

*Status: Point in time view as at 01/04/2001.*

*Changes to legislation: Transport Act 2000, SCHEDULE 6 is up to date with all changes known to be in force on or before 19 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

Section 63.

#### TRANSFER SCHEMES

##### *Allocation*

- 1 (1) Paragraphs 2 and 3 apply if the following two conditions are satisfied.
- (2) The first condition is that—
  - (a) provision is made by a transfer scheme for the transfer to a transferee of a specified part of a transferor's undertaking, or
  - (b) provision is made by a transfer scheme (or transfer schemes) for the transfer to different transferees of different specified parts of a transferor's undertaking.
- (3) The second condition is that any property, right or liability falls partly in one part of the undertaking and partly in another or others; and the parts of the undertaking are—
  - (a) the part (or each part) transferred, and
  - (b) if a part is retained by the transferor, that part.
- (4) In paragraphs 2 and 3 references to the parties are to—
  - (a) the transferee or transferees concerned, and
  - (b) the transferor (if he retains part of the undertaking).
- (5) Paragraphs 2 and 3 do not apply to rights or liabilities under a contract of employment.

#### **Commencement Information**

- II** [Sch. 6 paras. 1-25](#) wholly in force at 1.2.2001, see [s. 275\(1\)](#) and [S.I. 2001/57, art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to the transitional provision and saving in [Sch. 2 Pt. II](#))

- 2 (1) If the nature of the property, right or liability permits, it must be apportioned in appropriate proportions between the parties; and each appropriate part must be taken to have been transferred to a transferee or retained by the transferor.
- (2) If an estate or interest in land is to be apportioned under sub-paragraph (1)—
  - (a) any rent payable under a lease in respect of the estate or interest, and
  - (b) any rent charged on the estate or interest,must be apportioned so that an appropriate part of the rent is payable in respect of (or charged on) the appropriate part of the estate or interest.
- (3) Sub-paragraph (2) applies, with any necessary modifications, in relation to any feuduty 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.

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**Commencement Information**

**I2** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 3
- (1) If the nature of the property, right or liability does not permit it to be apportioned as mentioned in paragraph 2(1), it must be taken to have been transferred to a transferee or retained by the transferor in accordance with the tests in sub-paragraphs (2) and (3).
  - (2) In the case of an estate or interest in land the test is—
    - (a) which one of the parties has the greater (or greatest) need of the estate or interest for business purposes, or
    - (b) if it is not possible to say that one of them has the greater (or greatest) need, which one of them is likely to make more (or the most) use of the land.
  - (3) In the case of any other property or any right or liability, the test is which one of the parties is likely—
    - (a) to make more (or the most) use of the property, or
    - (b) to be more (or the most) affected by the right or liability.
  - (4) The tests in sub-paragraphs (2) and (3) must be applied at—
    - (a) the time when the transfer scheme comes into force (or schemes come into force), or
    - (b) if there are two or more schemes and they come into force at different times, the later or latest of the times.
  - (5) The preceding provisions of this paragraph apply subject to any arrangements made by the parties as to the protection of the interests of any of them.

**Commencement Information**

**I3** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

*Identification*

- 4
- (1) Paragraphs 5 to 7 apply if—
    - (a) provision is made by a transfer scheme for the transfer to a transferee of a specified part of a transferor’s undertaking, or
    - (b) provision is made by a transfer scheme (or transfer schemes) for the transfer to different transferees of different specified parts of a transferor’s undertaking.
  - (2) It is immaterial whether or not the second condition set out in paragraph 1 is satisfied.
  - (3) In paragraphs 5 to 7 references to the parties are to—
    - (a) the transferee or transferees concerned, and
    - (b) the transferor (if he retains part of the undertaking).
  - (4) Paragraphs 5 to 7 do not apply to rights or liabilities under a contract of employment.

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#### Commencement Information

**I4** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 5
- (1) The parties must, so far as practicable, make any written agreement necessary or expedient to identify what is to be taken to have been transferred to whom and what (if anything) is to be taken to have been retained.
  - (2) The duty under sub-paragraph (1) has effect before as well as after the coming into force of any transfer scheme concerned.

