STATUTORY INSTRUMENTS

1986 No. 1702

TRANSPORT

The Burnley and Pendle Joint Transport Undertaking (Transfer) Order 1986

Made - - - -	1*st October* 1986
Laid before Parliament	3*rd October* 1986
Coming into Operation	26*th October* 1986

The Secretary of State for Transport, in exercise of the powers conferred by sections 69(7) and (9) and 70(1) and (5) of the Transport Act 1985(**a**), and of all other enabling powers, and after consultation in accordance with section 69(7) and (10)(*a*) of that Act, hereby makes the following Order:—

Citation, commencement and interpretation

1. This Order may be cited as the Burnley and Pendle Joint Transport Undertaking (Transfer) Order 1986 and shall come into operation on 26th October 1986.

2.—(1) In this Order —

"company" means the Burnley and Pendle Transport Company Limited;

"constituent councils" means Burnley Borough Council and Pendle Borough Council;

"joint bus undertaking" means —

(*a*) all activities carried on immediately before the transfer date by the constituent councils or by the joint committee in or for the purposes of the provision by the constituent councils of services for the carriage of passengers by road; and

(*b*) all activities of any other description carried on similarly in association with the activities mentioned in paragraph (*a*) above,

and any reference to property, rights and liabilities comprised in the joint bus undertaking is a reference to property of a constituent council or (as the case may be) the joint committee used or appropriated for use and to rights and liabilities of a constituent council or (as the case may be) the joint committee subsisting for the purposes of the activities mentioned in paragraphs (*a*) and (*b*) above;

(**a**) 1985 c.67.

"joint committee" means the joint transport committee established by the operating agreement;

"operating agreement" means the agreement dated 18th June 1974 to which the constituent councils are party, by which the joint committee was established, and pursuant to which that committee has carried on the joint bus undertaking;

"transfer date" means 26th October 1986.

(2) Except where there is provision to the contrary, any reference to a numbered article or Schedule is a reference to the article or Schedule bearing that number in this Order, and any reference to a numbered paragraph is a reference to the paragraph bearing that number in the article or Schedule in which the reference occurs.

Transfer of property etc to company

3.—(1) Subject to paragraph (2) and article 5 (effect of transfer on employees), there shall be transferred to the company all the property, rights and liabilities of—

(*a*) the constituent councils; or

(*b*) the joint committee,

comprised in the joint bus undertaking.

(2) There are excluded from paragraph (1) the property, rights and liabilities specified in Schedule 1.

(3) Without prejudice to the generality of paragraphs (1) and (2), there shall be transferred to the company the liabilities of the joint committee to repay to Burnley Borough Council the sum of £47,200, and to Pendle Borough Council the sum of £50,800, being debts incurred by the councils for the purposes of the joint committee.

(4) On or within seven days of the transfer date, and subject to paragraph (5), the joint committee shall transfer to the company the sum of £100,126, and the Pendle Borough Council shall separately transfer to the company the sum of £31,874, such transfers to be effected by means of—

(*a*) the delivery to the company of banker's drafts in its favour; or

(*b*) direct transfers to a bank account of the company.

(5) The provisions of Schedule 2 shall have effect for the purpose of calculating the amount of a further payment to be made by the constituent councils or (as the case may be) the company to ensure that the amount of cash transferred to the company is equal to the difference between the value of transferred current liabilities (as defined in that Schedule) and the value of transferred current assets (as similarly defined).

Consideration for the transfer

4.—(1) As consideration for the transfer to it of the property, rights and liabilities mentioned in paragraph (1) of article 3, and the cash amounts mentioned in paragraph (3) of that article, on or within seven days of the transfer date the company shall issue to the constituent councils debentures and shares in accordance with the following provisions of this article.

