These notes refer to the Transport Act 2000 (c.38)
which received Royal Assent on 30 November 2000

TRANSPORT ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Air Traffic

Chapter Ii: Transfer Schemes

Sections 41 and 42: Introduction

40. Transfer schemes are the means by which shares in the current air traffic services provider will be transferred out of the CAA's ownership and into Crown ownership, in readiness for partial sale. The transfer of ownership is the means by which the objective of separating the CAA's regulatory functions from the provision of services is achieved. The transfer scheme provisions also allow the corporate structure of the air traffic service provider's business to be reorganised in light of the new licensing regime and the proposed public private partnership.

41. *Section 41* deals with the meaning of a transfer scheme, and describes the parties between whom transfers can be made. *Section 42* contains supplementary provisions detailing what a transfer scheme may do.

Sections 43 and 44: CAA's schemes

42. Transfer schemes can be made by either the CAA or the Secretary of State. *Sections 43* and*44* provide the Secretary of State with powers to approve and to control the content and timetable of transfer schemes made by the CAA; but no schemes can be made until a period of three months from the date of enactment has elapsed.

Sections 45 and 46: Secretary of State's schemes

43. *Section 45* provides a power for the Secretary of State to make a transfer scheme where either the CAA fails to make a scheme, or the Secretary of State does not agree with the CAA's proposals. No scheme can be made until a period of three months from the date of enactment has elapsed. Where the Secretary of State does make a scheme, *section 46* gives him the power to direct interested bodies (listed in *subsections (2)(a) to (d)),* to provide such information as he may require.

Sections 47 and 48: Accounting provisions

44. *Section 47* deals with certain accounting and valuation matters with regard to transfer schemes. Its principal purpose is to specify rules to determine the value of any asset or liability transferred to a company under a scheme, for the purposes of the opening accounts of that company. *Section 48* defines certain terms used in section 47.

Sections 49 to 51: Ownership of transferee companies

45. *Section 49* applies where property, rights or liabilities are transferred by a transfer scheme and permits the Secretary of State to require certain companies receiving the

property to issue securities to any person listed in *section 49(5)*. The securities must be issued at such times and on such terms as the Secretary of State directs. *Section 50* allows the Treasury (or the Secretary of State with the Treasury's consent), to acquire securities of a transferee company falling within *section 50(1)* and to acquire options to acquire or dispose of those securities.

46. *Section 51* requires the Secretary of State not to dispose of more than 51% of the shares in the designated company, and to ensure that the Crown's holding in the company is not diluted below 25%. The Crown must also not dispose of any of its shares unless it is satisfied that plans are in place which will ensure the completion of certain major projects.

47. The section also requires the Crown to hold a special share in the designated company which is to be provided for in the company's articles of association. The Crown must not alter the special share arrangements without the consent of Parliament. The provisions of this section can only be amended or repealed by order with the approval of Parliament (see *section 103(6)*).

Sections 52 to 56: Transferee companies: other provisions

48. *Section 52* enables the Secretary of State, with the Treasury's approval, to make loans from the National Loans Fund to transferee companies listed in *section 52(3)*, while they are still owned by the CAA or the Crown. Loan repayments and accrued interest must be paid into the National Loans Fund (see *section 278(3))*. The Secretary of State must produce an account to the Comptroller and Auditor General of sums issued and received, and how he has disposed of them. *Section 53* provides a power for the Treasury or the Secretary of State to guarantee the discharge of any financial obligation of a transferee provided that the guarantee is given when the transferee is a company falling within those listed under *section 53(3)*. *Section 54* provides a power for the Secretary of State, with the approval of the Treasury, to make grants to a transferee falling within *subsection (3)*, of such amounts, at such times and in such a manner as he sees fit. These provisions will allow the Secretary of State to offer such a transferee a range of financial assistance while it is in public ownership.

49. *Section 55* has the effect of disapplying certain provisions in the Trustee Investments Act 1961, which restrict a trustee's ability to invest in certain securities where dividends have not been paid in the five years prior to the proposed investment. The purpose of disapplying these provisions is to ensure that if any shares of a transferee company listed in *subsection (2)* are included in the Official List of The Stock Exchange, they are not subject to the investment restrictions imposed by the Trustee Investments Act 1961.

50. *Section 56* provides that for the purposes of specified sections of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, Ministers of the Crown, Northern Ireland Minister, their nominees and Northern Ireland Departments are not to be regarded as shadow directors of certain transferees or of any company associated with such transferee at a time when the condition set out in *section 56(3)* is satisfied.

Sections 57 to 59: Extinguishment of liabilities

51. *Section 57* enables the Secretary of State, with the Treasury's consent, to extinguish the debts to the CAA of a company wholly owned by the CAA. The Secretary of State may direct the CAA to release such a company from its debt to the CAA. He may also, by order, extinguish the CAA's corresponding liability to him in respect of this debt, and the assets of the National Loans Fund would be reduced accordingly by a corresponding amount.

52. *Section 58* provides for the issue, at the direction of the Secretary of State, of new equity or debt securities by the specified companies to the persons set out in *subsection (4)*. The purpose of this section is to enable the Government to alter the ratio of equity capital to debt of companies in the air traffic service provider group as part of the reorganisation.

Section 59 provides for certain accounting and valuation principles to be applied to securities and debentures issued under sections 49 or 58.

Sections 60 to 64: Miscellaneous

53. *Section 60* provides that where a transferor or transferee is required by a transfer scheme to execute an instrument or enter into an agreement, a person in whose favour such an instrument or agreement is made can ensure that obligations created by it are enforceable in the courts. *Section 61* provides that certain specified rights affecting land are not to operate or become exercisable as a result of a transfer of land under a transfer scheme and provides for compensation to be paid (determined, if necessary, by arbitration) to a person whose rights are, as a result, made ineffective. *Section 62* permits the Treasury, or the Secretary of State with the Treasury's consent, to appoint a person to act as its nominee for the purposes of sections 49, 50 or 58. A person holding any securities as a nominee of the Treasury or the Secretary of State must hold and deal with them as directed by the Treasury or the Secretary of State.

54. *Section 63* introduces*Schedule 6* which contains detailed provisions about transfer schemes, including the identification and allocation of property, rights and liabilities to be transferred, the discharge of functions by parties and transfers by agreement. It also includes provision as to documents of title, foreign properties, rights and liabilities, certificates, restrictions on dealings with land, the construction of agreements, proceedings and third parties.

55. *Section 64* introduces*Schedule 7* which contains provisions regulating the tax treatment of transfers which take place under transfer schemes. The main purpose of the Schedule is to ensure that the reorganisation of business operations and capital structure which takes place prior to the establishment of the public-private partnership will be largely tax neutral.