#### Commencement Information

**I5** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 6
- (1) If the Secretary of State thinks it is unlikely that agreement will be reached on a matter where agreement is required under paragraph 5 he may serve a notice on the parties.
  - (2) A notice may be served—
    - (a) whether or not representations are made by a party;
    - (b) before or after the coming into force of any transfer scheme concerned.
  - (3) A notice may specify the terms of the agreement which the Secretary of State thinks the parties should have made under paragraph 5 in relation to the matter concerned.
  - (4) If a notice is served under this paragraph the parties are to be treated as having made an agreement in the terms specified.

#### Commencement Information

**I6** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 7
- (1) This paragraph applies if—
    - (a) an agreement made under paragraph 5, or
    - (b) an agreement treated as made by paragraph 6,contains provision to the effect that any property, right or liability is to be taken to have been transferred to a transferee.
  - (2) The property, right or liability is to be treated as having been transferred to the transferee by the scheme concerned (or, if there are two or more schemes, such of them as the agreement specifies).

#### Commencement Information

**I7** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

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### *Discharge of functions*

- 8 (1) Paragraphs 9 and 10 apply if—
- (a) provision is made by a transfer scheme for the transfer to a transferee of a specified part of a transferor’s undertaking, or
  - (b) provision is made by a transfer scheme (or transfer schemes) for the transfer to different transferees of different specified parts of a transferor’s undertaking.
- (2) It is immaterial whether or not the second condition set out in paragraph 1 is satisfied.
- (3) In paragraphs 9 and 10 references to the parties are to—
- (a) the transferee or transferees concerned, and
  - (b) the transferor (if he retains part of the undertaking).
- (4) Paragraphs 9 and 10 do not apply to rights or liabilities under a contract of employment.
- (5) Sub-paragraph (6) applies if at the time a transfer scheme comes into force a transferor or transferee under the scheme is—
- (a) a company which is wholly owned by the Crown;
  - (b) a company which is wholly owned by the CAA;
  - (c) a company which is a wholly owned subsidiary of a company falling within paragraph (a) or (b).
- (6) Paragraphs 9 and 10 cease to apply in relation to the scheme concerned at the time when the transferor or any one of the transferees under the scheme ceases to be a company which falls within any of paragraphs (a) to (c) of sub-paragraph (5).

#### **Commencement Information**

**I8** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 9 (1) The parties must, so far as practicable, make any written agreement and execute any other instrument necessary or expedient to—
- (a) give to any party (as against another or others) any rights and safeguards needed for carrying out the party’s functions;
  - (b) modify the division of the transferor’s undertaking in order to help the parties in carrying out their functions.
- (2) An agreement or instrument under sub-paragraph (1) may provide—
- (a) for the granting of leases and for the creation of other rights and liabilities over land (whether or not amounting in law to interests in land and whether or not involving the surrender of any existing interest or the creation of a new interest);
  - (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 statutory register.
- (3) The duty under sub-paragraph (1) has effect before as well as after the coming into force of any transfer scheme concerned.

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#### Commencement Information

**I9** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 10 (1) If the Secretary of State thinks it is unlikely that agreement will be reached on a matter where agreement is required under paragraph 9 he may serve a notice on the parties.
- (2) A notice may be served—
- whether or not representations are made by a party;
  - before or after the coming into force of any transfer scheme concerned.
- (3) A notice may specify the terms of the agreement which the Secretary of State thinks the parties should have made under paragraph 9 in relation to the matter concerned.
- (4) If a notice is served under this paragraph the parties are to be treated as having made an agreement in the terms specified.

#### Commencement Information

**I10** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

#### *Transfers by agreement*

- 11 (1) If a transfer scheme provides for property, rights or liabilities to be transferred from a transferor to a transferee, they may agree that such of the property, rights or liabilities as are specified in the agreement are to be transferred from the transferee to the transferor.
- (2) If one or more transfer schemes provide for different property, rights or liabilities to be transferred to different transferees, any transferee may agree with another that such of the property, rights or liabilities as are specified in the agreement are to be transferred from one to the other.
- (3) This paragraph does not apply to rights or liabilities under a contract of employment.
- (4) An agreement under this paragraph—
- must be in writing;
  - must be made before the end of the required period;
  - must be made with the Secretary of State's approval.
- (5) The required period is the period of 12 months starting with—
- the day on which the transfer scheme comes into force (or schemes come into force), or
  - if there are two or more schemes and they come into force on different days, the later or latest of the days.
- (6) An agreement under this paragraph may provide for a transfer to take effect on a date specified in or determined in accordance with the agreement; but the agreement may provide that a transfer is not to take effect unless the circumstances are such as the agreement specifies.

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- (7) When a transfer agreed under this paragraph takes effect the agreement has effect to transfer (in accordance with its provisions) the property, rights or liabilities concerned, subject to any enactment which provides for transactions to be registered in a statutory register.

#### Commencement Information

- I11** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

#### *Documents of title*

- 12 (1) This paragraph applies if on a transfer under a transfer scheme a transferor is entitled to retain possession of any document relating in part to the title to, or to the management of, any land or other property transferred to a transferee.
- (2) If the land or other property is situated in England and Wales—
- (a) the transferor is to be treated as having given the transferee an acknowledgement in writing of the transferee's right to production of the document and to delivery of copies of it, and
  - (b) section 64 of the <sup>M1</sup>Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.
- (3) If the land or other property is situated in Scotland, subsections (1) and (2) of section 16 of the <sup>M2</sup>Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (4) If the land or other property is situated in Northern Ireland—
- (a) the transferor is to be treated as having given the transferee an acknowledgement in writing of the transferee's right to production of the document and to delivery of copies of it, and
  - (b) section 9 of the <sup>M3</sup>Conveyancing Act 1881 (which corresponds to section 64 of the <sup>M4</sup>Law of Property Act 1925) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

#### Commencement Information

- I12** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

#### Marginal Citations

- M1** 1925 c. 20.  
**M2** 1979 c. 33.  
**M3** 1881 c. 41.  
**M4** 1925 c. 20.

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### *Foreign property, rights and liabilities*

- 13 (1) This paragraph applies if a transfer scheme provides for the transfer of foreign property, rights or liabilities from a transferor to a transferee.
- (2) The transferor and the transferee must take such steps as may be necessary to secure that the vesting of the property, rights or liabilities in the transferee is effective under the relevant foreign law; and the transferor must take the steps at such times as the transferee may specify in directions given to the transferor.
- (3) Until the vesting of the property, rights or liabilities in the transferee is effective under the relevant foreign law, the transferor must—
- (a) hold the property or rights for the transferee’s benefit, or
  - (b) discharge the liabilities on the transferee’s behalf.
- (4) The transferor is to have all powers necessary for the performance of his duty under sub-paragraph (2), but the transferee must act on the transferor’s behalf (so far as possible) in the performance of that duty.
- (5) Nothing in sub-paragraphs (2) to (4) affects the law of the United Kingdom (or of any part of the United Kingdom) as it applies to the vesting of the property, rights or liabilities in the transferee by virtue of the transfer scheme.
- (6) References in this paragraph to foreign property, rights or liabilities are references to property, rights or liabilities as respects which any issue arising in any proceedings would 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.
- (7) The transferee must meet any expenses incurred by the transferor in consequence of this paragraph.
- (8) Duties imposed on the transferor or the transferee by this paragraph are enforceable in the same way as if they were imposed by a contract between them.

#### **Commencement Information**

**I13** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

### *Certificates*

- 14 (1) This paragraph applies if—
- (a) a transfer scheme provides for the transfer of property, rights or liabilities from a transferor to a transferee, and
  - (b) a certificate falling within sub-paragraph (2) is made jointly by or on behalf of the parties.
- (2) A certificate falls within this sub-paragraph if it certifies that any specified property, right or liability—
- (a) was intended to be, and was, vested in the transferee by virtue of the transfer, and
  - (b) has not been the subject of an agreement under paragraph 11.
- (3) The certificate is to be conclusive evidence for all purposes of the facts it certifies.

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- (4) The reference in sub-paragraph (2) to property includes a reference to an interest in or right over property.
- (5) Sub-paragraph (6) applies if—
  - (a) one of the parties requests the other to join in the preparation of a certificate, and
  - (b) they fail to agree the terms of a certificate within the period of one month starting with the day of the request.
- (6) The parties must—
  - (a) refer the matter to the Secretary of State, and
  - (b) issue a certificate in such terms as may be specified in a direction given by him.
- (7) The parties are the transferor and the transferee.

#### **Commencement Information**

**I14** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

#### *Restrictions on dealing with land*

- 15
- (1) For the purposes of this paragraph a person is a party if—
    - (a) he is the transferor (or one of the transferors) under a transfer scheme and holds an interest in land immediately after the scheme comes into force, or
    - (b) he is the transferee (or one of the transferees) under the scheme and an interest in land is transferred to him under the scheme.
  - (2) For the purposes of this paragraph the relevant land is any land in which any party has an interest immediately after the scheme comes into force.
  - (3) On the representation of any of the parties the Secretary of State may give to the parties a direction stating that sub-paragraph (4) is to apply to such of the relevant land as the direction specifies.
  - (4) While the direction remains in force—
    - (a) no party may dispose of an interest in any of the specified land unless the Secretary of State consents;
    - (b) if a party proposes to dispose of such an interest and the Secretary of State thinks it necessary or expedient to exercise any of the powers set out in sub-paragraph (5) for the protection of any other party, the Secretary of State may exercise any of those powers.
  - (5) The powers are—
    - (a) power to consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose;
    - (b) power to require a party to dispose of an interest in any of the specified land to such person and in such manner as may be specified in the requirement;
    - (c) power to require a party to acquire another party's interest in any of the specified land.



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- (6) In sub-paragraph (5)(b) and (c) references to an interest include (but are not limited to) references to the interest whose disposal is proposed.
- (7) A person who is not a party and who is dealing with a party (or with a person claiming under a party) in relation to land is not to be concerned to see or enquire—
  - (a) whether this paragraph applies (or has applied) in relation to any of the land;
  - (b) whether a direction under this paragraph has been given in relation to any of the land;
  - (c) whether this paragraph or any condition imposed or requirement made under it has been complied with in connection with the dealing or any other dealing concerning any of the land.
- (8) No transaction between a person who is not a party (on the one hand) and a party or a person claiming under a party (on the other) is to be invalid by reason of any failure to comply with this paragraph or any condition imposed or requirement made under it.

#### Commencement Information

**115** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

#### *Construction of agreements etc*

- 16 (1) This paragraph applies if—
- (a) a transfer scheme provides for the transfer of property, rights or liabilities from a transferor to a transferee, and
  - (b) immediately before the coming into force of the scheme the transferor was entitled or subject to the property, rights or liabilities under an agreement to which he was then a party.
- (2) This paragraph applies—
- (a) whether or not the agreement is in writing;
  - (b) whether or not the transferor could assign the property, rights or liabilities.
- (3) So far as the agreement relates to the property, rights or liabilities transferred to the transferee, as respects anything falling to be done after the coming into force of the scheme the agreement is to have effect as if—
- (a) the transferee had been a party to it instead of the transferor;
  - (b) a reference to the transferor were a reference to the transferee;
  - (c) a reference 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 a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by (or engaged in the business of) the transferee;
  - (d) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.
- (4) A reference mentioned in sub-paragraph (3)(b) or (c) may be express or implied; and if express it is immaterial how it is worded.

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(5) It is immaterial how a reference mentioned in sub-paragraph (3)(d) is worded.

**Commencement Information**

**I16** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 17 (1) This paragraph applies if—
- (a) a transfer scheme provides for the transfer of property, rights or liabilities from a transferor to a transferee, and
  - (b) immediately before the coming into force of the scheme any provision of an agreement to which the transferor was not a party, any statutory provision or any provisions of a document (other than an agreement) related to the property, rights or liabilities transferred to the transferee.
- (2) This paragraph applies—
- (a) whether or not the agreement mentioned in sub-paragraph (1)(b) is in writing;
  - (b) whether or not the transferor could assign the property, rights or liabilities.
- (3) So far as the agreement, provision or document relates to the property, rights or liabilities transferred to the transferee, as respects anything falling to be done after the coming into force of the scheme the agreement, provision or document is to have effect as if—
- (a) a reference to the transferor were a reference to the transferee;
  - (b) a reference 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 a reference to such a person as the transferee may appoint or, in default of appointment, to a person with corresponding functions who is employed by (or engaged in the business of) the transferee;
  - (c) a reference in general terms to persons employed by, persons engaged in the business of, or agents of, the transferor were a reference to persons employed by, persons engaged in the business of, or agents of, the transferee.
- (4) A reference mentioned in sub-paragraph (3)(a) or (b) may be express or implied; and if express it is immaterial how it is worded.
- (5) It is immaterial how a reference mentioned in sub-paragraph (3)(c) is worded.
- (6) A reference mentioned in sub-paragraph (3) to the transferor may be a general reference to a class of persons of which the transferor is one (without the transferor being named).
- (7) For the purposes of this paragraph a statutory provision is a provision contained in an Act or in a document made or issued under an Act; and here “Act” includes a private or local Act.

**Commencement Information**

**I17** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

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### *Proceedings etc*

- 18 (1) This paragraph applies if a transfer scheme provides for a transfer from a transferor to a transferee.
- (2) From the coming into force of the scheme the transferee is to have the same rights, powers and remedies for ascertaining, perfecting or enforcing a right or liability transferred to him under the scheme as he would have had if the right or liability had at all times been a right or liability of his.
- (3) From the coming into force of the scheme any person (other than the transferee) is to have the same rights, powers and remedies for ascertaining, perfecting or enforcing a right or liability transferred to the transferee under the scheme as he would have had if the right or liability had at all times been a right or liability of the transferee.
- (4) The rights and powers which the transferee or any other person is to have include—
- (a) rights and powers as to the taking or resisting of legal proceedings;
  - (b) rights and powers as to the making or resisting of applications to an authority.
- (5) Sub-paragraph (6) applies if on the coming into force of the scheme legal proceedings or applications to an authority by or against the transferor are pending.
- (6) The proceedings or applications must be continued by or against the transferee (to the transferor's exclusion) in so far as they relate—
- (a) to any property, rights or liabilities transferred to the transferee under the scheme, or
  - (b) to any agreement or enactment relating to any such property, rights or liabilities.

#### **Commencement Information**

**I18** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

### *Third parties*

- 19 (1) This paragraph applies if—
- (a) an agreement is made by the parties under paragraph 5 or 9 or treated as made under paragraph 6 or 10, or
  - (b) an instrument is executed by the parties under paragraph 9.
- (2) The agreement or instrument is to bind all other persons even if it would (apart from this sub-paragraph) have required the consent or concurrence of any other person.
- (3) If as a result of the agreement or instrument the rights or liabilities of a person who is not a party become enforceable as to part against or by one party and as to part against or by another party—
- (a) the parties must notify that person of the agreement or instrument;
  - (b) that person may within the period of 28 days (starting with the day he is notified) apply to the Secretary of State to give a direction to vary the agreement or instrument.

*Status: Point in time view as at 01/04/2001.*

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- (4) If the Secretary of State is satisfied that the agreement or instrument operated unfairly against that person, the Secretary of State may give a direction to the parties requiring them to vary the agreement or instrument in a way specified in the direction.

#### Commencement Information

**I19** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 20 (1) For the purposes of this paragraph—
- (a) a party is a person who is a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph;
  - (b) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph.
- (2) This paragraph applies if—
- (a) a transfer scheme is made or transfer schemes are made,
  - (b) rights or liabilities of a third party are (apart from the scheme or schemes) enforceable against or by a transferor,
  - (c) in consequence of the scheme or schemes or of anything done under this Schedule the third party's rights or liabilities become enforceable as to different parts against or by different parties, and
  - (d) the value of any property or interest of the third party is diminished as a result.
- (3) Just compensation must be paid to the third party by one or more of these persons—
- (a) the parties against or by whom the third party's rights or liabilities become enforceable;
  - (b) the transferor concerned (if he does not fall within paragraph (a)).
- (4) If it appears to the transferor that a person is or may be entitled to compensation the transferor must—
- (a) notify the person that he is or may be entitled, and
  - (b) invite him to make representations to the transferor within the period of 14 days starting with the date the notification is made.
- (5) But if the transferor does not know the person's name and address he must instead publish (in a manner he thinks is appropriate) a notice which—
- (a) contains information about the property or interest affected, and
  - (b) invites any person who thinks he is or may be entitled to compensation to make representations to the transferor within the period specified in the notice (which must not be less than 28 days starting with the date of publication of the notice).
- (6) A dispute about whether (or how much) compensation is payable under this paragraph, or about who must pay or be paid it, must be referred to and determined by—
- (a) an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors (if the proceedings are to be held in England and Wales),
  - (b) an arbiter appointed by the Chairman of the Royal Institution of Chartered Surveyors in Scotland (if the proceedings are to be held in Scotland), or

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- (c) an arbitrator appointed by the Lord Chancellor (if the proceedings are to be held in Northern Ireland).

