

SCHEDULES

SCHEDULE 12

Section 36

TRANSFER SCHEMES

PART 1

TRANSFERS FROM CROSS LONDON RAIL LINKS LIMITED AND ITS SUBSIDIARIES

- 1 (1) The Secretary of State may make schemes for the transfer of property, rights and liabilities—
- (a) from Cross London Rail Links Limited (“CLRL”), or
 - (b) from a body corporate which is a wholly-owned subsidiary of CLRL,
- to any person, including the Secretary of State.
- (2) The Secretary of State shall consult CLRL before making a scheme under sub-paragraph (1).

PART 2

TRANSFERS FROM THE GREATER LONDON AUTHORITY, TRANSPORT FOR LONDON, THE LONDON DEVELOPMENT AGENCY AND THEIR SUBSIDIARIES

- 2 (1) The Secretary of State may, for purposes connected with Crossrail, make schemes for the transfer of property, rights and liabilities—
- (a) from the Greater London Authority, the London Development Agency or Transport for London, or
 - (b) from a body corporate which is a wholly owned subsidiary of the Greater London Authority, the London Development Agency or Transport for London,
- to any person, including the Secretary of State.
- (2) The power conferred by sub-paragraph (1) shall be exercisable only with the consent of the transferor.

PART 3

TRANSFERS FROM SECRETARY OF STATE AND COMPANIES OWNED BY SECRETARY OF STATE

- 3 (1) The Secretary of State may, for purposes connected with Crossrail, make schemes for the transfer of property, rights and liabilities—
- (a) from the Secretary of State, or
 - (b) from a company which is wholly owned by the Secretary of State,
- to any person.

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- (2) For the purposes of this paragraph, a company is wholly owned by the Secretary of State at any time when it has no members other than one or more persons falling within the following paragraphs—
- (a) the Secretary of State;
 - (b) a company which is wholly owned by the Secretary of State;
 - (c) a person acting on behalf of the Secretary of State or of a company which is wholly owned by the Secretary of State.

PART 4

GENERAL PROVISIONS ABOUT TRANSFER SCHEMES

Scheme for grant of lease

- 4 Any power under paragraph 1, 2 or 3 to make a scheme for the transfer of any property from one person (A) to another person (B) may be exercised instead so as to make a scheme under that paragraph for the creation by A in favour of B of an interest in, or right in relation to, the property.

Property, rights and liabilities that may be transferred

- 5 The property, rights and liabilities for whose transfer a scheme may provide include (in particular)—
- (a) rights and liabilities relating to contracts of employment;
 - (b) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
 - (c) property acquired after the making of the scheme and rights and liabilities arising after the making of the scheme;
 - (d) rights and liabilities under an enactment.

Creation by a scheme of interests, rights and liabilities

- 6 (1) A scheme may contain—
- (a) provision for the creation, in favour of the transferor, of—
 - (i) an interest in, or
 - (ii) a right in relation to,
 property whose transfer is provided for by the scheme,
 - (b) provision for the creation, in favour of a transferee, of—
 - (i) an interest in, or
 - (ii) a right in relation to,
 property retained by the transferor,
 - (c) provision for the creation, in favour of a transferee, of—
 - (i) an interest in, or
 - (ii) a right in relation to,
 property whose transfer to another person is provided for by the scheme,
 - (d) provision for the creation of rights and liabilities as between the transferor and a transferee, and

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- (e) provision for the creation of rights and liabilities as between different transferees.
- (2) A scheme may contain provision about enforcement, by or against any one or more of the transferor and the transferee or transferees, of a right or liability whose transfer or creation is provided for by the scheme.

Identifying what is transferred or created by a scheme

- 7
- (1) A scheme may define property, rights or liabilities for whose transfer it provides—
 - (a) by specifying it or them;
 - (b) by describing it or them.
 - (2) A scheme may define retained property for the purposes of provision made under paragraph 6(1)(b)—
 - (a) by specifying it;
 - (b) by describing it.
 - (3) A description of property, rights or liabilities may be framed (in particular)—
 - (a) by reference to the transferor’s undertaking;
 - (b) by reference to a specified part of that undertaking.

Scheme may provide for contraventions etc. to be treated as not occurring

- 8
- (1) A scheme may contain provision for a transfer to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be by reason of a provision falling within sub-paragraph (2).
 - (2) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled to the property or right, or subject to the liability, for whose transfer the scheme provides.
 - (3) A scheme may contain provision for—
 - (a) the creation of an interest in property, or
 - (b) the creation of a right in relation to property,to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be by reason of a provision falling within sub-paragraph (4) or (5).
 - (4) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled to the property.
 - (5) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which a subsidiary of the transferor is entitled or subject to anything immediately before the creation of the interest or right takes effect.

Transfer of shares in subsidiary of transferor

- 9
- (1) This paragraph applies where a scheme provides for the transfer of shares in a subsidiary of the transferor.

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- (2) The scheme may contain provision for the transfer to take effect as if there were no contravention or liability, or interference with any interest or right, that there would otherwise be by reason of a provision falling within sub-paragraph (3), but this is without prejudice to paragraph 8(1).
- (3) A provision falls within this sub-paragraph if it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

Scheme may modify interests, rights and liabilities of third parties

- 10 (1) A 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.
 - (2) In sub-paragraph (1) “third party”, in relation to a scheme, means a person who is neither the transferor nor a transferee.
- 11 (1) Sub-paragraph (2) applies where (apart from that sub-paragraph) a person would have a triggered entitlement in consequence of—
 - (a) property, rights or liabilities having been, or being likely to be, transferred by the operation of paragraph 14(1) in relation to a scheme,
 - (b) interests, rights or liabilities having been, or being likely to be, created by the operation of paragraph 14(1) in relation to a scheme, or
 - (c) anything else having been done, or being likely to be done, by or under a scheme.
 - (2) That triggered entitlement shall, as respects the interest or right to which it relates, be enforceable in consequence of the circumstances mentioned in sub-paragraph (1) (a), (b) or (c) to the extent only that the scheme provides for it to be so enforceable.
 - (3) In this paragraph “triggered entitlement”, in relation to a scheme, means an entitlement—
 - (a) to terminate, modify, acquire or claim an interest or right to which the transferor, or a subsidiary of the transferor, is entitled or subject, or
 - (b) to treat an interest or right to which the transferor, or a subsidiary of the transferor, is entitled or subject as modified or terminated.

Scheme may impose obligations to enter into agreements or execute instruments

- 12 (1) A scheme may contain provision for imposing, on the transferor or a transferee, obligations—
 - (a) to enter into agreements with, or
 - (b) to execute instruments in favour of,persons specified in the scheme.
 - (2) The persons who may be so specified are—
 - (a) a transferee;
 - (b) the transferor;
 - (c) any person other than the transferor or a transferee.
 - (3) Sub-paragraphs (4) to (7) apply where a scheme contains provision for imposing an obligation of the kind mentioned in sub-paragraph (1).

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- (4) The scheme must specify or describe the agreement or instrument to which the obligation relates.
- (5) The obligation may be enforced in any authorised way by the person—
 - (a) with whom the agreement is to be entered into, or
 - (b) in favour of whom the instrument is to be executed.
- (6) In sub-paragraph (5) “enforced in any authorised way” means—
 - (a) enforced in civil proceedings for an injunction,
 - (b) enforced in civil proceedings for any other appropriate remedy or relief, or
 - (c) enforced in any other way authorised by the scheme.
- (7) The scheme may provide for sub-paragraph (6)(a) or (b)—
 - (a) not to apply in relation to the obligation, or
 - (b) to apply in relation to the obligation subject to restrictions imposed by the scheme.

Supplementary provisions of schemes

- 13
- (1) A scheme may make such incidental, supplementary, consequential and transitional provision as the Secretary of State considers appropriate.
 - (2) The provision under sub-paragraph (1) that may be made by a scheme includes (in particular)—
 - (a) provision saving the effect of things done by or in relation to the transferor,
 - (b) provision for a transferee to be treated as the same person in law as the transferor,
 - (c) provision for things done by or in relation to the transferor to be treated as done by or in relation to a transferee,
 - (d) provision for things (including legal proceedings) being done by or in relation to the transferor to be continued by or in relation to a transferee, and
 - (e) provision for references in a document to the transferor, or to an employee or office-holder of the transferor, to have effect with modifications specified in the scheme.
 - (3) In sub-paragraph (2)(e), the reference to an employee or office-holder of the transferor includes a reference to a person employed in Her Majesty’s Home Civil Service.
 - (4) Sub-paragraph (2)(e) does not apply to references in an enactment.

