

Status: Point in time view as at 11/01/2024.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Schedule 9. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 174

INDEPENDENT SYSTEM OPERATOR AND PLANNER: TRANSFERS

PART 1

TRANSFER SCHEMES

Power to make a transfer scheme

- 1 (1) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person—
 - (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#), or
 - (b) for the purpose of enabling the ISOP to carry out any of its functions.
- (2) The Secretary of State may, during the period of 7 years beginning with the day on which this Act is passed, make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person in connection with the operation or management of—
 - (a) a document maintained in accordance with the conditions of a relevant licence, or
 - (b) an agreement that gives effect to a document so maintained.
- (3) In this Schedule
 - (a) “transfer scheme” means a scheme under either or both of [sub-paragraphs \(1\) and \(2\)](#);
 - (b) “transferor”, in relation to a transfer scheme, means a person from whom property, rights or liabilities are or are to be transferred under the scheme;
 - (c) “transferee”, in relation to a transfer scheme, means a person to whom property, rights or liabilities are or are to be transferred under the scheme.
- (4) In [this Part](#) of this Schedule—
 - (a) “designated”, in relation to a transfer scheme, means specified in or determined in accordance with the scheme;
 - (b) “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#));
 - (c) references to property are to property situated in the United Kingdom or elsewhere;
 - (d) references to the transfer of property include the grant of a lease;
 - (e) references to rights and liabilities—
 - (i) are references to rights and liabilities of any kind, arising (in any way or at any time) under the law of a part of Great Britain or of a place outside Great Britain;

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- (ii) include rights and liabilities arising under or by virtue of an enactment.

Commencement Information

I1 Sch. 9 para. 1 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Consultation

- 2 (1) Before making a transfer scheme, the Secretary of State must consult—
- (a) the transferor (or, if there is more than one transferor, the transferors), and
 - (b) such other persons as the Secretary of State considers appropriate.
- (2) [Sub-paragraph \(1\)](#) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

Commencement Information

I2 Sch. 9 para. 2 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Transfer of property, rights and liabilities

- 3 (1) The transfer of designated property, rights and liabilities under a transfer scheme takes effect on the date (or dates) specified in or determined in accordance with the scheme.
- (2) [Sub-paragraph \(1\)](#) has effect notwithstanding any provision (whether under an enactment or agreement or otherwise) that would otherwise prevent or restrict the transfer.
- (3) The things that may be transferred under a transfer scheme include—
- (a) rights, powers, duties and liabilities under or in connection with a contract of employment (see paragraph 4);
 - (b) property, rights and liabilities that could not otherwise be transferred;
 - (c) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (d) criminal liabilities.

Commencement Information

I3 Sch. 9 para. 3 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

- 4 (1) This paragraph applies where, under a transfer scheme, an employee to whom the scheme applies becomes an employee of a transferee.
- (2) The transfer scheme may apply to—
- (a) all persons who are employees of a transferor,
 - (b) such descriptions of a transferor’s employees as the scheme may specify, or
 - (c) such employees of a transferor as the scheme may specify.
- (3) The transfer scheme may include provision—

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- (a) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply to any extent in relation to the transfer);
 - (b) about the pension entitlements of the employee enjoyed immediately before the transfer.
- (4) The transfer scheme must contain provision enabling an employee to whom the scheme applies to object to the transfer before the relevant time, including provision as to how such an objection is to be made and as to the consequences of it.
- (5) The transfer scheme may provide that a person who is assigned to work for a transferor (whether on secondment or otherwise and whether or not on a full-time basis), but who does not have a contract of employment with the transferor, is to be treated for the purposes of any provision of the scheme as an employee of the transferor.
- (6) The transfer scheme may provide that a collective agreement that, immediately before the relevant time, had effect in relation to an employee's employment with a transferor is to have effect on and after the relevant time in relation to the employee's employment with a transferee.
- (7) In this paragraph—
- “collective agreement” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178(1) of that Act);
 - “employee” has the same meaning as in the TUPE regulations (see regulation 2(1) of the regulations);
 - “the relevant time” means the time at which the transfer of the person's employment takes effect in accordance with the transfer scheme.

Commencement Information

I4 Sch. 9 para. 4 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

- 5
- (1) A transfer scheme may make provision requiring a transferor to provide such co-operation to a transferee as the transferee may reasonably require in connection with the implementation of the scheme.
 - (2) The co-operation that may be required by virtue of sub-paragraph (1) includes, in particular, co-operation in relation to—
 - (a) the provision of information;
 - (b) consultation with representatives of employees transferred by the scheme.

