

SCHEDULES

SCHEDULE 4

Section 52

TRANSFER SCHEMES

Application and commencement of scheme

- 1 (1) A scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
 - (a) by specifying or describing them in particular;
 - (b) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
 - (c) by specifying the manner in which they are to be determined.
- (2) A scheme comes into force on the date appointed by the scheme.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
 - (b) property acquired in the period after the making of the scheme and before it comes into force and rights and liabilities arising in that period;
 - (c) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
 - (d) property situated in the United Kingdom, otherwise in a controlled place, or elsewhere;
 - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom;
 - (f) rights and liabilities under an enactment or subordinate legislation.
- (2) The transfers to which effect may be given by a scheme include transfers that are to take effect in accordance with the scheme as if there were—
 - (a) no such requirement to obtain a person's consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within [sub-paragraph \(3\)](#).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) [Sub-paragraph \(5\)](#) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a scheme—

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- (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
 - (b) to treat such an interest or right as modified or terminated.
- (5) That entitlement is to be enforceable in relation to the interest or right—
- (a) in consequence of what is done or likely to be done by or under this Act, and
 - (b) in corresponding circumstances arising after the transfer,
- to the extent only that the scheme provides for it to be so enforceable.
- (6) **Sub-paragraphs (2) to (5)** have effect where shares in a subsidiary of the transferor are or are to be transferred—
- (a) as if the reference in **sub-paragraph (3)** to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect, and
 - (b) as if the reference in **sub-paragraph (4)** to the transferor included a reference to the subsidiary.

Dividing and modifying transferor's property, rights and liabilities

- 3 (1) A scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property to be transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor;
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees, or between a transferee and a transferor.
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor, and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within **paragraph (a)** to be enforceable in different or modified respects by or against each or any of them.
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) In **sub-paragraph (4)** “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
- (6) **Paragraph 2(2) and (3)** applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

Obligation to effect transfers etc. under a scheme

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of [this paragraph](#) (whether in the same or a different scheme), or
 - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) An obligation imposed on a person by virtue of [sub-paragraph \(1\)](#) is enforceable by the relevant person in civil proceedings—
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.
- (3) The relevant person for the purposes of [sub-paragraph \(2\)](#) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

Transfer of licences and permits

- 5 (1) A scheme may include provision to transfer any licence or permit held by the transferor from the transferor to the transferee.
- (2) Such a transfer may relate to the whole or any part of the licence or permit.
- (3) Where such a transfer relates to a part of the licence or permit, the provision made under [sub-paragraph \(1\)](#) may include—
- (a) provision apportioning responsibility between the transferor and the transferee in relation to—
 - (i) the making of payments required by conditions included in the licence or (as the case may be) permit,
 - (ii) ensuring compliance with any other requirements of the conditions included in the licence or (as the case may be) permit, and
 - (b) provision making incidental modifications to the terms and conditions of the licence or permit.
- (4) References in [this paragraph](#) to a part of a licence or permit are references to one or both of—
- (a) a part of the activities authorised by the licence or (as the case may be) permit;
 - (b) a part of the area in relation to which the holder of the licence or (as the case may be) permit is authorised to carry on those activities.

Powers and duties under statutory provisions

- 6 (1) A scheme may contain provision for some or all of the powers and duties to which [this paragraph](#) applies—
- (a) to be transferred to the transferee,
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or

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- (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.
- (2) Provision falling within [sub-paragraph \(1\)](#) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which [this paragraph](#) applies are the powers and duties conferred or imposed upon the transferor by or under an enactment, so far as those powers and duties are connected with—
 - (a) the undertaking of the transferor to the extent the scheme relates to that undertaking, or
 - (b) any property, rights or liabilities to be transferred in accordance with the scheme.
- (4) The powers and duties mentioned in [sub-paragraph \(3\)](#) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.

Effect of scheme

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- (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
 - (a) this Act has the effect that, at the time when the scheme comes into force, the property or interests, rights or liabilities vest, without further assurance, in the transferee, and
 - (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from that time.
 - (2) [Sub-paragraph \(1\)](#) is subject to so much of a scheme as provides for—
 - (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
 - (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,
 to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of [paragraph 4\(1\)](#).
 - (3) In its application to Scotland, [sub-paragraph \(1\)](#) has effect with the omission of the words “without further assurance”.

Supplementary provisions of schemes

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- (1) A scheme may—
 - (a) make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme;
 - (b) make different provision for different purposes.
 - (2) In particular, a scheme may make provision, in relation to transfers in accordance with the scheme—
 - (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;

- (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;
 - (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the transferor is not to terminate any of those contracts but is to be that periods of employment with the transferor are to count for all purposes as periods of employment with the transferee;
 - (e) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) **Sub-paragraph (2)(c)** does not apply to references in an enactment or in subordinate legislation.
- (4) A scheme may make provision for disputes as to the effect of the scheme between the transferor and the transferee to be referred to such arbitration as may be specified in or determined under the scheme.
- (5) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (6) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsection (1) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer—
- (a) as if the transfer had been effected by deed, and
 - (b) as if the words “unless specially qualified” were omitted from that subsection.
- (7) In **this paragraph** references to a transfer in accordance with a scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

Modification of scheme

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- (1) The Secretary of State may modify a scheme.
 - (2) A modification may be made only for the purpose of achieving the objective with which the scheme was made (see **section 50(2)**).
 - (3) If a transfer under the scheme has taken effect, a modification under **sub-paragraph (1)** may be made only with the agreement of—
 - (a) the transferor or transferee affected by the modification (or, where both the transferor and transferee are affected, with the agreement of both of them);
 - (b) any employee who is a party to a contract of employment containing rights and liabilities to which the modification relates;

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- (c) any other person whose property or rights have been adversely affected by the modification.
- (4) A modification takes effect from such date as the Secretary of State may specify (which may be the date when the original scheme came into effect).

Compensation for third parties

- 10 (1) Where—
- (a) an entitlement of a third party to an interest or right would, apart from a provision of a scheme under [paragraph 2\(4\)](#) and [\(5\)](#), become enforceable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities,
 - (b) the provisions of that scheme or of [paragraph 2\(4\)](#) and [\(5\)](#) have the effect of preventing the third party’s entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and
 - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,
- the third party is entitled to compensation in respect of the extinguishment of the third party’s entitlement.
- (2) The amount of compensation to which a third party is entitled under [this paragraph](#) is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.
 - (3) A liability to pay compensation under [this paragraph](#) falls on the Secretary of State.
 - (4) In the preceding provisions of [this paragraph](#) “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
 - (5) [This paragraph](#) has effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme as it has effect in relation to the scheme.

Provision relating to foreign property etc

- 11 (1) Where there is a transfer in accordance with a scheme of—
- (a) any foreign property, or
 - (b) a foreign right or liability,
- the transferor and the transferee must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee is effective under the relevant foreign law.
- (2) Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must—
 - (a) hold the property or right for the benefit of the transferee, or
 - (b) discharge the liability on behalf of the transferor.

- (3) The transferor must comply with any directions given to it by the transferee in relation to the performance of the obligations under [sub-paragraphs \(1\) and \(2\)](#) of the transferor.
- (4) Nothing in [sub-paragraphs \(1\) to \(3\)](#) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a scheme.
- (5) Where—
 - (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a person, and
 - (b) by virtue of [this paragraph](#), the person holds the other property or right for the benefit of the transferee or is required to discharge the liability on behalf of the transferee,the property, right or liability acquired or incurred immediately becomes the property, right or liability of the transferee.
- (6) The provisions of [sub-paragraphs \(1\) to \(5\)](#) have effect in relation to foreign property, rights or liabilities transferred to the transferee under [sub-paragraph \(5\)](#) as they have effect in the case of property, rights and liabilities transferred in accordance with a scheme.
- (7) References in [this paragraph](#) to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an 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.
- (8) Expenses incurred under [this paragraph](#) by a person as the person from which anything is transferred are to be met by the transferee.
- (9) An obligation imposed under [this paragraph](#) in relation to property, rights or liabilities is to be enforceable as if contained in a contract between the transferor and the transferee.

Provision of information to Secretary of State

- 12 (1) If the Secretary of State proposes to make a scheme, the Secretary of State may direct—
 - (a) a proposed transferor, or
 - (b) a proposed transferee,to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to make the scheme.
- (2) If the Secretary of State proposes to modify a scheme, the Secretary of State may direct—
 - (a) a transferor, or
 - (b) a transferee,to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to modify the scheme.
- (3) A direction under [sub-paragraph \(1\) or \(2\)](#) must specify the period within which the information is to be provided.

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- (4) The period specified in the direction must be not less than 28 days beginning with the day of the giving of the direction.
- (5) If a person fails to comply with such a direction, the Secretary of State may serve a notice on the person requiring the person—
 - (a) to produce to the Secretary of State any documents which are specified or described in the notice and are in the person’s custody or under the person’s control, or
 - (b) to provide to the Secretary of State such information as may be specified or described in the notice.
- (6) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.
- (7) No person may be required under [this paragraph](#)—
 - (a) to produce a document which the person could not be compelled to produce in civil proceedings in the court, or
 - (b) to provide information which the person could not be compelled to give in evidence in such proceedings.
- (8) A person who intentionally alters, suppresses or destroys a document which the person has been required to produce by a notice under [sub-paragraph \(5\)](#) is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine.
- (9) If a person fails to comply with a notice under [sub-paragraph \(5\)](#), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (10) Any order under [sub-paragraph \(9\)](#) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of the following—
 - (a) the person in default;
 - (b) any officers of a company or other association who are responsible for its default.
- (11) In [this paragraph](#)—
 - (a) a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form, and
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (12) In [this paragraph](#) “the court” means—
 - (a) in England and Wales, the High Court;
 - (b) in Scotland, the Court of Session;
 - (c) in Northern Ireland, the High Court.

Interpretation

13 (1) In [this Schedule](#)—

“controlled place” has the meaning given by section 17(3) to (4) of the Energy Act 2008;

“scheme” means a scheme under [section 50](#);

“subsidiary” has the meaning given to it by section 1159 of the Companies Act 2006;

“transferee”—

- (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created;

“transferor”—

- (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme; and
- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created.

- (2) References in [this Schedule](#) to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable.