

SCHEDULES

SCHEDULE 12

Sections 165 and 217.

TRANSPORT FOR LONDON TRANSFER SCHEMES

Interpretation

- 1 In this Schedule—
- “transfer scheme” means—
- (a) a scheme under section 165 of this Act; or
 - (b) a scheme under section 217 of this Act;
- “transferor” means the person from whom property, rights or liabilities are transferred by a transfer scheme;
- “transferee” means a person to whom any such property, rights or liabilities are so transferred.

Contents of transfer schemes

- 2 (1) The property, rights and liabilities which may be transferred by a transfer scheme include—
- (a) property, rights and liabilities which would not otherwise be capable of being transferred or assigned; and
 - (b) rights and liabilities under enactments.
- (2) No right of reverter, right of pre-emption, right of forfeiture, right of re-entry, right to compensation, option or similar right affecting any land or other property shall operate or become exercisable as a result of any transfer of land or other property by virtue of a transfer scheme whether or not any consent required to the transfer has been obtained.
- (3) No right to terminate or vary a contract or instrument shall operate or become exercisable, and no provision of a contract or relevant document shall operate or become exercisable or be contravened, by reason of any transfer by virtue of a transfer scheme.
- (4) For purposes connected with any transfers (including transfers of rights and liabilities under an enactment) made by virtue of a transfer scheme, or by virtue of an instrument or agreement made in connection with a transfer scheme, a body or person to which anything is transferred by any such transfer is to be treated as the same person in law as the body or person from which that thing is transferred, except as otherwise provided in the transfer scheme, instrument or agreement.
- (5) Sub-paragraph (4) above is without prejudice to section 415 of this Act or any other provision made by or under this Act which makes transitional provision in relation to a transfer.
- (6) Sub-paragraphs (2) to (5) above shall have effect in relation to—

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- (a) the grant or creation of an estate or interest in, or right over, any land or other property, or
 - (b) the doing of any other thing in relation to land or other property,
- as they have effect in relation to a transfer of land or other property.

(7) In this paragraph, “relevant document” means—

- (a) any enactment, other than an enactment contained in this Act;
- (b) any subordinate legislation made otherwise than under this Act; or
- (c) any deed or other instrument.

Apportionment and division

- 3 (1) A transfer scheme may make provision for the apportionment or division of any property, rights or liabilities.
- (2) Where a transfer scheme makes provision for the apportionment or division between two or more persons of any rights or liabilities under a contract, the contract shall have effect, as from the coming into force of the provision, as if it constituted two or more separate contracts separately enforceable by and against each of those persons respectively as respects the part of the rights or liabilities which falls to him as a result of the apportionment or division.

Definition of the property, rights and liabilities transferred

- 4 A transfer scheme may define the property, rights and liabilities to be transferred—
- (a) by specifying or describing them;
 - (b) by referring to all (or all except anything specified or described) of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor; or
 - (c) partly in the one way and partly in the other.

Other provision that may be made by a transfer scheme

- 5 (1) The provision that may be made by a transfer scheme includes provision—
- (a) for the creation, in relation to any land or other property which the scheme transfers, of an estate or interest in or right over the property in favour of the transferor;
 - (b) for the creation, in favour of a transferee, of an estate or interest in or right over any land or other property retained by the transferor or transferred by the scheme to another transferee;
 - (c) for the creation of rights or liabilities as between two or more transferees or as between one or more transferees and the transferor;
 - (d) for any rights or liabilities specified or described in the scheme to be, or to be to any extent, enforceable by or against two or more transferees, or by or against one or more transferees and the transferor;
 - (e) for imposing on the transferor or a transferee an obligation to enter into written agreements with, or execute other instruments in favour of, the transferor, or that or any other transferee, or such other person as may be specified in the scheme.

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- (2) The provision that may be made by a transfer scheme includes provision for transfers to take effect at such time of day as may be specified in the order.

Power to make supplementary etc provision

- 6 A transfer scheme may make such supplementary, incidental, consequential or transitional provision, or savings, as Transport for London considers appropriate.

Functions under local Acts or Transport and Works Act orders

- 7 (1) A transfer scheme may provide that any functions of the transferor under a relevant statutory provision—
- (a) shall be transferred to the transferee;
 - (b) shall be concurrently exercisable by two or more transferees; or
 - (c) shall be concurrently exercisable by the transferor and one or more transferees.
- (2) Sub-paragraph (1) above applies in relation to any function under a relevant statutory provision if and to the extent that the relevant statutory provision—
- (a) relates 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 property or the acquisition of land for the purpose of carrying out any such works.
- (3) A transfer scheme which makes provision by virtue of this paragraph shall not have effect unless and until it is confirmed by an order made by the Secretary of State.
- (4) In this paragraph “relevant statutory provision” means any provision, whether of a general or of a special nature, contained in, or in any document made or issued under—
- (a) any local Act; or
 - (b) any order under the Transport and Works Act 1992.

Effect of transfer scheme

- 8 On the date appointed by a transfer scheme, the property, rights and liabilities which are the subject of the scheme shall, by virtue of this paragraph, be transferred in accordance with the provisions of the scheme.

Continuity

- 9 (1) Nothing in this Act affects the validity of anything done by or in relation to the transferor in connection with anything transferred by a transfer scheme.
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings) which—
- (a) relates to anything transferred by a transfer scheme, and
 - (b) is in the process of being done by or in relation to the transferor immediately before the transfer takes effect.
- (3) Anything which—

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- (a) was done by the transferor for the purposes of or otherwise in connection with anything transferred by a transfer scheme, and
 - (b) is in effect immediately before the transfer takes effect,
- shall have effect as if done by the transferee.
- (4) The transferee shall be substituted for the transferor in any instruments, contracts or legal proceedings which—
- (a) relate to anything transferred by a transfer scheme, and
 - (b) are made or commenced before the transfer takes effect.
- (5) Any reference in this paragraph to anything done by or in relation to the transferor includes a reference to anything which by virtue of any enactment is treated as having been done by or in relation to the transferor.

Transfer of employees

- 10 (1) This paragraph applies where a person employed by the transferor becomes an employee of the transferee by virtue of a transfer scheme.
- (2) Anything done by or in relation to the transferor in respect of the employee before the day on which the transfer takes effect shall be treated on and after that day as done by or in relation to the transferee.
- (3) For the purposes of Part XI of the Employment Rights Act 1996 (redundancy payments etc) the employee shall not be regarded as having been dismissed by virtue of the transfer.
- (4) For the purposes of that Act—
- (a) the employee's period of employment with the transferor shall count as a period of employment with the transferee; and
 - (b) the change of employment shall not break the continuity of the period of employment.

Provision of information to Transport for London

- 11 (1) Where Transport for London proposes to make a transfer scheme under section 217 of this Act, it may direct any person to whom, or from whom, property is to be transferred under the scheme—
- (a) to provide Transport for London with such information as Transport for London considers necessary to enable it to make the scheme; and
 - (b) to do so within such time (being not less than 28 days from the giving of the direction) as may be specified in the direction.
- (2) If a person fails to comply with a direction under sub-paragraph (1) above, Transport for London may serve a notice on him requiring him—
- (a) to produce to Transport for London, at a time and place specified in the notice, any documents which are specified or described in the notice and are in his custody or under his control; or
 - (b) to provide to Transport for London, at a time and place and in the form and manner specified in the notice, such information as may be specified or described in the notice.
- (3) No person shall be required under this paragraph—

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- (a) to produce any documents which he could not be compelled to produce in civil proceedings in the court; or
 - (b) in complying with any requirement for the provision of information, to provide any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by a notice under sub-paragraph (2) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under sub-paragraph (2) above is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under sub-paragraph (2) above, the court may, on the application of Transport for London, make such order as the court thinks fit for requiring the default to be made good.
- (7) Any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.
- (8) In this paragraph—
- (a) any 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.
- (9) In this paragraph “the court” means the High Court.

Modification of transfer scheme

- 12 (1) If at any time after a transfer scheme has come into force—
- (a) the transferor,
 - (b) any transferee affected, and
 - (c) Transport for London, if not falling within paragraph (a) or (b) above,
- so agree in writing, the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the agreement.
- (2) Sub-paragraph (1) above does not apply in relation to modifications relating to the transfer of rights and liabilities under a contract of employment, unless the employee concerned is a party to the agreement.
- (3) An agreement under sub-paragraph (1) above—
- (a) may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme; and
 - (b) in connection with giving effect to that provision from that time, may contain incidental, supplemental, consequential or transitional provision.

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- (4) Transport for London may only enter into an agreement under sub-paragraph (1) above with the consent of the Mayor.
- (5) The Mayor, in giving his consent under sub-paragraph (4) above to an agreement in respect of a scheme under section 165 of this Act, may make it a condition of the consent that such further modifications to the scheme as he may specify in giving the consent are to be included in the agreement.
- (6) No modification may be specified by the Mayor under sub-paragraph (5) above which could not have been included in the agreement apart from that sub-paragraph.