Effect of scheme

- 14
- (1) At the time appointed for the purpose by a scheme—
 - (a) property, rights and liabilities for whose transfer the scheme provides, and
 - (b) interests, rights and liabilities for whose creation the scheme provides,shall, by virtue of this sub-paragraph, be transferred or (as the case may be) created in accordance with the scheme.
 - (2) A scheme may appoint different times for the transfer or creation of different things.

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Modification of scheme by agreement

- 15 (1) Where the transferor, and the transferee or transferees, under a scheme so agree, the scheme shall be treated for all purposes as having been made with such modifications as may be agreed.
- (2) Sub-paragraph (1) does not apply in the case of an agreement relating to rights and liabilities under a contract of employment unless the employee is a party to the agreement.
- (3) Sub-paragraph (1) does not apply in the case of an agreement that adversely affects the property or rights of a person other than the transferor or a transferee unless that person is a party to the agreement.
- (4) An agreement under sub-paragraph (1) may make—
- (a) any provision that could have been contained in the scheme, and
 - (b) incidental, supplementary, consequential and transitional provision in connection with giving effect to any such provision.
- (5) Provision under sub-paragraph (4) may be made so as to have effect from when the scheme was made (or any later time).

Transfer of employees and continuity of employment

- 16 (1) Where, by virtue of a scheme, a person employed by the transferor becomes an employee of a transferee—
- (a) the person is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c. 18) as having been dismissed by virtue of the transfer,
 - (b) the person's period of employment with the transferor counts, for the purposes of that Act, as a period of employment with the transferee, and
 - (c) the change of employment does not break the continuity of the period of employment for the purposes of that Act.
- (2) In sub-paragraph (1)—
- (a) a reference to becoming an employee of a person includes a reference to becoming employed in Her Majesty's Home Civil Service, and
 - (b) a reference to being employed by a person, or to employment with a person, includes a reference to being employed in Her Majesty's Home Civil Service.

Provision of information to person making scheme

- 17 Where the Secretary of State proposes to make a scheme under paragraph 1(1), 2(1) or 3(1) he may direct—
- (a) a proposed transferor,
 - (b) a proposed transferee, or
 - (c) Cross London Rail Links Limited,
- to provide him with such information as he considers necessary to enable him to make the scheme.
- 18 (1) This paragraph applies to a direction under paragraph 17.
- (2) The direction must specify the period within which the information is to be provided.

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- (3) The period specified must be not less than 28 days beginning with the day when the direction is given.
- (4) If a person fails to comply with the direction, the Secretary of State may serve a notice on the person—
 - (a) requiring the person to produce to the Secretary of State, at a time and place specified in the notice, any documents which are specified or described in the notice and are in the person's custody or control, or
 - (b) requiring the person to provide to the Secretary of State, at a time and place and in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (5) No person may be required under this paragraph—
 - (a) to produce a document which he could not be compelled to produce in civil proceedings in the High Court, or
 - (b) to provide information which he could not be compelled to give in evidence in such proceedings.
- (6) A person who intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under sub-paragraph (4) is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (7) If a person fails to comply with a notice under sub-paragraph (4), the High Court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (8) Any order under sub-paragraph (7) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of—
 - (a) the person in default, and
 - (b) any officers of a body corporate or other association who are responsible for its default.
- (9) In this paragraph—
 - (a) a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form, and
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Agreements relating to schemes

- 19 The Secretary of State may by agreement fetter the exercise of his discretion relating to his powers under this Schedule.

PART 5

INTERPRETATION

Interpretation

- 20 (1) In sub-paragraph (2), and in Part 4 of this Schedule except where the context otherwise requires, “scheme” means a scheme under paragraph 1(1), 2(1) or 3(1).
- (2) In this Schedule—
- “enactment” includes an enactment—
 - (a) contained in an instrument made under an Act, or
 - (b) contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - “subsidiary” and “wholly-owned subsidiary” have the meaning given by section 736 of the Companies Act 1985 (c. 6);
 - “transferee”, in relation to a scheme, means a person who is a transferee in respect of property, rights or liabilities for whose transfer the scheme provides (or the person in whose favour any interest or right is created pursuant to paragraph 4);
 - “transferor”, in relation to a scheme, means the person for the transfer of whose property, rights or liabilities the scheme provides (or the person by whom any interest or right is created pursuant to paragraph 4).
- (3) 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.