

SCHEDULES

SCHEDULE 5

Section 38

SUPPLEMENTARY PROVISIONS ABOUT NUCLEAR TRANSFER SCHEMES

Identification of property to which scheme applies

- 1 A nuclear transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
- (a) by specifying or describing them in particular;
 - (b) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
 - (c) by specifying the manner in which they are to be determined.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a nuclear transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
 - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme and before it comes into force;
 - (c) rights and liabilities arising after it comes into force in respect of matters occurring before it comes into force;
 - (d) property situated anywhere in the United Kingdom or elsewhere;
 - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom; and
 - (f) rights and liabilities under an enactment, Community instrument or subordinate legislation.
- (2) The transfers to which effect may be given by a nuclear transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a nuclear transfer scheme—

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- (a) to terminate, modify, acquire or claim an interest or right; or
 - (b) to treat an interest or right as modified or terminated.
- (5) That entitlement—
- (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
 - (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (6) Sub-paragraphs (2) to (5) have effect where shares in a subsidiary of the transferor are transferred—
- (a) as if the reference in sub-paragraph (3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
 - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (5) to the transfer of the interest or right included a reference to the transfer of the shares.

Dividing and modifying transferor's property, rights and liabilities

- 3 (1) A nuclear transfer scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property retained by a transferor;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A nuclear transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees or between a transferee and a transferor.
- (3) A nuclear transfer scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor; and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A nuclear transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) In sub-paragraph (4) "third party", in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee.

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- (6) Paragraph 2(2) and (3) applies to the creation of interests and rights in accordance with a nuclear transfer scheme as it applies to the transfer of interests and rights.

Obligation to effect transfers etc. under a nuclear transfer scheme

- 4 (1) A nuclear transfer scheme may contain provision for imposing on a transferee or transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
 - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) Subject to sub-paragraphs (3) and (4) of this paragraph, paragraph 2 does not enable—
- (a) an agreement or instrument entered into or executed in accordance with an obligation imposed by a nuclear transfer scheme, or
 - (b) anything done under such an agreement or instrument, to give effect to a transfer, or to create an interest or right, which could not have been made or created by or under that agreement or instrument apart from that paragraph.
- (3) A nuclear transfer scheme may provide for—
- (a) transfers made by or under an agreement or instrument entered into or executed in accordance with an obligation imposed in a nuclear transfer scheme, or
 - (b) interests or rights created by or under such an agreement or instrument, to include, to the extent specified in the scheme, a transfer, interest or right that may be made or created by virtue of paragraph 2(2).
- (4) A nuclear transfer scheme may provide for paragraph 2(4) and (5) to apply to interests or rights affected by—
- (a) the provisions of an agreement or instrument which is to be entered into or executed in accordance with the scheme; or
 - (b) a proposal for such an agreement or for the execution of such an instrument.
- (5) Where paragraph 2(4) and (5) does apply to interests or rights so affected, it shall apply as if references to the nuclear transfer scheme included references to the agreement or instrument in question.
- (6) An obligation imposed on a person by virtue of sub-paragraph (1) shall be enforceable by the relevant person in civil proceedings—
- (a) for an injunction;
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
 - (c) for any other appropriate remedy or relief.
- (7) The relevant person for the purposes of sub-paragraph (6) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

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Effect of nuclear transfer schemes

- 5 (1) In relation to each provision of a nuclear transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) this Act shall have effect so as, without further assurance, to vest the property or interests, or the rights or liabilities, in the transferee at the time at which the scheme comes into force; and
 - (b) the provisions of that scheme in relation to that property or those interests, or in relation to those rights or liabilities, shall have effect from that time.
- (2) Sub-paragraph (1) is subject to so much of a nuclear transfer scheme as provides for—
- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
 - (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

Supplementary provisions of schemes

- 6 (1) A nuclear transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the scheme.
- (2) Such provision may include different provision for different cases or different purposes.
- (3) In particular, a nuclear transfer scheme may make provision, in relation to transfers in accordance with the scheme—
- (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
 - (c) for references in an agreement, instrument or other document to the transferor or to an employee or office holder with the transferor to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme; and
 - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (4) Sub-paragraph (3)(c) does not apply to references in an enactment or in subordinate legislation.
- (5) A nuclear transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different transferees, or
 - (b) between a transferee and a transferor,

to be referred to such arbitration as may be specified in or determined under the scheme.

- (6) Where a person is entitled, in consequence of a nuclear transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it; and
 - (b) section 64 of the Law of Property Act 1925 (c. 20) (production and safe custody of documents) shall have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (7) Where a person is entitled, in consequence of a nuclear transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (c. 33) (omission of certain clauses in deeds) shall have effect in relation to the transfer—
- (a) as if the transfer had been effected by deed; and
 - (b) as if the words “unless specially qualified” were omitted from each of those subsections.
- (8) In this paragraph references to a transfer in accordance with a nuclear transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

Proof of title by certificate

- 7 A certificate issued by the Secretary of State to the effect that any property, right or liability vested at a particular time in accordance with a nuclear transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters specified in the certificate.

