

SCHEDULES

SCHEDULE 7

Section 59.

TRANSFER OF RELEVANT ACTIVITIES IN CONNECTION WITH RAILWAY ADMINISTRATION ORDERS

Application of Schedule

- 1 (1) This Schedule shall apply in any case where—
- (a) the court has made a railway administration order in relation to a protected railway company (“the existing appointee”); and
 - (b) it is proposed that, on and after a date appointed by the court, another company (“the new appointee”) should carry on the relevant activities of the existing appointee, in place of the existing appointee.
- (2) In this Schedule—
- “the court”, in the case of any protected railway company, means the court having jurisdiction to wind up the company;
 - “other appointee” means any company, other than the existing appointee or the new appointee, which is the holder of a licence under section 8 of this Act and which may be affected by the proposal mentioned in subparagraph (1)(b) above;
 - “the relevant date” means such day, being a day before the discharge of the railway administration order takes effect, as the court may appoint for the purposes of this Schedule; and
 - “special railway administrator”, in relation to a company in relation to which a railway administration order has been made, means the person for the time being holding office for the purposes of section 59(1) of this Act.
- (3) Any reference in this Schedule to “assignment” shall be construed in Scotland as a reference to assignation.

Making and modification of transfer schemes

- 2 (1) The existing appointee, acting with the consent of the new appointee and, in relation to the matters affecting them, of any other appointees, may make a scheme under this Schedule for the transfer of property, rights and liabilities from the existing appointee to the new appointee.
- (2) A scheme under this Schedule shall not take effect unless it is approved by the Secretary of State or, in a case where the existing appointee is a protected railway company by virtue of section 59(6)(a)(i) of this Act, by the Franchising Director.
- (3) Where a scheme under this Schedule is submitted to the Secretary of State or the Franchising Director, for his approval, he may, with the consent of the new appointee, of the existing appointee and, in relation to the matters affecting them, of any other appointees, modify the scheme before approving it.

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- (4) If at any time after a scheme under this Schedule has come into force in relation to the property, rights and liabilities of any company the Secretary of State considers it appropriate to do so and the existing appointee, the new appointee and, in relation to the provisions of the order which affect them, any other appointees consent to the making of the order, the Secretary of State may by order provide that that scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (5) An order under sub-paragraph (4) above may make, with effect from the coming into force of the scheme to which it relates, any such provision as could have been made by the scheme and, in connection with giving effect to that provision from that time, may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (6) In determining, in accordance with his duties under Part I of this Act, whether and in what manner to exercise any power conferred on him by this paragraph the Secretary of State or the Franchising Director, shall have regard to the need to ensure that any provision for the transfer of property, rights and liabilities in accordance with a scheme under this Schedule allocates property, rights and liabilities to the different companies affected by the scheme in such proportions as appear to him to be appropriate in the context of the different relevant activities of the existing appointee which will, by virtue of this Act, be carried out at different times on and after the relevant date by the new appointee, by the existing appointee and by any other appointees.
- (7) It shall be the duty of the new appointee, of the existing appointee and of any other appointees to provide the Secretary of State or, in a case where the existing appointee is a protected railway company by virtue of section 59(6)(a)(i) of this Act, the Franchising Director with all such information and other assistance as he may reasonably require for the purposes of, or in connection with, the exercise of any power conferred on him by this paragraph.
- (8) Without prejudice to the other provisions of this Act relating to the special railway administrator of a company, anything which is required by this paragraph to be done by a company shall, where that company is a company in relation to which a railway administration order is in force, be effective only if it is done on the company's behalf by its special railway administrator.

Transfers by scheme

- 3 (1) A scheme under this Schedule for the transfer of the existing appointee's property, rights and liabilities shall come into force on the relevant date and, on coming into force, shall have effect, in accordance with its provisions and without further assurance, so as to transfer the property, rights and liabilities to which the scheme relates to the new appointee.
- (2) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities in accordance with a scheme under this Schedule, the provisions of that scheme may—
 - (a) create for the existing appointee, the new appointee or any other appointees an interest in or right over any property to which the scheme relates;

- (b) create new rights and liabilities as between any two or more of those companies; and
 - (c) in connection with any provision made by virtue of paragraph (a) or (b) above, make incidental provision as to the interests, rights and liabilities of other persons with respect to the subject-matter of the scheme.
- (3) The property, rights and liabilities of the existing appointee that shall be capable of being transferred in accordance with a scheme under this Schedule shall include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the existing appointee;
 - (b) such property, rights and liabilities to which the existing appointee may become entitled or subject after the making of the scheme and before the relevant date as may be described in the scheme;
 - (c) property situated anywhere in the United Kingdom or elsewhere;
 - (d) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (4) The provision that may be made by virtue of sub-paragraph (2)(b) above includes—
- (a) provision for treating any person who is entitled by virtue of a scheme under this Schedule to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies thereof;
 - (b) provision applying section 64 of the Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect; and
 - (c) provision that where a scheme under this Schedule transfers any interest in land or other property situated in Scotland, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall 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.
- (5) For the avoidance of doubt, it is hereby declared that the transfers authorised by paragraph (a) of sub-paragraph (3) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than in accordance with a scheme under this Schedule, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the existing appointee is entitled or subject to the property, right or liability in question.

Transfer of licences

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- (1) A scheme under this Schedule may provide for a licence held by the existing appointee to have effect as if it had been granted to the new appointee.
 - (2) Different schemes under this Schedule may provide for a licence held by the same existing appointee to have effect as if it had been granted as a separate licence to each of the new appointees under those schemes.

