

## SCHEDULES

### SCHEDULE 31

Section 46

#### TRANSFER SCHEMES: FURTHER PROVISION

##### *Property, rights and liabilities*

- 1 (1) The property, rights and liabilities that may be the subject of a transfer scheme include in particular—
  - (a) rights and liabilities relating to contracts of employment;
  - (b) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
  - (c) property acquired after the making of the scheme and rights and liabilities arising after the making of the scheme;
  - (d) rights and liabilities under an enactment.
- (2) A transfer scheme may—
  - (a) create rights or interests in relation to property for whose transfer the scheme provides or property retained by the transferor;
  - (b) create rights and liabilities as between the transferor and a transferee or as between different transferees.
- (3) A transfer scheme may contain provision about enforcement, by or against any one or more of the transferor and the transferee or transferees, of a right or liability for whose transfer or creation the scheme provides.
- (4) A transfer scheme may define the property, rights and liabilities to be transferred or property to be retained by the transferor—
  - (a) by specifying it or them;
  - (b) by describing it or them.
- (5) A description of property, rights or liabilities may be framed in particular—
  - (a) by reference to the transferor's undertaking;
  - (b) by reference to a specified part of that undertaking.
- 2 The power under section 46 to make a scheme for the transfer of any property from one person (A) to another (B) may be exercised instead so as to make a scheme for the creation by A in favour of B of an interest in or right in relation to the property.

##### *Transfer of employees and continuity of employment*

- 3 (1) This paragraph applies where rights, powers, duties and liabilities relating to a person's contract of employment are transferred in accordance with a transfer scheme.
- (2) The transfer does not break the continuity of the person's employment, and accordingly—

- (a) the person is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (redundancy) as having been dismissed by virtue of the transfer, and
  - (b) the person's period of employment with the transferor counts, for the purposes of that Act, as a period of employment with the transferee.
- 4 (1) This paragraph applies where—
  - (a) a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a person's contract of employment, but
  - (b) before the transfer takes effect, the person informs the transferor or transferee that the person objects to the transfer.
- (2) Those rights, powers, duties and liabilities are not transferred to the transferee.
- (3) The person's contract of employment is terminated immediately before the day on which the transfer would have occurred.
- (4) The person is not, for any purpose, to be regarded as having been dismissed.
- (5) Nothing in this paragraph affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in his or her working conditions.
- 5 (1) If a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a person's contract of employment, it may include provision with respect to the person's eligibility to become a member of a pension scheme by virtue of employment with the transferee.
- (2) The transfer scheme may include provision with respect to rights of, or rights or liabilities in respect of, the person under—
  - (a) a pension scheme of which the person may become a member by virtue of employment with the transferee, or
  - (b) a pension scheme of which the person is a member by virtue of employment immediately before the transfer.
- 6 Where a person holds employment in the civil service of the State on terms which do not constitute a contract of employment—
  - (a) the person is to be treated for the purposes of this Schedule as employed under a contract of employment,
  - (b) the terms of the employment in the civil service of the State are to be treated for those purposes as the terms of that contract, and
  - (c) the reference in paragraph 4 to dismissal is to be read as a reference to termination of the employment in the civil service of the State.

*Provision for contraventions etc to be treated as not occurring*

- 7 (1) A transfer scheme may provide for a transfer to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be as a result of a provision which has effect (whether under an enactment or agreement or otherwise) in relation to—
  - (a) the terms on which the transferor is entitled to the property or right for whose transfer the scheme provides, or
  - (b) the terms on which the transferor is subject to the liability for whose transfer the scheme provides.

- (2) A transfer scheme may provide for the creation of an interest in or right in relation to property to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be as a result of a provision which has effect (whether under an enactment or agreement or otherwise) in relation to—
- (a) the terms on which the transferor is entitled to the property, or
  - (b) the terms on which a subsidiary of the transferor is entitled or subject to anything immediately before the creation of the interest or right takes effect.
- 8 (1) This paragraph applies where a transfer scheme provides for the transfer of shares in a subsidiary of the transferor.
- (2) The scheme may provide for the transfer to take effect as if there were no contravention or liability, or interference with any right or interest, that there would otherwise be as a result of a provision which has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

*Power to modify interests, rights and liabilities of third parties*

- 9 (1) A transfer scheme may modify interests, rights or liabilities of third parties in relation to anything to which the scheme relates.
- (2) In sub-paragraph (1), “third party”, in relation to a scheme, means a person other than the transferor or a transferee.
- 10 (1) Where a person would (apart from this paragraph) have a qualifying entitlement in consequence of—
- (a) property, rights or liabilities having been, or being likely to be, transferred under a transfer scheme,
  - (b) interests, rights or liabilities having been, or being likely to be, created under a transfer scheme, or
  - (c) anything else having been done, or being likely to be done, by or under a transfer scheme,
- that entitlement is enforceable, in consequence of the circumstances mentioned in paragraph (a), (b) or (c), only to the extent specified in the scheme.
- (2) In this paragraph, “qualifying entitlement”, in relation to a transfer scheme, means an entitlement—
- (a) to terminate, modify, acquire or claim an interest or right to which the transferor, or a subsidiary of the transferor, is entitled or subject, or
  - (b) to treat an interest or right to which the transferor, or a subsidiary of the transferor, is entitled or subject as modified or terminated.

*Obligations to enter into agreements or execute instruments*

- 11 (1) A transfer scheme may contain provision for imposing, on the transferor or a transferee, obligations—
- (a) to enter into agreements with persons specified in the scheme, or
  - (b) to execute instruments in favour of persons specified in the scheme.
- (2) Any person may be specified by virtue of sub-paragraph (1)(a) or (b) (including the transferor or a transferee).

- (3) Where a scheme contains provision for imposing an obligation of the kind mentioned in sub-paragraph (1)—
  - (a) the scheme must specify or describe the agreement or instrument to which the obligation relates, and
  - (b) the obligation may be enforced in any authorised way by the person—
    - (i) with whom the agreement is to be entered into, or
    - (ii) in favour of whom the instrument is to be executed.
- (4) In sub-paragraph (3)(b), “enforced in any authorised way” means enforced—
  - (a) in civil proceedings for an injunction,
  - (b) in civil proceedings for any other appropriate remedy or relief, or
  - (c) in any other way authorised by the scheme.
- (5) The scheme may provide that sub-paragraph (4)(a) or (b)—
  - (a) does not apply in relation to the obligation, or
  - (b) applies in relation to the obligation subject to restrictions imposed by the scheme.

#### *Supplementary provisions of schemes*

- 12 (1) A transfer scheme may include consequential, supplementary, incidental, and transitional provision.
- (2) That includes, in particular, provision—
  - (a) saving the effect of things done by or in relation to the transferor,
  - (b) for a transferee to be treated as the same person in law as the transferor,
  - (c) for things done by or in relation to the transferor to be treated as done by or in relation to a transferee,
  - (d) for things (including legal proceedings) being done by or in relation to the transferor to be continued by or in relation to a transferee, and
  - (e) for references in a document (other than in an enactment) to the transferor, or to an employee or office-holder of the transferor, to have effect with modifications specified in the scheme.

#### *Effect of scheme*

- 13 (1) At the time appointed for the purpose by a transfer scheme, property, rights and liabilities for whose transfer the scheme provides are transferred in accordance with the scheme.
- (2) A scheme may appoint different times for the transfer of different things.
- (3) References in this paragraph to the transfer of property, rights and liabilities include references to the creation of interests, rights or liabilities under paragraph 1 or 2 (and “transferred”, in relation to property, rights or liabilities, is to be read accordingly).

#### *Modification of scheme by agreement*

- 14 (1) Where the transferor, and the transferee or transferees, under a transfer scheme so agree, the scheme is to be treated for all purposes as having been made with such modifications as may be agreed.

- (2) Sub-paragraph (1) does not apply in the case of an agreement relating to rights and liabilities under a contract of employment unless the employee is a party to the agreement.
- (3) Sub-paragraph (1) does not apply in the case of an agreement that adversely affects the property or rights of a person other than the transferor or a transferee unless that person is a party to the agreement.
- (4) An agreement under sub-paragraph (1) may make—
  - (a) any provision that could have been contained in the scheme, and
  - (b) consequential, supplementary, incidental or transitional provision in connection with giving effect to any such provision.
- (5) Provision under sub-paragraph (4) may be made so as to have effect from when the scheme was made (or any later time).

