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SCHEDULES

SCHEDULE 5

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

PART II

PROVISIONS AND SAVINGS COMING INTO FORCE ON TRANSFER DATE

- 20 A licence granted under section 7 of this Act to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.
- 21 An order made under section 9(1) of this Act which designates any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it designated the corresponding telecommunication system or systems run by the successor company.
- 22 An approval given under section 20(1) of this Act which applies for the purposes of a telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 23 An approval given, or having effect as if given, under section 22(1) of this Act, or a standard designated, or having effect as if designated, under section 22(6) of this Act, which (in either case) applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 24 An approval given under section 24(1) of this Act which applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.
- 25 A recognition given under section 27(1) of this Act which applies for the purposes of any telecommunication system or systems run by British Telecommunications and is effective on the transfer date shall have effect as if it applied for the purposes of the corresponding telecommunication system or systems run by the successor company.

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- 26 An order made, or having effect as if made, under section 33 of this Act which applies in relation to hereditaments occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied to the corresponding hereditaments occupied by the successor company.
- 27 A compulsory purchase order made, or having effect as if made, under section 34 or 35 of this Act which is effective on the transfer date shall have effect as if made by the successor company.
- 28 An application for a vesting order made, or having effect as if made, by British Telecommunications under section 36 of this Act which is effective on the transfer date shall have effect as if made by the successor company.
- 29 An authorisation given, or having effect as if given, by the Secretary of State under section 37, 38 or 39 of this Act on the nomination of British Telecommunications which is effective on the transfer date shall have effect as if given on the nomination of the successor company.
- [^{F1}30 An order made under section 57 of this Act which relates to a cable programme service provided by British Telecommunications and is effective on the transfer date shall have effect as if it related to the corresponding cable programme service provided by the successor company.]

Textual Amendments

- F1** Sch. 5 para. 30 repealed (1.1.1991) by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), ss. 4(6), 87(6), 134, 203(3), 204(2), Sch. 12 Pt. II para. 1, [Sch. 21](#); S.I. 1990/2347, [art. 3\(1\)](#) (subject to [art. 3\(2\)\(3\)](#))

- 31 A licence granted under section 58 of this Act to British Telecommunications which is effective on the transfer date shall have effect as if granted to the successor company.
- 32 An undertaking given, or having effect as if given, to British Telecommunications under section 97 of this Act which is effective on the transfer date shall have effect as if given to the successor company.
- 33 A direction given, or having effect as if given, to British Telecommunications under section 94(1) or (2) of this Act which is effective on the transfer date shall have effect as if given to the successor company.
- 34 (1) For the purposes of authorising the making, in relation to employees of the successor company or any of its subsidiaries, of provision corresponding to that authorised to be made, in relation to employees of British Telecommunications or any of its subsidiaries, by section 84 of the 1981 Act, that section shall have effect as if—
- (a) any reference to the Post Office or to employees of, persons employed by or employment by the Post Office were a reference to British

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Telecommunications or to employees of, persons employed by or employment by British Telecommunications; and

- (b) any reference to a relevant body or to employees of, persons employed by or employment by a relevant body were a reference to the successor company or any subsidiary of the successor company or to employees of, persons employed by or employment by the successor company or any such subsidiary.

- (2) Nothing in sub-paragraph (1) above shall be taken as prejudicing the operation of section 84 of the 1981 Act as originally enacted.

35 Where immediately before the transfer date there is in force an agreement which—

- (a) confers or imposes on British Telecommunications any rights or liabilities which vest in the successor company by virtue of section 60 of this Act; and
(b) refers (in whatever terms and whether expressly or by implication) to a member or officer of British Telecommunications,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of British Telecommunications in question.