(2) There shall be issued one debenture in favour of Burnley Borough Council and one debenture in favour of Pendle Borough Council, and each of those debentures shall include the following terms —

(*a*) the amount of the principal shall be the sum of £42,000;

(*b*) that principal shall be repayable within a period of 25 years commencing on the transfer date;

(*c*) the amount outstanding from time to time of that principal shall bear interest at the rate of $10\frac{1}{2}$ per centum per annum; and

(*d*) such interest shall be payable half-yearly in arrear on the thirty-first day of March and the thirtieth day of September in every year,

and shall further include such supplementary, incidental and consequential terms as may be decided, in the case of each debenture, by the constituent council to whom it is to be issued.

(3) The shares issued pursuant to paragraph (1) shall be fully paid ordinary shares of the company with a nominal value of £1 each and shall be issued to the constituent councils or their nominees in the following numbers —

(*a*) to Burnley Borough Council—577,000 shares; and

(*b*) to Pendle Borough Council—577,000 shares,

and, where shares are issued to a constituent council and its nominees, those shares shall be divided between the council and the nominees in such proportions as the council may direct.

Effect of transfer on employees

5. The effect of the transfer provision for which is made in this Order on persons employed in the joint bus undertaking shall be determined by applying the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981(**a**).

Payments in respect of pensions

6. On or within seven days of the transfer date the constituent councils and the company shall enter into an agreement in the form set out in Schedule 3.

Termination of operating agreement and dissolution of joint committee

7.—(1) On the transfer date the operating agreement shall cease to have effect and shall be determined, except only so far as may be necessary for the joint committee to continue in being until the date when it is dissolved.

(2) The joint committee shall be dissolved one month after the transfer date, and on the date when the joint committee is dissolved the operating agreement, so far as it has not already ceased to have effect and been determined by virtue of paragraph (1), shall cease to have effect and be determined.

(**a**) S.I. 1981/1794.

Modification of Schedule 4 to the Transport Act 1968

8.—(1) For the purposes of its application to the transfer provision for which is made in this Order, Schedule 4 to the Transport Act 1968(a) shall be modified in accordance with the provisions of Part I of Schedule 4.

(2) Schedule 4 to the Transport Act 1968, as so modified and with consequential adjustments in the numbering of the paragraphs, is set out in Part II of Schedule 4.

John Moore,
Secretary of State for Transport.

1st October 1986.

(a) 1968 c.73.

SCHEDULE 1 — Article 3(2)

Property, rights and liabilities excluded from the transfer

1. Premises.

The bus stations situated at Burnley, Nelson, Colne and Earby.

2. Vehicles.

Vehicle	*Body*	*Registration Mark*
Leyland National	Integral	VCW 131L
" "	"	VCW 132L
" "	"	VCW 133L
" "	"	VCW 134L
" "	"	VCW 135L
" "	"	YCW 836N
" "	"	YCW 837N
" "	"	YCW 838N
" "	"	YCW 839N
" "	"	YCW 840N
" "	"	YCW 841N
" "	"	YCW 842N
" "	"	YCW 843N
" "	"	YCW 844N
" "	"	YCW 845N
Bristol VRT	East Lancs	URN 160R
" "	"	URN 161R
" "	"	URN 162R
" "	"	URN 163R
" "	"	URN 164R

3. Rights and liabilities.

(*a*) all rights and liabilities of the constituent councils and joint committee relating to the premises and vehicles specified in paragraphs 1 and 2;

(*b*) all rights and liabilities of the constituent councils and joint committee under the following agreements —

(i) the co-ordination agreement dated 29th January 1977 and made between the Lancashire County Council, the Burnley Borough Council, the Pendle Borough Council and Ribble Motor Services Limited;

(ii) the agreement dated 1st April 1979 and made between the joint committee and West Yorkshire Road Car Limited concerning the joint service between Burnley and Keighley;

(iii) the agreement dated 1st April 1977 and made between the joint committee and Pennine Motor Services concerning the carrying of concessionary pass holders on the Barnoldswick/Skipton services; and

(iv) the agreement dated 1st April 1979 and made between the joint committee and West Yorkshire Passenger Transport Executive concerning the service between Burnley, Todmorden and Halifax or Rochdale; and

(*c*) any liability of the constituent councils or the joint committee to any person other than the company arising out of any accident causing personal injury or death or damage to property and occurring in the course of the operation before the transfer date of any vehicle provision for the transfer of which is made in this Order.

SCHEDULE 2 — Article 3(5)

Procedure for ascertaining amount of adjusting payment

1. In this Schedule —

"current assets" means —

(*a*) all transferred stocks;

(*b*) all transferred rights to the payment of money within one year of the transfer date in settlement of debts; and

(*c*) all transferred rights to the supply of goods or the rendering of services by persons other than the constituent councils and the joint committee for which payment was made by the councils or the committee before the transfer date.

"current liabilities" means —

(*a*) all transferred liabilities to make payments of money to persons other than the constituent councils and the joint committee within one year of the transfer date in settlement of debts; and

(*b*) all transferred liabilities to supply goods or render services to persons other than the constituent councils and the joint committee for which payment was received by the councils or the committee before the transfer date.

"transferred" means transferred pursuant to this Order.

2.—(1) The company shall cause the values of the transferred current liabilities and of the transferred current assets as at the transfer date to be ascertained by a person appointed by the company and qualified under section 389 of the Companies Act 1985(**a**) to be appointed as auditor of the company.

(2) Such ascertainment shall be carried out, and the results thereof provided to the company and the constituent councils, not later than 3rd January 1987.

3. If the value of the transferred current liabilities exceeds the value of the transferred current assets (both as ascertained in accordance with paragraph 2) by an amount greater than £132,000, subject to paragraphs 6 and 7 the constituent councils shall deliver to the company a banker's draft for an amount equal to the difference between that excess and £132,000.

4. If the value of the transferred current liabilities exceeds the value of the transferred current assets (both as ascertained as aforesaid) by an amount less than £132,000, subject to paragraphs 6 and 7 the company shall deliver to the constituent councils (or as those councils may direct) a banker's draft for an amount equal to the difference between £132,000 and that excess.

5. If the ascertainment carried out in accordance with paragraph 2 shows the value of the transferred current assets to be greater than the value of the transferred current liabilities, the company shall deliver to the constituent councils (or as those councils may direct) a banker's draft for the aggregate of the difference between the two values and £132,000.

6. Any banker's draft required to be delivered pursuant to paragraph 3, 4 or 5 shall be delivered not later than 28th February 1987.

7. Any difference of less than £100 shall be disregarded.

SCHEDULE 3 Article 6

Form of agreement relating to payments in respect of pensions

THIS AGREEMENT is made the day of 1986 BETWEEN Burnley Borough Council and Pendle Borough Council (hereinafter called "the Councils") of the one part and the Burnley and Pendle Transport Company Limited (hereinafter called "the Company") of the other part

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(**a**) 1985 c.6.

WHEREAS —

(1) By the Burnley and Pendle Joint Transport Undertaking (Transfer) Order 1986 provision was made for the transfer to the Company of the property rights and liabilities comprised in the bus undertaking of the Councils and such transfer took place on 26th October 1986

(2) Each Council has by statutory resolution passed in each case with the agreement of the Company resolved that each employee of the Company who is a qualified employee as defined in regulation 4(2) of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986 shall for the purposes of the Local Government Superannuation Regulations 1986 be deemed to be employed by the council which was his employer prior to the transfer.

NOW THIS DEED WITNESSETH as follows —

1. In this agreement and except where there is provision to the contrary —

(*a*) "the 1986 Regulations" means the Local Government Superannuation Regulations 1986 (S.I. 1986/24);

"administering authority" means a body required to maintain a superannuation fund under the 1986 Regulations;

"fund actuary" means the actuary acting in relation to a superannuation fund for the purposes of regulations P5 and P6 of the 1986 Regulations;

"party" means either of the Councils or the Company and "parties" means all of them;

"pensionable employee" shall be construed in accordance with regulation B1 of the 1986 Regulations;

"qualified employee" has the same meaning as in regulation 4(2) of the Local Government Superannuation (Miscellaneous Provisions) Regulations 1986 (S.I. 1986/380);

"remuneration" and "standard rate" have the same meanings as in the 1986 Regulations;

(*b*) any reference to a numbered clause is a reference to the clause bearing that number in this agreement;

(*c*) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the clause in which the reference occurs; and

(*d*) any reference to a numbered regulation is a reference to the regulation bearing that number in the 1986 Regulations.

2.—(1) The Company shall deduct from the remuneration paid to each pensionable employee an amount equal to the contribution which that employee would under regulation C2 be required to make if at the time of the deduction he was a pensionable employee of one of the Councils.

(2) The Company shall remit to the Councils (or as they may direct) the amounts deducted pursuant to paragraph (1) at the intervals and in the manner set out in clause 5(1) and (2).

3.—(1) The Company shall also pay to the Councils further amounts in accordance with the following provisions of this clause.

(2) In respect of each pensionable employee there shall be paid an amount equal to the percentage of his remuneration which equals the common rate of employer's contribution (with any individual adjustment for the Councils) specified from time to time by the fund actuary in a certificate under Regulation P6.

(3) The Company shall remit to the Councils (or as they may direct) the amounts payable in accordance with this clause at the intervals set out in clause 5(3).

4.—(1) The Company shall also pay to the Councils (or as they may direct) amounts equal to the proportion of the aggregate remuneration paid to all pensionable employees which is certified from time to time by a Fellow of the Institute of Actuaries (who shall be nominated for the purpose by the Councils) as representing the estimated cost of entitlements arising under the Pensions (Increase) Act 1971 after retirement in respect of the service of those employees with the Company.

(2) The Company shall remit to the Councils (or as they may direct) the amounts payable in accordance with this clause at the intervals specified in clause 5(1).

5.—(1) The amounts payable under clauses 2 and 4 shall be paid by the Company to the Councils at the same intervals as the Councils are under regulation P10 required to make payments to the appropriate administering authority.

(2) Each payment made by the Company under paragraph (1) shall be accompanied by a statement showing the particulars set out in paragraph (4) of the said regulation P10.

(3) The amounts payable under clause 3 shall be paid by the Company to the Councils at the same intervals as the Councils are under regulation P7 required to make payments to the administering authority.

6.—(1) Subject to paragraph (2) the Company shall reimburse to the Councils such part of the amount of any payment of interest made by the Councils to the administering authority under regulation P7(3) or P10(6) as relates to any payment due under clause 4 from the Company to the Councils.

(2) The Company shall only be liable to make reimbursement to the Councils in accordance with paragraph (1) if—

(*a*) the Councils have given or sent a written demand to the Company for the payment due under clause 4;

(*b*) that demand was given or sent not less than one month before the date on which the Councils were due to make payment to the administering authority under regulation P7(2) or (as the case may be) P10(1); and

(*c*) the Company failed to make the payment due under clause 4 or made that payment less than 21 days before the date on which the Councils became liable to pay interest to the administering authority.

(3) Any payment due from the Company under paragraph (1) shall be made not more than one month after the date of a written demand given or sent to the Company by the Councils.

(4) If the Company fail to make any payment due under paragraph (1) within the period specified in paragraph (3) the Company shall pay interest at the standard rate on the amount due from the date of the written demand given or sent by the Councils to the date of payment (both dates inclusive).

7. The Company shall pay to each of the Councils the proportion attributable to qualified employees of any contribution paid by that Council under regulation P10(1)(*d*) to the administering authority towards the cost of administration of the relevant superannuation fund.

8.—(1) Any dispute or difference between the parties in connection with this agreement shall be referred to and determined by a sole arbitrator (hereinafter called "the arbitrator").

(2) The arbitrator shall be appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Arbitrators.

(3) The procedure to be followed shall be agreed by the parties or in default of agreement determined by the arbitrator.

(4) In the event of default by any party in respect of any procedural order made by the arbitrator he shall have power to proceed with the arbitration in the absence of that party and to deliver his award.

9.—(1) This agreement shall be deemed to have come into force on 26th October 1986.

(2) This agreement may be amended or determined at any time by agreement between the parties.

IN WITNESS whereof the parties have caused their respective seals to be hereunto affixed the day and year first before written.

SCHEDULE 4 — Article 8

PART I — Article 8(1)

Modifications to Schedule 4 for the purposes of its application to the transfer provision for which is made in this Order

1. In paragraph 1 —

(*a*) in sub-paragraph (1) —

(i) the words from "shall have effect" to "the transferor's undertaking, but" and the word "such" shall be omitted; and

(ii) for the words "an agreement for the rendering of personal services" there shall be substituted the words "a contract of employment";

(*b*) sub-paragraph (3) shall be omitted;

(*c*) in sub-paragraph (4), the words from "or, if either" to the end shall be omitted;

(*d*) in sub-paragraph (5), the words from "and if either" to the end shall be omitted; and

(*e*) in sub-paragraph (7) —

(i) the words from "(not being" to "wholly owned subsidiary" in the second place where those words occur shall be omitted; and

(ii) for the words "this Act" there shall be substituted the words "the Transport Act 1985".

2. Paragraph 2 shall be omitted.

3. In paragraph 3, the words "in England and Wales" shall be omitted.

4. Paragraph 4 shall be omitted.

5. In paragraph 5 —

(*a*) for the words "Railways Board and the Scottish Group" there shall be substituted the words "transferor and the transferee";

(*b*) for the words "this Act" there shall be substituted the words "the Transport Act 1985";

(*c*) the words "or in such wholly-owned subsidiary of" shall be omitted;

(*d*) for the words "the certifying authorities" there shall be substituted the word "them";

(*e*) for the words "one of those authorities" there shall be substituted the words "either of them"; and

(*f*) for the words "the authorities concerned" there shall be substituted the word "they".

6. In paragraph 6 —

(*a*) for the words "Railways Board or the Scottish Group" there shall be substitued the words "transferor or transferee";

(*b*) for the words from "or by a wholly-owned subsidiary" to "another of those authorities" there shall be substituted the word "them";

(*c*) in sub-paragraph (*a*) —

(i) for the words from "none of those authorities" to "the specified land" there shall be substituted the words "neither the transferor nor the transferee"; and

(ii) for the words "that interest" there shall be substituted the words "any interest in any of the specified land";

(*d*) in sub-paragraph (*b*) —

(i) for the words "one of those authorities or their subsidiaries" there shall be substituted the words "the transferor or the transferee";

(ii) for the words "any other" in both places where they occur there shall be substituted the words "the other";

(iii) for the words "any of those authorities or their subsidiaries" in both places where they occur there shall be substituted the words "the transferor or the transferee"; and

(iv) the words "authority or subsidiary" shall be omitted;

(*e*) for the words "one of those authorities or their subsidiaries" where they occur otherwise than in sub-paragraph (*b*) there shall be substituted the words "the transferor or the transferee";

(*f*) for the words "one of those authorities or subsidiaries" there shall be substituted the words "the transferor or the transferee"; and

(*g*) for the words "those authorities or subsidiaries" there shall be substituted the words "the transferor and the transferee".

7. In sub-paragraph (*c*) of paragraph 7 —

(*a*) for the words "any officer or any servant of the transferor" there shall be substituted the words "a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity";

(*b*) for the words "the officer or servant" there shall be substituted the words "a person employed by, or engaged in the business"; and

(*c*) for the words "that officer or servant of the transferor" there shall be substituted the words "the first mentioned person".

8. In paragraph 8 —

(*a*) for the words "this Act" there shall be substituted the words "the Transport Act 1985";

(*b*) after the words "the provision in question relates to" there shall be inserted "(*a*)";

(*c*) after the words "transferred rights and liabilities" there shall be inserted " ; or

(*b*) any business or activity to which any of those rights and liabilities relates"; and

(*d*) for the words "officers or servants" there shall be substituted the words "persons employed by, persons engaged in the business of, or agents".

9. Paragraph 9 shall be omitted.

10. In paragraph 10 —

(*a*) for the words "7 to 9" there shall be substituted the words "7 and 8";

(*b*) for the words "this Act" in the first place where they occur there shall be substituted the words "the Transport Act 1985"; and

(*c*) for the words "this Act" in the second place where they occur there shall be substituted the words "that Act".

11. Paragraph 11 and sub-paragraph (1) of paragraph 12 shall be omitted.

12. In sub-paragraph (2) of paragraph 12, the words "the said" shall be omitted, and for the words "7 to 11" there shall be substituted the words "7 to 10".

13. In paragraph 13 —

(*a*) for the words "one of the Boards or new authorities or a wholly-owned subsidiary thereof" in the first place where they occur there shall be substituted the words

"the transferor and the transferee", and for those words in the second and third places where they occur there shall be substituted the words "the transferor or the transferee"; and

(*b*) for the words "this Act" there shall be substituted the words "the Transport Act 1985".

14. There shall be added the following new paragraph —

"In this Schedule "statutory provision" means a provision, whether of a general or a special nature, contained in, or in a document made or issued under, the Transport Act 1985 or any Act (whether of a general or a special nature) other than that Act.".

PART II Article 8(2)

Schedule 4 as modified for the purposes of its application to the transfer provision for which is made in this Order

N.B. By virtue of the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238), and subject to certain exceptions not affecting Schedule 4, references in the Transport Act 1968 to "the Minister" are to be read as references to the Secretary of State.

SCHEDULE 4

SUPPLEMENTARY PROVISIONS AS TO CERTAIN TRANSFERS OF PROPERTY RIGHTS AND LIABILITIES

Allocation of property, rights and liabilities

1.—(1) The provisions of this paragraph shall not apply to any rights or obligations under a contract of employment.

(2) Any property, rights or liabilities held or subsisting partly for the purpose of a part of the transferor's undertaking which is transferred and partly for the purpose of a part of that undertaking which is retained by the transferor shall, where the nature of the property, rights or liability permits, be divided or apportioned between the transferor and the transferee in such proportions as may be appropriate; and, where any estate or interest in land falls to be so divided, any rent payable under a lease in respect of that estate or interest and any rent charged on that estate or interest, shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(3) Any property, rights or liabilities held or subsisting as mentioned in sub-paragraph (2) of this paragraph the nature of which does not permit their division or apportionment as so mentioned shall be transferred to the transferee or retained by the transferor according to which of them appear at the transfer date likely to make use of the property, or, as the case may be, to be affected by the right or liability, to the greater extent, subject to such arrangements for the protection of the other of them as may be agreed between them.

(4) It shall be the duty of the transferor and the transferee, whether before or after the transfer date, so far as practicable to arrive at such written agreements, and to execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor and as will —

(*a*) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and

(*b*) make as from such date, not being earlier than the transfer date, as may be specified in that agreement or instrument such clarifications and modifications of the division of the transferor's undertaking as will best serve the proper discharge of the respective functions of the transferor and the transferee.

(5) Any such agreement shall provide so far as it is expedient —

(*a*) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;

(*b*) for the granting of indemnities in connection with the severance of leases and other matters;

(*c*) for responsibility for registration of any matter in any description of statutory register.

