

SCHEDULES

SCHEDULE 3

Section 15

TRANSFER SCHEMES

Application and commencement of scheme

- 1 (1) The property, rights and liabilities to be transferred may be specified or described by a scheme.
- (2) A scheme comes into force on the date it appoints.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned;
 - (b) property acquired in the period after the making of the scheme and before it comes into force;
 - (c) rights and liabilities arising in that period;
 - (d) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
 - (e) rights and liabilities under an enactment or EU instrument.
- (2) A scheme may provide that transfers are to take effect irrespective of—
 - (a) any requirement to obtain a person's consent or concurrence,
 - (b) any liability in respect of a contravention of another requirement, or
 - (c) any interference with an interest or right,which would otherwise apply.
- (3) Sub-paragraph (4) applies where a person would otherwise be entitled, in consequence of anything done, or likely to be done, in connection with a scheme—
 - (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
 - (b) to treat such an interest or right as modified or terminated.
- (4) That entitlement is enforceable in relation to the interest or right—
 - (a) in consequence of what is done or likely to be done, and
 - (b) in corresponding circumstances arising after the transfer,to the extent only that the scheme provides for it to be so enforceable.

Dividing and modifying transferor's property, rights and liabilities

- 3 (1) A scheme may contain provision—

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- (a) for the creation, in favour of a transferor or transferee, of an interest or right in, or in relation to, property to be transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in, or in relation to, property to be retained by a transferor;
 - (c) for the creation of new rights and liabilities, including rights of indemnity and duties to indemnify, as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between—
- (a) different transferees, or
 - (b) a transferee and a transferor.
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against—
 - (i) more than one transferee, or
 - (ii) both the transferee and the transferor, and
 - (b) for rights and liabilities enforceable against more than one of those people to be enforceable in different or modified respects by or against each or any of them.
- (4) A 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) Paragraph 2(2) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

Obligation to effect transfers etc under a scheme

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
 - (b) to execute such instruments in favour of any such person,
- as may be specified or described in the scheme.
- (2) That other person may enforce an obligation imposed on a transferor or a transferee by virtue of sub-paragraph (1) in civil proceedings.

Effect of scheme

- 5 (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) the property or interests, rights or liabilities vest, without further assurance, in the transferee at that time, and

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- (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from the time when the scheme comes into force.
- (2) Sub-paragraph (1) is subject to provision under a scheme for—
- (a) the transfer of property, rights or liabilities, or
 - (b) the creation of interests, rights and liabilities,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) A certificate issued by the Secretary of State that any property, rights or liabilities have been transferred under a scheme is conclusive evidence of the transfer.

Powers and duties under statutory provisions

- 6 (1) A scheme may make provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to a transferee,
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or
 - (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.
- (2) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon a transferor by or under an enactment so far as they relate to—
- (a) property to be transferred in accordance with the scheme,
 - (b) carrying out works designed to be used in connection with such property, or
 - (c) acquiring land for the purpose of carrying out such works.
- (3) This paragraph does not require a restrictive construction to be given to what may be transferred by virtue of paragraph 2(1)(e).

Supplementary provisions of schemes

- 7 (1) A scheme may—
- (a) make such incidental, supplemental, consequential and transitional provision in connection with the scheme as the Secretary of State thinks fit;
 - (b) make different provision for different cases.
- (2) In particular, a scheme may make provision—
- (a) for the transferee to be treated as the same person in law as the transferor;
 - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfer, as made, effected or done by or in relation to the transferee;
 - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;
 - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.

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- (3) Sub-paragraph (2)(c) does not apply to references in an enactment.

Modification of a scheme by agreement

- 8 (1) Where the transferor and transferee under a scheme that has come into force so agree, the scheme is to be treated for all purposes as having come into force with such modifications as may be agreed.
- (2) An agreement under this paragraph which relates to rights and liabilities under a contract of employment may be entered into only if the employee is a party to the agreement.
- (3) An agreement under this paragraph that adversely affects the property or rights of a person other than the transferor, the transferee or such an employee may be entered into only if that person is a party to the agreement.
- (4) An agreement under this paragraph may include—
- (a) any provision that could have been contained in the scheme;
 - (b) incidental, supplemental, consequential and transitional provision in connection with any such provision.

Continuity of employment etc

- 9 (1) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee—
- (a) that person is not to be regarded for the purposes of Part 11 (redundancy payments etc) of the Employment Rights Act 1996 as having been dismissed by virtue of the transfer,
 - (b) that person's period of employment with the transferor counts for the purposes of that Act as a period of employment with the transferee, and
 - (c) the change of employment does not break the continuity of the period of employment for the purposes of that Act.
- (2) Where in accordance with a scheme a person employed by a transferor becomes an employee of a transferee, the scheme must provide for the transfer of all the rights and liabilities relating to the person's contract of employment.
- (3) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment but, before the transfer takes effect, the person informs the transferor or the transferee that the person objects to the transfer—
- (a) those rights and liabilities are not transferred under the transfer scheme,
 - (b) the person's contract of employment is terminated immediately before the day on which the transfer would occur, and
 - (c) the person is not, for any purpose, to be regarded as having been dismissed.
- (4) Nothing in sub-paragraph (3) affects the person's right to terminate the contract of employment if, apart from the change of employer, a substantial change is made to the person's detriment in the person's working conditions.
- (5) No damages are payable by virtue of a constructive dismissal occurring under sub-paragraph (4) in respect of unpaid wages relating to a notice period which the employee has not worked.

- (6) Where a transfer scheme contains provision for the transfer of rights and liabilities relating to a person's contract of employment, it may include provision with respect to—
- (a) the person's eligibility to become a member of a pension scheme by virtue of employment with the transferee;
 - (b) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person may become a member by virtue of employment with the transferee;
 - (c) the rights of, or rights or liabilities in respect of, the person under a pension scheme of which the person is a member by virtue of employment immediately before the transfer.

Compensation for third parties

- 10 (1) A third party is entitled to compensation in respect of the extinguishment of that party's entitlement where—
- (a) the entitlement is to an interest or right which would, apart from a provision of a scheme and paragraph 2(3) and (4), have become enforceable in respect of the transfer or creation of any property, rights or liabilities in accordance with the scheme,
 - (b) the provisions of that scheme or of paragraph 2(3) and (4) have the effect of preventing that party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and
 - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides.
- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.
- (3) A liability to pay compensation under this paragraph falls on the Secretary of State.
- (4) This paragraph has effect in relation to—
- (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme, and
 - (b) the provisions of an agreement under paragraph 8 relating to property, rights or liabilities transferred or created in accordance with a scheme,
- as it has effect in relation to the scheme but as if, in the case of an agreement under paragraph 8, only persons who are not parties to the agreement were third parties.

Provision of information to Secretary of State for the purposes of making a scheme

- 11 (1) The Secretary of State may direct a strategic highways company, or a former strategic highways company, to provide such information as he or she may consider necessary for the purposes of making a scheme.
- (2) The direction must specify the period within which the information is to be provided.

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- (3) The period specified in the direction must be not less than 28 days beginning with the day on which the direction is given.
- (4) If the company fails to comply with the direction, the Secretary of State may serve a notice on the company requiring—
 - (a) production to the Secretary of State of any documents which are specified or described in the notice and are in the custody or under the control of that company, or
 - (b) provision to the Secretary of State of such information as may be specified or described in the notice.
- (5) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.
- (6) A direction or notice under this paragraph may not require—
 - (a) production of a document which a person could not be compelled to produce in civil proceedings, or
 - (b) provision of information which a person could not be compelled to give in evidence in such proceedings.
- (7) If a strategic highways company fails to comply with a notice under sub-paragraph (4), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (8) Any order under sub-paragraph (7) may include provision requiring all the costs or expenses of, or incidental to, the application to be borne by one or more of the following—
 - (a) the strategic highways company in default;
 - (b) any officers of that company who are responsible for its default.
- (9) In this paragraph, reference to the production of a document includes reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.

Interpretation

- 12 (1) In this Schedule—
- “third party”, in relation to a scheme, means a person other than a transferor and a transferee;
- “transferee”—
- (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme, and
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person—
 - (i) to whom that property or those rights or liabilities are transferred, or
 - (ii) in whose favour, or in relation to whom, they are created;
- “transferor”—
- (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme, and

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- (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person—
 - (i) from whom that property or those rights or liabilities are transferred,
 - (ii) who, or whose property, is subject to the interest or right created, or
 - (iii) for whose benefit the liability is created;“scheme” means a scheme under section 15.
- (2) In this Schedule, reference to employment includes reference to employment in the civil service of the State and, in respect of such employment—
 - (a) reference to a contract of employment is to be treated as a reference to the terms of employment in the civil service of the State, and
 - (b) reference to a dismissal is to be treated as a reference to the termination of the employment.
- (3) References in this Schedule—
 - (a) to a right or to an entitlement to a right include references to an entitlement to exercise a right, and
 - (b) to a right’s arising include references to its becoming exercisable.