36 (1) Except as otherwise provided by the foregoing provisions of this Part of this Schedule (whether expressly or by necessary implication), any agreement made, transaction effected or other thing done by, to or in relation to British Telecommunications which is in force or effective immediately before the transfer date shall have effect as from that date as if made, effected or done by, to or in relation to the successor company, in all respects as if the successor company were the same person, in law, as British Telecommunications, and accordingly references to British Telecommunications—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
(b) in any process or other document issued, prepared or employed for the purpose of any proceeding before any court or other tribunal or authority; and
(c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right or liability of British Telecommunications which vests by virtue of section 60 of this Act in the successor company,
- shall be taken as from the transfer date as referring to the successor company.

- (2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to the deed of covenant by virtue of which the excepted liabilities subsist.

37 (1) It is hereby declared for the avoidance of doubt that—

- (a) the effect of section 60 of this Act in relation to any contract of employment with British Telecommunications in force immediately before the transfer date is merely to modify the contract (as from that date) by substituting the successor company as the employer (and not to terminate the contract or vary it in any other way); and
(b) that section is effective to vest the rights and liabilities of British Telecommunications under any agreement or arrangement for the payment of pensions, allowances or gratuities in the successor company along with all other rights and liabilities of British Telecommunications;

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and accordingly for the purposes of any such agreement or arrangement (as it has effect by virtue of paragraph 36 above in relation to employment with the successor company or with a wholly owned subsidiary of that company) any period of employment with British Telecommunications shall count as employment with the successor company or (as the case may be) with a wholly owned subsidiary of that company.

- (2) Nothing in sub-paragraph (1) above shall be taken as applying in relation to the excepted liabilities or to the deed of covenant by virtue of which those liabilities subsist.
- 38 (1) It shall be the duty of British Telecommunications and of the successor company to take, as and when during the transitional period the successor company considers appropriate, all such steps as may be requisite to secure that the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law.
- (2) During the transitional period, until the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of British Telecommunications to hold that property or right for the benefit of, or to discharge that liability on behalf of, the successor company.
- (3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the successor company by virtue of section 60 of this Act or this paragraph of any foreign property, right or liability.
- (4) British Telecommunications shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—
- (a) it shall be the duty of the successor company during the transitional period to act on behalf of British Telecommunications (so far as possible) in performing the duty imposed on British Telecommunications by this paragraph; and
 - (b) any foreign property, rights and liabilities acquired or incurred by British Telecommunications during that period shall immediately become property, rights and liabilities of the successor company.
- (5) References in this paragraph to any foreign property, right or liability are references, respectively, to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (6) Any expenses incurred by British Telecommunications under this paragraph shall be met by the successor company.
- 39 (1) During the transitional period it shall be the duty of British Telecommunications to discharge the excepted liabilities as they fall to be discharged.
- (2) Subject to sub-paragraph (3) below, the excepted liabilities shall be discharged, and any expenses incurred by British Telecommunications under this paragraph shall be met, out of sums received by British Telecommunications in right of or on the

