

SCHEDULES

SCHEDULE 2

Section 30

TRANSFER SCHEMES

Contents of transfer scheme

- 1 (1) A transfer scheme—
 - (a) shall set out the property, rights and liabilities to be transferred by the scheme; and
 - (b) may make incidental, supplemental, consequential and transitional provision in connection with the transfer of that property and of those rights and liabilities.
- (2) The provisions of the scheme setting out the property, rights and liabilities to be transferred may do so in either or both of the following ways—
 - (a) by specifying them or describing them in particular; or
 - (b) by identifying them generally by reference to, or to a specific part of, an undertaking from which they are to be transferred.
- (3) The property, rights and liabilities that are to be capable of being transferred by a transfer scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the person from whom they are transferred;
 - (b) property acquired and rights and liabilities arising in the period after the making of the scheme and before it comes into force;
 - (c) rights and liabilities arising subsequently in respect of matters occurring in that period;
 - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and
 - (e) rights and liabilities under an enactment.
- (4) The provision that may be made under sub-paragraph (1)(b) includes provision for the creation in favour of a pre-commencement regulator, the Secretary of State or OFCOM of rights or liabilities over or in respect of property transferred to OFCOM or property retained by a pre-commencement regulator or the Secretary of State.
- (5) The transfers to which effect may be given by a transfer scheme, and the rights that may be created by means of such a scheme, include transfers that are to take effect, and rights that are to arise, in accordance with the scheme as if there were—
 - (a) no such requirement to obtain a person's consent or concurrence,
 - (b) no such liability in respect of any contravention of any other requirement, and
 - (c) no such interference with any interest or right,

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as there would be, in the case of a transaction apart from this Act (whether under any enactment or agreement or otherwise), by reason of any provision having effect in relation to the terms on which a pre-commencement regulator or the Secretary of State is entitled or subject to any property, right or liability.

Effect of transfer scheme

- 2 (1) Property transferred by a transfer scheme shall, on the coming into force of the scheme, vest in OFCOM without further assurance.
- (2) Where any transfer scheme comes into force, any agreement made, transaction effected or other thing done by or in relation to the person from whom any transfers for which the scheme provides are made shall have effect, so far as necessary for the purposes of those transfers, as if—
- (a) it had been made, effected or done by or in relation to OFCOM; and
 - (b) OFCOM were the same person in law as the person from whom the transfer is made.
- (3) Accordingly, references in any agreement, document, process or instrument of any description to the person from whom anything is transferred by means of a transfer scheme shall have effect, so far as necessary for the purpose of giving effect to the transfer from the coming into force of the scheme, as references to OFCOM.
- (4) Where any agreement, document, process or instrument of any description has effect, in relation to anything transferred by means of a transfer scheme, as referring (whether expressly or by implication)—
- (a) to a member or to an officer of a pre-commencement regulator, or
 - (b) to an officer of the Secretary of State,
- that agreement, document, process or instrument shall have effect so far as necessary for the purposes of the transfers effected by the scheme and in consequence of them, as referring instead to the person mentioned in sub-paragraph (5).
- (5) That person is—
- (a) the person nominated for the purposes of the transfer by OFCOM; or
 - (b) in default of a nomination, the member or employee of OFCOM who most closely corresponds to the member or officer originally referred to.
- (6) Nothing in sub-paragraph (3) or (4) is to apply in relation to any reference in an enactment or in subordinate legislation.

Retrospective modification of a transfer scheme

- 3 (1) If at any time after the coming into force of a transfer scheme it appears to the Secretary of State that it is appropriate to do so, he may by order provide for the scheme to be deemed to have come into force with such modifications (including modifications retrospective to the time of the coming into force of the scheme) as may be provided for in the order.
- (2) The power under this paragraph to provide by order for the modification of a transfer scheme shall be exercisable for the purpose only of making provision that could have been made by the scheme.
- (3) Before making an order under this paragraph the Secretary of State must consult OFCOM.

Compensation

- 4 (1) Where, in consequence of any provision included in a transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2), the third party is to be entitled to such compensation as may be just in respect of—
- (a) any diminution in the value of any of his interests or rights, or
 - (b) any increase in the burden of his liabilities,
- which is attributable to that modification.
- (2) The modifications mentioned in sub-paragraph (1) are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
 - (i) an interest in only part of that property; or
 - (ii) separate interests in different parts of that property;
 - (b) a right of the third party against any of the pre-commencement regulators or against the Secretary of State is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against that regulator or (as the case may be) against the Secretary of State; or
 - (c) a liability of the third party to any of the pre-commencement regulators or to the Secretary of State is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the person by whom it was enforceable before being so transformed.
- (3) Where—
- (a) a third party would, apart from any provision of a transfer scheme, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
 - (b) the provisions of that scheme have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a), and
 - (c) provision is not made by a transfer scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,
- the third party is to be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.
- (4) A liability to pay compensation under this paragraph shall fall on the persons mentioned in sub-paragraph (5) who (as the case may be)—
- (a) have interests in the whole or any part of the property affected by the modification in question,
 - (b) are subject to the rights of the person to be compensated which are affected by the modification in question,
 - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification, or

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- (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3),
and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.
- (5) Those persons are the pre-commencement regulators and the Secretary of State.
- (6) Sub-paragraph (4) shall have effect subject to so much of any transfer scheme (including the one that gives rise to the liability) as makes provision for the transfer of any liability under that sub-paragraph to OFCOM.
- (7) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of compensation to be paid by a person, shall be referred to and determined—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
 - (b) where the claimant requires the matter to be determined in Scotland, by an arbiter appointed by the Lord President of the Court of Session.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—
- (a) a pre-commencement regulator; and
 - (b) the Secretary of State.

Stamp duty

- 5 (1) Stamp duty is not to be chargeable—
- (a) on a transfer scheme; or
 - (b) on an instrument or agreement certified by the Secretary of State to the Commissioners of Inland Revenue as made for the purposes of a transfer scheme, or as made for purposes connected with such a scheme.
- (2) But a transfer scheme, or an instrument or agreement so certified, is to be treated as duly stamped only if—
- (a) in accordance with section 12 of the Stamp Act 1891 (c. 39) it has been stamped with a stamp denoting either that it is not chargeable to duty or that it has been duly stamped; or
 - (b) it is stamped with the duty to which it would be chargeable apart from this paragraph.

Interpretation of Schedule

- 6 In this Schedule “transfer scheme” means a scheme made by a pre-commencement regulator or by the Secretary of State under section 30.