

SCHEDULES

SCHEDULE 8

Article 70(1).

TRANSITIONAL PROVISIONS

Provisions relating to Parts II and III

1.—(1) Until the coming into operation of Article 28, references in Articles 3, 7, 10, 25 and 26 to a regulated airport shall be construed as references to an airport to which this paragraph applies.

(2) This paragraph applies to an airport if the annual turnover of the business carried on at the airport by the airport operator exceeded £1 million in the case of at least two of the last three financial years ending before the date when this paragraph comes into operation.

(3) Paragraphs (11) and (12) of Article 28 apply for the purposes of this paragraph as they apply for the purposes of that Article.

2. Where, immediately before the coming into operation of Article 18, byelaws are in operation under section 10 of the Aerodromes Act (Northern Ireland) 1971^{F1} in relation to any airport, then—

- (a) if the airport is managed by a person other than a district council, the airport shall, as from the coming into operation of Article 18, be deemed to have been designated for the purposes of that Article by an order made by the Department; and
- (b) in any case, those byelaws shall as from the coming into operation of Article 18, have effect as if duly made under that Article.

F1 1971 c.15 (NI)

Provisions relating to Part V

3.—(1) Any agreement made, transaction effected or other thing done by, to or in relation to NIAL which—

- (a) was made, effected or done for the purposes of or in relation to any assets or liabilities which vest in a transferee under Article 54; and
- (b) is in force or effective immediately before the transfer date,

shall have effect as from that date as if made, effected or done by, to or in relation to that transferee in all respects as if that transferee were the same person in law as NIAL.

(2) Accordingly, references to NIAL—

- (a) in any agreement, deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than a statutory provision),

relating to or affecting assets or liabilities which vest in a transferee under Article 54 shall be taken as from the transfer date as references to that transferee.

(3) Where immediately before the transfer date there is in force an agreement, deed, bond or other instrument which—

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- (a) confers or imposes on NIAL any rights or liabilities which vest in a transferee under Article 54; and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of NIAL,

it shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference—

- (i) where the transferee is the Department, to such officer of the Department as the Department may appoint;
 - (ii) where the transferee is the successor company, to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of NIAL.
- (4) Sub-paragraphs (1) to (3) apply to the Holding Company as they apply to NIAL.

4. Where the rights and liabilities of NIAL under any agreement, scheme or arrangement for the payment of pensions, allowances or gratuities to, or in respect of, its employees vest under Article 54 in the successor company, any period of employment with NIAL shall count for the purposes of such agreement, scheme or arrangement (as it has effect by virtue of paragraph 3(1) in relation to employment with the successor company) as a period of employment with the successor company.

5.—(1) It shall be the duty of NIAL and the transferee to take, as and when the transferee considers appropriate, all such steps as may be requisite to secure that the vesting in the transferee under Article 54 of any foreign asset or liability is effective under the relevant foreign law.

(2) Until the vesting in the transferee under Article 54 of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of NIAL to hold that asset for the benefit of, or to discharge that liability on behalf of, the transferee.

(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in the transferee under Article 54 of any foreign asset or liability.

(4) It shall be the duty of the transferee to act on behalf of NIAL (so far as possible) in performing the duty imposed on NIAL by this paragraph.

(5) References in this paragraph to any foreign asset or liability are references to any asset or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(6) Any expenses incurred by NIAL under this paragraph shall be met by the transferee.

(7) Sub-paragraphs (1) to (6) apply to the Holding Company as they apply to NIAL.

6. Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 5 has effect in relation to NIAL, that statutory provision shall have effect in relation to the successor company as if that company were the same person, in law, as NIAL.

7.—(1) Without prejudice to the powers conferred by Article 71(3), every provision contained in subordinate legislation which is in operation immediately before the transfer date and then applicable to NIAL in relation to assets or liabilities which vest in a transferee under Article 54 shall have effect as if—

- (a) for references to NIAL there were substituted references to the transferee; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of NIAL there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the transferee.

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(2) Sub-paragraph (1) applies to the Holding Company as it applies to NIAL.

8.—(1) Where a distribution is proposed to be declared during the accounting reference period of the successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies Order (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

- (a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
- (b) references in Article 281 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of the Companies Order in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Article 54 had been a vesting of such of the assets and liabilities to which NIAL was entitled or subject immediately before the beginning of the relevant year as are determined by the transfer scheme and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liabilities of NIAL vested in the successor company under Article 54 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by NIAL in respect of the financial year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by NIAL (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

(4) Accordingly (but without prejudice to the generality of the preceding provisions) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by NIAL had been realised and retained by the successor company.

(5) The said accounts shall not be regarded as statutory accounts for the purposes of Article 61.

(6) In this paragraph “the relevant year” means the last complete financial year ending before the transfer date.

9. Expressions used in paragraphs 4 to 8 and in Part V have the same meaning in those paragraphs as in that Part.

Supplementary

10. The Department may by order make such other transitional provision in relation to the coming into operation of any provision of this Order as it thinks necessary or expedient.

11. The provisions of this Schedule and any order under paragraph 10 shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954^{F2}.

F2 1954 c.33 (NI)

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Changes and effects yet to be applied to :

- Instrument am. (prosp.) by [1998 c. 41 s.74\(1\)Sch.12 para.20\(1\)](#)
- Instrument rev. in pt. by [1998 c. 41 s.74\(3\)Sch.14 Pt. II](#)