Commencement Information

I5 Sch. 9 para. 5 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

- 6
- (1) A transfer scheme may make supplementary, incidental, transitional or consequential provision and may in particular—
 - (a) create rights, or impose liabilities, in relation to property, rights or liabilities transferred;
 - (b) make provision about the continuing effect of things done by a transferor in respect of anything transferred;

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- (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to, a transferor in respect of anything transferred;
 - (d) make provision for references to a transferor in any instrument or other document in respect of anything transferred to be treated as references to the transferee;
 - (e) prevent a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer;
 - (f) dispense with any formality in relation to the transfer of anything by the scheme;
 - (g) make provision for the shared ownership or use of property;
 - (h) require a transferor, an associate of a transferor, or a transferee, to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(d) does not apply to references in—
- (a) primary legislation,
 - (b) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
 - (c) an instrument made under an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation.
- (3) Any requirement imposed on a person by a transfer scheme is enforceable by the Secretary of State 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, or
 - (c) for any other appropriate remedy or relief.
- (4) A certificate issued by the Secretary of State to the effect that any property, interest, right or liability transferred in accordance with a transfer scheme to a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.
- (5) In [this paragraph](#)—
- “associate” has the meaning given by section 1152 of the Companies Act 2006;
 - “primary legislation” means—
 - (a) an Act,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation.

Commencement Information

I6 Sch. 9 para. 6 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

- 7 A transfer scheme may—
- (a) make different provision for different purposes;

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- (b) make provision subject to exceptions.

Commencement Information

I7 Sch. 9 para. 7 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Commencement Information

I3 Sch. 9 para. 3 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

I4 Sch. 9 para. 4 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

I5 Sch. 9 para. 5 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

I6 Sch. 9 para. 6 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

I7 Sch. 9 para. 7 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Compensation

- 8 (1) A transfer scheme may provide for a transferor to be entitled to compensation from the Secretary of State, in accordance with provision made by or under the scheme, to the extent that the scheme makes provision—
- (a) in preparation for or in connection with the first designation of a person under [section 162\(1\)](#), or
 - (b) for the purpose of facilitating the carrying on by the ISOP of any of its functions.
- (2) Where a transferor is entitled to compensation by virtue of [sub-paragraph \(1\)](#), the amount of compensation is to be the amount—
- (a) agreed by the Secretary of State and the transferor, or
 - (b) in the absence of such agreement, determined by an independent valuer.
- (3) For the purposes of [sub-paragraph \(2\)](#) an independent valuer must be appointed—
- (a) by the Secretary of State and the transferor, or
 - (b) in the absence of such agreement, by the Secretary of State on behalf of both the Secretary of State and the transferor.
- (4) The Secretary of State may by regulations make provision—
- (a) for determining when there is an absence of agreement for the purposes of [sub-paragraph \(2\)\(b\)](#) or [\(3\)\(b\)](#);
 - (b) about the procedure to be followed by an independent valuer in making a determination for the purposes of [sub-paragraph \(2\)\(b\)](#) (“a compensation determination”);
 - (c) specifying matters to which an independent valuer must have regard, or assumptions that an independent valuer must apply, in making a compensation determination;
 - (d) for an independent valuer to require the Secretary of State or the transferor to provide such information to the independent valuer as the independent valuer reasonably requires for the purposes of making a compensation determination;
 - (e) for an independent valuer’s determination to be binding on the Secretary of State and the transferor for the period specified in or determined under the regulations;

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- (f) about remuneration and expenses of an independent valuer;
- (g) about enforcement of requirements imposed by the regulations.

(5) Regulations under sub-paragraph (4) may confer a discretion on a person.

Commencement Information

18 Sch. 9 para. 8 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Taxation

- 9 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred, acquired or disposed of under a transfer scheme, or
 - (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme.
- (2) The provision that may be made under [sub-paragraph \(1\)\(a\)](#) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
 - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
 - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision that may be made under [sub-paragraph \(1\)\(b\)](#) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;
 - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
 - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this paragraph—
- “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax, stamp duty land tax or value added tax;
 - “tax provision” means any provision—
 - (a) about a relevant tax, and
 - (b) made by an enactment.

