imposed on a person by virtue of sub-paragraph (1) shall be enforceable by the relevant person in civil proceedings—
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
 - (c) for any other appropriate remedy or relief.
- (3) The relevant person for the purposes of sub-paragraph (2) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

Effect of scheme

- 5 (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) this Act shall have the effect that, at the time when the scheme comes into force, the property or interests, rights or liabilities shall vest, without further assurance, in the transferee; and
 - (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities shall have effect from that time.
- (2) Sub-paragraph (1) is subject to so much of a scheme as provides for—
- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
 - (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

Powers and duties under statutory provisions

- 6 (1) A scheme may make provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to a transferee;
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees; or
 - (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.

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- (2) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the transferor by or under a relevant enactment so far as they relate to—
- (a) property to be transferred in accordance with the scheme;
 - (b) the carrying out of works designed to be used in connection with such property; or
 - (c) the acquisition of land for the purpose of the carrying out of such works.
- (3) In this paragraph “relevant enactment” means any enactment other than—
- (a) the 1993 Act;
 - (b) Part 4 of the 2000 Act; or
 - (c) this Act.
- (4) This paragraph does not require a restrictive construction to be given to what may be transferred by virtue of paragraph 2(1)(d).

Supplementary provisions of schemes

- 7 (1) A scheme may—
- (a) make such incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the scheme as the person making the scheme thinks fit;
 - (b) make different provision for different cases.
- (2) In particular, a scheme may make provision, in relation to transfers in accordance with the scheme—
- (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor 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 an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme; and
 - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) In this paragraph references to a transfer in accordance with a scheme include references to the creation of an interest, right or liability in accordance with a scheme.

Modification of scheme by agreement

- 8 (1) Where the transferor and transferee under a scheme that has come into force so agree, the scheme shall be treated for all purposes as having come into force with such modifications as may be agreed.

- (2) An agreement under this paragraph which relates to rights and liabilities under a contract of employment may be entered into only if the employee is a party to the agreement.
- (3) An agreement under this paragraph that adversely affects the property or rights of a person other than the transferor, the transferee or such an employee may be entered into only if that person is a party to the agreement.
- (4) The provision that may be included in an agreement under this paragraph includes—
 - (a) any provision that could have been contained in the scheme; and
 - (b) incidental, supplemental, consequential and transitional provision in connection with any such provision.

Continuity of employment etc.

- 9 (1) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee—
- (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer;
 - (b) his period of employment with the transferor counts for the purposes of that Act as a period of employment with the transferee;
 - (c) the change of employment does not break the continuity of the period of employment either for the purposes of that Act or for the purposes of Schedule 11 to the 1993 Act (pensions); and
 - (d) in a case in which the transferee is not engaged in the railway industry, that person's period of employment with the transferee is to be disregarded for the purpose of determining whether the termination conditions under paragraph 8 of Schedule 11 to the 1993 Act are fulfilled in his case.
- (2) References in this paragraph to becoming an employee of the transferee and to employment with the transferee include references, respectively, to becoming and to being employed in the civil service of the state.

Compensation for third parties

- 10 (1) Where—
- (a) an entitlement of a third party to an interest or right would, apart from a provision of a scheme under section 1(2) and paragraph 2(4) and (5), become enforceable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities,
 - (b) the provisions of that scheme or of paragraph 2(4) and (5) have the effect of preventing the third party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and
 - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable 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 compensation in respect of the extinguishment of his entitlement.

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- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that he does not suffer financial loss from the extinguishment of his entitlement.
- (3) A liability to pay compensation under this paragraph shall fall on the Secretary of State.
- (4) In the preceding provisions of this paragraph “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
- (5) This paragraph shall have effect in relation to—
 - (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme under section 1(2), and
 - (b) the provisions of an agreement under paragraph 8 relating to property, rights or liabilities transferred or created in accordance with such a scheme,
 as it has effect in relation to the scheme but as if, in the case of an agreement under paragraph 8, only persons who are not parties to the agreement were third parties.

Provision of information to person making scheme

- 11 (1) A person who proposes to make a scheme (“the scheme authority”) may direct—
- (a) a proposed transferor, or
 - (b) a proposed transferee,
- to provide him with such information as he considers necessary to enable him to make the scheme.
- (2) Such a direction must specify the period within which the information is to be provided.
 - (3) The period specified in the direction must be not less than 28 days beginning with the day of the giving of the direction.
 - (4) If a person fails to comply with such a direction, the scheme authority may serve a notice on him requiring him—
 - (a) to produce to the scheme authority any documents which are specified or described in the notice and are in his custody or under his control; or
 - (b) to provide to the scheme authority such information as may be specified or described in the notice.
 - (5) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.
 - (6) No person may be required under this paragraph—
 - (a) to produce a document which he could not be compelled to produce in civil proceedings in the court; or
 - (b) to provide information which he could not be compelled to give in evidence in such proceedings.
 - (7) A person who intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under sub-paragraph (4) is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; and

- (b) on conviction on indictment, to a fine.
- (8) If a person fails to comply with a notice under sub-paragraph (4), the court may, on the application of the scheme authority, make such order as the court thinks fit for requiring the failure to be made good.
- (9) Any order under sub-paragraph (8) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of the following—
 - (a) the person in default;
 - (b) any officers of a company or other association who are responsible for its default.
- (10) In this paragraph—
 - (a) a reference 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
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (11) In this paragraph “the court” means—
 - (a) in England and Wales, the High Court; and
 - (b) in Scotland, the Court of Session.

Interpretation

- 12 (1) In this Schedule—
- “enactment” includes an enactment comprised in an Act of the Scottish Parliament;
 - “transferee”—
 - (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created;
 - “transferor”—
 - (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme; and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created;
 - “scheme” means a scheme made under section 1(2) or 12; and
 - “subsidiary” has the meaning given to it by section 736 of the Companies Act 1985 (c. 6).
- (2) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable.