STATUTORY INSTRUMENTS

1992 No. 231

The Electricity (Northern Ireland) Order 1992

PART III

REORGANISATION OF THE INDUSTRY

Finances of successor companies

Statutory reserves

77.—(1) If the Department with the approval of the Department of Finance and Personnel so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding such proportion of the accumulated realised profits of Northern Ireland Electricity as is determined by or under the transfer scheme shall be carried by the company to a reserve ("the statutory reserve").

(2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) Notwithstanding paragraph (2), the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of **[**[F1]section 831(4)(d) of the Companies Act 2006**]**; but for the purpose of determining under **[**[F2]that section**]** whether a company with a statutory reserve may make a distribution at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of **[**[F3]section 831(4)(c) of that Act**]** as if it were unrealised profits of the company.

F1 Words in art. 77(3) substituted (6.4.2008) by virtue of Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(3)(a)** (with arts. 6, 11, 12)

F2 Words in art. 77(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(3)(b)** (with arts. 6, 11, 12)

F3 Words in art. 77(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(3)(c)** (with arts. 6, 11, 12)

Statutory accounts

78.—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of **[**[F4]the Companies Acts (as defined in section 2 of the Companies Act 2006)**]** (including group accounts).

(2) The vesting in the company effected under this Part shall be taken to have been effected immediately after the end of the last complete accounting year of Northern Ireland Electricity to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which

Northern Ireland Electricity was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the company shall be taken to have been—

(a) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by Northern Ireland Electricity in respect of the last complete accounting year of Northern Ireland Electricity to end before the transfer date; or

(b) if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.

(4) The amount to be included in respect of any item shall be determined as if—

(a) anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise); or

(b) so much of anything so done as may be determined by or under the transfer scheme,

had been done by the company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the company as representing the company's accumulated realised profits or, as the case may be, losses shall be determined as if such proportion of—

(a) any profits realised and retained; or

(b) any losses realised; or

(c) any other provision made,

by Northern Ireland Electricity as is determined by or under the transfer scheme, had been realised and retained, realised or made, as the case may require, by the company.

(6) In this Article "complete accounting year", in relation to Northern Ireland Electricity, means an accounting year of Northern Ireland Electricity ending on 31st March.

F4 Words in art. 78(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(4)** (with arts. 6, 11, 12)

Temporary restrictions on borrowings, etc.

79.—(1) If articles of association of a successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law and any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of a successor company shall be disregarded if the alteration—

(a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and

(b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article—

"group", in relation to a company, means that company and all of its subsidiaries taken together;

"subsidiary" has the meaning given by **[**[F5]section 1159 of the Companies Act 2006**]**.

F5 Art. 79(3): words in the definition of "subsidiary" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 1(2), 2(1), **Sch. 1 para. 135(3)** (with art. 10)

Government lending to the companies

80.—(1) Subject to Article 83, the Department may, with the approval of the Department of Finance and Personnel, make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Subject to Article 82, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.

Government guarantees for loans made to the companies

81.—(1) Subject to Article 83, the Department may guarantee, in such manner and on such terms as the Department, with the approval of the Department of Finance and Personnel, may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the company whose obligations are so fulfilled shall make to the Department, at such times and in such manner as the Department may direct,—

(a) payments of such amounts as the Department may so direct in or towards repayment of the sums so issued; and

(b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may so direct.

Conversion or discharge of certain loans or advances, etc.

82.—(1) The Department may by order extinguish all or any of the liabilities of Northern Ireland Electricity or, as the case may be, a successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to Northern Ireland Electricity or, as the case may be, the successor company whose liabilities are extinguished by the order; and Northern Ireland Electricity or that company as the case may require shall, as a

consequence of the making of the order, issue such securities as may be specified or described in the direction—

(a) to the Department or to the Department of Finance and Personnel; or

(b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(3) For the purposes of any statutory accounts of a successor company, the value at the time of its issue of any such security shall be taken—

(a) in the case of a share, to have been equal to its nominal value; and

(b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In paragraph (3) "statutory accounts of a company" means any accounts prepared by the company for the purpose of any provision of **[**[F6]the Companies Acts (as defined in section 2 of the Companies Act 2006)**]** (including group accounts).

(5) The Department shall not—

(a) make an order under paragraph (1) extinguishing the liability of any successor company; or

(b) give a direction under paragraph (2) for the issue of securities,

except at a time when the company is wholly owned by the Crown.

(6) Except as may be agreed between the Department and Northern Ireland Electricity or, as the case may be, a successor company which is directed to issue debentures under this Article,—

(a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and

(b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(7) For the purposes of paragraph (6) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(8) The Department may direct Northern Ireland Electricity to do anything specified in the direction which is requisite or expedient for the purpose of securing, on such terms as the Department, with the approval of the Department of Finance and Personnel, thinks fit, the discharge, or the transfer to the Department, of Northern Ireland Electricity's liabilities in respect of any foreign currency loan made to Northern Ireland Electricity.

(9) Paragraphs (3) to (5) of Article 73 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(10) In this Article—

"foreign currency" means a currency other than sterling;

"foreign currency loan" means a loan made wholly or mainly in a foreign currency;

"relevant loan" means—

(a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests or will vest in the successor company by virtue of Article 69(4);

(b) any loan made to that company by the Department under Article 80; and

(c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

F6 Words in art. 82(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(5)** (with arts. 6, 11, 12)

Financial limits on borrowings, etc.

83. The aggregate of any amounts outstanding by way of principal in respect of—

(a) sums issued under Article 81 in ful lment of guarantees given in respect of loans made to such companies; and

(b) relevant loans within the meaning of Article 82,

shall not exceed £750 million.

Changes to legislation:
The Electricity (Northern Ireland) Order 1992, Cross Heading: Finances of successor companies is up to date with all changes known to be in force on or before 26 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- Instrument am. (ot.prosp.) by 1998 c. 41 s.66(5)Sch.10 Pt.III para.7
- Instrument am. (prosp.) by 1998 c. 41 s.66(5)Sch.10 Pt.V para.17
- Instrument rev. in pt. (prosp.) by 1998 c. 41 ss.66(5),74(3), Sch.10, Pt.V, para.17, Sch.14, Pt.II

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:
Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 10E(7) inserted by S.I. 2019/530 reg. 89(6) (This amendment not applied to legislation.gov.uk. Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10F(9)(10) inserted by S.I. 2019/530 reg. 90(6) (This amendment not applied to legislation.gov.uk. Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10K(8A) inserted by S.I. 2019/530 reg. 94(7) (This amendment not applied to legislation.gov.uk. Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 11B(6)(7) inserted by S.I. 2019/530 reg. 99(4) (This amendment not applied to legislation.gov.uk. Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 18(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 5(2)(b) (as substituted) by S.I. 2019/1245 reg. 22 (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- art. 31A(1A) inserted by S.I. 2019/530 reg. 100(3) (This amendment not applied to legislation.gov.uk. Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 46(8) inserted by 2024 c. 13 Sch. 29 para. 6
- art. 65(1A) inserted by S.I. 2006/2955 (N.I.) art. 3(2)
- art. 65(3)-(5) added by S.I. 2006/2955 (N.I.) art. 3(3)