



Airports Act 1986

1986 CHAPTER 31

PART II

TRANSFER OF AIRPORT UNDERTAKINGS OF LOCAL AUTHORITIES

Preliminary

12 Interpretation of Part II

(1) In this Part—

" local authority "—

- (a) in relation to England and Wales, means a local authority within the meaning of the Local Government Act 1972 or the Common Council of the City of London; and
- (b) in relation to Scotland, has the same meaning as in the Local Government (Scotland) Act 1973 ; and

" principal council "—

- (a) in relation to England and Wales, means the council of a non-metropolitan county, of a district, or of a London borough; and
- (b) in relation to Scotland, means a regional or islands council.

(2) References in this Part to—

- (a) a public airport company ;
- (b) the controlling authority of a public airport company;
- (c) a composite authority;
- (d) constituent councils of a composite authority ; or
- (e) an associated company,

shall be read in accordance with the relevant provisions of section 16.

(3) For the purposes of this Part an airport shall be treated as controlled by a principal council or (as the case may be) by two or more principal councils jointly if it is for the time being owned—

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- (a) by that council or jointly by those councils ; or
 - (b) by a subsidiary of that council or those councils; or
 - (c) by that council or those councils jointly with any such subsidiary.
- (4) Any reference in this Part, in relation to two or more principal councils, to a subsidiary of those councils shall be read as a reference to a body corporate which would, if those councils were a single body corporate, be a subsidiary of that body corporate.

Transfer of airport undertakings of local authorities

13 Transfer of airport undertakings of local authorities to companies owned by such authorities

- (1) The Secretary of State may give to any principal council who control (whether alone or jointly with one or more other principal councils) an airport to which this section applies in accordance with section 14, a direction requiring the council to form a company for the purpose of carrying on—
- (a) the business of operating the airport as a commercial undertaking; and
 - (b) any activities which appear to the council to be incidental to or connected with carrying on that business.
- (2) The company shall be a company limited by shares and registered under the Companies Act 1985, and shall be formed by the council before such date as the Secretary of State may specify in his direction under subsection (1).
- (3) In the case of an airport which is jointly controlled by two or more principal councils the Secretary of State may give a direction under subsection (1) to such one of those councils as he thinks fit; but in any such case the council to whom the direction is given must consult the other principal council or councils before forming a company in accordance with the direction.
- (4) The Secretary of State may revoke a direction given by him under subsection (1) at any time before a company has been formed in accordance with the direction.
- (5) References in subsection (1) to carrying on the business of operating an airport as a commercial undertaking include references to carrying on any activities which, at the time when the direction in question is given, are carried on at the airport or on airport land—
- (a) by the principal council, or (as the case may be) any of the principal councils, who control the airport,
 - (b) by any subsidiary by whom the airport is owned as mentioned in section 12(3),
 - (c) by any person managing the airport under the terms of any lease or other arrangement made by or on behalf of the principal council or councils who control it or by any such subsidiary, or
 - (d) by any person who has been granted a right to carry on activities there by any council, subsidiary or person falling within any of the preceding paragraphs,
- with the exception of any activities which the Secretary of State has, before the date referred to in subsection (2), agreed with the principal council or councils who control the airport should not be carried on by the company to be formed in pursuance of the direction.

- (6) In subsection (5) "airport land", in relation to an airport, means land which is attached to the airport and was on 1st April 1986 administered with the airport as a single unit.
- (7) This section and section 15 (together with section 12(3) and (4)) shall apply to a metropolitan county passenger transport authority as they apply to a principal council.

14 Airports to which s. 13 applies

- (1) Section 13 applies to an airport if the annual turnover of the business carried on at the airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before the relevant date.
- (2) In subsection (1)—
- "annual turnover", in relation to the business carried on at an airport by the airport operator, means the aggregate, as stated or otherwise shown in the accounts of the business, of all sums received in the course of the business during a financial year, including grants from any public or local authority but excluding—
- (a) capital receipts; and
- (b) loans made by any person;
- "financial year" means a period of twelve months ending with 31st March; and
- "the relevant date", in relation to an airport, means the date of any direction given by the Secretary of State in respect of the airport under section 13(1).
- (3) The Secretary of State may by order substitute for the sum for the time being specified in subsection (1) such greater sum as may be specified in the order.
- (4) An order under subsection (3) shall not affect the validity of any direction in force under section 13(1) immediately before the coming into operation of the order.

