
STATUTORY INSTRUMENTS

1985 No. 1903

TRANSPORT

**The Transport Act 1985 (Modifications in Schedule 4 to the
Transport Act 1968) Order 1985**

Made - - - - - *5th December 1985*

Laid before Parliament *12th December 1985*

Coming into Operation *6th January 1986*

The Secretary of State for Transport (as respects England), the Secretary of State for Scotland (as respects Scotland) and the Secretary of State for Wales (as respects Wales), in exercise of the power conferred by section 129(5) of the Transport Act 1985(a), and of all other enabling powers, hereby make the following Order:—

1. This Order may be cited as the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985 and shall come into operation on 6th January 1986.

2. In this Order—

“the Act” means the Transport Act 1985;

“Schedule 4” means Schedule 4 to the Transport Act 1968(b).

3. For the purposes of its application to transfers under section 59(7), 61(11) or 68(7) of the Act, Schedule 4 shall be modified in accordance with the provisions of the First Schedule to this Order.

(a) 1985 c.67.

(b) 1968 c.73.

4. Schedule 4, as modified in accordance with the provisions of the First Schedule to this Order, and with consequential adjustments in the headings to and numbering of the paragraphs, is set out in the Second Schedule to this Order.

Nicholas Ridley,
Secretary of State for Transport.

5th December 1985.

George Younger,
Secretary of State for Scotland.

5th December 1985.

Nicholas Edwards,
Secretary of State for Wales.

5th December 1985.

Article 3

THE FIRST SCHEDULE

MODIFICATIONS TO SCHEDULE 4 FOR THE PURPOSES OF ITS APPLICATION TO TRANSFERS
UNDER SECTION 59(7), 61(11) OR 68(7) OF THE ACT.

1. In paragraph 1—

- (a) in sub-paragraph (1), for the words “an agreement for the rendering of personal services” there shall be substituted the words “a contract of employment”;
- (b) in sub-paragraph (4), the words from “or, if either” to the end shall be omitted;
- (c) in sub-paragraph (7), the words from “(not being” to “wholly-owned subsidiary” in the second place where those words occur shall be omitted; and
- (d) in sub-paragraphs (5) and (7), for the words “this Act” there shall be substituted the words “the Transport Act 1985”.

2. Paragraph 2 shall be omitted.

3. In paragraph 3, a colon shall be substituted for the full stop at the end, and there shall be added the following—

“in Scotland, section 16(1) and (2) of the Land Registration (Scotland) Act 1979 shall apply as if the transfer had been effected by deed and the words “unless specially qualified” were omitted from those subsections.”.

4. In paragraph 4, for the words “this Act” there shall be substituted the words “the Transport Act 1985”.

5. In paragraph 5—

- (a) for the words “Railways Board and the Scottish Group” there shall be substituted the words “transferor and the transferee”;
- (b) for the words “this Act” there shall be substituted the words “the Transport Act 1985”;
- (c) for the words “the certifying authorities” there shall be substituted the word “them”;
- (d) for the words “one of those authorities” there shall be substituted the words “either of them”; and
- (e) for the words “the authorities concerned” there shall be substituted the word “they”.

6. In paragraph 6—

- (a) for the words “Railways Board or the Scottish Group” there shall be substituted the words “transferor or the transferee”;
- (b) for the words “that authority” there shall be substituted the words “one of them”;
- (c) for the words “another of those authorities” there shall be substituted the words “the other of them”;
- (d) for the words “none of those authorities or” there shall be substituted the words “neither the transferor nor the transferee nor”;
- (e) for the words “one of those authorities” in sub-paragraph (b) there shall be substituted the words “either the transferor or the transferee”;
- (f) for the words “any of those authorities” in both places where they occur there shall be substituted the words “either the transferor or the transferee”;
- (g) in sub-paragraph (b)(ii), the words “authority or subsidiary” shall be omitted;

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- (h) for the words “one of those authorities” in both places where they appear there shall be substituted the words “the transferor or the transferee”; and
- (i) for the words “those authorities” there shall be substituted the words “the transferor and the transferee”.
7. In sub-paragraph (c) of paragraph 7—
- (a) for the words “any officer or any servant of the transferor” there shall be substituted the words “a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity”;
- (b) for the words “the officer or servant” there shall be substituted the words “a person employed by, or engaged in the business”; and
- (c) for the words “that officer or servant of the transferor” there shall be substituted the words “the first mentioned person”.
8. In paragraph 8 —
- (a) for the words “this Act” there shall be substituted the words “the Transport Act 1985”;
- (b) after the words “the provision in question relates to “there shall be inserted “(a)”;
- (c) after the words “transferred rights and liabilities” there shall be inserted “; or
(b) any business or activity to which any of those rights and liabilities relates”; and
- (d) for the words “officers or servants” there shall be substituted the words “persons employed by, persons engaged in the business of, or agents”.
9. Paragraph 9 shall be omitted.
10. In paragraph 10 —
- (a) for the words “7 to 9” there shall be substituted the words “7 and 8”;
- (b) for the words “this Act” in the first place where they appear there shall be substituted the words “the Transport Act 1985”; and
- (c) for the words “this Act” in the second place where they appear there shall be substituted the words “that Act”.
11. Paragraph 11 and sub-paragraph (1) of paragraph 12 shall be omitted.
12. In sub-paragraph (2) of paragraph 12, for the words “7 to 11” there shall be substituted the words “7 to 10”, and the words: “the said” shall be omitted.
13. In paragraph 13 —
- (a) in sub-paragraph (1), for the words “7 to 12” there shall be substituted the words “7 to 10”;
- (b) for the words “one of the Boards or new authorities” in the first place where they occur there shall be substituted the words “the transferor and the transferee”, and for those words in the second and third places where they occur there shall be substituted the words “the transferor or the transferee”; and
- (c) in sub-paragraph (5) for the words “this Act” there shall be substituted the words “the Transport Act 1985”.
14. There shall be added the following new paragraph —
- “In this Schedule “statutory provision” means a provision, whether of a general or a special nature, contained in, or in a document made or issued under, the Transport Act 1985 or any Act (whether of a general or of a special nature) other than that Act.”.

Article 4

THE SECOND SCHEDULE

SCHEDULE 4 AS MODIFIED FOR THE PURPOSES OF ITS APPLICATION TO TRANSFERS UNDER SECTION 59(7), 61(11) OR 68(7) OF THE ACT.

N.B. By virtue of the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238), and subject to certain exceptions not affecting Schedule 4, references in the Transport Act 1968 to "the Minister" are to be read as references to the Secretary of State.

SCHEDULE 4

SUPPLEMENTARY PROVISIONS AS TO CERTAIN TRANSFERS OF PROPERTY, RIGHTS AND LIABILITIES

ALLOCATION OF PROPERTY, RIGHTS AND LIABILITIES

1.—(1) The provisions of this paragraph shall have effect where a transfer to which this Schedule applies is a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking, but shall not apply to any such rights or obligations under a contract of employment.

(2) Any property, rights or liabilities held or subsisting partly for the purpose of a part of the transferor's undertaking which is transferred and partly for the purpose of a part of that undertaking which is retained by the transferor shall, where the nature of the property, rights or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided, any rent payable under a lease in respect of that estate or interest, and any rent charged on that estate or interest, shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(3) Sub-paragraph (2) of this paragraph shall apply, with any necessary modifications, in relation to any feu duty payable in respect of an estate or interest in land in Scotland as it applies in relation to any rent charged on an estate or interest in land.

(4) Any property, rights or liabilities held or subsisting as mentioned in sub-paragraph (2) of this paragraph the nature of which does not permit their division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to which of them appear at the transfer date likely to make use of the property, or, as the case may be, to be affected by the right or liability, to the greater extent, subject to such arrangements for the protection of the other of them as may be agreed between them.

(5) It shall be the duty of the transferor and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor and as will —

- (a) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
- (b) make as from such date, not being earlier than the transfer date, as may be specified in that agreement or instrument such clarifications and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee;

and if either the transferor or the transferee is, or on a vesting by virtue of the Transport Act 1985 will become, a wholly-owned subsidiary of some other body, references in the foregoing provisions of this sub-paragraph to the transferor or, as the case may be, the transferee shall include references to that other body.

- (6) Any such agreement shall provide so far as it is expedient —
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
 - (b) for the granting of indemnities in connection with the severance of leases and other matters;
 - (c) for responsibility for registration of any matter in any description of statutory register.

(7) If the transferor or the transferee represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (5) of this paragraph that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining the manner in which the property, rights or liabilities in question are to be divided between the transferor and the transferee, and may include in the direction any provision which might have been included in an agreement under the said sub-paragraph (5); and any property, rights or liabilities required by the direction to be transferred to the transferee shall be regarded as having been transferred to, and by virtue of the Transport Act 1985 vested in, the transferee accordingly.

RIGHT TO PRODUCTION OF DOCUMENTS OF TITLE

2. Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to, or to the management of, any land or other property transferred to the transferee, the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies thereof; and, in England and Wales, section 64 of the Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section: in Scotland, section 16(1) and (2) of the Land Registration (Scotland) Act 1979 shall apply as if the transfer had been effected by deed and the words “unless specially qualified” were omitted from those subsections.

PERFECTION OF VESTING OF CERTAIN PROPERTY OR RIGHTS

3. Where in the case of any transfer to which this Schedule applies any property or rights which fall to be transferred to the transferee cannot be properly vested in the transferee by virtue of the Transport Act 1985 because transfers thereof are governed otherwise than by the law of a part of Great Britain, the transferor shall take all practicable steps for the purpose of securing that the ownership of the property or, as the case may be, the right is effectively transferred.

PROOF OF TITLE BY CERTIFICATE

4. In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor and the transferee, that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is by virtue of the Transport Act 1985 for the time being vested in, or in such wholly-owned subsidiary of, such one of them as may be so specified shall be conclusive evidence for all purposes of that fact; and if on the expiration of one month after a request from either of them for the preparation of such a joint certificate as respects any property, interest, right or liability, they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as the Secretary of State may direct.

RESTRICTIONS ON DEALING WITH CERTAIN LAND

5. If the Secretary of State is satisfied on the representation of the transferor or the transferee that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by, or by a wholly-owned subsidiary of, one of them

and by, or by a wholly-owned subsidiary of the other of them and that the circumstances are such that this paragraph should have effect, the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction, and while that direction remains in force —

- (a) neither the transferor nor the transferee nor their subsidiaries entitled to any interest in any of the specified land shall dispose of that interest except with the consent of the Secretary of State;
- (b) if in connection with any proposal to dispose of an interest of either the transferor or the transferee or their subsidiaries in any of the specified land it appears to the Secretary of State to be necessary or expedient for the protection of any other of them, the Secretary of State may —
 - (i) require either the transferor or the transferee or their subsidiaries entitled to an interest in any of the specified land to dispose of that interest to such person and in such manner as may be specified in the requirement; or
 - (ii) require either the transferor or the transferee or their subsidiaries to acquire from any other of them any interest in any of the specified land to which that other is entitled; or
 - (iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose;

but a person other than the transferor or the transferee or their subsidiaries dealing with, or with a person claiming under, the transferor or the transferee or subsidiaries shall not be concerned to see or inquire whether this paragraph applies or has applied in relation to any land to which the dealing relates or as to whether the provisions of this subsection have been complied with in connection with that or any other dealing with that land, and no transaction with or between persons other than the transferor and the transferee or subsidiaries shall be invalid by reason of any failure to comply with those provisions.

CONSTRUCTION OF AGREEMENTS, STATUTORY PROVISIONS AND DOCUMENTS

6. Where in the case of any transfer to which this Schedule applies any of the rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities thereunder could be assigned by the transferor, that agreement shall have effect on and after the transfer date as if —

- (a) the transferee had been a party to the agreement, and
- (b) for any reference (however worded and whether express or implied) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee, and
- (c) any reference (however worded and whether express or implied) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the first mentioned person, and
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, as if the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee respectively as regards the part of the property, rights and liabilities retained by the transferor or, as the case may be, the part thereof vesting in the transferee and not as regards the other part;

and sub-paragraph (d) of this paragraph shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

7. Save as otherwise provided by any provision of the Transport Act 1985 (whether expressly or by necessary implication) paragraph 6 of this Schedule, except sub-paragraph (a) thereof, shall

apply in relation to any statutory provision, any provision of any agreement to which the transferor was not a party, and any provision of any document other than an agreement, if and so far as the provision in question relates to —

- (a) any of the transferred rights and liabilities; or
- (b) any business or activity to which any of those rights and liabilities relates,

as it applies in relation to an agreement to which the transferor was a party, and, in relation to any such statutory or other provision as aforesaid, references in sub-paragraphs (b) and (c) of that paragraph to the transferor and to any persons employed by, persons engaged in the business of, or agents of the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.

8. Without prejudice to the generality of the provisions of paragraphs 6 and 7 of this Schedule, the transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of the Transport Act 1985 as he would have had if that right or liability had at all times been a right or a liability of the transferee, and any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of that Act, or to any agreement or enactment relating to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

9. The provisions of paragraphs 6 to 8 shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

THIRD PARTIES AFFECTED BY VESTING PROVISIONS

10.—(1) Without prejudice to the provisions of paragraphs 6 to 9 of this Schedule, any transaction effected between a transferor and a transferee in pursuance of paragraph 1(5) or of a direction under paragraph 1(7) of this Schedule shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) It shall be the duty of the transferor and transferee, if they effect any transaction in pursuance of the said paragraph 1(5) or a direction under the said paragraph 1(7), to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee, and if such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him the Secretary of State may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule the rights or liabilities of any person other than the transferor and the transferee or a wholly-owned subsidiary thereof which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee, and the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the transferor, the transferee or both, and any dispute as to whether and if so how much compensation is so payable, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor or, where the proceedings are to be held in Scotland, by an arbiter appointed by the Lord President of the Court of Session.

(4) Where the transferor or the transferee under a transfer to which this Schedule applies purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee or a wholly-owned subsidiary thereof for consideration any land or any other property which before the transfer date belonged to the transferor, or which is an interest in

property which before that date belonged to the transferor, the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties thereto and had thereby conveyed or transferred all their interest in the property conveyed or transferred.

(5) If at any stage of any court proceedings to which the transferor or transferee under a transfer to which this Schedule applies and a person other than the transferor or the transferee or a wholly-owned subsidiary thereof are parties, it appears to the court that the issues in the proceedings depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or to raise a question of construction on the relevant provisions of the Transport Act 1985 which would not arise if the transferor and the transferee constituted a single person, the court may, if it thinks fit on the application of a party to the proceedings other than such a body as aforesaid, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person, and any judgment or order given by the courts, shall bind both the transferor and the transferee accordingly.

(6) It shall be the duty of the transferor and the transferee under any transfer to which this Schedule applies to keep one another informed of any case where either of them may be prejudiced by sub-paragraphs (4) or (5) of this paragraph, and if either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.

11. In this Schedule "statutory provision" means a provision, whether of a general or a special nature, contained in, or in a document made or issued under, the Transport Act 1985 or any Act (whether of a general or of a special nature) other than that Act.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes modifications in Schedule 4 to the Transport Act 1968 for the purposes of its application to transfers under section 59(7), 61(11) or 68(7) of the Transport Act 1985.

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