



# Aircraft and Shipbuilding Industries Act 1977

## 1977 CHAPTER 3

### PART II

#### VESTING OF SECURITIES AND OTHER ASSETS IN THE CORPORATIONS AND ACQUIRED COMPANIES

##### *Acquisition of securities and assets*

- 19 Vesting in British Aerospace or British Shipbuilders of securities of Scheduled companies**
- (1) Subject to the provisions of this Part of this Act, on the aircraft industry vesting date all securities of the companies which on 29th October 1974 were known by the names specified in Part I of Schedule 1 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Aerospace free from all trusts and incumbrances.
  - (2) Subject to the provisions of this Part of this Act, on the shipbuilding industry vesting date, all securities of the companies which on 31st July 1974 were known by the names specified in Part I of Schedule 2 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Shipbuilders free from all trusts and incumbrances.
  - (3) Each Corporation shall, in respect of the securities of any company which vest in it by virtue of this Part of this Act, be entitled or subject, as from the date of transfer, to the exclusion of the previous holders thereof, to all the rights, privileges and advantages and all the liabilities and obligations arising from the holding of those securities, in all respects as if the securities had been duly transferred to the Corporation in accordance with the enactments and rules of law (other than this Act) applicable thereto and

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everything necessary to make those rights, privileges, advantages, liabilities and obligations fully effective had been duly done.

- (4) Without prejudice to subsection (3) above, all persons concerned with the keeping of the register of the holders of any such securities as are referred to in that subsection shall forthwith register the relevant Corporation therein and the company concerned shall forthwith issue to that Corporation the appropriate documents of title relating to the securities of the company which vest in that Corporation by virtue of this Part of this Act.
- (5) In this section—
- “excepted company ” means any company—
- (a) which before 21st November 1975 a court has ordered to be wound up ;
  - or
  - (b) which before that day has passed a resolution for voluntary winding up ;
  - or
  - (c) of whose property a receiver has been appointed before that date ; and
- “securities ”, in relation to a company, does not include any security forming part of the loan capital of the company, the terms of which enable it to be redeemed, either without notice or upon not more than one year's notice, at a price not exceeding the nominal amount of the security together with any outstanding interest, at any time after the creation of the security or the expiry of a period not exceeding one year after the creation of the security.

## **20 Vesting in acquired company of certain assets of privately owned companies in same group**

- (1) Subject to subsection (5) below, where immediately before the date of transfer an acquired company was the wholly owned subsidiary of the person from whom it was acquired, any property, rights or liabilities to which this subsection applies shall vest in the acquired company on the date of transfer of the company.
- (2) The property, rights and liabilities to which subsection (1) above applies are any property, rights and liabilities of an associated privately owned company which—
- (a) satisfy a vesting condition for the purposes of this section, and
  - (b) would remain vested in the associated privately owned company but for this section.
- (3) Property, rights and liabilities satisfy a vesting condition for the purposes of this section if—
- (a) they are wholly appurtenant to the undertaking carried on by the acquired company, or
  - (b) they are mainly appurtenant to property, rights or liabilities which are wholly appurtenant to that undertaking, or
  - (c) they cannot reasonably be severed from property, rights or liabilities of the acquired company or property, rights or liabilities such as are mentioned in paragraph (a) or (b) above.
- (4) In the application of subsections (1) to (3) above in a case where the acquired company fulfils the criteria in paragraph 2 of Part II of Schedule 2 to this Act, the references in subsection (3) above to the undertaking carried on by the acquired company shall be construed as references to the shipbuilding undertaking carried on at a shipyard

or other works in which the acquired company had an interest in possession on 31st July 1974.

- (5) The rights and liabilities under any agreement for the rendering of personal services by any person shall be vested in the acquired company by virtue of this section if, and only if, immediately before the date of transfer, his employment under the agreement was wholly or mainly for the purposes of the undertaking carried on as mentioned in subsection (3) or, as the case may require, subsection (4) above.
- (6) The provisions of Schedule 3 to this Act shall have effect for supplementing the preceding provisions of this section.
- (7) In this section and Schedule 3 to this Act—
  - “associated privately owned company ” means any privately owned company which immediately before the date of transfer was the holding company of an acquired company or the wholly owned subsidiary of a company whose securities do not vest but which was the holding company of an acquired company; and
  - “privately owned company ” means a company whose securities do not vest, and which is not a subsidiary of a company whose securities vest, in either of the Corporations by virtue of this Part of this Act.

## **21 Certain loans from associated persons to be treated as securities**

- (1) In any case where—
  - (a) immediately before the date of transfer, an acquired company or the wholly owned subsidiary of an acquired company owes a debt to an associated person, and
  - (b) it appears to the Secretary of State that the circumstances in which and the purposes for which the debt was incurred were of such a nature that, had the acquired company or its wholly owned subsidiary sought to borrow the money in question from a person who was not an associated person, the terms of the provision of that money would have been likely, assuming the debtor not to be the subsidiary of any company, to be such as to require the issue to the lender by the debtor of securities,

the Secretary of State may, at any time within the period of 9 months beginning on the date of transfer, serve a notice on the person to whom the debt is owed stating that, in the opinion of the Secretary of State, the right to repayment of the whole or part of the debt should be treated as a security of the acquired company for the purposes of vesting and compensation.
- (2) Subject to subsection (5) below, where a notice is served under subsection (1) above, no person—
  - (a) shall be entitled to exercise any right to repayment of the debt in question, or
  - (b) shall be subject to any obligation to repay it.
- (3) Where a notice has been served under subsection (1) above, the questions—
  - (a) whether the right to repayment of the whole or part of the debt ought to be treated for the purposes of vesting and compensation as a security of the acquired company by whom or by whose wholly owned subsidiary the debt is owed, and
  - (b) on what date and terms and for what consideration any such security should be treated for those purposes as having been issued by the acquired company,

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shall be settled by agreement between the Secretary of State and the person on whom the notice was served within the period of 3 months beginning on the day on which he was so served or, in default of such agreement, by arbitration under this Act.

- (4) If the arbitration tribunal are satisfied that the right to repayment of the whole or any part of the debt in question ought to be treated as a security of the acquired company for the purposes of vesting and compensation, they shall confirm the Secretary of State's notice under subsection (1) above with any necessary amendments but otherwise shall revoke it.
- (5) If, by reason—
- (a) of an agreement under subsection (3) above, or
  - (b) of the revocation or amendment of a notice under subsection (4) above,
- the right to repayment of the debt or of any part of it does not fall to be treated as a security for the purposes of vesting and compensation, subsection (2) above shall to that extent cease to apply on the date of the agreement or the date when the notice is revoked or amended.
- (6) If—
- (a) the parties have agreed under subsection (3) above that the right to repayment of the debt or of any part of it ought to be treated as a security, or
  - (b) the arbitration tribunal confirm the Secretary of State's notice as respects the right to repayment of the debt or any part of it,
- the right which falls to be treated as a security shall vest in the relevant Corporation on the operative date of the notice as a security of the acquired company issued to the creditor on such date and terms and for such consideration as have been determined by agreement or arbitration under subsection (3) above and be treated as such a security—
- (i) for the purposes of section 19 above, and
  - (ii) subject to subsection (7) below, for the purposes of any provision of this Part of this Act relating to compensation for securities or the issue of securities.
- (7) A right to repayment shall not be so treated for the purpose of any provision of this Part of this Act relating to compensation under which it is necessary to determine, at any time before the operative date of the notice,—
- (a) the persons who are the holders of, or of any class of, securities of the acquired company concerned; or
  - (b) whether any matter was agreed to by a majority or any particular majority of any such persons.
- (8) Where a matter is referred to the arbitration tribunal under subsection (3) above, the tribunal shall, in determining the issue before them, have regard to all factors which appear to them to be relevant and, in particular, to—
- (a) the structure of the capital of the acquired company ;
  - (b) the nature and amounts of that company's assets and liabilities; and
  - (c) the length of time over which the debt in question has been outstanding on the date of transfer.
- (9) If the terms on which a security is to be treated under this section as having been issued include any charge on assets of the acquired company, subsection (5) of section 38 below shall not apply for the purpose of determining the base value of that security.
- (10) In this section—

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“operative date”, in relation to a notice means—

- (a) where paragraph (a) of subsection (6) above applies, the date of the agreement,
- (b) where paragraph (b) applies, the date of confirmation of the notice by the arbitration tribunal; and

“securities” has the same meaning as in section 19 above.

