

SCHEDULES

SCHEDULE 2

Article 3

Provisions relating to transfer schemes

General provisions about transfer schemes

- 1.—(1) A transfer scheme may—
- (a) define the property, rights and liabilities to be transferred to the undertaker (subject to any exception, reservation or other terms that may be specified in the transfer scheme)—
 - (i) by specifying or describing the property, rights and liabilities in question,
 - (ii) by referring to all (or all but so much as may be excepted or reserved) of the property, rights and liabilities comprised in a specified part of the core Valley lines undertaking, or
 - (iii) partly in the one way and partly in the other;
 - (b) provide that any rights or liabilities specified or described in the scheme is to be enforceable either by or against the undertaker or Network Rail (or both of them);
 - (c) without affecting paragraph 6, impose on the undertaker or Network Rail an obligation to enter into such written agreements with, or execute such other instruments in favour of, Network Rail or the undertaker or such other person as may be specified in the scheme;
 - (d) make such supplemental, incidental, consequential or transitional provision as the undertaker and Network Rail consider appropriate.
- (2) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) may be enforced by the undertaker or Network Rail or other person mentioned in that sub-paragraph—
- (a) in civil proceedings for an injunction,
 - (b) in civil proceedings for any other appropriate relief or remedy, or
 - (c) in any other way authorised by the transfer scheme.
- (3) A transaction of any description which is effected pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c)—
- (a) has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register, but
 - (b) subject to that, is binding on all other persons, notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.
- (4) No right of reverter, right of pre-emption, right of forfeiture, right of re-entry, option or similar right affecting land operates or becomes exercisable as a result of any transfer of land—
- (a) by virtue of a transfer scheme;
 - (b) pursuant to an obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c);

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and, any such right or option accordingly has effect in the case of any such transfer as if the undertaker in relation to that transfer were the same person in law as Network Rail and as if no transfer of the land had taken place.

(5) Sub-paragraph (4) has effect in relation to—

- (a) the grant or creation of an estate or interest in, or right over, land, or
- (b) the doing of any other thing in relation to land,

as it has effect in relation to a transfer of land; and any reference in that sub-paragraph or in the following provisions of this Schedule to Network Rail or the undertaker is to be construed accordingly.

(6) In any case where—

- (a) any such right or option as is mentioned in sub-paragraph (4) would, apart from that sub-paragraph, have operated in favour of, or become exercisable by, a person, but
- (b) the circumstances are such that, in consequence of the operation of that sub-paragraph, the right or option cannot subsequently operate in favour of that person or, as the case may be, become exercisable by that person,

such compensation as may be just must be paid to that person by the undertaker in respect of the extinguishment of the right or option.

(7) Any dispute as to whether any, and (if so) how much, compensation is payable under sub-paragraph (6), or as to the person to whom it is to be paid, is to be referred to and determined by an arbitrator appointed by the President for the time being of the Royal Institution of Chartered Surveyors.

(8) If it appears to the undertaker that a person (A) is or may be entitled to compensation under sub-paragraph (6), the undertaker must—

- (a) notify A that A is or may be so entitled, and
- (b) invite A to make such representations as A wishes to the undertaker not later than 14 days after the date of issue of the document containing the notification required by sub-paragraph (8)(a),

or, if the undertaker is not aware of the name and address of the person concerned, must publish, in such manner as the undertaker considers appropriate, a notice containing information about the interest affected and inviting any person who thinks that they are or may be entitled to compensation to make such representations to the undertaker within such period (being not less than 28 days from the date of publication of the notice) as may be specified in the notice.

Property, rights and liabilities that may be transferred

2. The property, rights and liabilities for whose transfer a transfer 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 Network Rail;
- (c) property acquired after the making of the scheme and rights and liabilities arising after the making of the scheme;
- (d) without affecting paragraph 3, rights and liabilities under a statutory provision.

Functions under local or private legislation

3.—(1) A transfer scheme may provide that any functions of Network Rail under a statutory provision—

- (a) are to be transferred to the undertaker, or
- (b) are to be concurrently exercisable by Network Rail and the undertaker.

(2) Sub-paragraph (1) applies in relation to any function under a statutory provision if and to the extent that the statutory provision—

- (a) relates to any part of the core Valley lines undertaking, or to any property, which is to be transferred by the scheme, or
- (b) authorises the carrying out of works designed to be used in connection with any such part of the core Valley lines undertaking or the acquisition of land for the purpose of carrying out any such works.

(3) A transfer scheme may define any functions of Network Rail to be transferred or made concurrently exercisable by the scheme in accordance with sub-paragraph (1)—

- (a) by specifying the statutory provisions in question,
- (b) by referring to all the statutory provisions which—
 - (i) relate to any part of the core Valley lines undertaking, or to any property, which is to be transferred by the scheme, or
 - (ii) authorise the carrying out of works designed to be used in connection with any such part of the core Valley lines undertaking or the acquisition of land for the purpose of carrying out any such works, or
- (c) by referring to all the statutory provisions within sub-paragraph (3)(b), but specifying certain excepted provisions.

Proof of title by certificate

4.—(1) In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of Network Rail and the undertaker that—

- (a) any property specified in the certificate, or
- (b) any such interest in or right over any such property as may be so specified, or
- (c) any right or liability so specified,

is property, or (as the case may be) an interest, right or liability which was intended to be, and was vested by virtue of the transfer scheme in such one of them as may be so specified (and, if it is the undertaker who is so specified, that the property, interest, right or liability has not been transferred back to Network Rail by virtue of an agreement under paragraph 9) is conclusive evidence for all purposes of that fact.

(2) If on the expiration of one month after a request from either Network Rail or the undertaker 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 must refer the matter to the Welsh Ministers and issue the certificate in such terms as the Welsh Ministers may direct.

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

5.—(1) A transfer 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 under 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 Network Rail is entitled to the property or right, or subject to the liability, for whose transfer the transfer scheme provides.

(3) A transfer scheme may contain provision for—

- (a) the creation of an interest in property (including a lease),
- (b) the transfer of shares in a subsidiary of Network Rail, or
- (c) 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 under 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 Network Rail 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 Network Rail is entitled or subject to anything immediately before the creation of the interest or right takes effect.

Transfer scheme may impose obligations to enter into agreements or execute instruments

6.—(1) A transfer scheme may contain provision for imposing, on Network Rail or the undertaker, obligations—

- (a) to enter into agreements with persons specified in the scheme,
- (b) to execute instruments in favour of persons specified in the scheme, or
- (c) to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to the undertaker or retained by Network Rail.

(2) The persons who may be so specified are—

- (a) the undertaker;
- (b) Network Rail;
- (c) any other person.

(3) The transfer scheme must specify or describe the agreement or instrument to which the obligation relates.

(4) Any such agreement may 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, and
- (c) for responsibility for registration of any matter in any statutory register.

Supplementary provisions of transfer schemes

7.—(1) A transfer scheme may make such incidental, supplementary, consequential and transitional provision as Network Rail and the undertaker consider appropriate.

(2) The provision under sub-paragraph (1) that may be made by a transfer scheme includes (in particular) provision—

- (a) saving the effect of things done by or in relation to Network Rail,
- (b) for the undertaker to be treated as the same person in law as Network Rail,
- (c) for things done by or in relation to Network Rail to be treated as done by or in relation to the undertaker,
- (d) for things (including legal proceedings) being done by or in relation to Network Rail to be continued by or in relation to the undertaker, and
- (e) for references in a document to Network Rail, or to an employee or office-holder of Network Rail, to have effect with modifications specified in the transfer scheme.

(3) The provision that may be made under sub-paragraph (2)(e) includes provision for references to Network Rail in any statutory provision, or any provision of an agreement to which Network Rail is not a party, to be treated as references to the undertaker, if and so far as the provision relates to the core Valley lines undertaking.

(4) The references in this paragraph to agreements to which Network Rail is a party and to statutory provisions include, in particular, references to agreements to which Network Rail became a party by virtue of the Transport Act 1962⁽¹⁾ and the Railways Act 1993⁽²⁾ and statutory provisions which apply to Network Rail by virtue of those Acts.

Effect of transfer scheme

8.—(1) At the time appointed for the purpose by a transfer scheme—

- (a) property, rights and liabilities for whose transfer the scheme provides, and
- (b) interests, rights and liabilities for whose creation the scheme provides,

are, by virtue of this sub-paragraph, 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.

Variation of transfer schemes

9.—(1) At any time before the end of the period of twelve months beginning with the date on which a transfer scheme comes into effect, the undertaker and Network Rail may, with the approval of the Welsh Ministers, agree in writing that—

- (a) as from such date as may be specified in or determined under the agreement, and
- (b) in such circumstances (if any) as may be so specified,

there is to be transferred from the undertaker to, and vested in, Network Rail any property, rights and liabilities specified in the agreement; but no such agreement is to have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(1) 1962 c. 46.

(2) 1993 c. 43.

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(2) Subject to sub-paragraphs (3) and (4), in the case of an agreement under sub-paragraph (1), the property, rights and liabilities in question are to be transferred and vest in accordance with the agreement.

(3) Any transfer effected in pursuance of an agreement under sub-paragraph (1) is to have effect subject to the provisions of any enactment which provides for such transactions to be registered in any statutory register.

(4) The provisions of this Schedule have effect in relation to a transfer effected in pursuance of an agreement under sub-paragraph (1) as if—

- (a) any reference to a transfer to which this Schedule applies included a reference to a transfer effected in pursuance of such an agreement,
- (b) any reference to a transaction effected in pursuance of a transfer scheme included a reference to such an agreement,
- (c) any reference to a vesting by virtue of a transfer scheme included a reference to a vesting by virtue of such an agreement, and
- (d) except in the case of paragraph 1(6) to (8), any reference to Network Rail was a reference to the undertaker, and vice-versa.

Transfer of employees and continuity of employment

10.—(1) Where, by virtue of a transfer scheme, a person employed by Network Rail becomes an employee of the undertaker—

- (a) the person is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996⁽³⁾ as having been dismissed by virtue of the transfer,
- (b) the person's period of employment with Network Rail counts, for the purposes of that Act, as a period of employment with the undertaker, and
- (c) the change of employment does not break the continuity of the period of employment for the purposes of that Act.

(2) This sub-paragraph applies where—

- (a) a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a person's contract of employment, but
- (b) before the transfer takes effect, the person informs Network Rail or the undertaker that the person objects to the transfer.

(3) Where sub-paragraph (2) applies—

- (a) those rights, powers, duties and liabilities are not transferred to the undertaker;
- (b) the person's contract of employment is terminated immediately before the day on which the transfer would have occurred;
- (c) the person is not, for any purpose, to be regarded as having been dismissed.

(4) Nothing in sub-paragraph (2) or (3) affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in his or her working conditions.

(5) If a transfer scheme provides for the transfer of rights, powers, duties and liabilities relating to a person's contract of employment, it may include provision with respect to the person's eligibility to become a member of a pension scheme by virtue of employment with the undertaker.

(3) 1996 c. 18.

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- (6) The transfer scheme may include provision with respect to rights of, or rights or liabilities in respect of, the person under—
- (a) a pension scheme of which the person may become a member by virtue of employment with the undertaker, or
 - (b) a pension scheme of which the person is a member by virtue of employment immediately before the transfer.