#### Commencement Information

**I20** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 21 (1) For the purposes of this paragraph—
- (a) a third party is a person who is not a transferor or a transferee under the transfer scheme or schemes referred to in this paragraph;
  - (b) a transferred item is any property, right, liability, undertaking or part of an undertaking which is the subject of a transfer (or transfers) under the transfer scheme or schemes referred to in this paragraph.
- (2) This paragraph applies if a transfer scheme is made (or transfer schemes are made) and there are court proceedings the parties to which are (or include) a third party and either—
- (a) the transferor of a transferred item, or
  - (b) any transferee or transferees of the item.
- (3) The third party may apply to the court at any stage in the proceedings on any of these grounds—
- (a) that the issues in the proceedings depend on the identification, with regard to the transferred item, of what has been transferred to whom and what (if anything) has been retained and that the identification has not yet been made;
  - (b) that the issues in the proceedings raise a question of construction on the provisions of this Chapter which would not arise if the transferor of the transferred item and the transferee (or transferees) of it constituted a single person.
- (4) If it appears to the court that such a ground is established it may hear and determine the proceedings on the first and second bases set out below.
- (5) If the transferor of the transferred item is a party to the proceedings, the first basis is that the transferor represents and is answerable for the transferee (or transferees) of the item.
- (6) If there is one transferee of the transferred item and he is a party to the proceedings, the first basis is that the transferee represents and is answerable for the transferor of the item.
- (7) If there are two or more transferees of the transferred item and they are parties to the proceedings, the first basis is that the transferees represent and are answerable for the transferor of the item.
- (8) If there are two or more transferees of the transferred item and one or more of them (but not both or all of them) are parties to the proceedings, the first basis is that—
- (a) the transferee who is a party represents and is answerable for the transferor of the item and for the transferee of it who is not (or the transferees of it who are not) parties, or

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- (b) the transferees who are parties represent and are answerable for the transferor of the item and for the transferee of it who is not (or the transferees of it who are not) parties.
- (9) The second basis is that the transferor of the transferred item and the transferee (or transferees) of it constitute a single person.
- (10) If the court determines the proceedings on the first and second bases any judgment or order of the court is to bind both the transferor and the transferee (or transferees) of the transferred item.

**Commencement Information**

**I21** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 22 (1) For the purposes of this paragraph a relevant person is a person who satisfies these conditions—
- (a) he is a transferor or transferee under a transfer scheme or transfer schemes, and
  - (b) he might be prejudiced by paragraph 21 if there were court proceedings in which the scheme or schemes were an issue.
- (2) A relevant person must keep each other relevant person informed of any court proceedings in which the scheme or schemes may become an issue.

**Commencement Information**

**I22** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 23 (1) This paragraph applies if a person falling within sub-paragraph (3) (the claimant) claims that—
- (a) he has been prejudiced by paragraph 21,
  - (b) another person or other persons falling within sub-paragraph (3) ought to indemnify him, and
  - (c) there has been an unreasonable failure by the person (or any of the persons) to indemnify him.
- (2) The claimant may refer the matter to the Secretary of State for determination by him; and a determination must be complied with.
- (3) A person falls within this sub-paragraph if he is a transferor or a transferee under the scheme or schemes concerned.

**Commencement Information**

**I23** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

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### General

- 24 Paragraphs 11 to 18 and 20 apply whether or not property, rights or liabilities are (or are to be) transferred under the scheme or schemes as a constituent of an undertaking (or part of one).

#### Commencement Information

**I24** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

- 25 (1) Paragraphs 12 to 18 and 20 to 24 have effect as if references to a transfer scheme or schemes included references to—
- (a) an agreement or agreements under paragraph 9 or 11;
  - (b) an instrument or instruments under paragraph 9;
  - (c) an agreement or agreements treated as made under paragraph 10.
- (2) Where paragraph 14 has effect in relation to an agreement under paragraph 11 by virtue of sub-paragraph (1), sub-paragraph (2)(b) of paragraph 14 shall be disregarded.
- (3) Paragraph 19 has effect in relation to an agreement under paragraph 11 as it has effect in relation to an agreement made under paragraph 5 or 9.
- (4) Where paragraphs 12 to 24 have effect in relation to—
- (a) an agreement under paragraph 9 or 11,
  - (b) an instrument under paragraph 9, or
  - (c) an agreement treated as made under paragraph 10,
- references to a transferor or a transferee have effect as references to a transferor or a transferee under the agreement or the instrument.

#### Commencement Information

**I25** Sch. 6 paras. 1-25 wholly in force at 1.2.2001, see s. 275(1) and S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to the transitional provision and saving in Sch. 2 Pt. II)

**Status:**

Point in time view as at 01/04/2001.

**Changes to legislation:**

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