## **22 Determination of rights to require the issue of securities or to nominate directors**

(1) If, after the date of transfer, a person other than a Corporation or a company which comes into public ownership would, apart from this section, have—

- (a) a right to require the issue of, or to subscribe for or purchase or otherwise acquire, any securities of such a company, or
- (b) a right to appoint any person, or to be appointed, otherwise than by virtue of an agreement for rendering personal services, to the office of director of such a company,

that right shall cease as from the date of transfer.

(2) Where the right referred to in subsection (1) above was conferred on a person as an incident of—

- (a) an agreement conferring other rights on that person, or
- (b) the holding of any securities of a company,

nothing in that subsection shall affect the continued existence of any other rights or liabilities under that agreement or, as the case may be, under the terms upon which those securities were held.

(3) Where any person suffers loss by reason of the determination, by virtue of this section, of any such right relating to a company as is referred to in subsection (1) above, being a right conferred by an agreement made, or by virtue of the holding of securities issued, before the initial date, or on or after that date with the approval in writing of the Secretary of State, he shall be entitled to claim from the relevant Corporation compensation under this section in respect of that loss.

(4) Any question whether any person has a right to claim compensation under this section or as to the amount of that compensation shall, in default of agreement, be determined by arbitration under this Act; but no claim for compensation under this section shall be made after the expiry of the period of 12 months beginning on the date of transfer of the company concerned.

### *Payments of dividend and interest*

## **23 Control of dividends and interest**

(1) If, without the prior approval in writing of the Secretary of State, an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer,—

- (a) made, in respect of a period of control, such payments of dividend or interest, other than payments by way of capital or special dividend, on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, or

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- (b) made payments of dividend on any of its securities in respect of a period prior to the first of the periods of control,
- then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of the excess referred to in paragraph (a) above or, as the case may require, to the payments falling within paragraph (b) above.
- (2) If, without the prior approval in writing of the Secretary of State, a company which, at the date of the resolution concerned, was a wholly owned subsidiary of an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer, made, in respect of a period of control, such payments of interest on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of that excess.
- (3) A claim by the relevant Corporation for the payment of an amount due under subsection (1) or subsection (2) above shall be made within the period of 9 months beginning on the date of transfer of the company concerned and, if so made and not settled by agreement, shall be determined by arbitration under this Act.
- (4) If the arbitration tribunal decide the claim in favour of the relevant Corporation, they shall make such orders against all or any of the directors of the company in respect of their liability on the claim as the tribunal think just, having regard to all the circumstances.
- (5) For the purposes of this section and section 24 below, any payment by a company out of its net revenue to its members in their capacity as such shall be treated as a payment of dividend, and references in this section and that—
- (a) to payments of dividend shall be construed, in the case of payments of dividend which are qualifying distributions within the meaning of Part V of the Finance Act 1972, as references to the franked payments, within the meaning of that Part, of which those distributions form part; and
- (b) to payments of interest shall be construed as references to the gross amount of those payments, that is to say, in any case where those payments were made under deduction of income tax, to the amounts thereof before any deduction was made therefrom in respect of income tax.
- (6) In determining the amount recoverable under this section from the directors of a company by virtue of subsection (1) or (2) above, there shall be deducted from the amount which, apart from this subsection, would be so recoverable, a sum equal to income tax on that amount at the basic rate or, as the case may require, the standard rate for the relevant year of assessment, that is to say,—
- (a) in the case of an amount which is so recoverable by virtue of a payment of interest, the year of assessment in which that payment was made ; and
- (b) in the case of an amount which is so recoverable by virtue of a payment of dividend, the year of assessment in which the dividend was paid.
- (7) For the purposes of this section and sections 24 and 25 below, the periods of control, in relation to a company, are the last financial year of the company ending before

the safeguarding date and any subsequent period or periods ending before the date of transfer.

(8) In this section and in sections 24 and 25 below—

“financial year ” has the same meaning as in the Companies Act 1948; and  
“net revenue ”, in relation to a company, means the revenue of that company, after deducting therefrom proper provision for taxation and for the redemption of capital and all charges which are proper to be made to revenue account including, in particular, proper provision for the depreciation of assets or for the renewal of assets and provision for interest on the loan capital of the company.

(9) For the purposes of this section and section 24 below, the certified net revenue of a company for a period of control is such amount as the company's auditor certifies to be the company's net revenue for that period as disclosed by a profit and loss account for that period which, in his opinion, gives a true and fair view of the company's profit or loss.

## **24 Permitted dividends and interest**

(1) Subject to the following provisions of this section, for the purposes of section 23 above the payments of dividend or interest permitted for any period of control of a company are as follows—

- (a) in the case of securities forming part of the loan capital of the company, other than cumulative loan stock, and in the case of other loans under which the company is the debtor, payments of interest at the minimum rate required to prevent the company from committing any default in respect of its obligations to the holders of those securities or, as the case may be, the creditors under those loans;
- (b) in the case of cumulative loan stock, payments of interest at the minimum rate required to prevent any interest being carried over for subsequent payment; and
- (c) in the case of securities forming part of the share capital of the company, payments of dividend of amounts which, when aggregated, do not exceed whichever is the less of—
  - (i) the certified net revenue of the company for the period of control, and
  - (ii) the total amount of dividend paid before 29th October 1974, otherwise than as a capital or special dividend, on securities forming part of the share capital of the company in respect of the basis financial year or, if no final dividend was paid at any time before that date, such amount as the Secretary of State may approve for the purposes of this section.

(2) In this section—

“basis financial year ” means the last financial year for which a final dividend was paid before 29th October 1974, and

“final dividend ” means a dividend declared by a company at its annual general meeting.

(3) If, with respect to any period of control of a company the maximum permitted payments of dividend in respect of securities forming part of the share capital of the

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company are those specified in sub-paragraph (ii) of subsection (1)(c) above, payments of dividend—

- (a) which are made in respect of cumulative preference shares, and by virtue of cumulative rights attaching to those shares, and
- (b) which, when aggregated with other payments falling within subsection (1)(c) above and made in respect of that period, do not exceed the certified net revenue of the company for that period,

shall be within the maximum permitted for that period for the purposes of section 23 above.

- (4) In any case where the number of days comprised in a period of control exceeds, or is less than, the number of days comprised in the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount by the fraction of which the numerator is the number of days comprised in the period of control and the denominator is the number of days comprised in the basis financial year.
- (5) In any case where the issued share capital of a company at the end of a period of control exceeds, or is less than, its issued share capital at the end of the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount or, where subsection (4) above applies, that amount as varied under that subsection, by the fraction of which the numerator is the amount of the issued share capital of the company at the end of the period of control and the denominator is the amount of the issued share capital of the company at the end of the basis financial year.
- (6) For the purposes of subsection (5) above, the amount of a company's issued share capital at the end of a period of control shall be computed by taking the amount of its issued share capital at the end of the basis financial year and adjusting it—
  - (a) by adding the amount or value of any consideration actually received in the period between the end of the basis financial year and the end of that period of control for the issue of share capital or in payment up of issued share capital, and
  - (b) by deducting the amount or value of any money or other assets paid or transferred by the company during the period referred to in paragraph (a) above for the repayment or redemption of any share capital,and the amount of the company's issued share capital at the end of the basis financial year shall be what is then the amount of the company's paid-up share capital and of any share premium account (or other comparable account by whatever name called).
- (7) Any reference in this section to payments of dividend shall be construed, in the case of payments made before 6th April 1973, as a reference to the gross amount of those payments, that is to say, to the amounts thereof before any deduction was made therefrom in respect of income tax; and if any such payment made by a company before that date was made without deduction of income tax, the amount of that payment shall be treated for the purposes of this section as a net amount paid after deduction of tax, and the gross amount of the payment shall be calculated accordingly for those purposes.



## **25 Final payments of dividend and interest**

- (1) As soon as possible after the date of transfer, each acquired company shall make the following payments to the persons who, immediately before that date, were the holders of securities of the company in respect of which compensation is payable under this Part of this Act, namely—
  - (a) payments on all securities forming part of the loan capital of the company of interest which has accrued up to the date of transfer and has not been paid, at the rates permitted under section 24 above or, if rates in excess of those rates have been approved under section 23(1) above, at the highest rates so approved ; and
  - (b) payments of dividend for the final financial period on any other securities of the company of such amounts as to ensure that the aggregate payments of dividend for that period on those securities are equal to the maximum amounts permitted under section 24 above, or, if larger amounts have been approved under section 23(1) above, to the largest amounts so approved.
- (2) As soon as possible after the date of transfer, each acquired company and each wholly owned subsidiary of an acquired company shall make to the persons who, immediately before that date, were owed any sums the rights to repayment of which are treated as securities under section 21(6) above, payments of interest which has accrued in respect of them up to the date of transfer, and has not been paid, at the rates permitted under section 24 above or, if rates in excess of those rates have been approved under section 23(1) or (2) above, at the highest rates so approved.
- (3) For the purpose of any such payments as are referred to in subsections (1) and (2) above, the statutory or other provisions relating to the company shall be deemed to permit payments of interest or dividend in respect of the final financial period.
- (4) In this section the expression “final financial period”, in relation to a company, means, subject to subsection (5) below, such part of the financial year during which the date of transfer occurs as precedes that date.
- (5) In any case where the accounts of a company in respect of the last financial year ending before the date of transfer have not been laid before the company in general meeting before that date, the expression “final financial period”, in relation to that company, means that financial year together with such part of the financial year during which the date of transfer occurs as precedes that date.

*Safeguarding of assets, avoidance of certain transactions, etc.*

## **26 Power to acquire securities of certain additional companies**

- (1) If it appears to the Secretary of State that a company which, apart from this section, would not come into public ownership—
  - (a) operates or owns the whole, or a substantial or essential part, of works which, at any time on or after the initial date, were operated or owned (as the case may be) by an acquired company or an excluded company or by a company which on that date was the subsidiary of an acquired company or an excluded company, or
  - (b) was on the initial date the wholly owned subsidiary of an acquired company but ceased to be such a subsidiary before the date of transfer of the acquired company, or

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- (c) was on the initial date the wholly owned subsidiary of an excluded company but ceased to be such a subsidiary before the relevant vesting date, then, subject to subsection (2) below, the Secretary of State may, at any time before the relevant vesting date or within the period of 3 months beginning on that date, serve on that company a notice (in this Act referred to as a “notice of acquisition”) stating that, subject to the following provisions of this section, the securities of the company will vest in the Corporation specified in the notice in like manner as the securities of the acquired companies.
- (2) No notice of acquisition may be served on a company under subsection (1) above if—
- (a) in a case falling within paragraph (a) of that subsection—
- (i) the Secretary of State has approved in writing for the purposes of this section, either before or after they were effected, all transactions entered into after the initial date resulting, directly or indirectly, in the transfer or grant to the company of rights of ownership in, or rights in respect of the user of, any of the works referred to in that paragraph, and
- (ii) the Secretary of State undertook that the powers conferred by this section would not be used in relation to those works ; or
- (b) in a case falling within paragraph (b) or paragraph (c) of that subsection, the Secretary of State has approved in writing for the purposes of this section, either generally or specially, the making of the arrangements which led to the company ceasing to be the wholly owned subsidiary of an acquired company or an excluded company.
- (3) The Secretary of State may also serve a notice of acquisition on a company, at any time before the relevant vesting date or within the period of 3 months beginning on that date, if it appears to him—
- (a) that the whole of the equity share capital of the company is held by or on behalf of the Crown, and
- (b) that it has as a subsidiary an acquired company falling within Part I of Schedule 1 or Schedule 2 to this Act.
- (4) A company on which a notice of acquisition has been served may, within the period of 3 months beginning on the date of the service of the notice, serve a notice on the Secretary of State contending that none of the conditions specified in subsection (1) or (3) above was fulfilled in relation to the company, and the notice shall set out the grounds of that contention.
- (5) Where a notice is served on the Secretary of State under subsection (4) above and neither that notice nor the notice of acquisition is withdrawn, the question whether the contention of the company is correct shall be determined by arbitration under this Act, and, on any such arbitration, the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the notice of acquisition, but shall otherwise confirm it.
- (6) Every notice of acquisition shall specify a date, which shall not be earlier than the relevant vesting date nor earlier than the expiry of 3 months after the service of the notice, and, subject to subsection (7) below, the date so specified shall be the date of transfer in relation to the company on which the notice is served.
- (7) The Secretary of State and the company on which a notice of acquisition is served may by agreement substitute another date for the date specified in accordance with

subsection (6) above, and where a reference to arbitration is made under the preceding provisions of this section and the arbitration tribunal confirm the notice, the date of transfer shall be whichever is the latest of the following dates, namely—

- (a) the date specified in the notice of acquisition in accordance with subsection (6) above ;
  - (b) any date substituted for that date in accordance with the preceding provisions of this subsection; and
  - (c) the date on which expires the period of 2 months beginning on the date of the decision of the arbitration tribunal.
- (8) Where a notice of acquisition is served on a company and is not withdrawn or revoked, the securities of the company shall, on the date of transfer, vest in the Corporation specified in the notice.
- (9) When a notice of acquisition has been served on a company under this section and either—
- (a) the period within which the company may serve a notice under subsection (4) above has expired without such a notice being served, or
  - (b) the question whether or not the notice is to have effect has been finally settled in favour of the Secretary of State,

the company shall forthwith give notice to every holder of its securities of the fact that its securities are to be acquired by the Corporation specified in the notice ; and the notice—

- (i) shall, in the case of security holders whose names are entered in any register kept by or on behalf of the company, be given in the same manner as the company gives notice to its members of its general meetings, and
- (ii) shall, in any other case, be given by advertisement or in any way allowed by the company's articles of association for giving notice to its members.

## **27 Removal of company from companies to be acquired**

- (1) If it appears to the Secretary of State, in relation to a company which, apart from this section, would be an acquired company or in relation to a subsidiary of such a company,—

- (a) that one of the conditions specified in subsection (2) below is fulfilled, or
- (b) that both the conditions specified in subsection (3) below are fulfilled,

the Secretary of State may, at any time before the date which, if the company were to come into public ownership, would be its date of transfer, serve a notice on the company stating that, subject to the following provisions of this section, the securities of the company will not vest in the relevant Corporation by virtue of this Act.

- (2) The conditions mentioned in subsection (1)(a) above are—

- (a) in relation to a company which apart from this section would be an acquired company, the following conditions, namely—
  - (i) that the company does not operate or own the whole, or a substantial or essential part, of works which at any time on or after the initial date were owned by the company,
  - (ii) that on or after 21st November 1975 the company has passed a resolution for its winding up or has been ordered to be wound up by a court, and

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- (iii) that a receiver has been appointed in respect of the undertaking of the company or in respect of any part of that undertaking which comprises works which at any time after that date were owned by the company; and
  - (b) in relation to a subsidiary of such a company the same conditions, but with the substitution of a reference to the subsidiary for any reference to the company and a reference to the initial date for any reference to 21st November 1975.
- (3) The conditions mentioned in subsection (1)(b) above are—
  - (a) that the company is included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act, and
  - (b) that before the relevant vesting date the Secretary of State has served a notice of acquisition on a company (in this section referred to as “the acquired company”) of which, at the date of service, it is the subsidiary.
- (4) A notice served on a company under this section because it appeared to the Secretary of State that the conditions specified in subsection (3) above were fulfilled shall cease to have effect if the notice of acquisition served on the acquired company is withdrawn or revoked.
- (5) Without prejudice to subsection (4) above, a company on which a notice has been served under this section may, within the period of 3 months beginning on the date of the service of that notice, serve a notice on the Secretary of State contending that the circumstances at the date of service did not fall within subsection (2) or (3) above.
- (6) Where a notice is served on the Secretary of State under subsection (5) above, and neither that notice nor the Secretary of State's notice is withdrawn, any question whether the circumstances at the date of service of the Secretary of State's notice fell within subsection (2) or (3) above shall be determined by arbitration under this Act, and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the Secretary of State's notice but shall otherwise confirm it.
- (7) Where a notice under this section has been served by the Secretary of State on any company—
  - (a) the securities of the company shall not vest in a Corporation by virtue of section 19 above during the period within which a notice may be served by the company under subsection (5) above or, if such a notice has been served by the company, pending the final settlement of the question whether or not the Secretary of State's notice is to have effect, and
  - (b) if the Secretary of State withdraws his notice or the arbitration tribunal revoke that notice and, but for this subsection, the vesting of securities would have already taken place or would take place within the period of 2 months beginning on the date of the withdrawal or, as the case may be, the decision of the arbitration tribunal, the date of transfer shall be the date on which expires the period of 2 months beginning on the date of the withdrawal or decision.
- (8) Where—
  - (a) a notice under this section has been served on a company because it appeared to the Secretary of State that the conditions specified in subsection (3) above were fulfilled in relation to it, and

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- (b) the acquired company transfers to any other person any of the securities held by it in the company on which the notice was served, the transfer shall be void unless—
  - (i) the prior consent of the Secretary of State was obtained for it, or
  - (ii) the notice of acquisition was withdrawn or revoked before it.
- (9) If a notice served on a company ceases to have effect by virtue of subsection (4) above, the securities of the company shall vest in the relevant Corporation on its date of transfer or on the date on which the notice of acquisition was withdrawn or revoked, whichever is the later.
- (10) Where a notice is served on a company under this section and is neither withdrawn nor revoked, and does not cease to have effect by virtue of subsection (4) above, the provisions of this Act other than this section and sections 28 and 29 below shall have effect, and be deemed always to have had effect, as if the company had never been included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act or, as the case may be, as if no notice of acquisition had ever been served on the company under section 26 above.
- (11) In this Act “excluded company” means a company in relation to which this Act has effect as mentioned in subsection (10) above.
- (12) Where the Secretary of State has served a notice on a company under this section and either the period within which the company may serve a notice under subsection (3) above has expired without such a notice being served or the question whether or not the Secretary of State's notice is to have effect has been finally settled in favour of the Secretary of State—
  - (a) the effect of the latter notice shall be published in the London, Edinburgh and Belfast Gazettes, and
  - (b) the company shall give the like notice thereof to the holders of its securities as in the case of a notice of acquisition under section 26 above.

## **28 Prohibition of transfer of certain works**

- (1) Subject to subsection (4) below, it shall not be lawful for an acquired company or a company which is the subsidiary of an acquired company to enter at any time before the date of transfer into a transaction transferring or granting to any person any rights of ownership in, or rights in respect of the user of, any works or part of any works used by that company or by any subsidiary of it.
- (2) Subject to subsection (4) below, it shall not be lawful for any company (not being a company falling within subsection (1) above) which has acquired any rights of ownership in, or any rights in respect of the user of, any works or part of any works which, at any time on or after the initial date, were owned or operated by an acquired company or a company which at any such time was a subsidiary of an acquired company, to enter into any transaction transferring or granting to any person any rights of ownership in those works or any part thereof, or any rights in respect of the user of those works or any part thereof—
  - (a) at any time before the relevant vesting date or within the period of 3 months beginning on that date, or
  - (b) if a notice of acquisition is served on the company under section 26 above, at any time before the date of transfer of that company or, if the notice is withdrawn or revoked, the date of such withdrawal or revocation.

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- (3) Subject to subsection (7) below, any transaction purporting to effect such a transfer or grant as is mentioned in subsection (1) or (2) above shall be void.
- (4) Nothing in subsection (1) or subsection (2) above shall apply to a transfer or grant which is approved in writing for the purposes of this section by the Secretary of State, either generally or specially; and the Secretary of State may approve a transfer or grant which would otherwise fall within either of those subsections at a time after it has been made and, in that case, the transfer or grant shall be deemed always to have been valid.
- (5) Any approval under subsection (4) above may be given subject to conditions, including conditions enabling the relevant Corporation to require the transfer, surrender or grant of rights in respect of the works or part of the works in question to the Corporation itself or to a company which comes into public ownership.
- (6) Any question whether a transaction is rendered void by subsection (1) or subsection (2) above shall, unless settled by agreement between the relevant Corporation and the parties to the transaction and the parties to any subsequent transaction relating to the same works, be determined by arbitration under this Act between that Corporation and those parties.
- (7) If proceedings for the determination of such a question are not commenced within the period of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, the transaction shall be deemed always to have been valid (but without prejudice to the effect of any agreement under subsection (6) above).
- (8) If a Corporation suffers damage by reason of any transaction which is unlawful by virtue of subsection (1) or subsection (2) above, the Corporation may, at any time within the period of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, make an application to the arbitration tribunal, and all parties to the transaction and, subject to subsection (9) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.
- (9) In the case of a transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (8) above relating to that transaction.
- (10) If, on an application under subsection (8) above, the arbitration tribunal are satisfied that the Corporation concerned has suffered such damage as is referred to in that subsection, they shall make such orders against any of the parties to the application as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and to all the circumstances of the case, for the payment by them to the Corporation of sums sufficient to enable the loss, or such part thereof as the tribunal think just, to be made good.
- (11) No person shall be liable to any criminal proceedings by reason only of a contravention of subsection (1) or subsection (2) above.

## **29 Recovery of assets transferred away**

- (1) In any case where

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- (a) it appears to the Secretary of State that a company which comes into public ownership or an excluded company or a company which on the relevant vesting date is a wholly owned subsidiary of an excluded company has, at any time after the initial date and before the date of transfer, entered into any transaction which—
    - (i) transferred or granted to any person, other than a company which comes into public ownership, any rights of ownership in any works or rights in respect of the user of any works, or
    - (ii) transferred or granted any industrial or intellectual property to any such person, and
  - (b) the transfer or grant has not been approved in writing for the purposes of this section by the Secretary of State (whether before or after the date of the transfer or grant), and
  - (c) it appears to the Secretary of State that it is necessary, for the purpose of enabling one of the Corporations fully to carry out its functions under this Act, that the rights or property so transferred or granted, or any rights derived from those rights or that property should vest in or be surrendered to that Corporation or to a company which comes into public ownership,
- he may authorise the Corporation to serve on any person entitled to the rights or property in question a notice (in this Act referred to as a “Schedule 4 notice”) stating that Schedule 4 below applies to rights or property specified in the notice.
- (2) A Schedule 4 notice may be served at any time within the period of 3 months beginning on the date of transfer.
  - (3) Subject to subsection (4) below, subsection (1) above shall apply in relation to a transaction entered into by a company (in the following provisions of this section referred to as “the former subsidiary”) which—
    - (a) was on the initial date the wholly owned subsidiary of an acquired company or an excluded company (in the following provisions of this section referred to as “the parent company”), and
    - (b) ceased to be such a subsidiary before the date of transfer of the parent company,as if the first reference in paragraph (a) of that subsection to a company which comes into public ownership were a reference to the former subsidiary and as if, in relation to the former subsidiary, the reference to the date of transfer were a reference to the date which is the date of transfer in relation to the parent company.
  - (4) In any case where, after the date of transfer of the parent company, the former subsidiary comes into public ownership by virtue of section 26 above, nothing in subsection (3) above shall affect the operation of subsection (1) above in relation to a transaction entered into by the former subsidiary after the date of transfer of the parent company but before the date of transfer of the former subsidiary.
  - (5) An approval given under paragraph (b) of subsection (1) above may be given subject to conditions, including conditions enabling the Corporation concerned to require the transfer, surrender or grant of rights in respect of the works, or property in question to the Corporation or to a company which comes into public ownership.
  - (6) In any case where—
    - (a) consequentially on the service of a notice under section 27 above, the securities of a company do not vest in a Corporation, and

- (b) the grounds for the service of that notice were those specified in subsection (2) (a)(ii) or (iii) of that section, and
  - (c) any such property or rights as are specified in subsection (1)(a)(i) or (ii) above remain vested in the company or have become vested in a receiver,
- subsection (1) above, with the omission of paragraph (b), shall apply as if the property or rights had been transferred or granted as mentioned in paragraph (a) of that subsection.
- (7) Any person on whom a Schedule 4 notice has been served may, within the period of 3 months beginning on the date of service of that notice, serve a notice on the Corporation concerned contending that the circumstances stated in the Schedule 4 notice as having appeared to the Secretary of State in accordance with paragraph (a) of subsection (1) above do not exist or, where the Schedule 4 notice was served by virtue of subsection (6) above, that any one or more of the conditions specified in paragraphs (a) to (c) of that subsection is or are not fulfilled, and the notice shall set out the grounds of that contention.
  - (8) Where a notice is served on a Corporation under subsection (7) above, and neither that notice nor the Schedule 4 notice is withdrawn, the question whether the circumstances referred to in that subsection exist or whether the condition or conditions referred to in that subsection is or are fulfilled shall be determined by arbitration under this Act; and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the person who served the notice under that subsection is correct, revoke the Schedule 4 notice, but shall otherwise confirm it.
  - (9) Where a Schedule 4 notice is served and is not withdrawn or revoked, Schedule 4 to this Act shall have effect.
  - (10) In relation to an excluded company or a company which on the relevant date is a subsidiary of an excluded company, references in this section and Schedule 4 to this Act to the date of transfer shall be construed as references to the relevant vesting date.

### **30 Dissipation of assets by transactions involving holders of securities etc.**

- (1) Subject to subsection (2) below, this section applies where any company which comes into public ownership has, after the safeguarding date and before the date of transfer,—
  - (a) made any payments to its members for the purpose of reducing the share capital of the company otherwise than by the redemption of any redeemable securities; or
  - (b) redeemed any securities which the company was not under any obligation to redeem before the date of transfer or made payments in respect of the redemption of any securities which exceed the minimum payments required to satisfy the rights existing on the safeguarding date of the holders of those securities ; or
  - (c) made any other payment to the holders of its securities (in their capacity as such) out of capital moneys, or distributed assets other than money to the holders of its securities (in their capacity as such); or
  - (d) made to the holders of any of its securities any payment by way of special dividend in respect of the securities ; or
  - (e) repaid any sum the right to repayment of which, if the sum had not been repaid, would, following the service of a notice under section 21 above, have been treated as a security or part of a security under subsection (6) of that section ; or



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- (f) entered into any transaction the effect of which is that property or rights of the company are transferred or granted to any person and the consideration for the transfer or grant is received by the holders of securities of the company or any of them (in their capacity as such); or
- (g) effected a transfer of rights of ownership in any works to another company of which it was at the time of the transfer a subsidiary or to another subsidiary of that company;

and in the following provisions of this section the transactions specified in paragraphs (a) to (g) above are, subject to subsection (2) below, referred to as “material transactions”.

- (2) For the purposes of this section a transaction is not a material transaction if it has been approved in writing by the Secretary of State for those purposes, either generally or specially, and whether before or after the date of the transaction.
- (3) An approval given by the Secretary of State under subsection (2) above may specify as a condition of the approval such of the conditions (if any) falling within subsection (4) below as is appropriate to the transaction to which the approval relates, but the Secretary of State shall not give an approval subject to any such condition unless he is satisfied that, after not less than 14 days notice in writing, a meeting has been held of the holders for the time being of the securities which would be affected by the condition and that a majority in number representing three-fourths in value of those holders who are present and voting either in person or by proxy at the meeting have agreed to the condition.
- (4) The conditions referred to in subsection (3) above are—
  - (a) in the case of a transaction falling within any of paragraphs (a), (c), (d) and (f) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of the securities of the members or holders concerned to be reduced to such extent as may be specified in the approval or as may be subsequently determined in a manner so specified ; and
  - (b) in the case of a transaction falling within paragraph (g) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of such securities of the company effecting the transfer as may be specified in the approval to be reduced to such extent as may be so specified or as may be subsequently determined in a manner so specified.
- (5) The relevant Corporation may, in the case of any company which comes into public ownership, at any time within the period of 9 months beginning on the date of transfer, make an application to the arbitration tribunal in respect of any transaction which in the opinion of the Corporation is a material transaction and, subject to subsection (6) below,—
  - (a) all persons who were directors of the company at the time when the transaction was entered into, and
  - (b) in the case of a transaction mentioned in paragraph (f) of subsection (1) above, or any transaction mentioned in paragraph (c) thereof where the payments made or assets distributed represent the consideration for the transfer or grant of property or rights by the company to any other person, the persons to whom the property or rights were transferred or granted,shall, unless the tribunal otherwise direct, be made parties to the application.
- (6) In the case of any transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution

authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (5) above relating to that transaction.

- (7) If the arbitration tribunal are satisfied that a transaction in respect of which an application under subsection (5) above is made is a material transaction, they shall determine the extent of the net loss resulting to the Corporation from the transaction and shall make such orders against any of the parties to the application as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case, for the payment by them to the Corporation of sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.

### **31 Onerous transactions: disclaimer and recovery of losses**

- (1) Subject to subsection (2) below, the provisions of this section apply in any case where, on or after the appropriate date and before the date of transfer, a company which comes into public ownership has entered into a transaction which, in the opinion of the relevant Corporation, was of such a nature as, and at the time it was entered into could reasonably have been foreseen by the company to be likely,—
- (a) to cause a loss to the company, or
  - (b) to impose a liability on it substantially greater than any benefit accruing to it, and which, in the opinion of the relevant Corporation, either—
    - (i) was both an unusual transaction for the company to enter into, having regard to the activities in which the company was engaged at the time of the transaction, and not reasonably necessary for the purpose of those activities, having regard to the circumstances at that time; or
    - (ii) was a transaction entered into otherwise than in the ordinary course of the company's business and on such terms or with such a party as to indicate an unreasonable lack of prudence on the part of the company, having regard to the circumstances at the time of the transaction;

and for the purposes of this subsection “the appropriate date ” means, in relation to a transaction consisting of the making or variation of an agreement or lease, the initial date and, in the case of any other transaction, the day after the safeguarding date; and a transaction falling within this subsection is in the following provisions of this section referred to as an “onerous transaction ”.

- (2) For the purposes of this section, a transaction is not an onerous transaction if—
- (a) it consists of a payment to which section 23 above applies; or
  - (b) it is a material transaction within the meaning of section 30 above or would be a material transaction but for an approval given under subsection (2) of that section ; or
  - (c) it is made or entered into for any charitable purpose ; or
  - (d) it is made or entered into in connection with the determination of any question, dispute or matter falling to be determined by or under any provision of this Part of this Act; or
  - (e) it has been approved in writing for the purposes of this section by the Secretary of State, either generally or specifically, and either before or after the time of the transaction.
- (3) At any time within the period of 9 months beginning on the date of transfer, the relevant Corporation may make an application to the arbitration tribunal in respect

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of any onerous transaction entered into by a company on or after the day after the safeguarding date; and all parties to the transaction and, subject to subsection (4) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.

- (4) Where an application under subsection (3) above relates to a transaction entered into in pursuance of a resolution of the directors of the company concerned, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to the application.
- (5) If, in the case of an onerous transaction which consists of the making or variation of an agreement or lease, the agreement or lease remains, in whole or in part, unperformed or unexpired on the date of transfer, the company shall, if so directed by the relevant Corporation, by notice in writing given to the other parties to the agreement or lease at any time within the period of 6 months beginning on the date of transfer, disclaim the agreement or lease.
- (6) In this Act a notice under subsection (5) above is referred to as a “notice of disclaimer”.
- (7) Where a company gives a notice of disclaimer, any of the other parties to the agreement or lease concerned may, within the period of 2 months beginning on the date on which the notice is served, refer to arbitration under this Act the question whether or not the agreement or lease ought to be disclaimed under this section, and the relevant Corporation, as well as the company concerned, shall be made a party to the arbitration.
- (8) If, on an application under subsection (3) or a reference under subsection (7) above, the arbitration tribunal are themselves satisfied, having regard to all relevant factors, that the transaction concerned—
  - (a) was of such a nature as to cause such a loss, or to impose such a liability, as is referred to in subsection (1) above, and
  - (b) at the time it was entered into could reasonably have been foreseen by the company to be likely to cause such a loss or impose such a liability, and that it falls within either paragraph (i) or paragraph (ii) of that subsection, the tribunal shall—
    - (i) in the case of an application under subsection (3) above, determine the extent of the net loss resulting to the Corporation from the transaction, and
    - (ii) in the case of a reference under subsection (7) above, confirm the notice of disclaimer,unless (in either case) the tribunal are satisfied that the transaction was not entered into with a view to defeating the object of any provision made by this Act or (if the transaction was entered into before the passing of this Act) with a view to defeating any provision which might reasonably have been anticipated to be likely to be contained in this Act.
- (9) Where the arbitration tribunal make a determination of a net loss under subsection (8) (i) above, they shall make such orders against any of the parties to the application concerned as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case, for the payment by them to the relevant Corporation of

sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.

- (10) If on a reference under subsection (7) above the arbitration tribunal do not confirm the notice of disclaimer, they shall revoke it.

### **32 Provisions supplementary to section 31**

- (1) Where a notice of disclaimer is given with respect to an agreement or lease and that notice is not revoked by the arbitration tribunal, the agreement shall be deemed to be frustrated or, as the case may be, the lease shall be deemed to be surrendered, on the date on which the notice of disclaimer becomes final, and for that reason the parties thereto shall be deemed to be discharged from the further performance of their obligations under the agreement or lease.
- (2) Where an agreement is deemed to be frustrated by virtue of subsection (1) above, neither—
- (a) the following enactments, namely—
    - (i) section 2(3) of the Law Reform (Frustrated Contracts) Act 1943, and
    - (ii) section 2(3) of the Frustrated Contracts Act (Northern Ireland) 1947,(each of which requires the court to give effect to any provision of a contract intended to operate on or notwithstanding the frustration of the contract), nor
  - (b) any rule of the common law of Scotland corresponding to those enactments, shall apply to that agreement.
- (3) Where, on a reference to the arbitration tribunal under section 31(7) above, the notice of disclaimer is confirmed, the arbitration tribunal shall have exclusive jurisdiction to determine claims arising under the agreement or lease in question with respect to the period before the frustration or surrender and, in the case of an agreement, any claims arising as a result of its frustration, and the tribunal may, in the case of a lease, on the application of either party thereto, make such modifications (if any) of the provisions of the lease relating to repairing obligations or any other provisions taking effect on or within a limited time before the determination of the lease as the tribunal think just.
- (4) For the purposes of this section, a notice of disclaimer which is not revoked shall be deemed to become final on the following date, that is to say,—
- (a) if no reference to arbitration is made under section 31(7) above, the date on which the period for making such a reference expires; and
  - (b) in any other case, the date on which the notice is confirmed by the arbitration tribunal.

### **33 Supplementary provisions relating to dissipation of assets**

- (1) Where it appears to the arbitration tribunal that a transaction in respect of which an application is made under section 30 or section 31 above is or may be one of a group of inter-connected transactions which ought to be treated for the purposes of that section as a single transaction, they may order such additional persons as they think fit, being parties to any transaction comprised in the group, to be made parties to the application, and, if the tribunal are satisfied that the whole or part of the group of transactions ought to be treated as a single transaction for the purposes of that section, they may give a direction to that effect, and that section shall have effect accordingly.

- (2) The serving of a Schedule 4 notice in relation to any property or rights shall not prejudice the taking of proceedings under either of the sections referred to in subsection (1) above with respect to any transaction relating to that property or those rights, and any such proceedings and any proceedings pursuant to the notice may, if the arbitration tribunal think fit, be heard together, and any sums ordered by the tribunal in the proceedings under either of those sections to be paid by any person may, if the tribunal think fit, be set off against any compensation payable to that person in the proceedings pursuant to the notice.

### **34 Approvals and undertakings given before passing of Act**

- (1) Where—
- (a) the Secretary of State has approved in writing any transaction before the passing of this Act, and
  - (b) the approval was expressed to be given for the purposes of any provision of this Part of this Act when that provision should come into operation, or to be subject to a condition affecting the operation of any provision of this Part of this Act, and
  - (c) the approval sufficiently identifies the provision in question,
- the approval shall have effect for the purposes of or in relation to that provision in like manner as if it had been given after the passing of this Act.
- (2) Where the Secretary of State has given an undertaking in writing before the passing of this Act with respect to the use of any powers to be conferred by any provision of this Part of this Act, and the undertaking sufficiently identifies the provision in question, the undertaking shall have effect in relation to that provision in like manner as if it had been given after the passing of this Act.

### *Compensation*

### **35 Compensation for vesting of securities**

- (1) Compensation for the vesting in a Corporation by virtue of this Part of this Act of the securities of any company shall be satisfied by the issue of government stock, that is to say, stock the principal whereof and the interest whereon shall be charged on the National Loans Fund with recourse to the Consolidated Fund; and in this Part of this Act government stock issued by way of compensation in accordance with this section is referred to as “compensation stock”.
- (2) No compensation shall be payable in respect of securities which, immediately before they become vested in a Corporation by virtue of this Part of this Act, are held by or on behalf of the Crown.
- (3) Subject to section 30(4) above, and to subsection (4) below, the amount of compensation due to any person in respect of any securities of a company which are held by him immediately before the date of transfer of that company shall be an amount equal to the base value of those securities less any deduction which is appropriate in his case by virtue of section 39 below.
- (4) Where—
- (a) on any date after 6th November 1975 but before the relevant vesting date—

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- (i) a payment is made to a company by virtue of section 1 of the Civil Aviation Act 1949, or
  - (ii) financial assistance for a company is provided under Part II of the Industry Act 1972, and
  - (b) the Secretary of State makes a special declaration with respect to the payment or assistance before the offer to make the payment or provide the assistance is accepted,
- the amount of compensation due to any person in respect of the securities of the company which are held by him immediately before its date of transfer shall be the reduced amount.
- (5) Where compensation stock falls to be issued in satisfaction of an amount of compensation due to any person, the amount of stock so issued shall be such as, in the opinion of the Treasury, is equal on the date of issue to that amount of compensation, regard being had (in estimating the value of the compensation stock so issued) to the market value of other government securities at or about that date.
- (6) In this section—
- “the reduced amount ” means whichever of the following amounts is specified in a stockholders' representative's notice, namely—
  - (a) 5 per cent. of the amount which would have been payable under subsection (3) above, if the special declaration had not been made, or
  - (b) the amount which, if the company had not received the payment or assistance mentioned in subsection (4) above, and had in consequence been wound up, the holders of the securities would have received in the winding-up ;
  - “special declaration ” means a declaration by the Secretary of State that in his opinion either—
  - (a) the company would be unable to pay its debts as they fall due without the payment or assistance in question; or
  - (b) the state of the company's affairs is such that in all the circumstances it is probable that in the foreseeable future it would become unable so to pay them without that payment or assistance ; and
  - " stockholders' representative's notice " means a notice served on the Secretary of State within 3 months after the relevant vesting date by the stockholders' representative appointed under section 41 below.
- (7) If no stockholders' representative's notice is served, the reduced amount is the amount specified in paragraph (a) of the definition in subsection (6) above.
- (8) If any question arises as to—
- (a) the amount of compensation payable under subsection (4) above, or
  - (b) when the company would have been wound up but for the payment or assistance,
- it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.
- (9) Schedule 5 to this Act shall have effect for supplementing the provisions of this section.

### **36 Payment of compensation**

- (1) Subject to subsections (6) to (8) below, compensation shall not be payable in respect of the vesting of any class of securities of a company in a Corporation before such date (in this Part of this Act referred to as “the conversion date”) as may be specified in relation to that class of securities in an order made by the Secretary of State.
- (2) An order of the Secretary of State under subsection (1) above may not specify as the conversion date for any class of a company's securities a date earlier than the date of transfer of that company.
- (3) The date specified in such an order as the conversion date for the equity share capital of a company or for rights which are treated as securities by virtue of section 21(6) above (and in respect of which a deduction may accordingly fall to be made under section 39(8)(b) below) shall be the first convenient date which falls after the relevant conditions have been fulfilled in relation to the company.
- (4) The relevant conditions referred to in subsection (3) above are—
  - (a) that the base value of the equity share capital and of the rights mentioned in that subsection has been determined in accordance with the following provisions of this Part of this Act; and
  - (b) that there has been determined the amount of any deduction or deductions falling to be made by virtue of section 39 below in determining the amount of the compensation payable to any person in respect of any of the equity share capital or rights in question.
- (5) Except in a case to which subsection (3) above applies, the date specified as the conversion date for any class of a company's securities shall be the first convenient date which falls after the date on which the base value of the securities of that class has been determined in accordance with the following provisions of this Part of this Act.
- (6) At any time on or after the date of transfer of a company such sum may be paid on account of compensation in respect of the vesting of its securities as the Secretary of State thinks fit, with the approval of the Treasury, notwithstanding that the total amount of the compensation payable is not yet ascertained.
- (7) A payment under subsection (6) above may be made on such terms and conditions as the Secretary of State, with the approval of the Treasury, thinks fit.
- (8) Subsections (1), (2) and (9) of section 35 above shall apply for the purposes of subsection (6) above ; and subsection (5) of that section shall apply for the purposes of subsection (6) above with the substitution of the words “to be paid on account ” for the word “due ”.

### **37 Base value of securities of a listed class**

- (1) In the case of securities of any class that were listed : in the Stock Exchange Daily Official List on each of the relevant; days, the base value of securities of that class for the purposes of section 35 above shall, subject to the provisions of this section, be deemed to be the average of the mean of the quotations for securities of that class appearing in that List on each of the relevant days, such addition, if any, being made to the average as is necessary to make it a complete multiple of one halfpenny.
- (2) Where, in the case of securities of any class whose base value would, apart from this subsection, fall to be ascertained under subsection (1) above, there has been, at any

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time after the last of the relevant days, a fresh issue of securities of that class, the base value of every security of that class for the purposes of section 35 above shall (subject to subsection (3) below) instead of being ascertained under subsection (1) above, be deemed to be the average of the base values of all the securities of that class calculated on the basis that—

- (a) the base value of each of the securities comprised in that issue is the price at which it was issued or, if it was issued free, is nil; and
  - (b) the base value of the remaining securities is that which they had or would have had for the purposes of that section immediately before the issue took place.
- (3) Where, at any time after the last of the relevant days, any securities whose base value would, apart from this subsection, fall to be ascertained under subsection (1) or (2) above have been converted into securities of a different nominal value—
- (a) the base value of those securities as so converted shall, for the purposes of section 35 above, be deemed to be a value bearing to the base value which the securities had or would have had for the purposes of that section immediately before the conversion took place the same proportion as the nominal value of the securities as converted bears to the nominal value of the securities immediately before the conversion took place; and
  - (b) subsection (2) above shall apply to any fresh issue of securities which have been converted as mentioned above, but if a part only of a class of securities has been so converted, the converted securities shall, for the purposes of that subsection, be treated as securities of a different class from that of the unconverted securities.
- (4) If all the securities of any issue were originally disposed of to a person who did not become the registered holder of those securities, the price of each of the securities shall, for the purposes of subsection (2) above, be deemed to be either—
- (a) the price paid for the security by the first registered holder thereof, or
  - (b) the price received by the company for the security plus an amount equal to 2 ½ per cent. of that price,
- whichever is the lower.
- (5) If any question arises under the preceding provisions of this section as to the base value of any securities, it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.
- (6) Calculations for the purposes of this section are to be completed correct to five places of decimals.
- (7) In this section—

“convert ” means, in relation to any securities, to consolidate and divide those securities into units of larger nominal value or to sub-divide those securities into units of smaller nominal value, without in either case making any change in the aggregate nominal value of the securities;

“the mean of the quotations ” means the average of the two figures shown in the Stock Exchange Daily Official List on the date in question in respect of the security in question under the heading “Quotations ” ;

“quotation ” has the same meaning as in the Stock Exchange Daily Official List, and accordingly does not include the statements of the business that was done; and



“the Stock Exchange Daily Official List ” means the publication known as the Stock Exchange Daily List of Officially Quoted Securities which is published by and under the authority of the Council of the Stock Exchange, London;

and for the purposes of subsection (1) above, an alteration effected, after the last of the relevant days, in rights attaching to securities shall not be taken to have changed them into different securities.

### **38 Base value of other securities**

- (1) Subject to the following provisions of this section, the base value for the purposes of section 35 above of any securities of a class which were issued on or before the last of the relevant days but were not listed in the Stock Exchange Daily Official List on each of those days shall be such as may be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, as may be determined by arbitration under this Act to be the base value which the securities would have had under section 37 above if they had been listed in the Stock Exchange Daily Official List on all of the relevant days.
- (2) Subsections (2), (3), (4) and (6) of section 37 above shall have effect in relation to securities to which subsection (1) above applies as they have effect in relation to securities to which subsection (1) of that section applies.
- (3) The arbitration tribunal, in determining the base value that any securities would have had if they had been listed as mentioned in subsection (1) above, shall have regard to all relevant factors.
- (4) Where securities of a class were issued on or after the first of the relevant days and before the end of the last of the relevant days, the base value of those securities and of all other securities of that class issued before the first of the relevant days shall be determined in accordance with subsection (1) above on the assumption that the securities were issued and the consideration therefor was given immediately before the first of the relevant days.
- (5) For the purposes of determining in accordance with subsection (1) above the base value of securities of any company, it shall be assumed that the assets of that company were not subject to any charge on any of the relevant days.
- (6) If on any of the relevant days—
  - (a) a company the base value of the securities of which falls to be determined in accordance with subsection (1) above was a subsidiary of another body corporate (in this subsection referred to as “the parent company ”), and
  - (b) the undertaking carried on by the company formed a substantial part of the undertakings of the group of companies of which the company and the parent company were members, and
  - (c) shares forming part of the equity share capital of the parent company were listed in the Stock Exchange Daily Official List,

one of the relevant factors to which the arbitration tribunal shall have regard in determining the base value of the company's securities in accordance with subsection (1) above shall be the quotation of the shares referred to in paragraph (c) above.

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- (7) If, by virtue of section 20 above, any property, rights or liabilities become vested in a company on the date of transfer, then, for the purpose of determining the base value of any securities of the company in accordance with subsection (1) above, it shall be assumed that, immediately before each of the relevant days, there were vested in the company such property, rights or liabilities as on that day corresponded to the property, rights or liabilities which become so vested and as would have satisfied a vesting condition for the purposes of the said section 20.
- (8) In any case where—
- (a) prior to any relevant day, a Minister of the Crown had paid any sum to a company with a view to rendering financial assistance to it, and
  - (b) on that day the detailed terms on which the company was to hold the sum had not been agreed and, pending an agreement on those terms, the company held the sum on the terms that immediate repayment could be required at any time, and
  - (c) the detailed terms referred to in paragraph (b) above were not agreed before 28th February 1974,
- then, in determining the base value of the company's securities in accordance with subsection (1) above, it shall be assumed that the sum referred to in paragraph (a) above had never been paid to the company.
- (9) Without prejudice to subsection (8) above, in determining, in accordance with subsection (1) above, the base value which securities of any company would have had under section 37 above, no account shall be taken of any prospects which, on or before any relevant day, the company might have had of receiving financial assistance from any Minister of the Crown, other than—
- (a) grants under Part I of the Industry Act 1972 (regional development grants); and
  - (b) other assistance which on that relevant day the company had a statutory or contractual right to receive.
- (10) Subject to subsection (11) below, where securities of a new class have been issued after the last of the relevant days, the base value of the securities of that class for the purpose of section 35 above shall be deemed to be the price at which they were issued or, if they were issued free, shall be deemed to be nil; and—
- (a) subsections (2) and (3) of section 37 above shall have effect in relation to any fresh issue or conversion of securities of the new class, and
  - (b) subsections (4) to (6) of that section shall have effect for the purposes of this subsection.
- (11) Where—
- (a) apart from this subsection the base value of securities would fall to be ascertained under subsection (10) above, and
  - (b) they were issued for a consideration consisting in whole or in part of the transfer to the company by which they were issued (in this subsection referred to as “the transferee”) of the whole or any part of an undertaking of another company (in this subsection referred to as “the transferor”) which at the date of that transfer was a member of the same group of companies as the transferee,
- the base value shall instead be determined in accordance with subsection (1) above, on the assumptions—

- (i) that the securities were in existence on each of the relevant days; and
  - (ii) that on each of the relevant days the undertaking of the transferee included the whole or, as the case may require, the part of the undertaking carried on on that day by the transferor which then corresponded to the undertaking or part thereof transferred to the transferee by way of consideration for the issue of the securities ; and
  - (iii) that, in any case where the transfer of the undertaking, or part thereof formed only part of the consideration for the issue of the securities, the remainder of that consideration was an asset of the transferee on each of the relevant days.
- (12) Expressions to which a meaning is assigned by subsection (7) of section 37 above have the same meanings in this section.

### **39 The appropriate deduction**

- (1) Subject to and in accordance with the provisions of this section, a deduction shall be made from the amount of the compensation which would otherwise be due to any person under section 35 above in respect of the vesting in a Corporation of any securities of an acquired company—
- (a) if any of the conditions specified in subsection (2) below is fulfilled, and
  - (b) in a case to which subsection (5) below applies.
- (2) The conditions referred to in subsection (1) above are—
- (a) that the acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, made payments of dividend or interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the acquired company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(1) above;
  - (b) that a company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, and at a date on which it was a wholly owned subsidiary of an acquired company, made payments of interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(2) above;
  - (c) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be a material transaction, within the meaning of section 30 above ; and
  - (d) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be an onerous transaction, within the meaning of section 31 above.
- (3) The fulfilment with respect to a wholly owned subsidiary of an acquired company of a condition specified in paragraph (c) or (d) of subsection (2) above shall be treated for the purposes of subsection (1) above as its fulfilment with respect to the acquired company itself.

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- (4) For the purposes of this section, the relevant hypothesis is that—
- (a) for any reference to the safeguarding date in section 23 or 30 above there were substituted a reference to 27th February 1974;
  - (b) for the references to 29th October 1974 in section 24(1)(c) and (2) above there were substituted references to 27th February 1974 ;
  - (c) in section 31—
    - (i) for any reference to the day after the safeguarding date there were substituted a reference to 28th February 1974 ; and
    - (ii) in subsection (1) the words from “in relation to ” to “any other transaction ” were omitted ; and
  - (d) for any reference to the date of transfer in section 23, 30 or 31 above there were substituted a reference to the day after the safeguarding date.
- (5) This subsection applies where, within the period beginning on 28th February 1974 and ending—
- (a) on the date of service of a notice under section 21(1) above, or
  - (b) 9 months after the date of transfer,
- whichever is the earlier, there has been repayment of any sum the right to repayment of which, if the sum had not been repaid, would, following the service of such a notice, have been treated as a security or part of a security under section 21(6) above.
- (6) In any case where, by virtue of the preceding provisions of this section, a deduction falls to be made as mentioned in subsection (1) above, that deduction (in the following provisions of this section referred to, in relation to the securities of the company concerned, as “the appropriate deduction ”) shall be the aggregate of,—
- (a) if the condition specified in subsection (2)(a) or (b) above is fulfilled, the amount which, on the relevant hypothesis, would become due to the Corporation concerned under subsection (1) of section 23 above on a claim made as mentioned in subsection (3) thereof; and
  - (b) if the condition specified in subsection (2)(c) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (5) of section 30 above, would be determined under subsection (7) of that section to result from the transaction referred to in subsection (2)(c) above; and
  - (c) if the condition specified in subsection (2)(d) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (3) of section 31 above, would be determined under subsection (8)(i) of that section to result from the transaction referred to in subsection (2)(d) above; and
  - (d) in a case to which subsection (5) above applies, the net loss to the Corporation resulting from the repayment in question.
- (7) The question—
- (a) whether any, and if so which, of the conditions specified in subsection (2) above is fulfilled, or
  - (b) whether, in any case, subsection (5) above applies,
- and any question as to—
- (i) the amount of the appropriate deduction to be made in respect of any securities, or
  - (ii) any amount to be included in such a deduction by virtue of subsection (6) above,

shall be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.

(8) No deduction shall be made by virtue of this section from the compensation otherwise due to any person in respect of a security unless—

- (a) the security forms part of the equity share capital of a company, or
- (b) in the case of a right which is treated as a security by virtue of section 21(6) above, that security is of such a nature that, if it existed as such, it would form part of a company's equity share capital,

and securities in respect of which a deduction falls to be so made are in the following provisions of this section referred to as “equities”.

(9) Subject to subsection (10) below, the appropriate deduction for a company's securities, as calculated under subsection (6) above, shall be apportioned among all the persons who, immediately before the date of transfer, held equities of the company so that the amount of the appropriate deduction which is apportioned to any such person bears to the total amount of the appropriate deduction the same proportion as the base value for the purposes of section 35 above of the equities so held by him bears to the aggregate of the base values for those purposes of all the company's equities.

(10) Where, apart from this subsection, the amount of the appropriate deduction apportioned to any person under subsection (9) above in respect of equities held by him immediately before the date of transfer of the company concerned would otherwise exceed the base value of those equities for the purposes of section 35 above, the amount so apportioned to him shall be reduced to an amount equal to that base value (but without affecting the amount of the appropriate deduction so apportioned to any other person).

#### **40 General provisions as to compensation stock**

- (1) Compensation stock shall bear such rate of interest and be subject to such conditions as to repayment, redemption and other matters as the Treasury may determine.
- (2) The Treasury may by regulations made by statutory instrument make provision as to the issue of compensation stock by the Bank of England.
- (3) Regulations under subsection (2) above may contain such incidental or supplementary provisions as the Treasury consider appropriate.
- (4) The Corporation in which any securities become vested shall be liable to indemnify the Bank of England against any loss suffered by them arising out of, or in connection with, the issue of compensation stock in respect of the vesting of those securities.
- (5) Any expenses incurred in connection with the issue or repayment of compensation stock shall be charged on and issued out of the National Loans Fund.
- (6) References in the preceding provisions of this section to compensation stock include references to stock issued by way of compensation in accordance with paragraph 5 of Schedule 4 to this Act.

#### **41 Stockholders' representatives**

- (1) In the case of every company whose securities are to vest in either Corporation by virtue of this Part of this Act, there shall be appointed an individual (in this Act

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referred to as " the stockholders' representative ") to represent the interests of holders of securities of that company in connection with the determination of the base value of those securities under the preceding provisions of this Part of this Act.

- (2) The provisions of Schedule 6 to this Act shall have effect with respect to the office of stockholders' representative and meetings of the holders of securities whose interests are represented by a stockholders' representative and matters incidental thereto.
- (3) References in this section and Schedule 6 to this Act to securities do not include securities of a company which, immediately before the date of transfer, are held by or on behalf of the Crown.
- (4) The Secretary of State shall pay, out of money provided by Parliament, to a stockholders' representative such remuneration (whether by salary or fees) and such allowances, and such expenses incurred by him in the exercise of his functions, as may be determined by the Secretary of State with the approval of the Minister for the Civil Service ; and any sums paid by the Secretary of State under this section shall, on demand, be repaid to him by the Corporation in which vest the securities to which his functions relate.
- (5) Any sums repaid to the Secretary of State under subsection (4) above shall be paid into the Consolidated Fund.
- (6) Where a stockholders' representative is appointed for a company, then—
  - (a) the company,
  - (b) any person to whom property or rights of the company have been disposed of after the date of transfer,
  - (c) any person by whom any property or rights have been disposed of to the company, and
  - (d) any other company which, at any time between 5th September 1973 and the date of transfer is a member of the same group of companies,

shall make available to the stockholders' representative such facilities for the examination of and the making of extracts from or copies of books, accounts and documents of the company or person, and such services of employees of that company or of any such person, as he may reasonably request for the purposes of his duties or, in the event of any question arising between the stockholders' representative and the company or person whether any request is reasonable, as may be directed by the Secretary of State.