Supplemental provisions of schemes

- 5 (1) A scheme under this Schedule may contain supplemental, consequential and transitional provision for the purposes of, or in connection with, the provision for the transfers or any other provision made by the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a scheme under this Schedule may provide—
- (a) that for purposes connected with any transfers made in accordance with the scheme (including the transfer of rights and liabilities under an enactment) the new appointee is to be treated as the same person in law as the existing appointee;
 - (b) that, so far as may be necessary for the purposes of or in connection with any such transfers, agreements made, transactions effected and other things done by or in relation to the existing appointee are to be treated as made, effected or done by or in relation to the new appointee;
 - (c) that, so far as may be necessary for the purposes of or in connection with any such transfers, references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any officer of, the existing appointee are to have effect with such modifications as are specified in the scheme;
 - (d) that proceedings commenced by or against the existing appointee are to be continued by or against the new appointee;
 - (e) that the effect of any transfer under the scheme in relation to contracts of employment with the existing appointee is not to be to terminate any of those contracts but is to be that periods of employment with the existing appointee are to count for all purposes as periods of employment with the new appointee;
 - (f) that disputes as to the effect of the scheme between the existing appointee and the new appointee, between either of them and any other appointee or between different companies which are other appointees are to be referred to such arbitration as may be specified in or determined under the scheme;
 - (g) that determinations on such arbitrations and certificates given jointly by two or more such appointees as are mentioned in paragraph (f) above as to the effect of the scheme as between the companies giving the certificates are to be conclusive for all purposes.

Duties of existing appointee after the scheme comes into force

- 6 (1) A scheme under this Schedule may provide for the imposition of duties on the existing appointee and on the new appointee to take all such steps as may be requisite to secure that the vesting in the new appointee, by virtue of the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a scheme under this Schedule may require the existing appointee to comply with any directions of the new appointee in performing any duty imposed on the existing appointee by virtue of a provision included in the scheme under sub-paragraph (1) above.
- (3) A scheme under this Schedule may provide that, until the vesting of any foreign property, right or liability of the existing appointee in the new appointee is effective under the relevant foreign law, it shall be the duty of the existing appointee to hold

that property or right for the benefit of, or to discharge that liability on behalf of, the new appointee.

- (4) Nothing in any provision included by virtue of this paragraph in a scheme under this Schedule shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting by virtue of the scheme in the new appointee of any foreign property, right or liability.
- (5) A scheme under this Schedule may provide that, in specified cases, foreign property, rights or liabilities that are acquired or incurred by an existing appointee after the scheme comes into force are immediately to become property, rights or liabilities of the new appointee; and such a scheme may make the same provision in relation to any such property, rights or liabilities as can be made, by virtue of the preceding provisions of this paragraph, in relation to foreign property, rights and liabilities vested in the existing appointee when the scheme comes into force.
- (6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (7) Any expenses incurred by an existing appointee in consequence of any provision included by virtue of this paragraph in a scheme under this Schedule shall be met by the new appointee.
- (8) Duties imposed on a company by virtue of this paragraph shall be enforceable in the same way as if they were imposed by a contract between the existing appointee and the new appointee.

Functions under private and local legislation etc.

- 7 (1) A scheme under this Schedule may provide that any functions of the existing appointee under a statutory provision—
 - (a) shall be transferred to the new appointee or any of the other appointees;
 - (b) shall be concurrently exercisable by two or more companies falling within paragraph (a) above; or
 - (c) shall be concurrently exercisable by the existing appointee and one or more companies falling within paragraph (a) above;
 and different schemes under this Schedule may provide for any such functions of the same existing appointee to have effect as mentioned in paragraphs (a) to (c) above in relation to each of the new appointees under those schemes or of all or any of the other appointees.
- (2) Sub-paragraph (1) above applies in relation to any function under a statutory provision if and to the extent that the statutory provision—
 - (a) relates to any part of the existing appointee's undertaking, or to any property, which is to be transferred by the scheme; or
 - (b) authorises the carrying out of works designed to be used in connection with any such part of the existing appointee's undertaking or the acquisition of land for the purpose of carrying out any such works.
- (3) Sub-paragraph (1) above does not apply to any function of the Board or of any of the Board's subsidiaries under any provision of this Act or of—

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- (a) the Transport Act 1962;
 - (b) the Transport Act 1968;
 - (c) section 4 of the Railways Act 1974; or
 - (d) sections 119 to 124 of the Transport Act 1985.
- (4) A scheme under this Schedule may define any functions of the existing appointee to be transferred or made concurrently exercisable by the scheme in accordance with sub-paragraph (1) above—
- (a) by specifying the statutory provisions in question;
 - (b) by referring to all the statutory provisions (except those specified in sub-paragraph (3) above) which—
 - (i) relate to any part of the existing appointee’s undertaking, or to any property, which is to be transferred by the scheme, or
 - (ii) authorise the carrying out of works designed to be used in connection with any such part of the existing appointee’s undertaking or the acquisition of land for the purpose of carrying out any such works; or
 - (c) by referring to all the statutory provisions within paragraph (b) above, but specifying certain excepted provisions.
- (5) In this paragraph “statutory provision” means a provision whether of a general or of a special nature contained in, or in any document made or issued under, any Act, whether of a general or a special nature.