



Transport (Scotland) Act 1989

1989 CHAPTER 23

An Act to make provision for the transfer to the private sector of the operations of the Scottish Transport Group, other than its shipping operations; for the transfer of its shipping operations to the Secretary of State; to provide for the dissolution of the Group; and for connected purposes. [21st July 1989]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

BUS OPERATIONS

The disposal programme

1 Transfer of operations of the Group

- (1) The Secretary of State may, after consultation with the Scottish Transport Group (in this Act referred to as “the Group”), formulate a programme providing for the disposal, in preparation for the dissolution of the Group, of (subject to section 7 of this Act) the whole of the Group's undertaking.
- (2) A programme under subsection (1) above may provide for—
 - (a) the disposal of the whole or any part of the undertaking of or of any particular property, rights or liabilities of any of the Group's subsidiaries, the disposal of which appears to the Secretary of State to be appropriate in preparation for the dissolution of the Group; and
 - (b) the arrangements to be made, in preparation for the dissolution of the Group, as regards any matter for which provision appears to the Secretary of State to be appropriate for the purposes of or in connection with the dissolution.

- (3) Without prejudice to the generality of subsection (2)(b) above, the arrangements there mentioned may include provision for the making by the Group or any subsidiary of theirs, to persons employed by them or any such subsidiary who do not, by virtue of any disposal in pursuance of the programme, fall to be treated as employed by any other person, of payments by way of compensation in respect of the loss of their employment.
- (4) In this Act “the disposal programme” means the programme formulated by the Secretary of State under subsection (1) above subject to any modifications under subsection (7) below.
- (5) Without prejudice to subsections (1) and (2) above, the disposal programme shall contain—
- (a) a statement of the general approach which the Secretary of State intends that the Group should adopt in carrying out the disposals for which the programme provides (including the intended time table for implementing the programme); and
 - (b) a description of the measures (if any) which the Secretary of State proposes should be taken for the purpose of preparing for any such disposals by way of reorganisation of the structure or operations of the Group and any of their subsidiaries.
- (6) Without prejudice to the generality of subsection (5)(b) above, the measures there mentioned may include the formation or promotion of new subsidiaries and the reconstruction, amalgamation, dissolution or winding up of any existing subsidiaries.
- (7) The Secretary of State may from time to time, at the request of the Group or on his own initiative, make such modifications in the disposal programme as, after consultation with the Group, he thinks fit.
- (8) The exercise by the Secretary of State of his powers under subsections (1) and (7) above requires the consent of the Treasury.

2 Objectives of disposal

- (1) The main objective of the Secretary of State in preparing the disposal programme shall be to promote sustained and fair competition, both between companies which are Group or former Group companies and between any such companies and other persons engaged in providing services of a like nature to those provided by such companies or in carrying on any activities carried on in connection with the provision of such services.
- (2) The Secretary of State shall have regard in preparing the disposal programme—
- (a) to the desirability of promoting the acquisition by persons employed in any undertaking or part of an undertaking which is to be the subject of a disposal under the programme (whether alone or jointly with other persons) of a controlling interest in the equity share capital of any company operating or proposing to operate that undertaking or part; and
 - (b) to the effect which he estimates the implementation of any part of the programme will have on the net value that may be expected to be secured from all disposals required under the programme, where that value is the excess of the aggregate proceeds arising from all disposals so required over

the aggregate costs incurred in carrying out the programme and taking any other steps required in preparation for the dissolution of the Group.

3 Implementation of the programme

- (1) It shall be the duty of the Group—
 - (a) to implement the disposal programme; and
 - (b) to complete the implementation of the programme not later than such date as may be specified in the programme (which date shall be subject to modification under section 1(7) of this Act).
- (2) The Secretary of State may, having regard to section 2 of this Act, give directions to the Group as to the manner in which they are to implement the disposal programme generally or in any case specified in the directions.
- (3) In implementing the disposal programme and in complying with any directions given to them by the Secretary of State under subsection (2) above, the Group shall have regard to the main objective of the Secretary of State and the other considerations referred to in the said section 2.
- (4) The Group shall have regard, in the conduct of their undertaking and the business of their subsidiaries, to the estimated effect of any intended course of action on the net value that may be expected to be secured from all disposals required in pursuance of the disposal programme, where that value is the excess of the aggregate proceeds arising from all disposals so required over the aggregate costs incurred in carrying out the programme and taking any other steps required in preparation for the dissolution of the Group.

Powers of disposal

4 The Group's powers of disposal

- (1) Without prejudice to any powers conferred on them by or under any other enactment, the Group shall have power to do, in such manner as they think fit, any thing required in pursuance of the disposal programme.
- (2) The Group shall not exercise their powers under subsection (1) above in relation to any disposal required in pursuance of the disposal programme except with the consent of the Secretary of State; and such consent may be given either—
 - (a) generally, in relation to disposals of any description specified in the consent; or
 - (b) in relation to a particular disposal.
- (3) In providing, in exercise of their powers under subsection (1) above, for the disposal of any shares in or other securities of any subsidiary of theirs, the Group may, with the consent of the Secretary of State, provide for employees' share schemes to be established in respect of that subsidiary; and any such scheme may provide for the transfer of shares without consideration.

5 Provisions supplementary to section 4

- (1) For the purpose of facilitating the eventual implementation of any disposal required in pursuance of the disposal programme, the Group may exercise their powers

to form subsidiaries and to transfer property, rights and liabilities to subsidiaries, notwithstanding the provisions of any enactment which may be taken to limit the purposes for which those powers may be exercised.

- (2) The Group may also, for that purpose, make schemes for the transfer of any property, rights or liabilities between the Group and a wholly-owned subsidiary of theirs or between one such subsidiary and another.
- (3) A scheme under subsection (2) above shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve a scheme either without modifications or with such modifications as, after consultation with the Group, he thinks fit.
- (4) On the coming into force of a scheme under subsection (2) above the property, rights and liabilities affected by the scheme shall, subject to section 6 of this Act, be transferred and vest in accordance with the scheme.

Transfer schemes

6 Transfer schemes

- (1) This section applies to any scheme under section 5(2) of this Act (referred to below in this section as a transfer scheme).
- (2) A transfer scheme may define the property, rights and liabilities to be transferred by the scheme—
 - (a) by specifying the property, rights or liabilities in question; or
 - (b) by referring to all the property, rights and liabilities comprised in the whole or any specified part of the transferor's undertaking;
 (or partly in one way and partly in the other) and may contain such supplementary, incidental and consequential provisions as may appear to the Group to be necessary or expedient (including in particular, but without prejudice to the generality of that, provision with respect to the consideration to be provided by the transferee for any transfer under the scheme).
- (3) Subject to the following provisions of this section, Schedule 4 to the 1968 Act (supplementary provisions as to certain transfers of property, rights and liabilities) shall apply to any transfer under section 5(2) of this Act; and that section shall have effect subject to the provisions of that Schedule.
- (4) In the said Schedule 4 as it applies by virtue of subsection (3) above—
 - (a) any reference to a transfer by or a vesting by virtue of that Act shall be read as a reference to a transfer by or a vesting by virtue of the transfer scheme in question; and
 - (b) the reference in paragraph 13(5) to the relevant provisions of that Act shall be read as including a reference to the relevant provisions of this Act.
- (5) The Secretary of State may by order make modifications in the said Schedule 4 for the purposes of its application to transfers under section 5(2) of this Act; and an order made under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PART II

SHIPPING OPERATIONS

7 Transfer of shipping companies

- (1) Part I of this Act shall not apply to that part of the Group's undertaking which comprises the shipping companies.
- (2) On a day appointed for the purposes of this section the securities of the shipping companies, so far as beneficially owned on that day by the Group, shall be transferred to, and by virtue of this Act vest in, the Secretary of State.
- (3) An order appointing a day under subsection (2) above may make such amendments or repeals of any enactment (including an enactment contained in a local or private Act and any order, regulation or other instrument having effect by virtue of an Act) pertaining to the Group as appear to the Secretary of State to be necessary or expedient in consequence of the transfer.
- (4) In this Part of this Act "securities", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company.
- (5) For the purposes of this Part of this Act, the shipping companies are—
Caledonian MacBrayne Limited
David MacBrayne Limited.
- (6) An order appointing a day under subsection (2) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Any dividends or other sums received by the Secretary of State in right of any shares held by him in any of the shipping companies shall be paid into the Consolidated Fund.

8 Accounts to be laid before Parliament

- (1) As soon as practicable after the holding of any general meeting of any of the shipping companies, the Secretary of State shall lay before each House of Parliament a copy of any accounts which, in accordance with any requirement of the Companies Act 1985, are laid before the company at that meeting, and of any documents which are annexed or attached to any such accounts.
- (2) Subsection (1) above shall have effect only as regards the accounts of such a company for any financial year in which the Secretary of State holds securities in the company.

