



# Transport (Scotland) Act 1989

## 1989 CHAPTER 23

### 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.