

SCHEDULES

SCHEDULE 21

Section 220.

TRANSFER SCHEMES BY SRA

Transfers from Authority and its subsidiaries

- 1 (1) The Authority may, with the consent of the Secretary of State, make schemes for the transfer of property, rights and liabilities (including rights and liabilities relating to contracts of employment) from the Authority or a company which is wholly owned by the Authority to any other person or persons specified in sub-paragraph (2).
- (2) The persons referred to in sub-paragraph (1) are—
- (a) the Authority,
 - (b) a company which is wholly owned by the Authority,
 - (c) the Secretary of State, and
 - (d) a franchise company.

Transfers of franchise assets

- 2 (1) The Authority may make schemes for the transfer, at or after the end of a franchise period relating to a franchise agreement, to any person or persons specified in sub-paragraph (2) of property, rights and liabilities which, immediately before the end of that period, are for the time being designated as franchise assets for the purposes of the franchise agreement.
- (2) The persons referred to in sub-paragraph (1) are—
- (a) the Authority,
 - (b) a company which is wholly owned by the Authority, and
 - (c) a franchise company.
- (3) On the day on which such a scheme comes into force the transferee shall pay the transferor (or vice versa) such sums as may be specified in, or determined in accordance with, the relevant franchise agreement (but subject to any other agreement made between the transferor and the transferee).

Contents of transfer scheme

- 3 (1) The property, rights and liabilities which may be transferred by a transfer scheme include property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (2) The transfers authorised by sub-paragraph (1) include transfers which are to take effect as if there were no such contravention, liability or interference with any interest or right as there would otherwise be by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms

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on which the transferor is entitled to the property or right, or subject to the liability, in question.

4 A transfer scheme may define the property, rights and liabilities to be transferred by specifying them or describing them or 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 partly in one way and partly in the other).

5 A transfer scheme may contain provision—

- (a) for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the transferor,
- (b) for the creation in favour of the transferee of an interest in or right over property retained by the transferor,
- (c) for the creation of rights and liabilities as between the transferor and transferee,
- (d) for any rights or liabilities specified or described in the scheme to be, or to be to any extent, enforceable by or against the transferor or transferee (or both), and
- (e) for imposing on the transferor or transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, the transferor or transferee or such other person as may be specified in the scheme.

6 A transfer scheme may make such supplementary, incidental, transitional and consequential provision as the Authority considers appropriate.

Functions under legislation

7 (1) A transfer scheme may provide that any functions of the transferor under a 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) applies in relation to any function under a statutory provision if and to the extent that the 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) 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) other than the Railways Act 1993 or this Part.

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.

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- 9 Nothing in this Part affects the validity of anything done by or in relation to the transferor in connection with anything transferred by a transfer scheme.
- 10 There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything transferred by a transfer scheme which is in the process of being done by or in relation to the transferor immediately before it is transferred.
- 11 Anything done by the transferor for the purpose of or in connection with anything transferred by a transfer scheme which is in effect immediately before it is transferred shall be treated as if done by the transferee.
- 12 The transferee shall be substituted for the transferor in documents and legal proceedings relating to anything transferred by a transfer scheme.

Transfer of employees

- 13 Where a person employed by the transferor becomes an employee of the transferee by virtue of a scheme under paragraph 1—
- (a) for the purposes of Part XI of the Employment Rights Act 1996, he shall not be regarded as having been dismissed by virtue of the transfer, and
 - (b) for the purposes of that Act, his period of employment with the transferor counts as a period of employment with the transferee and the change of employment does not break the continuity of the period of employment.

Provision of information to Authority

- 14 (1) Where the Authority proposes to make a transfer scheme, it may direct any person to whom or from whom property is to be transferred under the scheme to provide the Authority with such information as the Authority considers necessary to enable it to make the scheme 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), the Authority may serve a notice on him requiring him—
- (a) to produce to the Authority, 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 the Authority, 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 to produce any documents which he could not be compelled to produce in civil proceedings in the court or, 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 intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under sub-paragraph (2) is guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (5) If a person fails to comply with a notice under sub-paragraph (2), the court may, on the application of the Authority, make such order as the court thinks fit for requiring

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the failure to be made good; and 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.

- (6) Any reference in this paragraph 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 the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (7) In this paragraph “the court” means the High Court, in relation to England and Wales, and the Court of Session, in relation to Scotland.

Modification of transfer scheme

- 15 (1) If at any time after a transfer scheme has come into force the transferor and transferee so agree in writing, the scheme shall for all purposes be deemed to have come into force with such modifications as may be agreed.
- (2) Sub-paragraph (1) 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) may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme, and in connection with giving effect to that provision from that time may contain incidental, supplemental, consequential and transitional provision.

Interpretation

- 16 In this Schedule—
- “franchise company” means any body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement,
- “transfer scheme” means a scheme under paragraph 1 or 2,
- “transferor” means the person from whom property, rights or liabilities are transferred by a transfer scheme, and
- “transferee” means the person to whom any such property, rights or liabilities are so transferred.