15 Transfer schemes

- (1) Where a principal council have formed a company in pursuance of section 13, the council shall, before such date as the Secretary of State may specify in a direction given to the council, submit to the Secretary of State a scheme providing for the transfer to the company of any property, rights or liabilities of the council, or of any subsidiary of theirs, which it appears to the council to be appropriate to transfer to that company.
- (2) In preparing a scheme in pursuance of subsection (1) a council shall take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme (and in particular any advice as to the description of property, rights and liabilities which it is in his view appropriate to transfer to the company).
- (3) A scheme under subsection (1) shall not come into force until it has been approved by the Secretary of State or until such date as the Secretary of State may, in giving his approval, specify; and the Secretary of State may approve a scheme either without modifications or with such modifications as he thinks fit after consulting the council who submitted the scheme.

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- (4) If it appears to the Secretary of State that a scheme submitted under subsection (1) does not accord with any advice given by him as mentioned in subsection (2), he may do one or other of the following things, as he thinks fit, namely—
- (a) approve the scheme under subsection (3) with modifications, or
 - (b) after consulting the council who submitted the scheme, substitute for it a scheme of his own, to come into force on such date as may be specified in the scheme.
- (5) In the case of a scheme relating to an airport which is jointly controlled by two or more principal councils (" the relevant authorities ") the authority required to submit the scheme under subsection (1) must consult the other relevant authority or authorities before submitting the scheme under that subsection ; and the Secretary of State shall not approve the scheme (whether with or without modifications), or substitute a scheme of his own, unless—
- (a) he has given that other authority or (as the case may be) those other authorities an opportunity of making, within such time as he may allow for the purpose, written representations with respect to the scheme; and
 - (b) he has considered any such representations made to him within that time.
- (6) In relation to a scheme relating to any such airport, subsection (1) shall be read as if—
- (a) the reference to any property, rights or liabilities of the council submitting the scheme were a reference to any property, rights or liabilities vested in, or in any person on behalf of, the relevant authorities ; and
 - (b) the reference to any subsidiary of the council submitting the scheme were a reference to any subsidiary of the relevant authorities.
- (7) On the coming into force of a scheme under this section the property, rights and liabilities affected by the scheme shall, subject to section 75(3), be transferred and vest in accordance with the scheme.
- (8) The Secretary of State may, if he thinks fit, give a council a direction specifying a date under subsection (1) above at the same time as he gives the council a direction under section 13(1); and the Secretary of State may revoke any direction given by him under subsection (1) above at any time before any property, rights or liabilities vest in any company by virtue of this section.
- (9) Section 13(7) applies for the purposes of this section.

Public airport companies

16 Public airport companies and their controlling authorities

- (1) References in this Part to a public airport company are references to a company (whether formed under section 13 or not) which carries on the business of operating an airport as a commercial undertaking and is for the time being either—
- (a) a subsidiary of a single principal council, or
 - (b) a subsidiary of two or more such councils.
- (2) In this Part of this Act-
- (a) references to the controlling authority of a public airport company are references to the principal council or principal councils of whom it is for the time being a subsidiary as mentioned in subsection (1); and

- (b) references to a composite authority are references to a controlling authority consisting of two or more principal councils, the councils concerned being referred to as the constituent councils of that authority.
- (3) For the purposes of this Part a public airport company is an associated company of a principal council if that council are its controlling authority or one of the constituent councils of a composite authority who are its controlling authority.

17 Control over constitution and activities of public airport companies

- (1) Subject to subsection (2), it shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that at least three of the directors of the company, or at least one-quarter of their number (whichever is less), are full-time employees of the company who are suitably qualified to act as directors of the company by virtue of their experience in airport management.
- (2) Where at any time it appears to the Secretary of State—
 - (a) that a public airport company has made arrangements for the management of the airport operated by it to be carried on otherwise than through its officers or employees, and
 - (b) that any such arrangements are adequate to secure that those participating in the management of the airport under the arrangements are suitably qualified to do so by virtue of their experience in airport management,the Secretary of State may direct that subsection (1) shall not apply in relation to that company.
- (3) Any direction given by the Secretary of State under subsection (2) may provide—
 - (a) that it is to have effect only for such period, or in such circumstances, as may be specified in it, or
 - (b) that its continuation in force is to be subject to compliance with such conditions specified in it as the Secretary of State thinks fit.
- (4) It shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that the company does not—
 - (a) engage in activities in which the controlling authority have no power to engage, or
 - (b) permit any subsidiary of the company to engage in any such activities.
- (5) Where the controlling authority of a public airport company are a composite authority, the duties imposed by subsections (1) and (4) are joint duties of both or all of the constituent councils of that authority ; and subsection (4) shall apply in any such case as if it referred to activities in which none of the constituent councils have power to engage.

18 Disabilities of directors of public airport companies

- (1) A director of a public airport company who is paid for acting as such, or who is an employee of the company or of a subsidiary of the company, shall be disqualified for being elected, or being, a member—
 - (a) where the company's controlling authority is a single principal council, of that council; or

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- (b) where the company's controlling authority are a composite authority, of any of the councils who are the constituent councils of that authority.
- (2) Where a director of a public airport company is a member of any such council as is mentioned in subsection (1)(a) or (b) he shall not at any meeting of the council—
 - (a) take part in the consideration or discussion of any contract or proposed contract between the company or a subsidiary of the company and the council; or
 - (b) vote on any question with respect to any contract or proposed contract between the company or a subsidiary of the company and—
 - (i) the council, or
 - (ii) (if they are a constituent council), any of the constituent councils,
 or with respect to any other matter relating to the activities of the company or such a subsidiary.
- (3) Any person who contravenes paragraph (a) or (b) of subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale, unless he proves that he did not know that the matter in relation to which the contravention occurred was such a contract or proposed contract as is mentioned in that paragraph or (as the case may be) was a matter otherwise relating to the activities of the company or subsidiary concerned.
- (4) A prosecution for an offence under this section shall not, in England and Wales, be instituted except by or on behalf of the Director of Public Prosecutions.
- (5) A principal council who are the controlling authority of a public airport company or one of the constituent councils of such an authority may by standing orders provide for the exclusion of a member of the council who is a director of the company from a meeting of the council while there is under consideration by the council—
 - (a) any contract or proposed contract between the company or a subsidiary of the company and the council, or
 - (b) any other matter relating to the activities of the company or such a subsidiary.
- (6) Subsections (2) and (5) above shall apply in relation to members of—
 - (a) a committee of any principal council who are the controlling authority of a public airport company or one of the constituent councils of such an authority, or
 - (b) a joint committee of two or more local authorities one or more of whom are such a council,
 (including, in either case, a sub-committee) as they apply in relation to members of any such council, but with the substitution of references to meetings of any such committee for references to meetings of the council.
- (7) This section shall apply in relation to a director of a subsidiary of a public airport company as it applies in relation to a director of such a company.

19 Prohibition on employment by public airport company of officers etc. of controlling authority

- (1) No person who is a full-time officer or employee of a principal council shall hold any office or employment under an associated company except as a director who is not also an employee of the company.

- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.

20 Powers of investment and disposal in relation to public airport companies

- (1) Without prejudice to the powers of a principal council—
- (a) to subscribe for shares on the formation of a company formed by them in pursuance of section 13, or
 - (b) to acquire any shares in or other securities of a company formed in pursuance of that section by way of consideration for any transfer of property, rights and liabilities to that company under section 15(7),
- a principal council shall have power at any time to subscribe for, take up or acquire (as the case may be) any securities of any associated company.
- (2) A principal council shall have power to provide for the disposal, in such manner as they think fit, of any such securities.
- (3) A local authority shall have power, with the consent of the Secretary of State, to acquire securities of any company which carries on the business of operating an airport as a commercial undertaking and is not an associated company (whether or not it is a public airport company or was formed in pursuance of section 13).
- (4) Subsections (1) and (3) are without prejudice to the operation of section 30(1)(a) of the 1982 Act (need for consent of Secretary of State to the maintenance of airports by local authorities).
- (5) A principal council who are the controlling authority of a public airport company, or (as the case may be) both or all of the constituent councils of a composite authority who are such a controlling authority, may, in exercising their power under subsection (2) in relation to the disposal of any securities of the company, provide for an employees' share scheme to be established in respect of the company; and any such scheme may provide for the transfer of shares without consideration.
- (6) In subsection (5) " employees' share scheme " means a scheme for encouraging or facilitating the holding of shares or debentures in a public airport company by or for the benefit of—
- (a) the bona fide employees or former employees of the company or of a subsidiary of the company; or
 - (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees.

21 Capital controls relating to investment in public airport companies by local authorities in England and Wales

- (1) Where a local authority dispose of any securities of a public airport company (whether it continues to be such a company after the disposal or not)—
- (a) any amount received by the authority in respect of the disposal shall be treated for the purposes of section 72 of the 1980 Act (expenditure which authorities may make) as a receipt of the authority which, by virtue of section 75(1) of that Act, is a capital receipt of the authority for the purposes of Part VIII of that Act (capital expenditure of local authorities etc.), but

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- (b) only the relevant sum shall be taken into account under section 72(3)(d) of that Act.
- (2) In subsection (1) " the relevant sum ", in relation to an amount falling within paragraph (a) of that subsection, means—
 - (a) three-tenths of that amount, or
 - (b) if regulations are made for the purposes of section 72(3)(d) of the 1980 Act which prescribe a proportion other than three-tenths in relation to disposals falling within subsection (1), the proportion of that amount so prescribed.
- (3) Where a local authority incur any expenditure in respect of the acquisition of any securities—
 - (a) of a public airport company, or
 - (b) of any company which, as a result of the acquisition by the authority of those securities, becomes a public airport company,

the amount of that expenditure shall, in so far as it is not prescribed expenditure of the authority for the purposes of Part VIII of the 1980 Act by virtue of Schedule 12 to that Act, be treated as prescribed expenditure of the authority for those purposes.
- (4) In this section and section 22 "the 1980 Act" means the Local Government, Planning and Land Act 1980; and this section and section 22 apply to England and Wales only.

22 Other local authority capital controls in England and Wales

- (1) For the purposes of Part VIII of the 1980 Act
 - (a) the amount of any advance of a capital nature made—
 - (i) to a public airport company by any person other than a subsidiary of the company or an authority to whom Part VIII of that Act applies, or
 - (ii) to a subsidiary of a public airport company by a person other than that company, any other subsidiary of that company or such an authority, and
 - (b) subject to subsection (2), any amount raised by the issue of any securities—
 - (i) by a public airport company to any person other than such an authority, or
 - (ii) by a subsidiary of a public airport company to any person other than that company,

shall be treated as prescribed expenditure of the controlling authority of that company.
- (2) Subsection (1)(b) shall not apply to any amount raised by the issue of any securities—
 - (a) by a public airport company where, as a result of the issue of those securities, it ceases to be such a company ; or
 - (b) by a subsidiary of a public airport company where, as a result of the issue of those securities, it ceases to be such a subsidiary.
- (3) Any amount repaid by a public airport company or a subsidiary of such a company in respect of any such advance as is mentioned in subsection (1)(a) shall be treated for the purposes of section 72 of the 1980 Act as a receipt of the controlling authority of that company which, by virtue of section 75(1) of that Act, is a capital receipt of the authority for the purposes of Part VIII of that Act.

- (4) Where the controlling authority of a public airport company are a composite authority, subsections (1) and (3) shall have effect as if the references to the controlling authority were references to such one of the constituent councils of that authority as may be determined by agreement between those councils.
- (5) It shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that the company appoints as auditors of the company only persons who, in addition to being qualified for appointment as such auditors in accordance with section 389 of the Companies Act 1985, are approved for appointment as such auditors by the Audit Commission for Local Authorities in England and Wales.
- (6) Where the controlling authority of a public airport company are a composite authority, the duty imposed by subsection (5) is a joint duty of both or all of the constituent councils of that authority.
- (7) Section 21(4) applies for the purposes of this section.

23 Local authority capital controls in Scotland

- (1) Any liability to meet capital expenses incurred by a public airport company, or by a subsidiary of such a company, shall, in the case of a company whose controlling authority are an authority to whom section 94 of the Local Government (Scotland) Act 1973 (consent of Secretary of State required for the incurring of liability to meet capital expenses) applies, be treated for the purposes of that section as a liability to meet capital expenses incurred by the company's controlling authority.
- (2) It shall be the duty of the controlling authority of a public airport company to exercise their control over the company so as to ensure that the company appoints as auditors of the company only persons who, in addition to being qualified for appointment as such auditors in accordance with section 389 of the Companies Act 1985, are approved for appointment as such auditors by the Commission for Local Authority Accounts in Scotland.
- (3) This section applies to Scotland only.

24 Provision of services for public airport companies

- (1) A principal council shall have power to enter into an agreement with any associated company, or with any subsidiary of an associated company, for the provision by the council for that company or (as the case may be) for that subsidiary of any administrative, professional or technical services.
- (2) Any agreement under this section shall include provision for payment of proper commercial charges in respect of services to be provided under the agreement.
- (3) Where a principal council have entered into an agreement under this section, the accounts of that council shall include a separate account in respect of that agreement and—
 - (a) in England and Wales, section 24 of the Local Government Finance Act 1982 (rights of inspection) shall apply in relation to any such separate account as it applies in relation to any statement of accounts prepared by the council pursuant to regulations under section 23 of that Act; and

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- (b) in Scotland, sections 101 and 105 of the Local Government (Scotland) Act 1973 (rights of inspection and regulations as to accounts) shall have effect as if any reference to an abstract of the accounts of an authority included a reference to any such separate account.

25 Financial backing for establishment and operations of public airport companies

- (1) A principal council shall have power to make loans-to any associated company, or to guarantee loans made to any associated company by any other person, for the provision of working capital.
- (2) The reference in subsection (1) to guaranteeing loans is a reference to guaranteeing the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, the loans.
- (3) A principal council shall have power to make loans—
 - (a) to any associated company, or
 - (b) to any subsidiary of an associated company,for the purpose of meeting any expenses incurred or to be incurred by that company or subsidiary in connection with the provision or improvement of assets in connection with its business.
- (4) Any loan under subsection (1) or (3) must be made on terms, both as to rates of interest and otherwise, no more favourable than the terms on which the council making the loan would themselves be able to borrow at the time when the loan is made.
- (5) A principal council shall have power to give any guarantees and do any other things which appear to the council to be necessary or expedient for the purpose of or in connection with—
 - (a) any disposal authorised under section 20(2); or
 - (b) any disposal by any associated company of the whole or any part of that company's undertaking, or of any property, rights or liabilities of that company.
- (6) A principal council shall have power to provide financial assistance by way of grants, loans or guarantees for any associated company which has incurred losses affecting the viability of its business.
- (7) A principal council shall have power, where on the winding up of any associated company the assets of the company are not sufficient to meet the company's liabilities, to make to the creditors of the company such payments as may be necessary to meet the balance of those liabilities (and may accordingly give to persons dealing or proposing to deal with any such company such guarantees with respect to the exercise of their power under this subsection in relation to the company as they think fit).