Duties in relation to foreign property

- 8 (1) Where there is a transfer in accordance with a nuclear transfer scheme of—
- (a) foreign property, or
 - (b) a foreign right or liability,
- the transferor and the transferee must take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee by this Act is effective under the relevant foreign law.
- (2) Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee; or
 - (b) discharge the liability on behalf of the transferee.
- (3) Nothing in sub-paragraph (1) or (2) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a nuclear transfer scheme.
- (4) Where—

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- (a) any foreign property, right or liability is acquired or incurred by the transferor in respect of any other property, right or liability, and
 - (b) by virtue of this paragraph, the transferor holds the other property or right for the benefit of another person or is required to discharge the liability on behalf of another person,
- the property, right or liability acquired or incurred shall immediately become the property, right or liability of that other person.
- (5) The provisions of sub-paragraphs (1) to (4) shall have effect in relation to foreign property, rights or liabilities transferred to a person under sub-paragraph (4) as they have effect in the case of property, rights and liabilities transferred in accordance with a nuclear transfer scheme.
 - (6) Where the transferor of foreign property, or of a foreign right or liability, is the NDA or the UKAEA—
 - (a) the transferor shall have all such powers as it or they may require for the performance of obligations imposed on it or them under this paragraph; but
 - (b) the transferee must, so far as practicable, act on behalf of the transferor in performing the obligations imposed on the transferor by this paragraph.
 - (7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
 - (8) Expenses incurred by a transferor under this paragraph shall be met by the transferee.
 - (9) An obligation imposed under this paragraph in relation to property, rights or liabilities shall be enforceable as if contained in a contract between the transferor and the transferee.

Modification of scheme by agreement

- 9 (1) This paragraph applies in the case of a nuclear transfer scheme where a transferee agrees in writing—
 - (a) with the transferor,
 - (b) with another transferee under that scheme, or
 - (c) with a transferor or transferee under another nuclear transfer scheme,
 that provision falling within sub-paragraph (2) be made for the purpose of modifying the effect of the scheme or (as the case may be) the effect of either or both of the schemes.
- (2) That provision is provision that—
 - (a) property, rights or liabilities transferred in accordance with the scheme or either of them, and
 - (b) property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,
 be transferred from one party to the agreement to the other as from a date appointed by the agreement.
- (3) If—

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- (a) the agreement is entered into within the period of three years after the coming into force of any transfer made in accordance with either of the schemes to a party to the agreement, and
 - (b) the Secretary of State has given his approval to the transfer for which the agreement provides, and to its terms and conditions,
- the transfer for which the agreement provides shall take effect on the date appointed by the agreement as if it were a transfer in accordance with a nuclear transfer scheme.
- (4) Subject to the approval of the Secretary of State and to sub-paragraph (5), the provisions that may be contained in a modification agreement include any provision in relation to a transfer for which it provides as is capable of being contained in a nuclear transfer scheme in relation to a transfer for which the scheme provides.
 - (5) Nothing in a modification agreement is to provide for interests, rights or liabilities to be created, as opposed to transferred, except as between persons who are parties to the agreement.
 - (6) Before—
 - (a) refusing his approval for the purposes of this paragraph, or
 - (b) giving his approval for those purposes in a case where the NDA is not a party to the proposed agreement,the Secretary of State must consult the NDA.
 - (7) The consent of the Treasury is required for the giving of an approval by the Secretary of State for the purposes of this paragraph.
 - (8) In this paragraph references to a transfer in accordance with a nuclear transfer scheme include references to the creation of an interest, right or liability in accordance with such a scheme.

The Transfer of Undertakings (Protection of Employment) Regulations 1981

- 10 (1) The 1981 regulations apply to a transfer of an undertaking or part of an undertaking—
- (a) in accordance with a nuclear transfer scheme, or
 - (b) in accordance with a modification agreement,
- as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person in whom that undertaking or part was vested immediately before the coming into force of the transfer.
- (2) It shall be the duty of the Secretary of State, before—
 - (a) making a nuclear transfer scheme, or
 - (b) approving a modification agreement,to give such notice of his proposals to such persons as he considers appropriate for enabling the provisions of the 1981 regulations applicable to a transfer in accordance with the scheme or agreement to be complied with by the transferor.
 - (3) In sub-paragraph (2) “the transferor”, in relation to a transfer, means the person who is the transferor in relation to that transfer for the purposes of the 1981 regulations.
 - (4) In this paragraph—
 - “the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 ([S.I. 1981/1794](#));
 - “undertaking” has the same meaning as in the 1981 regulations.