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- disposal of such debentures of the successor company as the Secretary of State, with the approval of the Treasury, may transfer to British Telecommunications (in this paragraph referred to as “the transferred debentures”).
- (3) British Telecommunications may not dispose of any of the transferred debentures without the consent of the Secretary of State given with the approval of the Treasury.
- (4) Where so much of any sums so received as is held by British Telecommunications on any day exceeds the aggregate for that day of—
- (a) any excepted liability falling to be discharged; and
 - (b) any expenses falling to be met under this paragraph,
- the excess shall be applied by British Telecommunications in such manner as the Secretary of State, with the approval of the Treasury, may direct; and a direction under this sub-paragraph may require the whole or any part of the excess to be paid into the Consolidated Fund.
- (5) Where so much of any sums so received as is held by British Telecommunications on any day falls short of the aggregate for that day of—
- (a) any excepted liability falling to be discharged; and
 - (b) any expenses falling to be met under this paragraph,
- the deficiency shall be made good by the Secretary of State out of money provided by Parliament.
- (6) During the transitional period British Telecommunications shall, as respects its duties under this paragraph, keep proper accounts and proper records in relation thereto and shall, as soon as may be after the end of each financial year—
- (a) prepare a report on the performance by it during that year of those duties; and
 - (b) transmit the report to the Secretary of State who shall consider it and lay copies of it before each House of Parliament.
- (7) British Telecommunications shall be exempt from income tax and corporation tax in respect of—
- (a) income accruing to it in right of the transferred debentures; and
 - (b) chargeable gains accruing to it on the disposal of those debentures;
- and in so far as the exemption conferred by this sub-paragraph calls for repayment of tax, effect shall be given thereto by means of a claim.
- (8) Nothing in section 72(1) of this Act shall be taken—
- (a) as requiring any payments made or expenses incurred by British Telecommunications under this paragraph to be regarded for corporation tax purposes as made or incurred by the successor company; or
 - (b) as requiring any payments made by the successor company to British Telecommunications in pursuance of the transferred debentures to be disregarded for those purposes.
- (9) Section 82(4) of the 1981 Act (tax provisions) shall have effect during the transitional period as if any reference to persons who are employees of the Post Office included a reference to persons who are employees of the successor company.
- (10) In this paragraph—
- “debenture” includes debenture stock;

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“financial year” means the period beginning on the transfer date and ending with the next following 31st March or each subsequent period of twelve months ending with 31st March.

- 40 (1) Notwithstanding the repeal of subsection (12) of section 6 of the 1981 Act, it shall be the duty of British Telecommunications to make a report to the Secretary of State in accordance with that subsection in respect of the last accounting year of British Telecommunications ending before the transfer date.
- (2) Notwithstanding the repeal of section 31 of the 1981 Act, it shall be the duty of British Telecommunications to prepare statements of accounts in accordance with subsections (1)(b) and (c) of that section in respect of the last accounting year of British Telecommunications ending before the transfer date, and that section shall continue to apply during the transitional period in relation to those statements and in relation also to the auditing of accounts kept in accordance with subsection (1)(a) of that section in respect of that accounting year.
- (3) Any expenses incurred by British Telecommunications under this paragraph shall be met by the successor company.
- 41 For the purpose of enabling anything which, on the transfer date, remains to be done under the provisions of sections 10 and 81(1) of and Schedule 2 to the 1981 Act to be done after that date, those provisions shall have effect as if the successor company were the same person, in law, as British Telecommunications.
- 42 (1) Subject to sub-paragraph (2) below, nothing in this Act shall affect the operation of subsections (2) to (4) of section 28 of the 1981 Act in relation to any loan made to British Telecommunications under that section in respect of which any outstanding liability of British Telecommunications becomes a liability of the successor company on the transfer date.
- (2) No further directions may be given by the Secretary of State under subsection (2) of that section on or after the transfer date, but those applying to any such loan immediately before that date shall apply in relation to payments by the successor company in respect of that loan.
- 43 Nothing in this Act shall affect the operation of any order made under section 33 of the 1981 Act before the transfer date or any duty imposed by subsection (3) of that section to amend any order so made.
- 44 Nothing in this Act shall affect the operation of section 56 of the 1981 Act in relation to any records of British Telecommunications which become records of the successor company on the transfer date or any records kept by British Telecommunications for the purposes of paragraph 39 above.
- 45 Where by virtue of anything done before the transfer date, any enactment amended by Schedule 4 to this Act has effect (whether or not as so amended) in relation to British Telecommunications, then, on and after that date, that enactment shall have effect in relation to the successor company as if that company were the same person, in law, as British Telecommunications.
- 46 (1) Section 6(2) of the ^{M1}Commonwealth Telegraph Act 1949 shall continue to have effect with the modifications made by section 34(1) of the 1981 Act and, subject

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to that, shall have effect as if references which include references to British Telecommunications, in paragraph (c) and sub-paragraphs (iv), (v) and (vi) of paragraph (d), included references to the successor company.

- (2) The power to make regulations conferred on the Secretary of State by section 49 of the ^{M2}Post Office Act 1969 shall include power to make such regulations as appear to him to be requisite for securing that persons to whom that section applies, and persons claiming in right of them, are not adversely affected in the matter of pension rights by reason only that—
- (a) in consequence of the 1981 Act, they ceased to be employed by the Post Office; or
 - (b) in consequence of section 60 of this Act, they cease to be employed by British Telecommunications.

Marginal Citations

- M1** 1949 c. 39.
M2 1969 c. 48.

- 47 (1) Nothing in this Act shall affect the validity of anything done by, or in relation to, British Telecommunications before the transfer date under or by virtue of the ^{M3}Public Utilities Street Works Act 1950; and anything which, immediately before that date, is in process of being done under, or by virtue of, that Act by or in relation to it (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the successor company.
- (2) Any notice or direction given or other thing whatsoever done under the said Act of 1950 by British Telecommunications shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the successor company.

Marginal Citations

- M3** 1950 c. 39.

- 48 (1) Where an asset, or the right to receive an asset, vests in the successor company by virtue of section 60 of this Act, then for the purposes of Part I of the ^{M4}Industry Act 1972 and Part II of the ^{M5}Industrial Development Act 1982—
- (a) so much of any expenditure incurred by British Telecommunications in providing that asset as is approved capital expenditure (of any description relevant for the purposes of regional development grant) in respect of which no payment of regional development grant has been made to British Telecommunications shall be treated as having been incurred by the successor company and not by British Telecommunications; and
 - (b) where the asset itself vests in the successor company by virtue of section 60 of this Act, it shall be treated as a new asset if it would have fallen to be so treated if it had remained vested in British Telecommunications.
- (2) In this paragraph “regional development grant” means a grant under Part I of the Industry Act 1972 or Part II of the Industrial Development Act 1982 and “approved

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capital expenditure” has the same meaning as it has for the purposes of the provisions relating to regional development grant.

Marginal Citations

M4 1972 c. 63.

M5 1982 c. 52.

- 49 An order under section 19 of the ^{M6}Local Government Act 1974 (rating of certain public utilities and other bodies) which applies in relation to hereditaments occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied to the corresponding hereditaments occupied by the successor company.

Marginal Citations

M6 1974 c. 7.

- 50 An order under section 6 of the ^{M7}Local Government (Scotland) Act 1975 (valuation by formula of certain lands and heritages) which applies in relation to lands and heritages occupied by British Telecommunications and is effective on the transfer date shall have effect as if it applied in relation to the corresponding lands and heritages occupied by the successor company.

Marginal Citations

M7 1975 c. 30.

- 51 [^{F2}(1) Where a distribution is proposed to be declared during the accounting reference period of the successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, sections 270 to 274 and 275(7) of the Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company without contravening Part VIII of that Act) shall have effect as if—
- (a) the reference in section 270(2) to the company’s accounts, and
 - (b) references in section 273 to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (3) below, would have been prepared under Part VII of that Act in respect of the relevant year.]
- (3) The said assumptions are—
- (a) that the relevant year had been a financial year of the successor company;
 - (b) that the vesting effected by section 60 of this Act had been a vesting of all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before the

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- beginning of the relevant year and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liability of British Telecommunications vested in the successor company by virtue of that section had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by British Telecommunications in respect of the accounting year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (4) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by British Telecommunications (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by British Telecommunications had been realised and retained by the successor company.

- (5) The said accounts shall not be regarded as statutory accounts for the purposes of section 66 of this Act.
- (6) In this paragraph—
- “complete accounting year” means an accounting year ending with 31st March;
- “the relevant year” means the last complete accounting year of British Telecommunications ending before the transfer date;
- “securities” has the same meaning as in Part V of this Act.

Textual Amendments

- F2** Sch. 5 para. 51(1) substituted for Sch. 5 para. 51(1)(2) by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

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