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Commencement Information

I9 Sch. 9 para. 9 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Power to amend transfer scheme

- 10 (1) The Secretary of State may amend a transfer scheme if the Secretary of State considers that the amendment is appropriate—
- (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#),
 - (b) for the purpose of enabling the ISOP to carry out any of its functions, or
 - (c) for the purpose of enabling a transferor to carry out any of its functions.
- (2) The power under [sub-paragraph \(1\)](#) is not exercisable in relation to a transfer scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect.
- (3) Paragraphs [2](#) to [7](#) apply in relation to the amendment of a transfer scheme as they apply in relation to a transfer scheme.
- (4) A transfer scheme may provide for a transferor or transferee under the scheme to be entitled to compensation in consequence of the amendment of the scheme.
- (5) Paragraph [8\(2\)](#) to [\(5\)](#) applies (with any necessary modifications) in relation to an entitlement to compensation under [sub-paragraph \(4\)](#) as it applies in relation to an entitlement to compensation under [paragraph 8\(1\)](#).

Commencement Information

I10 Sch. 9 para. 10 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

National Security and Investment Act 2021

- 11 The making of a transfer scheme is not a trigger event for the purposes of the National Security and Investment Act 2021.

Commencement Information

I11 Sch. 9 para. 11 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

PART 2

OTHER PROVISION ABOUT TRANSFERS AND DESIGNATION

Provision of information or assistance

- 12 (1) The Secretary of State may direct a person within [sub-paragraph \(2\)](#) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require—

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- (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#), or
 - (b) in connection with the making of a transfer scheme.
- (2) A person is within this sub-paragraph if—
- (a) property, rights or liabilities are likely to be transferred from or to the person by a transfer scheme, or
 - (b) the person is a body corporate that is likely to be transferred under a transfer scheme.
- (3) The Secretary of State may direct a person (other than a person within sub-paragraph (2)) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require in preparation for or in connection with the designation of a person under [section 162\(1\)](#).
- (4) A direction under [sub-paragraph \(1\)](#) or (3) must—
- (a) be in writing, and
 - (b) specify the sub-paragraph under which it is given.
- (5) The power to give a direction under [sub-paragraph \(3\)](#) ceases to be exercisable—
- (a) at the end of the period of 3 years beginning with the time from which the first designation under [section 162\(1\)](#) has effect, or
 - (b) if at any time before the end of that period a transfer scheme is made under [paragraph 1\(1\)](#), at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect.
- (6) A person to whom a direction is given under [sub-paragraph \(1\)](#) or (3) must, so far as reasonably practicable, provide the Secretary of State with the specified information or assistance—
- (a) within the specified period, and
 - (b) in the specified form and manner.
- (7) A direction under [sub-paragraph \(1\)](#) or (3) is enforceable by the Secretary of State 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, or
 - (c) for any other appropriate remedy or relief.
- (8) The Secretary of State—
- (a) must reimburse a person in respect of costs reasonably incurred by the person in complying with a direction under [sub-paragraph \(1\)](#) or (3);
 - (b) may reimburse a person in respect of costs reasonably incurred by the person in complying with a request (whether made before or after the day on which this Act is passed) to provide the Secretary of State with information reasonably required by the Secretary of State for a purpose mentioned in [sub-paragraph \(1\)\(a\)](#) or (b).
- (9) In this paragraph—
- “assistance” includes assistance provided in a country or territory other than the United Kingdom;
 - “information” includes documents;

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“specified” means specified in the direction.

Commencement Information

I12 Sch. 9 para. 12 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Co-operation

- 13 (1) A person within [sub-paragraph \(2\)](#) must co-operate with, and so far as practicable must not take any step that may reasonably be expected to impede, the Secretary of State in relation to the doing of anything by the Secretary of State—
- (a) in preparation for or in connection with the first designation of a person under [section 162\(1\)](#), or
 - (b) in connection with the making of a transfer scheme.
- (2) The persons within this sub-paragraph are—
- (a) National Grid plc and its associates (within the meaning of section 1152 of the Companies Act 2006);
 - (b) any person who, at any time during the period mentioned in sub-paragraph (3), has acquired property, rights or liabilities from a person within [paragraph \(a\)](#) (whether or not as a result of a transfer scheme under [paragraph 1](#)).
- (3) The period mentioned in sub-paragraph (2)(b) is the period beginning on 20 July 2021 and ending with the first designation of a person under [section 162\(1\)](#).

Commencement Information

I13 Sch. 9 para. 13 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

Reimbursement and compensation: further provision

- 14 (1) The Secretary of State may reimburse a person in respect of expenditure reasonably incurred by the person—
- (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#), or
 - (b) in connection with the making of a transfer scheme.
- (2) The Secretary of State may make regulations providing for the payment of compensation by the Secretary of State to a person (other than the transferor in relation to a transfer scheme) who has suffered loss or damage in consequence of anything done by the Secretary of State in preparation for or in connection with the designation of a person under [section 162\(1\)](#).

Commencement Information

I14 Sch. 9 para. 14 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

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