



Telecommunications Act 1984

1984 CHAPTER 12

PART V

TRANSFER OF UNDERTAKING OF BRITISH TELECOMMUNICATIONS

*Vesting of property etc. of British Telecommunications
in a company nominated by the Secretary of State*

60 Vesting of property etc. of British Telecommunications in a company nominated by the Secretary of State

- (1) On such day as the Secretary of State may by order appoint for the purposes of this Part (in this Act referred to as " the transfer date "), all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before that date shall (subject to the following provisions of this section) become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by the Secretary of State (in this Act referred to as " the successor company ").
- (2) In this Act " the excepted liabilities " means the liabilities which subsist by virtue of a deed of covenant dated 22nd November 1978 and made between the Post Office and the then trustees of the Post Office Staff Superannuation Scheme.
- (3) The Secretary of State may, after consulting British Telecommunications, by order nominate for the purposes of this section any company formed and registered under the Companies Act 1948 ; but on the transfer date the company in question must be a company limited by shares which is wholly owned by the Crown.
- (4) References in this Act to property, rights and liabilities of British Telecommunications are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by British Telecommunications.
- (5) It is hereby declared for the avoidance of doubt that—

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- (a) any reference in this Act to property of British Telecommunications is a reference to property of British Telecommunications whether situated in the United Kingdom or elsewhere; and
 - (b) any such reference to rights or liabilities of British Telecommunications is a reference to rights to which British Telecommunications is entitled, or (as the case may be) liabilities to which British Telecommunications is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.
- (6) In the House of Commons Disqualification Act 1975 in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—
- “Director of the successor company within the meaning of Part V of the Telecommunications Act 1984, being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown”;
- and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

61 Initial Government holding in the successor company

- (1) As a consequence of the vesting in the successor company by virtue of section 60 above of property, rights and liabilities of British Telecommunications, the successor company shall issue such securities of the company as the Secretary of State may from time to time direct—
 - (a) to the Secretary of State ; or
 - (b) to any person entitled to require the issue of the securities following their initial allotment to the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Secretary of State may direct.
- (4) Shares issued in pursuance of this section—
 - (a) shall be of such nominal value as the Secretary of State may direct; and
 - (b) shall be issued as fully paid and treated for the purposes of the Companies Acts 1948 to 1981 as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (5) The Secretary of State may not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.
- (7) Stamp duty shall not be chargeable under section 47 of the Finance Act 1973 in respect of any increase in the capital of the successor company which is effected by the issue of shares allotted at a time when the successor company was wholly owned by the Crown and is certified by the Treasury as having been—

- (a) effected for the purpose of complying with the requirements of this section ; or
- (b) where any convertible securities were issued in pursuance of this section, effected in consequence of the exercise of the conversion rights attached to those securities.

62 Conversion of certain loans transferred to the successor company

- (1) The Secretary of State may by order extinguish all or any liabilities of the successor company to the Secretary of State in respect of the principal of such transferred loans as may be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) As a consequence of the extinguishment by an order under subsection (1) above of any such liabilities, the successor company shall issue such debentures of the company as the Secretary of State may direct—
 - (a) to the Secretary of State ; or
 - (b) to any person entitled to require the issue of the debentures following their initial allotment to the Secretary of State.
- (3) The Secretary of State shall not make an order or give a direction under this section at a time when the successor company has ceased to be wholly owned by the Crown.
- (4) Except as may be agreed between the Secretary of State and the successor company—
 - (a) the aggregate of the principal sums payable under debentures issued in pursuance of this section shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order ; and
 - (b) the terms as to the payment of the principal sums so payable, and as to the payment of interest thereon, shall be the same as the corresponding terms of the transferred loans specified in the order.
- (5) For the purposes of subsection (4) above any express or implied terms of a transferred loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.
- (6) Subsection (3) and subsections (5) to (7) of section 61 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (7) For the avoidance of doubt it is hereby declared that the principal sums payable under debentures issued in pursuance of this section are to be regarded as money lent for the purposes of subsection (10) of section 48 of the Finance Act 1981 (write-off of government investment: restriction of tax losses).
- (8) In this section " transferred loan " means any sum borrowed or treated as borrowed by British Telecommunications the liability to repay which vests in the successor company by virtue of section 60 above.

63 Government investment in securities of the successor company

- (1) The Secretary of State may at any time, with the consent of the Treasury, acquire—
 - (a) securities of the successor company or of any subsidiary of the successor company ; or
 - (b) rights to subscribe for any such securities.

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- (2) The Secretary of State may not dispose of any securities or rights acquired under this section without the consent of the Treasury.
- (3) Any expenses incurred by the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.
- (5) Stamp duty shall not be chargeable under section 47 of the Finance Act 1973 in respect of any increase in the capital of the successor company which—
 - (a) is effected by the issue of shares allotted at a time when the successor company was wholly owned by the Crown; and
 - (b) is certified by the Treasury as having been effected by the issue of shares subscribed for by the Secretary of State under subsection (1)(a) above.

