
STATUTORY INSTRUMENTS

1993 No. 2797

TRANSPORT

The Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) (Further Modification) Order 1993

<i>Made</i>	- - - -	<i>11th November 1993</i>
<i>Laid before Parliament</i>		<i>15th November 1993</i>
<i>Coming into force</i>	- -	<i>6th December 1993</i>

The Secretary of State for Transport in exercise of the power conferred by section 129(5) of the Transport Act 1985⁽¹⁾ and of all other powers enabling him in that behalf hereby makes the following Order:—

1. This Order may be cited as the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) (Further Modification) Order 1993 and shall come into force on 9th December 1993.

2. In this Order—

“the Act” means the Transport Act 1985; and

“Schedule 4 as modified” means Schedule 4 to the Transport Act 1968⁽²⁾ as modified for the purposes of its application to transfers under section 50(4), 59(7), 61(11) or 68(7) of the Act by the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985⁽³⁾.

3. Schedule 4 as modified is further modified for the purposes of its application to transfers under section 61(11) of the Act by the insertion after paragraph 10 of that Schedule of paragraph 10A as set out in the Schedule to this Order.

⁽¹⁾ 1985 c. 67.

⁽²⁾ 1968 c. 73.

⁽³⁾ S.I.1985/1903, to which there is an amendment not relevant to this Order.

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Signed by authority of the Secretary of State for Transport

11th November 1993

Roger Freeman
Minister of State,
Department of Transport

SCHEDULE

Article 3

PARAGRAPH TO BE INSERTED IN SCHEDULE 4 AS MODIFIED

“TRANSFERS UNDER SECTION 61 OF THE TRANSPORT ACT 1985

10A.—(1) This paragraph applies to a transfer which is made pursuant to a scheme under section 61 of the Transport Act 1985 whereby the property, rights and liabilities of an initial company (within the meaning of section 60 of that Act) are transferred to two or more companies.

(2) In relation to a transfer to which this paragraph applies, the preceding provisions of this Schedule have effect subject to the following modifications:—

(a) for paragraph 1(2) substitute—

(a) “(2) Any property, rights or liabilities (whether contractual or otherwise) held or subsisting partly for the purpose of or in connection with a part of the transferor’s undertaking which is transferred to one transferee and partly for the purpose or in connection with a part of the undertaking which is transferred to another transferee shall be divided or apportioned between the transferees in such manner and in such proportions as may be specified in the scheme under section 61 of the Transport Act 1985 or, if not so specified and where the nature of the property, rights and liabilities permits, in such proportions and in such manner as may be appropriate.

(b) Where any estate or interest in land falls to be divided pursuant to paragraph (a) of this sub-paragraph, any rent payable under a lease in respect of that estate or interest, and any rent charged on that estate or interest, shall be correspondingly apportioned or divided so that each part is payable in respect of, or charged on, only a specified part of the estate or interest.”;

(b) in paragraph 1(4) for the words “the transferee or retained by the transferor” substitute “one or other of the transferees”;

(c) for paragraph 1(5) substitute—

“(5) It shall be the duty of the transferees, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to each transferee and as will—

(a) afford to each of the transferees as against one another such rights and safeguards as they may reasonably require for the carrying on of their respective businesses; and

(b) make as from such date, not being earlier than the transfer date, as may be specified in that agreement or instrument such clarifications or modifications of the division of the transferor’s undertaking as will best enable the transferees to carry on their respective businesses.”;

(d) in paragraph 1(7)—

(i) for the words “the transferor or the transferee” substitute “any transferee”;

(ii) for the words “the transferor and the transferee” substitute “the transferees”; and

(iii) for the word “transferee” in the last two places where it occurs substitute “transferees”;

(e) for paragraph 2 substitute—

“2. Where on any transfer to which this Schedule applies a transferee is entitled to retain possession of any document relating to the title to, or to the management of, any

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land or other property part of which is transferred to that transferee and another part of which is transferred to another transferee, the first mentioned transferee shall be deemed to have given to the other transferee an acknowledgement in writing of the other's right to production of that document and to delivery of copies thereof and section 64 of the Law of Property Act 1925 shall have effect accordingly and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.”;

- (f) in paragraph 4, for the words “the transferor and the transferee” substitute “both, or as the case may be, all the transferees”;
- (g) for paragraph 5 substitute—

“5. If the Secretary of State is satisfied on the representation of a transferee that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by, or by a wholly owned subsidiary of, one transferee and by, or by a wholly owned subsidiary of, another transferee and that the circumstances are such that this paragraph should have effect, the Secretary of State may direct that this paragraph shall apply to such land as may be specified in the direction, and while that direction remains in force—

- (a) no transferee or subsidiary of a transferee entitled to any interest in any of the specified land shall dispose of that interest except with the consent of the Secretary of State; and
- (b) if in connection with any proposal to dispose of an interest of a transferee or a subsidiary of a transferee in any of the specified land it appears to the Secretary of State to be necessary or expedient for the protection of any one of them, the Secretary of State may—
 - (i) require a transferee or a subsidiary of a transferee entitled to an interest in any of the specified land to dispose of that interest to such person and in such manner as may be specified in the requirement; or
 - (ii) require a transferee or a subsidiary of a transferee to acquire from any other of them any interest in any of the specified land to which the other is entitled; or
 - (iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose;

but a person other than a transferee or subsidiary of a transferee dealing with, or with a person claiming under, a transferee or a subsidiary shall not be concerned to see or inquire whether this paragraph applies or has applied in relation to any land to which the dealing relates or as to whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land, and no transaction between person other than the transferees or subsidiaries shall be invalid by reason of any failure to comply with these provisions.”;

- (h) for paragraph 6(d) substitute—
 - “(d) where the agreement refers or relates to property, rights or liabilities which fall to be apportioned or divided (whether pursuant to paragraph 1(2) above or otherwise) between two or more transferees, the agreement constituted separate agreements separately enforceable by and against each transferee as regards the part of the property, rights and liabilities vested in the transferee but not as regards any other part thereof”;
- (i) in paragraph 10(1) for the words “a transferor and a transferee” substitute “transferees”;
- (j) in paragraph 10(2)—
 - (i) for the words “the transferor and transferee” substitute “the transferees”;

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- (ii) for the words “the transferor and as to part by and against the transferee” substitute “one transferee and as to part by or against another transferee”;
- (iii) for the words “the transferor and the transferee” substitute “the transferees”;
- (k) for paragraph 10(3) substitute—
 - “(3) If, in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule, the rights and liabilities of any person other than the transferor or a transferee or a wholly owned subsidiary thereof which were enforceable against or by the transferor become enforceable as to different parts against or by different transferees, and the value of any property or interest of that person is thereby diminished, such compensation as shall be just shall be paid to that person by one or more of the transferees, and any dispute as to compensation shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.”;
- (l) in paragraph 10(5)—
 - (i) for the words “the transferor or transferee under a transfer to which this Schedule applies”, substitute “a transferee under a transfer to which this Schedule applies”;
 - (ii) for the words “the transferor and the transferee” wherever those words occur, substitute “the transferees”;
 - (iii) for the words “the other of them” substitute “the other transferees”; and
 - (iv) omit the word “both”.
- (m) for paragraph 10(6) substitute—
 - “(6) It shall be the duty of the transferees under any transfer to which this Schedule applies to keep one another informed of any case where one of them may be prejudiced by sub-paragraphs (4) or (5) of this paragraph, and if a transferee claims that he has been so prejudiced and that another transferee ought to indemnify or make a payment to him on that account and has unreasonably failed to meet the claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes a further modification to Schedule 4 to the Transport Act 1968, as modified in its application to transfers under sections 50(4), 59(7), 61(11) and 68(7) of the Transport Act 1985 by the Transport Act 1985 (Modifications in Schedule 4 to the Transport Act 1968) Order 1985. The text of Schedule 4 as so modified is set out in the Second Schedule to that Order. This Order adds a further paragraph to the modified Schedule 4 for the purpose of adapting the provisions of that Schedule to transfer schemes under section 61 of the Transport Act 1985, whereby the undertaking of a public transport company owned by a Passenger Transport Authority is divided between two or more successor companies.