

## SCHEDULES

### SCHEDULE 1

Sections 2 and 10.

#### PROVISIONS AS TO TRANSFERS OF PROPERTY, RIGHTS AND LIABILITIES

##### *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 property, rights and liabilities comprised in a prescribed 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 be regarded as having been transferred by the scheme to, and by virtue thereof vested in, the transferee accordingly.

*Rights and liabilities under contracts of employment*

- 3 (1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer of all property, rights and liabilities comprised in a prescribed part of the transferor's undertaking and it falls to be determined whether the rights and liabilities transferred include rights and liabilities under a particular contract of employment.
- (2) Rights and liabilities under the contract of employment shall be transferred only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the part of the transferor's undertaking which is transferred.
- (3) The transferor, the transferee or the employee may apply to the Secretary of State to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred, and the Secretary of State's decision on the application shall be final.

*Right to production of documents of title*

- 4 Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to, or to the management of, any land or other property transferred to the transferee, the transferor shall be deemed to have given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery

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of copies thereof; and section 64 of the Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

*Perfection of vesting of certain property or rights*

- 5 Where in the case of any transfer to which this Schedule applies any property, right or liability which falls to be transferred to the transferee cannot be properly vested in the transferee by virtue of the scheme because transfers thereof are governed otherwise than by the law of a part of the United Kingdom, the transferor and the transferee shall take all practicable steps for the purpose of securing that the transfer of the property, right or liability is effective under the relevant foreign law.

*Proof of title by certificate*

- 6 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 any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is by virtue of the scheme for the time being vested in such one of them as may be so specified, shall be conclusive evidence for all purposes of that fact; and if on the expiration of one month after a request from either of them 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.

*Restrictions on dealing with certain land*

- 7 If the Secretary of State is satisfied on the representation of the transferor or the transferee 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 that the circumstances are such that this paragraph should have effect, the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction, and while that direction 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 it 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 ;

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but 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 to see or enquire whether this paragraph applies or has applied in relation to any land to which the dealing relates or 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 persons other than the transferor and the transferee shall be invalid by reason of any failure to comply with those provisions.

*Construction of agreements, licences, 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 or licence 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 thereunder could be assigned by the transferor.
- (2) So far as relating to property, rights or liabilities transferred to the transferee, the agreement or licence shall have effect on and after the transfer date as if—
- (a) the transferee had been the party thereto ; ,
  - (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 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 ;
  - (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 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 any statutory provision, any provision of an agreement or licence to which the transferor was not a party and any provision of a document other than an agreement or licence, if and so far as the provision in question relates to any of the transferred rights and liabilities, as it applies in relation to an agreement or licence to which the transferor was a party, and, in relation to any such statutory or other provision as aforesaid, references in sub-paragraph (2)(b), (c) and (d) of that paragraph 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 itself being specifically referred to.
- 10 Without prejudice to the generality of the provisions of paragraphs 8 and 9 above, 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

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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, and any legal proceedings or applications to any authority pending on the transfer date by or against the transferor in so far as they relate to any property, right or liability vested in the transferee by virtue of the scheme, or 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.

- 11 The provisions of paragraphs 8 to 10 above shall have effect for the interpretation of agreements, licences, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

*Third parties affected by vesting provisions*

- 12 (1) Without prejudice to the provisions of paragraphs 8 to 11 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 the rights or liabilities of any person other than the transferor and the transferee which were 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 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, and any dispute as to whether and if so how much compensation is so payable, or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor or, where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (4) 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 which before the transfer date belonged to the transferor or 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 thereto and had thereby conveyed or transferred all their interests in the property conveyed or transferred.
- (5) 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 depend on the identification or definition of any of the property, rights

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or liabilities transferred which the transferor and the transferee have not yet effected, or to 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.

- (6) 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 (4) or (5) above, and if either the transferor or the transferee claims that it has been so prejudiced and that the other of them ought to indemnify or make a repayment to it on that account and has unreasonably failed to meet that claim, it may refer the matter to the Secretary of State for determination by him.