9 Directions as regards shipping companies

- (1) The Secretary of State may, with the approval of the Treasury, give to the Group directions requiring them to do such things as appear to the Secretary of State to be necessary or expedient in preparation for the transfer to the Secretary of State of any securities held by the Group in the shipping companies.
- (2) Without prejudice to any powers conferred on them by any other enactment, the Group shall have power to do, in such manner as they think fit, anything required in pursuance of a direction under subsection (1) above.

10 Guarantees

- (1) The Secretary of State may, with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sum which any of the shipping companies or their subsidiaries borrow from a person other than the Secretary of State.
- (2) Immediately after any guarantee is given under this section the Secretary of State shall lay a statement of the guarantee before each House of Parliament, and, where any sum is issued for fulfilling such a guarantee, the Secretary of State shall, as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before each House of Parliament a statement relating to that sum.
- (3) Any sums required by the Secretary of State for fulfilling any guarantee under this section shall be paid out of money provided by Parliament.
- (4) If any sums are issued in fulfillment of any guarantee given under this section to a company, that company shall make to the Secretary of State, at such times and in such manner as he may, with the consent of the Treasury, from time to time direct, payments of such amounts as he may so direct in or towards repayment of the sums so issued, and payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Secretary of State may so direct.
- (5) Any sums received by the Secretary of State under subsection (4) above shall be paid into the Consolidated Fund.

PART III

GENERAL

Services and pensions

11 Provision of services for related companies

- (1) Subject to subsection (2) below, the Group may provide for any related company any of the services which they have power to provide for any of their subsidiaries.
- (2) The Group shall make proper commercial charges for any services provided under this section.
- (3) In this section and section 12 of this Act “related company” means any company which at any time has been a subsidiary of the Group.

12 Pensions for employees of related companies

- (1) The Secretary of State may make such orders under section 74 of the 1962 Act (power to make provision about pensions in the nationalised transport industry) in relation to related companies as he could make if those companies were subsidiaries of the Group.

- (2) In exercising, with respect to any pension scheme, the powers conferred by this section, the Secretary of State shall take into account any representations made by the persons administering the scheme.
- (3) Except on the application of a related company, no order shall be made by virtue of this section which has the effect of placing the related company or any of its subsidiaries in any worse position; but, for the purposes of this subsection, a related company or a subsidiary shall not be regarded as being placed in a worse position because an order provides that any changes in a pension scheme are not to be effected without the consent of the Secretary of State.
- (4) Any order such as is mentioned in subsection (3) above which is made otherwise than on the application of the related company shall not be invalid because it does not have the effect of securing that the related company and its subsidiaries are not placed in any worse position, but, except in so far as the related company approves the effect of the order, the Secretary of State shall as soon as may be make the necessary amending order.
- (5) Subsections (3) and (4) above have effect only in relation to orders made after such day as may be appointed for the purposes of this section by order made by statutory instrument made by the Secretary of State, and different days may be so appointed in relation to different related companies.
- (6) Where an order (the “first order”) applying to a related company has been made under the said section 74 and at the time when it was made the related company was a subsidiary of the Group, the order shall not apply to the related company when it ceases to be such a subsidiary except where an order made (at any time) by virtue of this section provides for the first order to continue to apply to the related company.
- (7) An order made by virtue of this section may, in particular, authorise the Group or any of its subsidiaries—
 - (a) to transfer liabilities under a pension scheme in relation to some (but not all) of the participants in that scheme to another pension scheme; and
 - (b) to divide or apportion a pension fund held for the purposes of the first-mentioned scheme between that scheme and the other scheme.
- (8) In this section “participant”, in relation to a scheme, means—
 - (a) in relation to a scheme under which benefits are or will be receivable as of right, a person who has pension rights under the scheme (whether he has contributed or not); and
 - (b) in relation to a scheme under which benefits are not or will not be receivable as of right, a person who (whether he is referred to in the scheme as a member, contributor or otherwise) has contributed under the scheme and has pension rights under it.

Finance

13 Financial provisions

- (1) The Secretary of State may from time to time give directions to the Group requiring the Group to make to him, out of the net proceeds of any disposals made in pursuance of the disposal programme, payments of such amount, at such times and by such methods, as may be specified in the directions.