64 Exercise of Secretary of State's functions through nominees

- (1) The Secretary of State may with the consent of the Treasury appoint such person or persons as he thinks fit to act as his nominees for the purposes of section 61, 62 or 63 above ; and—
 - (a) securities of the successor company may be issued under section 61 or 62 above to any nominee of the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
 - (b) any such nominee appointed for the purposes of section 63 above may acquire securities or rights in accordance with that section,
in accordance with directions given from time to time by the Secretary of State with the consent of the Treasury.
- (2) Any person holding any securities or rights as a nominee of the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Secretary of State may direct with the consent of the Treasury.

65 Target investment limit for Government shareholding

- (1) As soon as the successor company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by the Secretary of State or his nominee by virtue of any provision of this Part (in this section referred to as " the Government shareholding ").
- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (in this section referred to as " the ordinary voting rights ").
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.

- (4) The Secretary of State may from time to time by order fix a new target investment limit in place of the one previously in force under this section ; but—
 - (a) any new limit must be lower than the one it replaces; and
 - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of the Secretary of State so to exercise—
 - (a) his powers under section 63 above and his power to dispose of any shares held by him by virtue of any provision of this Part; and
 - (b) his power to give directions to his nominees,
as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5) above, the Secretary of State may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to that nominee, as an existing holder of shares or other securities of the successor company or of any subsidiary of the successor company; but if as a result the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit it shall be the duty of the Secretary of State to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

66 Financial structure of successor company

- (1) If the Secretary of State so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum (not exceeding the accumulated realised profits of British Telecommunications) as may be specified in the direction shall be carried by the successor company to a reserve (in this section referred to as " the statutory reserve ").
- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2) above, the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of section 40(2)(d) of the Companies Act 1980 ; but for the purpose of determining under that section whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of section 40(2)(c) as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company—
 - (a) the vesting effected by virtue of section 60 above shall be taken to have been a vesting of all the property, rights and liabilities (other than the excepted liabilities) to which British Telecommunications was entitled or subject immediately before the end of the last complete accounting year of British Telecommunications ending before the transfer date and to have been effected immediately after the end of that year; and
 - (b) the value of any asset and the amount of any liability of British Telecommunications taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to be the value or (as the case

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may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by British Telecommunications in respect of that year.

- (5) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by British Telecommunications (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.

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

- (6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the Companies Acts 1948 to 1981 (including group accounts); and in this section " complete accounting year " means an accounting year ending with 31st March.

67 Temporary restrictions on successor company's borrowings etc.

- (1) If articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above ; and
 - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
- shall be disregarded.
- (3) In this section " group" means the successor company and all of its subsidiaries taken together.

68 Liability of Secretary of State in respect of liabilities vesting in successor company

- (1) This section applies where—
- (a) a resolution has been passed, in accordance with the Companies Act 1948, for the voluntary winding up of the successor company, otherwise than merely for the purpose of reconstruction or amalgamation with another company ; or
 - (b) without any such resolution having been passed before hand, an order has been made for the winding up of the successor company by the court under that Act
- (2) The Secretary of State shall become liable on the commencement of the winding up to discharge any outstanding liability of the successor company which vested in that company by virtue of section 60 above.

- (3) Any sums required by the Secretary of State for discharging any liability imposed on him by this section shall be paid out of money provided by Parliament.
- (4) Where the Secretary of State makes a payment to any person in discharge of what appears to him to be a liability imposed on him by this section, he shall thereupon become a creditor of the successor company to the extent of the amount paid, his claim being treated for the purposes of the winding up as a claim in respect of the original liability.
- (5) Any sums received by the Secretary of State in respect of any claim made by virtue of subsection (4) above in the winding up of the successor company shall be paid into the Consolidated Fund.
- (6) The reference in subsection (2) above to the commencement of the winding up is a reference—
 - (a) in a case within subsection (1)(a) above, to the passing of the resolution ; and
 - (b) in a case within subsection (1)(b) above, to the making of the order.

69 Dissolution of British Telecommunications

- (1) British Telecommunications shall continue in existence after the transfer date until it is dissolved in accordance with subsection (2) below; and the period of its continued existence after the transfer date is in this Act referred to as " the transitional period ".
- (2) The Secretary of State may by order, after consulting British Telecommunications and the successor company, dissolve British Telecommunications on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by British Telecommunications under Schedule 5 to this Act.
- (3) During the transitional period section 1(4) of the 1981 Act (composition of British Telecommunications) shall have effect as if for the word " six " there were substituted the word " one " and paragraph 9 of Schedule 1 to that Act (quorum of British Telecommunications) shall have effect as if after the word " three " there were inserted the words " or the number of its members, whichever is the less ".

