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SCHEDULES

SCHEDULE 1

Articles 7(8), 8(5), 9(6), 10(4) and 11(4).

PROVISIONS RELATING TO ORDERS UNDER ARTICLES 7 TO 11

Procedure for making of orders

1.—(1) Before making the order the Department shall publish in the Belfast Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the locality in which the land to which the order relates is situated a notice—

- (a) stating that the Department proposes to make the order;
- (b) specifying the land to which the proposed order relates and stating the general effect of the proposed order;
- (c) specifying a place in that locality where a copy of the draft of the proposed order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than 6 weeks from the date of the last publication of the notice; and
- (d) stating that, within that period, any person may, by notice in writing to the Department, inform it of the grounds on which he objects to the making of the order.

(2) In relation to an order under Article 10 or 11, references in sub-paragraph (1) and in the following provisions of this Schedule to the land to which the order relates shall be construed as references to the road to which the order relates.

2. The Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, serve a copy thereof together with a copy of a draft of the order and of any relevant map or plan on—

- (a) the district council in whose district any of the land to which the order relates is situated;
- (b) in the case of an order under Article 7, every person appearing to the Department to be the owner, lessee, or occupier of any land to which the order relates;
- (c) in the case of an order under Article 10, the owner of any cables, mains, sewers, pipes, wires or other apparatus placed under, in, on, over, along or across any road to which the order applies.

3.—(1) If, before the expiration of the period referred to in paragraph 1(c), the Department receives an objection from any person on whom a copy of the notice is required to be served under paragraph 2 or from any other person appearing to it to be affected, it may—

- (a) cause a public local inquiry to be held; or
- (b) afford to any person by whom such an objection has been made an opportunity of appearing before and being heard by a person appointed by the Department for the purpose.

(2) For the purposes of this paragraph and paragraph 4 the Department—

- (a) shall disregard any objection which is withdrawn; and
- (b) may disregard any objection if it is satisfied that the objection relates exclusively to matters which can be dealt with in assessing compensation under Schedule 3.

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4. After considering—

- (a) any objections duly made to the proposed order; and
- (b) in a case where a public local inquiry is held under paragraph 3(1)(a) or a hearing is held under paragraph 3(1)(b), the report of the person who held that inquiry or hearing,

the Department may make the order either without modification or subject to such modifications as it thinks fit.

5. Immediately after the order is made, the Department shall publish in at least one newspaper circulating in the locality in which the land to which the order relates is situated a notice—

- (a) stating that the order has been made;
- (b) specifying the land to which the order relates and stating the general effect of the order; and
- (c) specifying a place in that locality where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours.

6. The Department shall serve a copy of the notice referred to in paragraph 5 on every person who has duly objected to the making of the order.

7. Any expenses incurred by the Department in exercising, in relation to an order in respect of any airport, its functions under the preceding provisions of this Schedule may be recovered from the airport operator summarily as a civil debt or in any court of competent jurisdiction.

Challenging validity of order

8. If any person aggrieved by the order desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Department or that any requirement of this Schedule has not been complied with in relation to the order, he may, within 6 weeks from the time when notice that the order has been made is first published under paragraph 5, make an application to the High Court and on any such application the High Court—

- (a) may by interim order suspend the operation of the order or of any provision contained therein, either generally or in so far as it affects the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the order or any provision contained therein is not within the powers of the Department, or that the interests of the applicant have been substantially prejudiced by any requirement of this Schedule not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects the applicant.

9. Subject to the provisions of paragraph 8, the order shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the expiration of 6 weeks from the date on which notice of the making of the order is first published under paragraph 5.

SCHEDULE 2

Article 8(6).

PROVISIONS RELATING TO DIRECTIONS UNDER ARTICLE 8

Notice of giving of directions

1.—(1) Immediately after the Department has given the direction, it shall publish in the Belfast Gazette and in one or more newspapers circulating in the locality in which the land to which the direction relates is situated a notice stating that the direction has been given, and shall also serve notice of the direction—

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- (a) in the case of a direction given for the purpose specified in Article 8(3)(a), on every district council in whose district any of the land to which the direction relates is situated;
 - (b) in the case of a direction given for the purpose specified in Article 8(3)(d), on every person appearing to the Department to be an owner, lessee or occupier of any land to which the right of way is appurtenant, and on every district council in whose district any of that land is situated;
 - (c) in the case of a direction given for any other purpose specified in Article 8(3), on every person appearing to the Department to be an owner, lessee or occupier of the land to which the direction relates and on every district council in whose district any of that land is situated;
 - (d) in the case of a direction restricting the installation of apparatus or extinguishing rights to install or maintain apparatus, on every person appearing to the Department to be a person whose rights to install or maintain apparatus are affected by the direction; and
 - (e) in the case of a direction requiring the removal of any apparatus, on the person appearing to the Department to be entitled to maintain the apparatus required to be removed under the direction.
- (2) Any notice given with respect to any direction for the purpose of complying with the requirements of this paragraph shall state the effect of the direction.

Challenging validity of direction

2. If any person aggrieved by the direction desires to question the validity thereof, or of any provision contained therein, on the ground that it is not within the powers of the Department or that any requirement of this Schedule has not been complied with in relation to the direction, he may, within 6 weeks from the time when notice that the direction has been given is first published under paragraph 1, make an application to the High Court and on any such application the High Court—

- (a) may by interim order suspend the operation of the direction or of any provision contained therein, either generally or in so far as it affects the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the direction or any provision contained therein is not within the powers of the Department, or that the interests of the applicant have been substantially prejudiced by any requirement of this Schedule not having been complied with, may quash the order or any provision contained therein, either generally or in so far as it affects the applicant.

3. Subject to the provisions of paragraph 2, the direction shall not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and shall become operative on the expiration of 6 weeks from the date on which notice of the giving of the direction is first published under paragraph 1.

SCHEDULE 3

Article 13.

COMPENSATION PAYABLE BY AIRPORT OPERATORS

Compensation where property damaged

1. Where any property is damaged—
 - (a) in the exercise by a person authorised by an airport operator of a power of entry conferred by Article 4 or in the making of any survey for the purpose of which that power is exercised;

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- (b) in the exercise of a power or right conferred by an order made under Article 7 in relation to an airport;
- (c) in the exercise of a power or right conferred, in pursuance of Article 8(4)(b), by an order made under Article 8 in relation to an airport;
- (d) in the exercise of a power or right conferred by an order made under Article 9 in relation to an airport,

the airport operator shall make good that damage or pay such compensation as may be just in respect of that damage.

Compensation for disturbance

2. Where any person is disturbed in the enjoyment of any property in consequence of—
- (a) the exercise by a person authorised by an airport operator of a power of entry conferred by Article 4 or in the making of any survey for the purpose of which that power is exercised;
 - (b) the exercise of a power or right conferred by an order made under Article 7 in relation to an airport;
 - (c) the exercise of a power or right conferred, in pursuance of Article 8(4)(b), by an order made under Article 8 in relation to an airport;
 - (d) the exercise of a power or right conferred by an order made under Article 9 in relation to an airport,

the airport operator shall pay such compensation as may be just in respect of that disturbance.

Compensation for diminution in value of land

- 3.—(1) Any person having an estate in land the value of which is diminished in consequence of—
- (a) the coming into operation of an order made under Article 7 in relation to an airport or the exercise of a right or power conferred by such an order;
 - (b) the coming into operation of a direction given under Article 8 in relation to an airport or the exercise of a power or right conferred, in pursuance of paragraph (4)(b) of that Article, by any order made under that Article in relation to an airport;
 - (c) the exercise of a right or power conferred by an order made under Article 9 in relation to an airport,

shall, subject to sub-paragraph (2), be entitled to recover compensation for the diminution from the airport operator.

(2) Sub-paragraph (1)(b) does not apply to the coming into operation of a direction given under Article 8 for the purpose specified in paragraph (3)(a) of that Article if the building or structure in question constitutes development for which planning permission is required under the Planning (Northern Ireland) Order 1991^{F1}.

(3) For the purpose of assessing the amount of any compensation payable under this paragraph, the value of land shall be determined in accordance with rules (2) to (4) in Article 6(1) of the Land Compensation (Northern Ireland) Order 1982^{F2}.

F1 1991 NI 11

F2 1982 NI 9

Compensation for expenditure incurred

4. An airport operator shall pay compensation in respect of any expenditure reasonably incurred by any person—

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- (a) for the purpose of carrying out work which is required to be carried out by a direction given under Article 8 in relation to the airport;
- (b) in connection with the lawful removal of any apparatus installed in pursuance of an order made under Article 9 in relation to the airport or in connection with so much of any repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order.

Reduction of compensation

5. The compensation payable to any person by virtue of paragraph 1(c), 2(c) or 3(1)(b) in connection with a direction under Article 8 shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the direction.

Disputes as to compensation

6.—(1) Where any dispute arises as to whether compensation is payable under this Schedule, or as to the amount of any such compensation, or as to the persons to whom it is payable, the dispute shall be referred to and determined by the Lands Tribunal.

(2) Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply, with appropriate modifications, to any such determination.

SCHEDULE 4

Article 18(6).

AIRPORT BYELAWS MADE BY AIRPORT OPERATOR OTHER THAN A DISTRICT COUNCIL

Penalties for contravention of byelaws

1. The byelaws may provide that a person contravening them shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale for each offence and, in the case of a continuing offence, to a further fine not exceeding one-tenth of level 3 on the standard scale for each day on which the offence continues after conviction.

Making and confirmation of byelaws

2. Where the airport operator is a body corporate, the byelaws shall be made under its common seal.

3. The byelaws shall not have effect until they are confirmed by the Department.

4. At least one month before application for confirmation of the byelaws is made to the Department, notice of the intention to apply for confirmation shall be given by the airport operator in one or more newspapers circulating in the locality in which the airport to which the byelaws relate is situated and such notice shall specify a period of not less than one month during which representations on the byelaws may be made to the Department.

5. For at least one month before application for confirmation is made, a copy of the byelaws shall be deposited at the offices of the airport operator at the airport to which the byelaws relate and shall, at all reasonable hours, be open to public inspection free of charge.

6. The airport operator shall, on application made by any person before the byelaws are confirmed, furnish him with a copy of the byelaws or of any part of them on payment of such reasonable fee as the airport operator may determine.

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7. The Department may confirm with or without modifications, or refuse to confirm, any byelaw submitted to it for confirmation, and may fix the date on which a byelaw confirmed by it is to come into operation; and if no date is so fixed, the byelaw shall come into operation at the end of the period of one month beginning with the day on which it is confirmed.

Publication of byelaws

8. A copy of the byelaws, when confirmed, shall be printed and deposited at the offices of the airport operator at the airport to which the byelaws relate and shall, at all reasonable hours, be open to public inspection free of charge; and a copy of the byelaws shall on application be furnished to any person on payment of such reasonable fee as the airport operator may determine.

Evidence of byelaws

9. The production of a printed copy of a byelaw purporting to be made by an airport operator upon which is endorsed a certificate purporting to be signed by a person authorised for the purpose by the airport operator and stating—

- (a) that the byelaw was made by the airport operator;
- (b) that the copy is a true copy of the byelaw;
- (c) that on a specified date the byelaw was confirmed by the Department; and
- (d) the date, if any, fixed by the Department for the coming into operation of the byelaw,

shall be evidence of the facts stated in the certificate, without proof of the handwriting or authorisation of the person by whom it purports to be signed.

SCHEDULE 5

Article 25.

APPLICATION OF STATUTORY PROVISIONS RELATING TO STATUTORY UNDERTAKERS

The Access to the Countryside (Northern Ireland) Order 1983 (NI 8)

1. In Article 2(2) in the definition of “statutory undertakers” at the end add “and the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies”.

The Planning (Northern Ireland) Order 1991 (NI 1)

2. In Article 2(2) in the definition of “statutory undertaker” at the end add “or the airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) of any airport to which Article 25 of that Order applies”.

SCHEDULE 6

Article 46.

APPLICATION OF PART IV TO ASSOCIATED COMPANIES OF AIRPORT OPERATORS

Preliminary

1. This Schedule has effect for the purpose of authorising or requiring the imposition by the CAA under Part IV of this Order (as it applies in accordance with this Schedule) of the following conditions in relation to an airport, namely—

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- (a) conditions under Article 31(1) or 32(1) with respect to the accounts of an associated company of the airport operator; and
- (b) conditions under Article 32(2) or 37(2) in respect of a course of conduct pursued by such a company,

and for related purposes; and in this Schedule any such conditions are referred to as “subsidiary conditions”.

Article 30

2. Article 30(1) and (4) shall apply to any subsidiary conditions for the time being in force in relation to an airport as if—

- (a) references to the airport operator were references to the associated company of the airport operator with respect to whose accounts the conditions were imposed or (as the case may be) that pursued the course of conduct in respect of which the conditions were imposed; and
- (b) references to any such conditions as are mentioned in Article 30(1) were references to any such conditions as are mentioned above.

Article 31

3.—(1) Where an associated company of the airport operator in the case of any airport either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, Article 31(2) shall have effect in relation to the airport with the modifications specified in sub-paragraphs (2) to (4).

(2) After sub-paragraph (a) there shall be inserted the following sub-paragraph—

- “(aa) such conditions as the CAA considers appropriate to secure that the accounts of any associated company of the airport operator, being a company which either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, disclose—
 - (i) any subsidy furnished (whether by the making of loans on non-commercial terms or otherwise) by any person or authority to the company in connection with its business so far as consisting of the carrying on of operational activities relating to the airport, and the identity of any such person or authority;
 - (ii) any subsidy so furnished to that business by the company out of funds attributable to any other activities carried on by it; and
 - (iii) the aggregate income and expenditure of the company attributable to any such operational activities (whether carried on by the company or by some other person); and” .

(3) After “the airport operator” where it occurs in sub-paragraph (b) there shall be inserted “or the associated company”.

(4) After “the airport operator” where it last occurs there shall be inserted “or in sub-paragraph (aa) to the accounts of any associated company of the airport operator”.

(5) Where—

- (a) sub-paragraph (1) above does not apply to an airport at the time when conditions are imposed in relation to the airport under Article 31(1)(a) or (b); but
- (b) at any later time it appears to the CAA that that sub-paragraph then applies to the airport,

the CAA shall thereupon impose in relation to the airport such conditions as are mentioned in sub-paragraphs (aa) and (b) of Article 31(2) as modified by this paragraph.

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Article 32

4. In Article 32—

- (a) in paragraph (1), the reference to Article 31(2) shall be construed as including, in relation to an airport to which sub-paragraph (1) of paragraph 3 above applies, a reference to Article 31(2) as modified by that paragraph;
- (b) in paragraphs (2), (3)(a) and (b) and (6), references to the airport operator shall be construed as including references to an associated company of the airport operator; and
- (c) in relation to such a company—
 - (i) the reference in paragraph (2) to paragraph (3) shall be construed as a reference to paragraph (3)(a) and (b) (as modified by sub-paragraph (b) above); and
 - (ii) the reference in paragraph (6) to paragraph (3)(a), (b) or (c) shall be construed as a reference to paragraph (3)(a) or (b) (as so modified).

Article 33

5. In Article 33(2) and (3)—

- (a) references to an airport operator shall be construed as including references to an associated company of an airport operator; and
- (b) in relation to such a company, references to any provision of Article 32 shall be construed as references to that provision as modified by paragraph 4 above.

Article 34

6.—(1) Where an associated company of the airport operator in the case of any airport either carries on operational activities relating to the airport or is entitled to grant rights by virtue of which any such activities may be carried on by other persons, Article 34(2) shall have effect in relation to any reference under Article 34(1) with respect to the airport with the insertion after sub-paragraph (a) of the following sub-paragraph—

- “(aa) whether any associated company of the airport operator has, at any time during the relevant period, pursued—
 - (i) in relation to any operational activities carried on by the company and relating to the airport; or
 - (ii) in relation to the granting of a right by virtue of which any operational activities relating to the airport may be carried on by any other person or persons, a course of conduct which has operated or might be expected to operate against the public interest; and”.

(2) In Article 34(3), as it applies in relation to an associated company of an airport operator in accordance with this Schedule, the reference to the airport operator shall be construed as a reference to the associated company in question.

Article 35

7.—(1) In relation to any reference to which paragraph 6(1) above applies, Article 35(1)(a) shall have effect with the insertion at the end of head (ii) of “and any course of conduct which, in its opinion, has been pursued by an associated company of the airport operator in relation to any of the matters specified in paragraph (2)(aa) of that Article and has operated, or might be expected to operate, against the public interest,”.

(2) In Article 35(4) the reference to the airport operator concerned shall—

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- (a) in the case of a reference or variation under Article 34 relating only to a course of conduct pursued by an associated company of an airport operator, be construed as a reference to that company; and
- (b) in the case of a reference or variation under that Article relating to courses of conduct pursued by an airport operator and such a company respectively, be construed as a reference to both the airport operator and the company.

Article 36

8.—(1) In Article 36(3) the reference to an airport operator shall, in the case of a reference under Article 34 relating wholly or in part to a course of conduct pursued by an associated company of an airport operator, be construed as, or as including, a reference to any such company (as the case may require).

(2) In Article 36(6) the reference to the airport operator concerned shall be construed as mentioned in paragraph 7(2) above according to the nature of the reference under Article 34.

Article 39

9.—(1) In Article 39(1)(a) the reference to the airport operator in relation to an airport shall be construed as including a reference to an associated company of the airport operator.

(2) Article 39(3), (5), (6) and (7) shall have effect in relation to any complaint against an associated company of an airport operator made by virtue of sub-paragraph (1) above as if any reference to an airport operator or to the airport operator concerned were a reference to any such company or to the company against which the complaint is made (as the case may require).

Article 40

10.—(1) In Article 40(1) and (9) any reference to an airport operator shall be construed as including a reference to an associated company of an airport operator.

(2) Where the permission for the time being in force in respect of an airport is revoked under Article 40(9), (as it applies in accordance with sub-paragraph (1) above) by reason of an associated company's contravention of a compliance order, then (notwithstanding Article 29(4)) a permission shall not again be granted under Part III of this Order in respect of that airport unless it appears to the CAA that, if the CAA were to impose in relation to the airport any condition corresponding to the one whose breach gave rise to the making of the compliance order, that condition would be complied with by the person (whether the airport operator or an associated company of the airport operator) to whose activities any such condition would relate.

(3) In this Article “compliance order” and “contravention” shall be construed in accordance with Article 40(11).

Article 41

11.—(1) In Article 41 any reference to an airport operator shall be construed as including a reference to an associated company of an airport operator.

- (2) In that Article, as it applies to any such company in accordance with sub-paragraph (1)—
 - (a) in paragraph (1), the reference to Article 31(2)(a) shall be construed as a reference to sub-paragraph (aa) of Article 31(2) (as modified by paragraph 3(2) and (4) above);
 - (b) in paragraph (2), the reference to Article 31(2)(b) shall be construed as a reference to that provision as modified by paragraph 3(3) above; and
 - (c) the references to Article 30(1) and Article 32(1) shall be construed as references to those provisions as modified by paragraph 2 and paragraph 4(a) above.

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Article 42

12.—(1) Article 42(3) shall apply in relation to any subsidiary conditions as if the reference to Article 31(2) were a reference to that provision as modified by paragraph 3 above.

(2) Article 42(5) shall apply in relation to any subsidiary conditions as if—

- (a) references to the airport operator concerned were references to the associated company of the airport operator that pursued the course of conduct in respect of which the conditions were imposed; and
- (b) the reference to Article 32(3)(a), (b) or (c) were a reference to Article 32(3)(a) or (b) (as modified by paragraph 4(b) above).

(3) Article 42(7) shall apply in relation to any subsidiary conditions as if the reference to the airport operator were a reference to the associated company with respect to whose accounts the conditions were imposed or (as the case may be) that pursued the course of conduct in respect of which the conditions were imposed.

Article 45

13. In^{F3} Article 45(1A),^{F3} references] to an airport operator shall be construed as including^{F3} references] to an associated company of an airport operator engaged in carrying on any operational activities relating to one or more airports.

F3 2002 c. 40

SCHEDULE 7

Article 54(3).

TRANSFERS UNDER ARTICLE 54

Variation of transfers under the scheme

1.—(1) If at any time before the end of the period of 12 months from the transfer date the Department considers it appropriate to do so and either—

- (a) the successor company has consented to the order; or
- (b) that company is for the time being wholly owned by the Crown and has been consulted by the Department,

the Department may by order provide that the transfer scheme shall for all purposes be deemed to have been made with such modifications as may be specified in the order.

(2) An order under this paragraph may make, with effect from the date on which the transfer scheme was made, any such provision as could have been made by the scheme.

Right to production of documents of title

2. Where the transferee under a transfer effected under Article 54 (“transferee A”) is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected under that Article (“transferee B”)—

- (a) transferee A shall be deemed to have given to transferee B an acknowledgement in writing of the right of transferee B to production of the document and to delivery of copies thereof; and

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- (b) section 9 of the Conveyancing Act 1881^{F4} shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

F4 1881 c.41

Proof of title by certificate

3. A certificate issued by the Department that—
- (a) any asset specified in the certificate;
 - (b) any such interest in or right over any such asset as may be so specified; or
 - (c) any liability so specified,

is by virtue of a transfer under Article 54 for the time being vested in the Department or the successor company shall be conclusive evidence for all purposes of that fact.

Third parties affected by transfers

- 4.—(1) If in consequence of any transfers effected under Article 54—
- (a) the rights or liabilities of a third party which were enforceable against or by NIAL or the Holding Company become enforceable as to part against or by one transferee and as to part against or by another transferee; and
 - (b) the value of any property or interest of that third party is thereby diminished,

such compensation as may be just shall be paid to that third party by one or both of the transferees.

(2) In sub-paragraph (1) “third party” means a person other than NIAL, the Holding Company or a transferee.

(3) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1), or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Department.

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^{F5} in relation to any airport, then—

Status: Point in time view as at 01/01/2006.

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- (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.

F5 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—

- (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.

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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.

(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;

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- (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^{F6}.

F6 1954 c.33 (NI)

Schedule 9—Amendments

Schedule 10—Repeals

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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