Supplementary

26 Avoidance of restrictions on transfer of securities of public airport companies

- (1) Any provision to which this section applies shall be void in so far as it operates—
 - (a) to preclude the holder of any securities of a public air port company from disposing of those securities, or

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- (b) to require the holder of any such securities to dispose, or offer to dispose, of those securities to particular persons or to particular classes of persons, or
 - (c) to preclude the holder of any such securities from disposing of those securities except—
 - (i) at a particular time or at particular times, or
 - (ii) on the fulfilment of particular conditions or in other particular circumstances.
- (2) This section applies to any provision relating to any securities of a public airport company and contained in—
- (a) the memorandum or articles of association of the company or any other instrument purporting to regulate to any extent the respective rights and liabilities of the members of the company,
 - (b) any resolution of the company, or
 - (c) any instrument issued by the company and embodying terms and conditions on which any such securities are to be held by persons for the time being holding them.

27 Consents under s. 30 of the 1982 Act

Where any airport controlled by a principal council, or jointly by two or more principal councils, comes into the ownership of a public airport company as a result of a transfer under section 15(7), any consent given to that council or (as the case may be) to any of those councils under section 30(1)(a) of the 1982 Act, or any consent having effect as if so given, shall (together with any conditions to which it is subject) continue in force so as to enable the council in question, through the company, to maintain that airport; but that council may not by virtue of the consent establish or maintain (whether directly or indirectly) any other airport.

28 Compensation for loss or diminution of pension rights

- (1) The Secretary of State may provide by regulations for the payment, by such persons as may be prescribed by or determined under the regulations, in such cases and to such extent as may be so prescribed or determined, of pensions, allowances or gratuities by way of compensation to or in respect of persons who have suffered loss or diminution of pension rights by reason of—
- (a) any transfer of property, rights and liabilities under section 15(7), or
 - (b) the disposal under section 20(2) of any interests held by a principal council in a public airport company.
- (2) Regulations under this section may—
- (a) include provision as to the manner in which and the persons to whom any claim for compensation is to be made, and for the determination of all questions arising under the regulations;
 - (b) make or authorise the Secretary of State to make exceptions and conditions in relation to any classes of persons or any circumstances to which the regulations apply; and
 - (c) be framed so as to have effect from a date earlier than the making of the regulations ;

but regulations having effect from a date earlier than their making shall not place any individual who is qualified to participate in the benefits for which the regulations

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provide in a worse position than he would have been in if the regulations had been framed so as to have effect only from the date of their making.

- (3) Regulations under this section may include either or both of the following provisions, namely—
- (a) provision authorising the payment, without probate (or, in Scotland, confirmation) and without other proof of title, of any sum due under the regulations in respect of a person who has died to his personal representatives or such other persons as may be prescribed by the regulations; and
 - (b) provision rendering void any assignment of (or, in Scotland, assignation of) or charge on, or any agreement to assign or charge, any benefit under the regulations, and provision that on the bankruptcy of a person entitled to such a benefit (or, in Scotland, sequestration of the estate of, or granting of a trust deed for creditors by, such a person) no part of it shall pass to any trustee or other person acting on behalf of the creditors, except in accordance with an order made by a court in pursuance of any enactment specified in the regulations.
- (4) Subject to subsection (5), where regulations under this section have made provision for the payment of pensions, allowances or gratuities as mentioned in subsection (1), compensation in respect of any such loss or diminution of pension rights as is mentioned in that subsection shall be paid only in accordance with those regulations in any case to which those regulations apply; and accordingly such compensation shall not be paid under any other statutory provision, by virtue of any provision in a contract or otherwise.
- (5) Subsection (4) shall not prevent the payment of any sum K which a person is entitled by virtue of contractual rights acquired by him before such date as the Secretary of State may by order specify.
- (6) Any regulations or order made under this section by the Secretary of State may make different provision for different cases to which those regulations or that order apply or applies, as the case may be, and may in particular make different provision as respects different areas.
- (7) In this section—
- "pension", in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes—
 - (a) a gratuity so payable;
 - (b) a return of contributions to a pension fund, with or without interest on or any other addition to those contributions; and
 - (c) any sums payable on or in respect of the death of that person;
 - "pension rights" includes, in relation to any person, all forms of right to or eligibility for the present or future payment of a pension, and any expectation of the accruer of a pension under any customary practice, and includes a right of allocation in respect of the present or future payment of a pension.