

SCHEDULES

SCHEDULE 8

Section 97.

TRANSFERS BY TRANSFER SCHEME

Allocation of property, rights and liabilities

- 1 (1) The provisions of this paragraph and paragraph 2 below shall have effect where a transfer to which this Schedule applies is a transfer of all (or of all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or liabilities under a contract of employment.
- (2) Any property, right or liability comprised partly in the part of the transferor's undertaking which is transferred to the transferee and partly in the part of that undertaking which is retained by the transferor shall, where the nature of the property, right or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided—
- (a) any rent payable under a lease in respect of that estate or interest, and
 - (b) any rent charged on that estate or interest,
- shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (3) Sub-paragraph (2) above shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rents charged on an estate or interest in land.
- (4) Any property, right or liability comprised as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to—
- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date the transferor or the transferee appears likely to make use of the land to the greater extent,
 - (b) in the case of any other property or any right or liability, whether on the transfer date the transferor or the transferee appears likely to make use of the property, or as the case may be to be affected by the right or liability, to the greater extent,
- subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.
- 2 (1) It shall be the duty of the transferor and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property,

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rights and liabilities transferred to the transferee or retained by the transferor and as will—

- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
- (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee.

(2) Any such agreement shall provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
- (b) for the granting of indemnities in connection with the severance of leases and other matters; and
- (c) for responsibility for registration of any matter in any statutory register.

(3) If the transferor or the transferee represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (1) above that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining that matter and may include in the direction any provision which might have been included in an agreement under sub-paragraph (1) above; and any property, rights or liabilities required by the direction to be transferred to the transferee shall accordingly be regarded as having been transferred to, and vested in, the transferee by virtue of the scheme.

Variation of transfers by agreement

- 3 (1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer by virtue of a transfer scheme made otherwise than under section 86 of this Act.
- (2) At any time before the end of the period of twelve months beginning with the transfer date, the transferor and the transferee of the specified part may, with the approval of the Secretary of State, agree in writing that—
- (a) as from such date as may be specified in or determined under the agreement, and
 - (b) in such circumstances (if any) as may be so specified,
- there shall be transferred from the transferee to, and vested in, the transferor any property, rights and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.
- (3) Subject to sub-paragraphs (4) and (5) below, in the case of an agreement under sub-paragraph (2) above, the property, rights and liabilities in question shall be transferred and vest in accordance with the agreement.
- (4) Any transfer effected in pursuance of an agreement under sub-paragraph (2) above shall have effect subject to the provisions of any enactment which provides for such transactions to be registered in any statutory register.

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- (5) The following provisions of this Schedule shall have effect as if—
- (a) any reference to a transfer to which this Schedule applies included a reference to a transfer effected in pursuance of an agreement under subparagraph (2) above;
 - (b) any reference to a transaction effected in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above included a reference to such an agreement; and
 - (c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement.

Right to production of documents of title

- 4 (1) This paragraph applies where, on any transfer to which this Schedule applies, the transferor is entitled to retain possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee.
- (2) Where the land or other property is situated in England and Wales—
- (a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and
 - (b) section 64 of the Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.
- (3) Where the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 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.
- (4) Where the land or other property is situated in Northern Ireland—
- (a) the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies of it; and
 - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the Law of Property Act 1925) shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

Perfection of vesting of foreign property, rights and liabilities

- 5 (1) This paragraph applies in any case where a transfer scheme provides for the transfer of any foreign property, rights or liabilities.
- (2) It shall be the duty of the transferor and the transferee to take, as and when the transferee considers appropriate, all such steps as may be requisite to secure that the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law.
- (3) Until the vesting in the transferee by virtue of the transfer scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the transferor to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.

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- (4) Nothing in sub-paragraphs (2) and (3) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the transferee by virtue of a transfer scheme of any foreign property, right or liability.
- (5) The transferor shall have all such powers as may be requisite for the performance of his duty under this paragraph, but it shall be the duty of the transferee to act on behalf of the transferor (so far as possible) in performing the duty imposed on the transferor by this paragraph.
- (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 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) Duties imposed on the transferor or the transferee by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the transferor and the transferee.
- (8) Any expenses incurred by the transferor under this paragraph shall be met by the transferee.

Proof of title by certificate

- 6 (1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor and the transferee 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, or
 - (c) any right or liability so specified,
 is property, or (as the case may be) an interest, right or liability which was intended to be, and was vested by virtue of the scheme in such one of them as may be so specified (and, if it is the transferee who is so specified, that the property, interest, right or liability has not been transferred back to the transferor by virtue of an agreement under paragraph 3(2) above) shall be conclusive evidence for all purposes of that fact.
- (2) If on the expiration of one month after a request from either the transferor or the transferee for the preparation of such a joint certificate 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.
- (3) This paragraph is without prejudice to paragraph 14(6) and (7) below.

Restrictions on dealing with certain land

- 7 (1) If the Secretary of State is satisfied on the representation of the transferor or the transferee—
 - (a) that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by the transferor and by the transferee, and
 - (b) that the circumstances are such that this paragraph should have effect,

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the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction.

- (2) While the direction mentioned in sub-paragraph (1) above remains in force—
- (a) neither the transferor nor the transferee shall dispose of any interest to which they may respectively be entitled in any of the specified land, except with the consent of the Secretary of State;
 - (b) if, in connection with any proposal to dispose of any interest of either the transferor or the transferee in any of the specified land, it appears to the Secretary of State to be necessary or expedient for the protection of either of them, he may—
 - (i) require either the transferor or the transferee to dispose of any interest to which he may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
 - (ii) require either the transferor or the transferee to acquire from the other any interest in any of the specified land to which that other is entitled; or
 - (iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose.
- (3) A person other than the transferor and the transferee dealing with, or with a person claiming under, either the transferor or the transferee shall not be concerned—
- (a) to see or enquire whether this paragraph applies, or has applied, in relation to any land to which the dealing relates; or
 - (b) as to whether the provisions of this paragraph have been complied with in connection with that, or any other, dealing with that land;

and no transaction between a person other than the transferor or the transferee on the one hand, and the transferor, the transferee or a person claiming under either of them on the other, shall be invalid by reason of any failure to comply with those provisions.

Construction of agreements, statutory provisions and documents

- 8 (1) This paragraph applies where, in the case of any transfer to which this Schedule applies, any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities under the agreement could be assigned by the transferor.
- (2) So far as relating to property, rights or liabilities transferred to the transferee, the agreement shall have effect on and after the transfer date as if—
- (a) the transferee had been the party to it;
 - (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
 - (c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such a person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the first-mentioned person;

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- (d) any reference in general terms (however worded) to persons employed by, persons engaged in the business of, or agents of, the transferor were, as respects anything to be done on or after the transfer date, a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.
- 9 (1) Except as otherwise provided in any provision of this Act (whether expressly or by necessary implication), paragraph 8 above shall, so far as applicable, apply in relation to—
- (a) any statutory provision,
 - (b) any provision of an agreement to which the transferor was not a party, and
 - (c) any provision of a document other than an agreement,
- if and so far as the provision in question relates to any of the transferred property, rights and liabilities, as it applies in relation to an agreement to which the transferor was a party.
- (2) In relation to any such statutory or other provision as is mentioned in sub-paragraph (1) above, references in sub-paragraph (2)(b), (c) and (d) of paragraph 8 above to the transferor and to any persons employed by, persons engaged in the business of, or agents of, the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.
- 10 On and after the transfer date for any transfer to which this Schedule applies, any statutory provision to which paragraph 2(3) of Schedule 6 to the Transport Act 1962 applies if and so far as the provision in question relates to any of the transferred property, rights and liabilities, shall have effect as if—
- (a) any of the references modified by paragraph (a) of the said paragraph 2(3) were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint; and
 - (b) any of the references modified by paragraph (b) of the said paragraph 2(3) were, as respects a period beginning with the transfer date, a reference to so much of the undertaking of the transferee as corresponds as mentioned in the said paragraph (b).
- 11 (1) The transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability vested in the transferee by virtue of the scheme as he would have had if that right or liability had at all times been a right or liability of the transferee.
- (2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate—
- (a) to any property, right or liability vested in the transferee by virtue of the scheme, or
 - (b) to any agreement or enactment relating to any such property, right or liability,
- shall be continued by or against the transferee to the exclusion of the transferor.
- (3) This paragraph is without prejudice to the generality of the provisions of paragraphs 8 to 10 above.

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- 12 If, in the case of any transfer to which this Schedule applies, the effect of any agreement (and, in particular, any agreement under the Railway Road Transport Acts of 1928 mentioned in paragraph 1 of Part II of Schedule 2 to the Transport Act 1962)—
- (a) which was executed before the passing of this Act, and
 - (b) to which the transferee is by virtue of this Act a party,
- depends on whether the transferee has power to carry on any activity, it shall be assumed for the purposes of the agreement that any activity which requires the consent of the Secretary of State under the Transport Act 1962 or the Transport Act 1968 has been authorised by such a consent.
- 13 (1) References in paragraphs 8 to 12 above to agreements to which the transferor was a party and to statutory provisions include, in particular, references to agreements to which the transferor became a party by virtue of the Transport Act 1962 and statutory provisions which applied to the transferor by virtue of that Act.
- (2) The provisions of paragraphs 8 to 12 above shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

Third parties affected by vesting provisions

- 14 (1) Without prejudice to the provisions of paragraphs 8 to 13 above, any transaction effected between the transferor and the transferee in pursuance of paragraph 2(1) above or of a direction under paragraph 2(3) above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- (2) It shall be the duty of the transferor and the transferee, if they effect any transaction in pursuance of paragraph 2(1) above or a direction under paragraph 2(3) above, to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee; and if, within 28 days of being notified, such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him, the Secretary of State may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.
- (3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the transferor and the transferee which are enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee, and
 - (b) the value of any property or interest of that person is thereby diminished,
- such compensation as may be just shall be paid to that person by the transferor, the transferee or both.
- (4) If it appears to the transferor that a person is or may be entitled to compensation under sub-paragraph (3) above, he shall—
- (a) notify that person that he is or may be so entitled, and
 - (b) invite him to make such representations as he wishes to the transferor not later than fourteen days after the date of issue of the document containing the notification required by paragraph (a) above,

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or, if the transferor is not aware of the name and address of the person concerned, shall publish, in such manner as he considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that he is or may be entitled to compensation to make such representations to the transferor within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

- (5) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph (3) above, or as to the person to or by whom it shall be paid, shall be referred to and determined by—
- (a) an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors, or
 - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session, or
 - (c) where the proceedings are to be held in Northern Ireland, an arbitrator appointed by the Lord Chancellor.

- (6) Where, in the case of a transfer to which this Schedule applies, the transferor or the transferee purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or any other property transferred—
- (a) which before the transfer date belonged to the transferor, or
 - (b) which is an interest in property which before that date belonged to the transferor,

the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interests in the property conveyed or transferred.

- (7) Sub-paragraph (6) above applies in relation to the grant of any lease of, or any other estate or interest in, or right over any such land or other property as is there mentioned as it applies in relation to a transfer of any such land or other property; and references in that sub-paragraph to a conveyance or transfer shall be construed accordingly.
- (8) If, in the case of any transfer to which this Schedule applies, it appears to the court at any stage in any court proceedings to which the transferor or the transferee and a person other than the transferor or the transferee are parties that the issues in the proceedings—
- (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or
 - (b) raise a question of construction on the relevant provisions of this Act which would not arise if the transferor and the transferee constituted a single person,
- the court may, if it thinks fit on the application of a party to the proceedings other than the transferor and the transferee, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person, and any judgment or order given by the court shall bind both the transferor and the transferee accordingly.

- (9) In the case of any transfer to which this Schedule applies, it shall be the duty of the transferor and the transferee to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (6), (7) or (8) above, and if either the transferor or the transferee claims that he has been so prejudiced and that the other

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of them ought to indemnify or make a repayment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by him.

Interpretation

- 15 In this Schedule “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.