

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 1. (See end of Document for details)

SCHEDULES

SCHEDULE 1 **U.K.**

Section 8

TRANSFER SCHEMES

Introduction

1 In this Schedule—

“transfer scheme” means a transfer scheme under section 8,

“transferee”—

- (a) in relation to a transfer 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 transfer 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 transfer scheme, means a 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 transfer 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, and

“third party”, in relation to a transfer scheme, means any person other than a transferor or transferee.

Commencement Information

11 Sch. 1 para. 1 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Identification of property etc to be transferred

- 2 (1) A transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

Commencement Information

12 Sch. 1 para. 2 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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Property, rights and liabilities that may be transferred

- 3 (1) A transfer scheme may transfer—
- (a) property situated in any part of the world,
 - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a transfer scheme include—
- (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time specified under paragraph 6(1),
 - (b) rights and liabilities arising after that time in respect of matters occurring before that time,
 - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (3) The transfers to which effect may be given by a transfer scheme include ones that are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the transferor are transferred as if the reference 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.

Commencement Information

I3 [Sch. 1 para. 3](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Dividing and modifying transferor's property, rights and liabilities

- 4 (1) A transfer 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 or rights transferred in accordance with the scheme,
 - (b) for giving effect to a transfer by the creation, in favour of the transferee, of an interest or right in or in relation to property or rights retained by a transferor, and
 - (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 transfer 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 into a contract—
- (a) between different transferees, or

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- (b) between a transferee and a transferor.
- (3) A transfer 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 transfer 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) Paragraph 3(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Commencement Information

I4 Sch. 1 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Obligation to effect transfers etc

- 5
- (1) A transfer scheme may impose on a transferee or transferor an obligation—
 - (a) to enter into an agreement (specified or described in the scheme) with another person on whom a corresponding obligation is, could be or has been imposed as a result of this paragraph (whether in the same or a different scheme), or
 - (b) to execute an instrument (specified or described in the scheme) in favour of such a person.
 - (2) A transfer scheme that imposes such an obligation may provide that paragraph 3(3) applies (to the extent specified in the scheme) in relation to—
 - (a) a transfer made by or under an agreement or instrument made in pursuance of the obligation, and
 - (b) interests or rights created by or under such an agreement or instrument.
 - (3) Subject to that, nothing in paragraph 3 enables—
 - (a) an agreement or instrument made in pursuance of such an obligation, or
 - (b) anything done under such an agreement or instrument,to give effect to a transfer, or to create an interest or right, that could not otherwise have been made or created by or under the agreement or instrument.
 - (4) An obligation imposed as a result of sub-paragraph (1) may be enforced by the person with, or in favour of, whom the agreement or instrument is to be entered into or executed, in proceedings for any of the following—
 - (a) an injunction,
 - (b) specific performance of a statutory duty under section 45 of the Court of Session Act 1988,
 - (c) any other appropriate remedy or relief.

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I5 Sch. 1 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Effect of transfer scheme: general

- 6 (1) At the time specified in the scheme—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
 - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this sub-paragraph, to vest in the transferee.
- (2) Sub-paragraph (1) is subject to any provision of the scheme that provides that the transfer or creation of any property, interests, rights or liabilities is to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 5(1).

Commencement Information

I6 Sch. 1 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Effect of transfer scheme on right to terminate or modify interest etc

- 7 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
 - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the transferor are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.
- (4) A transfer scheme that (as a result of paragraph 5(1)) contains an obligation to enter into or execute an agreement or instrument may provide for sub-paragraphs (1) to (3) to apply to interests or rights affected by—
- (a) the agreement or instrument, or
 - (b) a proposal for the agreement or for the execution of the instrument.
- (5) Where the scheme does so provide, sub-paragraphs (1) to (3) apply in relation to the interests or rights as if references there to the transfer scheme included the agreement or instrument.

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Commencement Information

I7 Sch. 1 para. 7 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Supplementary provisions of schemes

- 8 (1) A transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 9 to 13 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a transfer scheme includes the creation in accordance with a transfer scheme of an interest, right or liability.

Commencement Information

I8 Sch. 1 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 9 (1) A transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a 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 a transferee,
 - (c) for references in any 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 any of the transfers, 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 a transferee.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.

Commencement Information

I9 Sch. 1 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 10 (1) A transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities,
 - (b) the creation of foreign rights, interests and liabilities.
- (2) For the purposes of this paragraph property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.

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Commencement Information

I10 Sch. 1 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 11 (1) A transfer scheme may contain provision for and in connection with the payment of compensation to third parties whose property, rights, interests or liabilities have been affected by (or as a result of) a transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.

Commencement Information

I11 Sch. 1 para. 11 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 12 A transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different transferees, or
 - (b) between a transferee and a transferor,
- to be referred to such arbitration as may be specified in or determined under the scheme.

Commencement Information

I12 Sch. 1 para. 12 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 13 (1) This paragraph applies if, in consequence of a transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
 - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the

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basis that the acknowledgement does not contain an expression of contrary intention.

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I13 Sch. 1 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Proof of title by certificate

- 14 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

Commencement Information

I14 Sch. 1 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Staff

- 15 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

Commencement Information

I15 Sch. 1 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 16 If an employee of the transferor becomes an employee of a transferee as a result of a transfer scheme—
- (a) a period of employment with the transferor is to be treated as a period of employment with the transferee, and
 - (b) the transfer to the transferee is not to be treated as a break in service.

Commencement Information

I16 Sch. 1 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Modification of scheme

- 17 (1) If—
- (a) before the end of the period of 3 years beginning with the time specified under paragraph 6(1), the transferor and transferee agree in writing that the scheme is to be treated as having come into force at that time with such modifications as are specified in the agreement, and
 - (b) the Secretary of State, with the consent of the Treasury, approves the agreement,

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the scheme as modified is to be treated for all purposes as having come into force at that time.

- (2) An agreement under this paragraph may, in connection with giving effect to modifications to the scheme—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (b) make different provision for different cases or circumstances.

Commencement Information

I17 Sch. 1 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Disapplication of certain company law provisions etc

- 18 Nothing in—
- (a) Part 23 of the Companies Act 2006 (distributions), or
 - (b) any rule of law relating to distributions by companies or the maintenance of capital by companies,
- applies in relation to a transfer of property, rights or liabilities, or the creation of rights or interests, by or under a transfer scheme.

Commencement Information

I18 Sch. 1 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 19 For the purposes of any enactment none of the following persons are to be regarded as shadow directors of a transferor or transferee in relation to anything done by or under a transfer scheme—
- (a) the Secretary of State or the Treasury (or a nominee of either of them), or
 - (b) a person employed by, or acting on behalf of, anyone within paragraph (a).

Commencement Information

I19 Sch. 1 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

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