

SCHEDULES

SCHEDULE 9

Section 127.

SCHEME PROVIDING FOR DIVISION OF ASSETS OF IBA

Preliminary

- 1 In this Schedule—
- “relevant transferee” shall be construed in accordance with paragraph 2(1) below; and
- “transfer scheme” means a scheme under this Schedule made either by the IBA under paragraph 2(1) below or by the Secretary of State under paragraph 2(4) below.

Making and modification of transfer scheme

- 2 (1) The IBA shall make a scheme under this Schedule for the division of all their property, rights and liabilities between—
- (a) the Commission,
 - (b) the Radio Authority, and
 - (c) the nominated company;
- and references in this Schedule to the relevant transferees are references to the bodies specified in paragraphs (a) to (c) above.
- (2) Where such a scheme is made by the IBA, it shall not be capable of coming into force in accordance with section 127(1) of this Act unless it is approved by the Secretary of State.
- (3) Where such a scheme is submitted to the Secretary of State for his approval, he may modify the scheme before approving it.
- (4) If—
- (a) the IBA have not, before such time as the Secretary of State may notify to them as the latest time for the submission of such a scheme, submitted such a scheme for his approval, or
 - (b) the Secretary of State decides not to approve (either with or without modifications) a scheme that has been submitted to him by the IBA,
- the Secretary of State may himself make a scheme for the division of the IBA’s property, rights and liabilities between the relevant transferees.
- (5) If, at any time after the Secretary of State has either—
- (a) approved (either with or without modifications) a scheme under this Schedule made by the IBA, or
 - (b) himself made such a scheme,
- but before the scheme has come into force in accordance with section 127(1) of this Act, the Secretary of State considers it appropriate to do so, he may determine that the

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scheme shall, on its so coming into force, come into force with such modifications as may be specified in his determination; and, in any such case, the scheme shall accordingly, on its coming into force, come into force with those modifications.

- (6) If at any time after a transfer scheme has come into force—
 - (a) the Secretary of State considers it appropriate to make an order under this sub-paragraph, and
 - (b) every relevant transferee who would be affected by the order either—
 - (i) (in a case where any such transferee is the nominated company and that company has ceased to be wholly owned by the Crown) has consented to the making of the order, or
 - (ii) (in any other case) has been consulted by the Secretary of State,
 the Secretary of State may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (7) Any power to modify a transfer scheme which is conferred on the Secretary of State by this paragraph may be so exercised as to make any such provision as could have been made by the scheme, and an order under sub-paragraph (6) above may provide for any of its provisions to have effect as from the coming into force of the scheme to which it relates.
- (8) In determining whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State shall have regard to the need to ensure that the division of property, rights and liabilities between the relevant transferees which is effected under this Schedule allocates property, rights and liabilities to those transferees in such a manner as appears to him to be appropriate—
 - (a) in the case of the Commission and the Radio Authority, in the light of the functions conferred on those bodies by this Act; and
 - (b) in the case of the nominated company, with a view to the carrying on by that company of a business consisting of—
 - (i) the provision of broadcasting transmission services and services related to such services, and
 - (ii) the carrying out of research and development work relating to broadcasting.
- (9) It shall be the duty of the IBA and each of the relevant transferees to provide the Secretary of State with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (10) Nothing in this paragraph shall require a scheme under this Schedule to make provision—
 - (a) with respect to any equipment or other asset which the IBA have agreed to dispose of in pursuance of section 132(1) or 133(6) of this Act, or
 - (b) with respect to any liabilities of the IBA which—
 - (i) have not yet become enforceable against the IBA, and
 - (ii) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which is or are transferred in accordance with any such scheme to one or more of the relevant transferees, or

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- (c) with respect to any such rights or liabilities as are mentioned in sub-paragraph (11).
- (11) Those rights and liabilities are rights and liabilities acquired by the IBA in connection with the sharing by the IBA and the BBC of the use of facilities (of whatever description) in connection with the transmission of television programmes or local sound broadcasts.

Content of transfer scheme

- 3 (1) A transfer scheme may—
 - (a) define the property, rights and liabilities to be allocated to a particular relevant transferee—
 - (i) by specifying or describing the property, rights and liabilities in question,
 - (ii) by referring to all the property, rights and liabilities comprised in a specified part of the IBA's 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 shall be enforceable either by or against either or any, or by or against both or all, of two or more relevant transferees;
 - (c) impose on any relevant transferee an obligation to enter into such written agreements with, or execute such instruments in favour of, such other relevant transferee as may be specified in the scheme;
 - (d) create for any of the relevant transferees an interest in or right over property transferred in accordance with the scheme to any other of those transferees;
 - (e) in connection with any provision made by virtue of paragraph (d), make incidental provision as to the interests, rights and liabilities of other persons with respect to the property in question.
- (2) Without prejudice to the generality of sub-paragraph (1)(a), a transfer scheme may, in connection with any transfer to be made in accordance with the scheme, exclude from the transfer any rights and liabilities falling within paragraph 2(11) above and described in the scheme.
- (3) A transfer scheme may also allocate to any of the relevant transferees such property, rights and liabilities to which the IBA may become entitled or subject after the making of the scheme and before the transfer date as may be described in the scheme.
- (4) The property, rights and liabilities of the IBA that are capable of being transferred in accordance with a transfer scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the IBA;
 - (b) property situated anywhere in the United Kingdom or elsewhere; and
 - (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (5) It is hereby declared for the avoidance of doubt that the rights and liabilities capable of being so transferred include rights and liabilities of the IBA under any agreement or arrangement for the payment of pensions, allowances or gratuities.
- (6) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (1)(c) shall be enforceable by civil proceedings brought by the

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other relevant transferee in question for an injunction or interdict or for any other appropriate relief.

Effect of transfer scheme

- 4 (1) Where a transfer scheme comes into force on the transfer date, this sub-paragraph shall have effect on that date so as to transfer to each of the relevant transferees, in accordance with the scheme's provisions and without further assurance, such of the property, rights and liabilities of the IBA as are allocated to that transferee by the scheme.
- (2) A transaction of any description which is effected in pursuance of any provision included in a transfer scheme in accordance with this Schedule shall be binding on all persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the IBA or any relevant transferee.
- (3) Where apart from this sub-paragraph any person would have power, in consequence of anything done or likely to be done by or under this Act, to terminate or modify an interest or right which is vested in the IBA at the passing of this Act, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a transfer scheme, that power shall not be exercisable in relation to the interest or right at any time before its transfer in accordance with the scheme; and
 - (b) without prejudice to any other provision of this Schedule, that power shall be exercisable in relation to the interest or right after its transfer only in so far as the scheme provides for it to be transferred subject to the power.
- (4) Where, in consequence of any transfer made in accordance with a transfer scheme, all the property, rights and liabilities comprised in a particular part of the IBA's undertaking are transferred to a relevant transferee—
- (a) the ^{M1}Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to the transfer, whether or not they would otherwise so apply, and
 - (b) that undertaking shall accordingly (whether or not it would otherwise be so regarded) be regarded for the purposes of those Regulations as an undertaking in the nature of a commercial venture.

Marginal Citations

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Third parties affected by transfer scheme

- 5 (1) This paragraph applies where—
- (a) in consequence of any transfer made in accordance with a transfer scheme, any right or liability of a person (other than the IBA or any relevant transferee) which was enforceable against or by the IBA becomes enforceable against or by one or more relevant transferees; and
 - (b) apart from this Schedule that person's consent or concurrence would have been required for that right or liability to become so enforceable;
- and in this paragraph references to a third party are references to any such person.

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- (2) Subject to sub-paragraph (3), the IBA shall take reasonable steps to identify any third party and to notify him of the effect of the transfer in question on any right or liability of his falling within sub-paragraph (1), and of the effect of sub-paragraph (4).
- (3) A transfer scheme may provide that the duties imposed on the IBA by sub-paragraph (2) in relation to a transfer shall be imposed instead on such one of the relevant transferees as may be specified in the scheme.
- (4) Where—
 - (a) any right or liability of a third party has become enforceable against or by more than one relevant transferee, and
 - (b) the value of any property or interest of the third party is diminished thereby, such compensation as is just shall be paid to the third party by one or more of the relevant transferees.
- (5) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (4), or as to the person to or by whom it shall be paid, shall be referred to and determined by—
 - (a) an arbitrator appointed by the Lord Chancellor; or
 - (b) where the proceedings are to be held in Scotland, an arbiter appointed by the Lord President of the Court of Session.

Supplemental provisions of scheme

- 6 (1) A transfer scheme may contain supplemental, consequential and transitional provisions for the purposes of, or in connection with, the division effected or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide—
 - (a) that for purposes connected with any transfer made in accordance with the scheme a relevant transferee to whom anything is transferred in accordance with the scheme is to be treated as the same person in law as the IBA;
 - (b) that, so far as may be necessary for the purposes of or in connection with any such transfer, agreements made, transactions effected and other things done by or in relation to the IBA are to be treated as made, effected or done by or in relation to the relevant transferee to whom the transfer is made;
 - (c) that, so far as may be necessary for the purposes of or in connection with any such transfer, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the IBA are to have effect with such modifications as are specified in the scheme;
 - (d) that proceedings commenced by or against the IBA are to be continued by or against such one of the relevant transferees as the scheme may provide in relation to any circumstances specified or described in it;
 - (e) that the effect of any transfer made in accordance with the scheme in relation to contracts of employment with the IBA is not to be to terminate any such contracts but is to be that periods of employment with the IBA are to count for all purposes as periods of employment with the relevant transferee to whom the transfer is made;

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- (f) that disputes as to the effect of the scheme between any of the relevant transferees are to be referred to such arbitration as may be specified in or determined under the scheme;
- (g) that determinations on such arbitrations, and certificates given jointly by all or any two of the relevant transferees as to the effect of the scheme as between the transferees concerned, are to be conclusive for all purposes.

Vesting of IBA's property after coming into force of scheme

- 7 (1) A transfer scheme may provide for the imposition of duties—
- (a) on the IBA, and
 - (b) on all or any of the relevant transferees,
- to take all such steps as may be requisite to secure that the vesting in any of those transferees, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a transfer scheme may require the IBA to comply with any directions of any of the relevant transferees in performing any duty imposed on the IBA by virtue of a provision included in the scheme by virtue of sub-paragraph (1).
 - (3) A transfer scheme may provide that, until the vesting of any foreign property, right or liability of the IBA in a relevant transferee is effective under the relevant foreign law, it shall be the duty of the IBA to hold that property or right for the benefit of, or to discharge that liability on behalf of, that transferee.
 - (4) Nothing in any provision included in a transfer scheme by virtue of this paragraph shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in a relevant transferee, by virtue of the scheme, of any foreign property, right or liability.
 - (5) The IBA shall have all such powers as may be requisite for the performance of any duty imposed on them by any provision included in a transfer scheme by virtue of this paragraph; but such a scheme may require a relevant transferee to act on behalf of the IBA (so far as possible) for the purposes of, or in connection with, the performance of any such duty in relation to any property, right or liability vested in the transferee by virtue of the scheme.
 - (6) A transfer scheme may provide that any foreign property, rights or liabilities that are acquired or incurred by the IBA after the scheme comes into force are immediately to become property, rights or liabilities of such one of the relevant transferees as is specified in the scheme; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the IBA when the scheme comes into force.
 - (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to 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) Any expenses incurred by the IBA in consequence of any provision included in a transfer scheme by virtue of this paragraph shall be met by the relevant transferees in such proportions as may be determined by or under the scheme.