Miscellaneous and supplemental

70 Application of law in relation to offer of shares or debentures of the successor company

- (1) This section applies where the Secretary of State or a nominee of his offers for sale to the public shares or debentures of the successor company at a time when that company is wholly owned by the Crown; and in this section " full prospectus " means a prospectus which complies, or is deemed to comply, with the requirements of Schedule 4 to the Companies Act 1948 (matters to be specified in prospectus and reports to be set out therein).
- (2) If the shares or debentures are offered by a full prospectus as respects which the conditions mentioned in subsection (3) below are fulfilled (in this section referred to as " the offer prospectus "), any form of application for the shares or debentures may (instead of being issued with a full prospectus) be issued with a notice given by the Secretary of State which includes—

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- (a) a brief description of the shares or debentures offered, the terms of the offer, the successor company's business and its financial position ;
 - (b) an indication of the places in the United Kingdom where copies of the offer prospectus are to be available for inspection by members of the public; and
 - (c) a statement of the effect of subsections (4) and (5) below.
- (3) The said conditions are—
- (a) that a copy of the prospectus has been delivered to the registrar of companies in pursuance of section 41 of the said Act of 1948 ; and
 - (b) that arrangements have been made with a view to securing—
 - (i) that on or before the date of receipt of the form of application by a member of the public a copy of the prospectus is published in not less than four national newspapers ; and
 - (ii) that on that date copies of the prospectus are generally available in the United Kingdom for inspection by members of the public.
- (4) Where a form of application is issued without a full prospectus but with a notice given by the Secretary of State under subsection (2) above, then, for the purposes of any enactment or any rule of law—
- (a) the notice shall be taken to have incorporated the offer prospectus; and
 - (b) any application for the shares or debentures which is made in pursuance of the notice shall be taken to have been made in pursuance of that prospectus.
- (5) Where a form of application is issued without a full prospectus, neither the form of application nor any document which is issued with it shall be regarded—
- (a) as a prospectus for the purposes of sections 37 to 46 of the said Act of 1948 (prospectus requirements); or
 - (b) as a circular for the purposes of section 14 of the Prevention of Fraud (Investments) Act 1958 or section 13 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940 (circulars relating to investments),
- but only, where the form of application is issued without a notice given by the Secretary of State under subsection (2) above, for the purpose of determining the liability of persons other than the Secretary of State.

71 Application of Trustee Investments Act 1961 in relation to investment in the successor company

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the transfer date falls (" the first investment year") or during any year following that year, the successor company shall be deemed to have paid, a dividend as there mentioned—
- (a) in any year preceding the first investment year which is included in the relevant five years; and
 - (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) above "the relevant five years" means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

72 Tax provisions

- (1) Subject to subsection (2) below and paragraph 39 of Schedule 5 to this Act, the successor company shall be treated for all purposes of corporation tax and development land tax as if it were the same person as British Telecommunications.
- (2) The successor company shall not by virtue of subsection (1) above be regarded as a body falling within section 272(5) of the Income and Corporation Taxes Act 1970 (bodies established for carrying on industries or undertakings under national ownership or control) or subsection (10) of section 23 of the Development Land Tax Act 1976 (statutory undertakers); and subsection (1) above shall not be regarded as preventing the vesting in the successor company of an interest of British Telecommunications constituting a disposal for the purposes of the said section 23.
- (3) Where, in the discharge of any liability which is vested in the successor company by this Act, the successor company makes payments to a retirement benefits scheme with a view to the provision of relevant benefits for persons who are employees of the Post Office, the Tax Acts shall have effect in relation to those payments—
 - (a) as if those persons were employees of the successor company ; and
 - (b) where the scheme is an exempt approved scheme, as if paragraph (a) of the proviso to section 21(3) of the Finance Act 1970 were omitted ;and in this subsection expressions which are also used in Chapter II of Part II of the said Act of 1970 have the same meanings as in that Chapter.
- (4) The vesting in the successor company by virtue of section 60 above of liability for any loan made to British Telecommunications shall not affect any direction in respect of the loan which has been given by the Treasury under section 416 of the Income and Corporation Taxes Act 1970 (income tax exemption for interest on foreign currency securities).
- (5) If the transfer date falls before the end of the period of three years beginning with 1st October 1981, then, for the purposes of section 29 of the Value Added Tax Act 1983 (value added tax: group registration) the successor company, the Post Office and any bodies corporate resident in the United Kingdom which are subsidiaries of either of those bodies shall be eligible to be treated as members of a group from that date until the end of that period; and where, by virtue of this subsection, two or more bodies are so treated, the Commissioners of Customs and Excise shall, as soon as practicable after the end of that period, terminate that treatment from such date as may be specified in the notice.

73 Interpretation of Part V

- (1) In this Part—
 - " debenture " includes debenture stock ;
 - " securities", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
 - " shares " includes stock ;
 - " subsidiary " has the same meaning as in the Companies Act 1948.
- (2) An order under section 60 above nominating any company for the purposes of that section and an order under subsection (1) of that section appointing the transfer date

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may be varied or revoked by a subsequent order at any time before any property, rights or liabilities vest in any company by virtue of section 60 above.

- (3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when all the issued shares in the company are held by or on behalf of the Crown.