(6) If the transferor or the transferee represents to the Secretary of State, or if it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (4) of this paragraph that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining the manner in which the property, rights or liabilities in question are to be divided between the transferor and the transferee, and may include in the direction any provision which might have been included in an agreement under the said sub-paragraph (4); and any property, rights or liabilities required by the direction to be transferred to the transferee shall be regarded as having been transferred to, and by virtue of the Transport Act 1985 vested in, the transferee accordingly.

Right to production of documents of title

2. Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to, or to the management of, any land or other property transferred to the transferee, the transferor shall be deemed to have given to the transferee an acknowledgement in writing of the right of the transferee to production of that document and to delivery of copies thereof; and section 64 of the Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

Proof of title by certificate

3. In the case of any transfer to which this Schedule applies, a joint certificate by or on behalf of the transferor and transferee, that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is by virtue of the Transport Act 1985 for the time being vested in such one of them as may be so specified shall be conclusive evidence for all purposes of that fact; and if on the expiration of one month after a request from either of them for the preparation of such a joint certificate as respects any property, interest, right or liability, they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as the Secretary of State may direct.

Restrictions on dealing with certain land

4. If the Secretary of State is satisfied on the representation of the transferor or transferee that, in consequence of a transfer to which this Schedule applies, different interests in land, whether the same or different land, are held by them, and that the circumstances are such that this paragraph should have effect, the Secretary of State may direct that this paragraph shall apply to such of that land as may be specified in the direction, and while that direction remains in force —

(*a*) neither the transferor nor the transferee shall dispose of any interest in any of the specified land except with the consent of the Secretary of State;

(*b*) if in connection with any proposal to dispose of an interest of the transferor or the transferee in any of the specified land it appears to the Secretary of State to be necessary or expedient for the protection of the other of them, the Secretary of State may —

(i) require the transferor or the transferee entitled to an interest in any of the specified land to dispose of that interest to such person and in such manner as may be specified in the requirement; or

(ii) require the transferor or the transferee to acquire from the other of them any interest in any of the specified land to which that other is entitled; or

(iii) consent to the proposed disposal subject to compliance with such conditions as the Secretary of State may see fit to impose;

but a person other than the transferor or the transferee dealing with, or with a person claiming under, the transferor or the transferee shall not be concerned to see or inquire whether this paragraph applies or has applied in relation to any land to which the dealing relates or as to whether the provisions of this subsection have been complied with in connection with that or any other dealing with that land, and no transaction with or between persons other than the transferor and the transferee shall be invalid by reason of any failure to comply with those provisions.

Construction of agreements, statutory provisions and documents

5. Where in the case of any transfer to which this Schedule applies any of the rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, whether in writing or not, and whether or not of such nature that rights and liabilities thereunder could be assigned by the transferor, that agreement shall have effect on and after the transfer date as if —

(*a*) the transferee had been a party to the agreement, and

(*b*) for any reference (however worded and whether express or implied) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee, and

(*c*) any reference (however worded and whether express or implied) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the first mentioned person, and

(*d*) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, as if the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee respectively as regards the part of the property, rights and liabilities retained by the transferor or, as the case may be, the part thereof vesting in the transferee and not as regards the other part;

and sub-paragraph (*d*) of this paragraph shall apply in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

6. Save as otherwise provided by any provision of the Transport Act 1985 (whether expressly or by necessary implication) paragraph 5 of this Schedule, except sub-paragraph (*a*) thereof, shall apply in relation to any statutory provision, any provision of any agreement to which the transferor was not a party, and any provision of any document other than an agreement, if and so far as the provision in question relates to —

(*a*) any of the transferred rights and liabilities; or

(*b*) any business or activity to which any of those rights and liabilities relates,

as it applies in relation to an agreement to which the transferor was a party, and, in relation to any such statutory or other provision as aforesaid, references in sub-paragraphs (*b*) and (*c*) of that paragraph to the transferor and to any persons employed by, persons engaged in the business of, or agents of the transferor include references made by means of a general reference to a class of persons of which the transferor is one, without the transferor himself being specifically referred to.

7. Without prejudice to the generality of the provisions of paragraphs 5 and 6 of this Schedule, the transferee under a transfer to which this Schedule applies and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or

the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of the Transport Act 1985 as he would have had if that right or liability had at all times been a right or a liability of the transferee, and any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of that Act, or to any agreement or enactment to any such property, right or liability, shall be continued by or against the transferee to the exclusion of the transferor.

8. The provisions of paragraphs 5 to 7 shall have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

Third parties affected by vesting provisions

9.—(1) Without prejudice to the provisions of paragraphs 5 to 8 of this Schedule, any transaction effected between a transferor and a transferee in pursuance of paragraph 1(5) or of a direction under paragraph 1(7) of this Schedule shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) It shall be the duty of the transferor and transferee, if they effect any transaction in pursuance of the said paragraph 1(5) or a direction under the said paragraph 1(7), to notify any person who has rights or liabilities which thereby become enforceable as to part by or against the transferor and as to part by or against the transferee, and if such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him the Secretary of State may give such directions to the transferor and the transferee as appear to him appropriate for varying the transaction.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule the rights or liabilities of any person other than the transferor and the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee, and the value of any property or interest of that person is thereby diminished, such compensation as may be just shall be paid to that person by the transferor, the transferee or both, and any dispute as to whether and if so how much compensation is so payable, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.

(4) Where the transferor or the transferee under a transfer to which this Schedule applies purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land or any other property which before the transfer date belonged to the transferor, or which is an interest in property which before that date belonged to the transferor, the conveyance or transfer shall be as effective as if both the transferor and the transferee had been parties thereto and had thereby conveyed or transferred all their interest in the property conveyed or transferred.

(5) If at any stage of any court proceedings to which the transferor or transferee under a transfer to which this Schedule applies and a person other than the transferor or the transferee are parties, it appears to the court that the issues in the proceedings depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected, or to raise a question of construction on the relevant provisions of the Transport Act 1985 which would not arise if the transferor and the transferee constituted a single person, the court may, if it thinks fit on the application of a party to the proceedings other than such a body as aforesaid, hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person, and any judgment or order given by the courts, shall bind both the transferor and the transferee accordingly.

(6) It shall be the duty of the transferor and the transferee under any transfer to which this Schedule applies to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (4) or (5) of this paragraph, and if either the transferor or the transferee claims that he has been so prejudiced and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State.

10. In this Schedule, "statutory provision" means a provision whether of a general or a special nature, contained in, or in a document made or issued under, the Transport Act 1985 or any Act (whether of a general or special nature) other than that Act.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order makes provision, pursuant to proposals submitted by the councils under section 69 of the Transport Act 1985, and modified by the Secretary of State after consultation with the councils, for the transfer of the joint transport undertaking of the Burnley and Pendle Borough Councils to a company formed by those councils, the Burnley and Pendle Transport Company Limited. Article 3 provides for the transfer of property, rights and liabilities, and two sums of money, to the company, subject to certain exceptions specified in Schedule 1. Article 3(4) (with Schedule 2) contains provisions for an adjusting payment. Article 4 requires the company to give consideration (in the form of debentures and shares) to the councils. Article 5 provides for the Transfer of Undertakings (Protection of Employment) Regulations 1981 to determine the effect of the transfer on employees, and article 6 (with Schedule 3) requires the councils and the company to enter into an agreement concerning payments in respect of pensions. Article 7 provides for the dissolution of the Committee which has carried on the joint bus undertaking on behalf of the councils, and for the termination of the agreement which established that committee, and article 8 (with Schedule 4) modifies Schedule 4 to the Transport Act 1968 for the purpose of its application to this transfer.