*Provision of information to person making scheme*

- 15 (1) Where the Secretary of State proposes to make a transfer scheme, the Secretary of State may direct—
- (a) a proposed transferor,
  - (b) a proposed transferee, or
  - (c) High Speed Two (HS2) Limited,
- to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the scheme to be made.
- (2) A direction under sub-paragraph (1) must specify the period (of not less than 28 days beginning with the day when the direction is given) within which the information is to be provided.
  - (3) If a person fails to comply with the direction, the Secretary of State may give the person a notice requiring the person—
    - (a) to produce to the Secretary of State, at a time and place specified in the notice, any documents which are specified or described in the notice and are in the person's custody or control, or
    - (b) to provide to the Secretary of State, at a time and place and in the form and manner specified in the notice, such information as may be specified or described in the notice.
  - (4) No person may be required under sub-paragraph (3)—
    - (a) to produce a document which the person could not be compelled to produce in civil proceedings in the High Court, or
    - (b) to provide information which the person could not be compelled to give in evidence in such proceedings.
  - (5) If a person fails to comply with a notice under sub-paragraph (3), the High Court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
  - (6) Any order under sub-paragraph (5) may include provision requiring all the costs and expenses of and incidental to the application to be borne by one or more of—
    - (a) the person in default, and

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

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- (b) any officers of a body corporate or other association who are responsible for its default.

(7) In this paragraph, a reference to producing a document includes a reference to producing a legible and intelligible copy of information recorded otherwise than in legible form.

*Agreements relating to schemes*

- 16 The Secretary of State may by agreement fetter the exercise of his or her discretion relating to his or her powers under this Schedule.

*Power to make provision about tax consequences of schemes*

- 17 (1) The Treasury may by regulations make provision for varying the way in which a relevant tax has effect from time to time in relation to—
- (a) any property, rights or liabilities transferred in accordance with a transfer scheme, or
  - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer of any property, rights or liabilities in accordance with 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 any property, rights or liabilities transferred;
  - (b) any property, rights or liabilities 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, with the consent of the Treasury, to determine, or to specify the method for determining, anything which needs to be determined for the purposes of any tax provision so far as relating to any property, rights or liabilities 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, or in consequence of, the transfer;
  - (b) anything done for the purposes of, or in relation to, or in consequence of, the transfer to have or not to have a specified consequence or to be treated in a specified way;
  - (c) the Secretary of State to be required or permitted, with the consent of the Treasury, to determine, or to specify the method for determining, anything which 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, or in consequence of, the transfer.
- (4) Regulations under this paragraph may make—
- (a) supplementary, incidental or consequential provision;
  - (b) different provision for different purposes.
- (5) In this paragraph—

- (a) “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty land tax or stamp duty reserve tax;
  - (b) “tax provision” means a provision of an enactment about a relevant tax.
- (6) References in this paragraph to the transfer of property, rights or liabilities, in accordance with a transfer scheme include references to—
- (a) the creation of interests, rights or liabilities under paragraph 1, 2 or 11, and
  - (b) the modification of interests, rights or liabilities under paragraph 9,
- (and “transferred”, in relation to property, rights or liabilities, is to be read accordingly).
- (7) Regulations under this paragraph must be made by statutory instrument; and a statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of the House of Commons.

### *Interpretation*

#### 18 (1) In this Schedule—

“enactment”, except in paragraph 17, includes a Scottish enactment (as well as the instruments and provisions specified in the definition in section 68(1));

“Scottish enactment” means an Act of the Scottish Parliament or an instrument made under such an Act (or a provision of such an Act or instrument);

“subsidiary” has the meaning given by section 1159 of the Companies Act 2006;

“transfer scheme” means a scheme under section 46;

“transferee”, in relation to a transfer scheme, means a person who is a transferee in respect of property, rights or liabilities for whose transfer the scheme provides (or the person in whose favour any interest or right is created under paragraph 2);

“transferor”, in relation to a transfer scheme, means the person for the transfer of whose property, rights or liabilities the scheme provides (or the person by whom any interest or right is created under paragraph 2).

- (2) References in this Schedule to a right or entitlement include references to an entitlement to exercise a right (and references to a right’s arising include references to its becoming exercisable).