- (2) Sums received under subsection (1) above shall be paid into the Consolidated Fund.
- (3) Any agreement or arrangements entered into by the Group or any subsidiary of theirs in connection with any disposal made in pursuance of the disposal programme may, with the approval of the Secretary of State, include provision—
- (a) for the maintenance to any extent of any concession, benefit or privilege enjoyed by—
 - (i) any person who is or has been employed by the Group (or any subsidiary of theirs); or
 - (ii) a member of such a person’s family; or
 - (b) for the making of any payment or the provision of any other concession, benefit or privilege in compensation for the loss, reduction or limitation of that concession, benefit or privilege;
- and the Group may make payments to any person in pursuance of or for the purpose of securing any such provision.
- (4) Without prejudice to the generality of section 1(2)(b) of this Act, the arrangements there mentioned may include provision for the making by the Group of payments in compensation for any loss, reduction or limitation of any such concession, benefit or privilege as is mentioned in subsection (3) above to the extent that provision in respect of the loss, reduction or limitation is not made by virtue of that subsection.

14 Dissolution of the Group

- (1) When it appears to the Secretary of State—
- (a) that the principal elements of the disposal programme have been implemented; and
 - (b) that the shipping companies have been transferred under section 7 of this Act,
- the Secretary of State may by order made by statutory instrument provide for the dissolution of the Group.
- (2) Any such order may provide for the disposal of any remaining property, rights or liabilities of the Group, and may contain such supplementary, incidental and consequential provisions as may appear to the Secretary of State to be necessary or expedient.
- (3) Without prejudice to the generality of subsection (2) above, any such order may in particular make provision—
- (a) for the preparation by such person or persons as may be specified in the order of a statement or statements of the Group’s accounts for the period from the end of that dealt with in the last annual statement of accounts sent by the Group to the Secretary of State under section 24(3) of the 1962 Act down to the date of the dissolution of the Group;
 - (b) for the auditing of any such statement of accounts;
 - (c) for the making to the Secretary of State by such person or persons as may be specified in the order of a report or reports on the exercise and performance by the Group of their functions during any period not dealt with in the reports made by the Group under section 27(8) of the 1962 Act;
 - (d) making such amendments or repeals of any provision of the 1962 Act or the 1968 Act or of this Act or any other enactment (including an enactment contained in any local or private Act and any order, regulation or other

instrument having effect by virtue of an Act) as appear to the Secretary of State to be required in consequence of the dissolution of the Group.

- (4) The Secretary of State may with the approval of the Treasury—
- (a) pay to any person upon whom duties are imposed by virtue of subsection (3)(a) to (c) above such remuneration, and such allowances in respect of expenses, as the Secretary of State may with the agreement of the Treasury determine; and
 - (b) incur expenditure in doing any other thing that falls to be done in preparation for or in connection with the dissolution of the Group.
- (5) On the dissolution of the Group, any sums received by the Secretary of State in consequence of the dissolution shall be paid into the Consolidated Fund.

Miscellaneous

15 Directions

- (1) It shall be the duty of the Group to give effect to any directions given to them by the Secretary of State under this Act.
- (2) Any direction given by the Secretary of State under any provision of this Act may be varied or revoked by a subsequent direction given under that provision.
- (3) Any direction given by the Secretary of State under this Act shall be in writing.

16 Interpretation

In this Act, unless the context otherwise requires—

- “the 1962 Act” means the Transport Act 1962;
- “the 1968 Act” means the Transport Act 1968;
- “company” means a body corporate;
- “the disposal programme” has the meaning given by section 1(4) of this Act;
- “employees' share scheme” means a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of—
 - (a) the bona fide employees or former employees of the company or of a subsidiary of the company; or
 - (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees;
- “equity share capital” has the meaning given in the Companies Act 1985;
- “the Group” has the meaning given by section 1(1) of this Act;
- “subsidiary” means, in relation to a body corporate, a body corporate which is a subsidiary of the first-mentioned body corporate as defined by section 736 of the Companies Act 1985 (taking references in that section to a company as being references to a body corporate).

17 Expenses

The following are authorised by this section—

- (a) the payment out of money provided by Parliament of any expenditure incurred by the Secretary of State under section 14(4) of this Act;

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

- (b) any increase attributable to this Act in payments out of money so provided under any other enactment.

18 Short title and commencement

- (1) This Act may be cited as the Transport (Scotland) Act 1989.
- (2) This Act, except this section, shall come into force at the end of the period of two months after the day on which it is passed.