SCHEDULES

SCHEDULE 6

TRANSFER SCHEMES

Third parties

19 (1) This paragraph applies if—

(a) an agreement is made by the parties under paragraph 5 or 9 or treated as made under paragraph 6 or 10, or

(b) an instrument is executed by the parties under paragraph 9.

(2) The agreement or instrument is to bind all other persons even if it would (apart from this sub-paragraph) have required the consent or concurrence of any other person.

(3) If as a result of the agreement or instrument the rights or liabilities of a person who is not a party become enforceable as to part against or by one party and as to part against or by another party—

(a) the parties must notify that person of the agreement or instrument;

(b) that person may within the period of 28 days (starting with the day he is notified) apply to the Secretary of State to give a direction to vary the agreement or instrument.

(4) If the Secretary of State is satisfied that the agreement or instrument operated unfairly against that person, the Secretary of State may give a direction to the parties requiring them to vary the agreement or instrument in a way specified in the direction.

20 (1) For the purposes of this paragraph—

(a) a party is a person who is a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph;

(b) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph.

(2) This paragraph applies if—

(a) a transfer scheme is made or transfer schemes are made,

(b) rights or liabilities of a third party are (apart from the scheme or schemes) enforceable against or by a transferor,

(c) in consequence of the scheme or schemes or of anything done under this Schedule the third party's rights or liabilities become enforceable as to different parts against or by different parties, and

(d) the value of any property or interest of the third party is diminished as a result.

(3) Just compensation must be paid to the third party by one or more of these persons—

(a) the parties against or by whom the third party's rights or liabilities become enforceable;

(b) the transferor concerned (if he does not fall within paragraph (a)).

(4) If it appears to the transferor that a person is or may be entitled to compensation the transferor must—

(a) notify the person that he is or may be entitled, and

(b) invite him to make representations to the transferor within the period of 14 days starting with the date the notification is made.

(5) But if the transferor does not know the person's name and address he must instead publish (in a manner he thinks is appropriate) a notice which—

(a) contains information about the property or interest affected, and

(b) invites any person who thinks he is or may be entitled to compensation to make representations to the transferor within the period specified in the notice (which must not be less than 28 days starting with the date of publication of the notice).

(6) A dispute about whether (or how much) compensation is payable under this paragraph, or about who must pay or be paid it, must be referred to and determined by—

(a) an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors (if the proceedings are to be held in England and Wales),

(b) an arbiter appointed by the Chairman of the Royal Institution of Chartered Surveyors in Scotland (if the proceedings are to be held in Scotland), or

(c) an arbitrator appointed by the Lord Chancellor (if the proceedings are to be held in Northern Ireland).

21 (1) For the purposes of this paragraph—

(a) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph;

(b) a transferred item is any property, right, liability, undertaking or part of an undertaking which is the subject of a transfer (or transfers) under the transfer scheme or schemes referred to in this paragraph.

(2) This paragraph applies if a transfer scheme is made (or transfer schemes are made) and there are court proceedings the parties to which are (or include) a third party and either—

(a) the transferor of a transferred item, or

(b) any transferee or transferees of the item.

(3) The third party may apply to the court at any stage in the proceedings on any of these grounds—

(a) that the issues in the proceedings depend on the identification, with regard to the transferred item, of what has been transferred to whom and what (if anything) has been retained and that the identification has not yet been made;

(b) that the issues in the proceedings raise a question of construction on the provisions of this Chapter which would not arise if the transferor of the transferred item and the transferee (or transferees) of it constituted a single person.

(4) If it appears to the court that such a ground is established it may hear and determine the proceedings on the first and second bases set out below.

(5) If the transferor of the transferred item is a party to the proceedings, the first basis is that the transferor represents and is answerable for the transferee (or transferees) of the item.

(6) If there is one transferee of the transferred item and he is a party to the proceedings, the first basis is that the transferee represents and is answerable for the transferor of the item.

(7) If there are two or more transferees of the transferred item and they are parties to the proceedings, the first basis is that the transferees represent and are answerable for the transferor of the item.

(8) If there are two or more transferees of the transferred item and one or more of them (but not both or all of them) are parties to the proceedings, the first basis is that—

(a) the transferee who is a party represents and is answerable for the transferor of the item and for the transferee of it who is not (or the transferees of it who are not) parties, or

(b) the transferees who are parties represent and are answerable for the transferor of the item and for the transferee of it who is not (or the transferees of it who are not) parties.

(9) The second basis is that the transferor of the transferred item and the transferee (or transferees) of it constitute a single person.

(10) If the court determines the proceedings on the first and second bases any judgment or order of the court is to bind both the transferor and the transferee (or transferees) of the transferred item.

22 (1) For the purposes of this paragraph a relevant person is a person who satisfies these conditions—

(a) he is a transferor or transferee under a transfer scheme or transfer schemes, and

(b) he might be prejudiced by paragraph 21 if there were court proceedings in which the scheme or schemes were an issue.

(2) A relevant person must keep each other relevant person informed of any court proceedings in which the scheme or schemes may become an issue.

23 (1) This paragraph applies if a person falling within sub-paragraph (3) (the claimant) claims that—

(a) he has been prejudiced by paragraph 21,

(b) another person or other persons falling within sub-paragraph (3) ought to indemnify him, and

(c) there has been an unreasonable failure by the person (or any of the persons) to indemnify him.

(2) The claimant may refer the matter to the Secretary of State for determination by him; and a determination must be complied with.

(3) A person falls within this sub-paragraph if he is a transferor or a transferee under the scheme or schemes concerned.