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Certificate of Secretary of State as to vesting of property etc.

- 8 (1) Subject to sub-paragraph (2), a certificate issued by the Secretary of State to the effect that any property, right or liability of the IBA vested at a particular time by virtue of this Schedule in one or more of the relevant transferees shall be conclusive evidence of the matters stated in the certificate.
- (2) Nothing in any such certificate shall prejudice the operation of a certificate issued by virtue of a provision included in a transfer scheme by virtue of paragraph 6(2)(g) above.

Power of Secretary of State to control division of IBA's pension fund

- 9 (1) If the Secretary of State so determines, the trustees of the Independent Broadcasting Authority Staff Pensions Plan shall refer to him, before such date as he may specify, the division and distribution of the relevant assets which is to be made by them for the purpose of making a transfer payment to a pension scheme established by the nominated company for its employees; and, if he does so, any such division and distribution of those assets and liabilities shall not be made by the trustees except—
- (a) with his consent, or
 - (b) in accordance with an order made by him under sub-paragraph (2).
- (2) Where any such division and distribution is referred to the Secretary of State under sub-paragraph (1), he may by order direct that the relevant assets shall be divided and distributed by the trustees in such manner, and at such time, as is specified in the order; and any provision of—
- (a) the Plan referred to in sub-paragraph (1), or
 - (b) any enactment relating to occupational pension schemes, including any enactment relating to transfer values,
- shall not have effect to the extent that it is inconsistent with the division and distribution of those assets in accordance with any such order.
- (3) When making an order under sub-paragraph (2) the Secretary of State shall have regard to the interests of all classes of persons who are for the time being beneficiaries or potential beneficiaries under the Plan referred to in sub-paragraph (1).
- (4) In this paragraph—
- “the relevant assets” means the assets held by or on behalf of the trustees; and
 - “the trustees” means the trustees of the Plan referred to in sub-paragraph (1).
- (5) An order under sub-paragraph (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Discharge by IBA of contingent etc. liabilities

- 10 (1) This paragraph applies to any liabilities to which the IBA are subject on or after the transfer date, being liabilities which—
- (a) had not become enforceable against the IBA before that date, and
 - (b) are not specifically and exclusively referable to any particular part or parts of the undertaking of the IBA which has or have been transferred in accordance with a transfer scheme to one or more of the relevant transferees.

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- (2) Any sums required by the IBA for the purpose of discharging any liabilities to which this paragraph applies shall be paid to them by the Secretary of State out of money provided by Parliament.
- (3) Any payments made to the IBA under sub-paragraph (2) may be so made subject to such conditions as the Secretary of State may determine with the approval of the Treasury.

Final accounts and annual report of IBA

- 11 (1) The IBA shall, as soon as possible after the transfer date, prepare such a statement of accounts as is mentioned in subsection (1) of section 42 of the Act 1981 (accounts and audit) in respect of the period between—
- (a) the end of the financial year for which the last statement of accounts was prepared by them under that section, and
 - (b) the transfer date,
- whether that period is a financial year or not; and that section shall continue to apply on and after that date in relation to the auditing of accounts kept in accordance with that subsection in respect of that period.
- (2) The IBA shall, as soon as possible after the transfer date, prepare and transmit to the Secretary of State, in accordance with section 43 of that Act (annual reports), such a report as is mentioned in subsection (1) of that section in respect of the period between—
- (a) the end of the financial year for which the last such report was prepared by them under that section, and
 - (b) the transfer date,
- whether that period is a financial year or not.
- (3) Subsection (2) of that section shall apply to any such report as if the references to the statement of accounts for the year in question included references to the statement of accounts prepared in accordance with sub-paragraph (1) above.
- (4) The Secretary of State shall lay copies of any such report before each House of Parliament.
- (5) Any expenses incurred by the IBA under this paragraph shall be met by such one or more of the relevant transferees, and (if more than one) in such proportions, as may be determined by or under a transfer scheme.

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