

SCHEDULES

SCHEDULE 11

Section 73

POSTAL TRANSFER SCHEMES

Application of Schedule

- 1 This Schedule applies if—
- (a) the court has made a postal administration order in relation to a company (the “old company”), and
 - (b) it is proposed that a relevant transfer (within the meaning of section 69(3)) be made to another company (or companies) (a “new company”).

Commencement Information

11 [Sch. 11 para. 1](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 2 While the order is in force, the postal administrator is to act on behalf of the old company in doing anything that it is authorised or required to do by or under this Schedule.

Commencement Information

12 [Sch. 11 para. 2](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Making of postal transfer schemes

- 3
- (1) The old company may for the purpose of giving effect to the proposed transfer make a scheme (a “postal transfer scheme”) for the transfer of property, rights and liabilities from it to the new company (or companies).
 - (2) A postal transfer scheme has effect only if—
 - (a) the new company (or companies) have consented to the making of the scheme, and
 - (b) the Secretary of State has approved the scheme.
 - (3) A postal transfer scheme may be made only at a time when the postal administration order is in force in relation to the old company.
 - (4) A postal transfer scheme takes effect at the time specified in the scheme.
 - (5) In the case of a proposed transfer falling within section 69(4)(a) (transfer to wholly-owned subsidiary), sub-paragraph (2)(a) does not apply.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

Commencement Information

I3 Sch. 11 para. 3 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Approval and modification of scheme by Secretary of State

- 4 (1) The Secretary of State may modify a postal transfer scheme before approving it.
- (2) After a postal transfer scheme has taken effect—
- (a) the Secretary of State may by notice to the old company and the new company (or companies) modify the scheme, and
 - (b) the scheme as modified is to be treated for all purposes as having come into force at the time specified under paragraph 3(4).
- (3) The only modifications that may be made by the Secretary of State under this paragraph are ones—
- (a) to which the old company and the new company (or companies) have consented, or
 - (b) in the case of a proposed transfer falling within section 69(4)(a), to which the old company has consented.
- (4) In connection with giving effect to modifications under sub-paragraph (2), the Secretary of State may make incidental, supplementary, consequential, transitional, transitory or saving provision (and different provision may be made for different cases or circumstances).
- (5) In deciding whether to approve or modify a postal transfer scheme, the Secretary of State must have regard to—
- (a) the public interest, and
 - (b) any effect the scheme or modification is likely to have on the interests of persons other than the old company and a new company.
- (6) Before approving or modifying a postal transfer scheme, the Secretary of State must consult OFCOM.
- (7) The old company and the new company (or companies) each have a duty to provide the Secretary of State with any information or other assistance that the Secretary of State may reasonably require for the purposes of, or in connection with, the exercise of any power under this paragraph.
- (8) That duty overrides a contractual or other requirement to keep information in confidence.
- (9) That duty is enforceable in civil proceedings by the Secretary of State—
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.

Commencement Information

I4 Sch. 11 para. 4 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

Identification of property etc to be transferred

- 5 (1) A postal transfer scheme may identify the property, rights and liabilities to be transferred by specifying or describing them.
- (2) A postal transfer scheme may provide for the way in which property, rights or liabilities of any description are to be identified.

Commencement Information

I5 Sch. 11 para. 5 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Property, rights and liabilities that may be transferred

- 6 (1) A postal transfer scheme may transfer—
- (a) property situated in any part of the world, and
 - (b) rights and liabilities arising (in any way) under the law of any country or territory.
- (2) The property, rights and liabilities that may be transferred by a postal transfer scheme include—
- (a) property, rights and liabilities acquired or arising after the scheme has been made but before the time at which it takes effect,
 - (b) rights and liabilities arising after that time in respect of matters occurring before that time, and
 - (c) property, rights and liabilities that would not otherwise be capable of being transferred or assigned.
- (3) The transfers to which effect may be given by a postal transfer scheme include ones that 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 in relation to the terms on which the old company is entitled or subject to anything to which the transfer relates.
- (4) In sub-paragraph (3) the reference to any provision is a reference to any provision, whether under an enactment or agreement or otherwise.
- (5) Sub-paragraph (3) has effect where shares in a subsidiary of the old company are transferred as if the reference to the terms on which that company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect.

Commencement Information

I6 Sch. 11 para. 6 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Dividing and modifying the old company's property, rights and liabilities

- 7 (1) A postal transfer scheme may contain provision—

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

- (a) for the creation, in favour of the old company or a new company, of an interest or right in or in relation to property or rights transferred in accordance with the scheme,
 - (b) for giving effect to a transfer by the creation, in favour of a new company, of an interest or right in or in relation to property or rights retained by the old company, and
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old company and a new company.
- (2) A postal transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of the old company's undertaking into a contract—
 - (a) between different new companies, or
 - (b) between a new company and the old company.
- (3) A postal transfer scheme may contain provision—
 - (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one new company or by or against both the new company and the old company, and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A postal transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) The reference here to third parties is to persons other than the old company and a new company.
- (6) Paragraph 6(2)(c) and (3) apply to the creation of interests and rights as they apply to the transfer of interests and rights.

Commencement Information

I7 [Sch. 11 para. 7](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Transfer of regulatory conditions etc

- 8 (1) A postal transfer scheme may contain provision—
- (a) for a new company to be treated for all purposes as having been designated by OFCOM under section 35 as a universal service provider, and
 - (b) for the transfer to a new company of the whole or part of any obligation contained in a regulatory condition to which the old company was subject.
- (2) The reference to the transfer of a part of any obligation includes the transfer of any obligation so far as relating to an area specified or described in provision made by the scheme.
- (3) A postal transfer scheme may, in consequence of provision made under subparagraph (1), make modifications of regulatory conditions to which the old company or new company are subject.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

Commencement Information

I8 Sch. 11 para. 8 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Transfer etc of statutory functions

- 9 (1) A postal transfer scheme may contain provision—
- (a) for the transfer of relevant statutory functions to a new company, or
 - (b) for relevant statutory functions to be exercisable concurrently by the old company and a new company (or companies).
- (2) For this purpose “relevant statutory functions” means powers and duties conferred or imposed on the old company by or under an enactment so far as they are connected with—
- (a) the undertaking of the old company to which the postal transfer scheme relates, or
 - (b) property, rights or liabilities transferred in accordance with the scheme.
- (3) Provision within sub-paragraph (1) may apply to relevant statutory functions so far as exercisable in an area specified or described in the provision.

Commencement Information

I9 Sch. 11 para. 9 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Effect of postal transfer scheme: general

- 10 (1) At the time at which a postal transfer scheme takes effect—
- (a) the property, rights and liabilities to be transferred in accordance with the scheme, and
 - (b) the interests, rights and liabilities to be created in accordance with the scheme,
- are, as a result of this paragraph, to vest in the appropriate person.
- (2) For this purpose “the appropriate person” means—
- (a) in the case of property, rights and liabilities to be transferred, the new company (or companies), and
 - (b) in the case of interests, right and liabilities to be created, the person in whose favour, or in relation to whom, they are to be created.

Commencement Information

I10 Sch. 11 para. 10 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Effect of postal transfer scheme on right to terminate or modify interest etc

- 11 (1) This paragraph applies where a person would otherwise be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a postal transfer scheme—

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

- (a) to terminate, modify, acquire or claim an interest or right, or
 - (b) to treat an interest or right as modified or terminated.
- (2) The entitlement—
- (a) is not enforceable in relation to the interest or right until after the transfer of the interest or right by the scheme, and
 - (b) after that transfer, is enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers the entitlement.
- (3) Where shares in a subsidiary of the old company are transferred, sub-paragraph (2) has effect in relation to an interest or right of the subsidiary as if the references to the transfer of the interest or right included a reference to the transfer of the shares.

Commencement Information

III1 [Sch. 11 para. 11](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

Supplementary provisions of postal transfer schemes

- 12 (1) A postal transfer scheme may—
- (a) contain incidental, supplementary, consequential, transitional, transitory or saving provision, and
 - (b) make different provision for different cases or circumstances.
- (2) Nothing in paragraphs 13 to 17 limits sub-paragraph (1).
- (3) In those paragraphs any reference to a transfer in accordance with a postal transfer scheme includes the creation in accordance with a postal transfer scheme of an interest, right or liability.

Commencement Information

III2 [Sch. 11 para. 12](#) in force at 1.10.2011 by [S.I. 2011/2329](#), [art. 3](#)

- 13 (1) A postal transfer scheme may provide, in relation to transfers in accordance with the scheme—
- (a) for a new company to be treated as the same person in law as the old company,
 - (b) for agreements made, transactions effected or other things done by or in relation to the old company to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to a new company,
 - (c) for references in any document to the old company, or to an employee or office holder of it, to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme, and
 - (d) for proceedings commenced by or against the old company to be continued by or against a new company.
- (2) In sub-paragraph (1)(c) “document” includes an agreement or instrument, but does not include an enactment.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

Commencement Information

I13 Sch. 11 para. 13 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 14 (1) A postal transfer scheme may contain provision about—
- (a) the transfer of foreign property, rights and liabilities, and
 - (b) the creation of foreign rights, interests and liabilities.
- (2) For this purpose property, or a right, interest or liability, is “foreign” if an issue relating to it arising in any proceedings would (in accordance with the rules of private international law) be determined under the law of a country or territory outside the United Kingdom.

Commencement Information

I14 Sch. 11 para. 14 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 15 (1) A postal transfer scheme may contain provision for and in connection with the payment of compensation to persons other than the old company and a new company if their property, rights, interests or liabilities have been affected by (or as a result of) a postal transfer scheme.
- (2) The provision may provide for the appointment of an arbitrator to determine disputes about compensation.

Commencement Information

I15 Sch. 11 para. 15 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 16 A postal transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different new companies, or
 - (b) between the old company and a new company,
- to be referred to such arbitration as may be specified in or determined under the scheme.

Commencement Information

I16 Sch. 11 para. 16 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 17 (1) This paragraph applies if, in consequence of a postal transfer scheme, a person (“P”) is entitled to possession of a document relating in part to the title to, or to the management of, land or other property.
- (2) If the land or other property is in England and Wales—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to apply to the acknowledgement and is to apply on the

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

basis that the acknowledgement does not contain an expression of contrary intention.

- (3) If the land or other property is in Scotland, section 16(1) of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) has effect in relation to the transfer as if—
- (a) the transfer had been effected by deed, and
 - (b) the words “unless specially qualified” were omitted from that subsection.
- (4) If the land or other property is in Northern Ireland—
- (a) the scheme may provide for P to be treated as having given another person an acknowledgement in writing of the other person's right to production of the document and to delivery of copies of it, and
 - (b) section 9 of the Conveyancing Act 1881 (which corresponds to section 64 of the 1925 Act) is to apply to the acknowledgement and is to apply on the basis that the acknowledgement does not contain an expression of contrary intention.

Commencement Information

I17 Sch. 11 para. 17 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Proof of title by certificate

- 18 A certificate issued by the Secretary of State to the effect that any property, interest, right or liability vested (in accordance with a postal transfer scheme) in a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.

Commencement Information

I18 Sch. 11 para. 18 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Staff

- 19 The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply to a transfer (under a postal transfer scheme) of rights and liabilities under a contract of employment (whether or not the transfer would otherwise be a relevant transfer for the purposes of those regulations).

Commencement Information

I19 Sch. 11 para. 19 in force at 1.10.2011 by S.I. 2011/2329, art. 3

- 20 If an employee of the old company becomes an employee of a new company as a result of a postal transfer scheme—
- (a) a period of employment with the old company is to be treated as a period of employment with the new company, and
 - (b) the transfer to the new company is not to be treated as a break in service.

Changes to legislation: There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11. (See end of Document for details)

Commencement Information

I20 Sch. 11 para. 20 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Transfers in case of foreign companies

- 21 (1) This paragraph applies if the old company is a foreign company.
- (2) The property, rights and liabilities which may be transferred by a postal transfer scheme, or in or in relation to which interests, rights or liabilities may be created by a postal transfer scheme, are confined to—
- (a) property of the old company in the United Kingdom,
 - (b) rights and liabilities arising in relation to its property in the United Kingdom, and
 - (c) rights and liabilities arising in connection with its affairs and business so far as carried on in the United Kingdom.

Commencement Information

I21 Sch. 11 para. 21 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Transfers by two or more postal transfer schemes

- 22 (1) This paragraph applies if there are two or more postal transfer schemes making transfers to new companies.
- (2) Paragraph 7 has effect as if—
- (a) in sub-paragraph (1)(a) the reference to property or rights transferred in accordance with a postal transfer scheme included property or rights transferred in accordance with another postal transfer scheme, and
 - (b) in sub-paragraphs (2)(a) and (3) references to a new company included a company that is a new company for the purposes of another postal transfer scheme.
- (3) Accordingly, in relation to anything done by a postal transfer scheme as a result of this paragraph, any reference to a new company in paragraphs 13 to 16 includes a company that is a new company for the purposes of another postal transfer scheme.

Commencement Information

I22 Sch. 11 para. 22 in force at 1.10.2011 by S.I. 2011/2329, art. 3

Changes to legislation:

There are currently no known outstanding effects for the Postal Services Act 2011, SCHEDULE 11.