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Compensation for third parties

11 (1) Where—

- (a) an entitlement of a third party to an interest or right would, apart from a provision of a nuclear transfer scheme or paragraph 2(4) and (5), arise in respect of the transfer or creation in accordance with a nuclear transfer scheme of any property, rights or liabilities,
- (b) the provisions of that scheme or of paragraph 2(4) and (5) have the effect of preventing the third party's entitlement to that interest or right from arising in respect of anything for which the scheme provides, and
- (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of his entitlement.

(2) Where, in consequence of provisions included in a nuclear transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (3), the third party shall be entitled to such compensation as may be just in respect of—

- (a) any diminution in the value of his interests or rights, or
- (b) any increase in the burden of his liabilities,

which is attributable to that modification.

(3) Those modifications are modifications by virtue of which—

- (a) an interest of the third party in property is transformed into, or replaced by, an interest in only part of that property;
- (b) an interest of the third party in property is transformed into, or replaced by, separate interests in different parts of that property;
- (c) a right of the third party against the transferor is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the transferor; or
- (d) a liability of the third party to the transferor is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the transferor.

(4) A liability to pay compensation under this paragraph shall fall on such persons mentioned in sub-paragraphs (5) and (6) as—

- (a) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (1);
- (b) have interests in the whole or any part of the property affected by the modification in question;
- (c) are subject to the rights of the person to be compensated which are affected by that modification; or
- (d) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification.

(5) Those persons are—

- (a) a Minister of the Crown;

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- (b) the NDA;
 - (c) the UKAEA;
 - (d) a publicly owned company which is a transferor or a transferee for the purposes of the provisions of the scheme giving rise to the compensation;
 - (e) a person who consented to the provisions of the scheme giving rise to the compensation.
- (6) Where in the case of a recovery scheme the transferor is not a publicly owned company, those persons also include—
- (a) the relevant contractor; and
 - (b) the transferor.
- (7) A liability to pay compensation under this paragraph must be apportioned between the persons liable to pay it in such manner as may be appropriate having regard to the extent of—
- (a) the benefit they respectively obtain from the extinguishment; or
 - (b) the interests, rights or liabilities in respect of which they are liable to pay compensation.
- (8) Where compensation is paid by any person in connection with provisions of a recovery scheme, the person paying the compensation may, if and to the extent that the Secretary of State so directs, recover the amount paid from—
- (a) the relevant contractor; and
 - (b) the transferor.
- (9) A dispute as to—
- (a) whether any compensation is to be paid under this paragraph,
 - (b) the person to or by whom it is to be paid, or
 - (c) the amount to be paid by any person,
- shall be referred to and determined by the person mentioned in sub-paragraph (10).
- (10) That person is—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, an arbitrator appointed by the Lord Chancellor; and
 - (b) where the claimant requires the matter to be determined in Scotland, an arbiter appointed by the Lord President of the Court of Session.
- (11) In the preceding provisions of this paragraph “third party”, in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee.
- (12) This paragraph shall have effect in relation to—
- (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a nuclear transfer scheme, and
 - (b) the provisions of a modification agreement relating to property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme,
- as it has effect in relation to the scheme but as if, in the case of a modification agreement, everyone who is not a party to the agreement were a third party.

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Compensation for transferor in case of a recovery scheme

- 12 (1) If the Secretary of State is satisfied in the case of a recovery scheme that it is just to do so he may—
- (a) pay compensation to the transferor in respect of property or rights of which he is deprived in accordance with the scheme; or
 - (b) direct the NDA to pay such compensation.
- (2) No compensation shall be payable under this paragraph to the relevant contractor.
- (3) Where compensation is paid under this paragraph and the Secretary of State so directs, so much of the compensation as may be specified in the direction may be recovered by him or (as the case may be) by the NDA from the relevant contractor.
- (4) The amount of any compensation under this paragraph shall be determined by the Secretary of State.
- (5) A dispute as to—
- (a) whether any compensation is to be paid under this paragraph,
 - (b) the person to or by whom it is to be paid, or
 - (c) the amount to be paid by any person,
- shall be referred to and determined by the person mentioned in sub-paragraph (6).
- (6) That person is—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, an arbitrator appointed by the Lord Chancellor; and
 - (b) where the claimant requires the matter to be determined in Scotland, an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to—
- (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a recovery scheme, and
 - (b) the provisions of a modification agreement relating to property, rights and liabilities transferred or created in accordance with a recovery scheme,
- as it has effect in relation to the scheme.

Interpretation

- 13 (1) In this Schedule—
- “modification agreement” means an agreement for a transfer that is to have effect in accordance with paragraph 9(3);
- “recovery scheme” means so much of a nuclear transfer scheme as contains provision for or in connection with a transfer authorised by section 41;
- “relevant contractor”, in relation to a recovery scheme, means the person who (within the meaning of that section) is the contractor in relation to the contract by reference to the breach of which, or the expiry or other termination of which, that scheme was made;
- “transferee”—

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- (a) in relation to a nuclear transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created;
- “transferor”—
- (a) in relation to a nuclear transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme; and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created.
- (2) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable.