

SCHEDULES

SCHEDULE 2

Section 12.

RESTRUCTURING SCHEMES

Contents and effect of scheme

- 1 (1) This paragraph shall have effect as regards the manner in which effect is to be given to—
- (a) the creation in accordance with a restructuring scheme of any interests or rights in or in relation to property; and
 - (b) the transfer in accordance with such a scheme of any property, rights or liabilities.
- (2) Provisions of a restructuring scheme for the creation, by virtue of section 12(1) of this Act or paragraph 2 below, of any interest or right in or in relation to any property shall specify—
- (a) the property in question and the interest or right to be created;
 - (b) the person in whose favour it is to be created; and
 - (c) the terms and conditions subject to which it is created;
- and this Act shall have effect so as, without further assurance, to create the specified interests and rights as from the beginning of the restructuring date or, in the case of interests or rights created by virtue of paragraph 2 below, as from such date as may be appointed by the scheme in relation to the interest or right in question.
- (3) Provisions of a restructuring scheme for the transfer of property, rights or liabilities to any person shall—
- (a) specify or describe the property, rights and liabilities to be transferred;
 - (b) allocate the property, rights or liabilities to the person to whom the transfer is to be made; and
 - (c) appoint the day on which each of the transfers for which the scheme provides is to come into force;
- and such a scheme may allocate different property, rights or liabilities to different persons and may appoint different days for the scheme to come into force in relation to different transfers and different persons.
- (4) This Act shall have effect, in relation to any provisions of a restructuring scheme for the transfer of any property, rights or liabilities, so as to transfer the property, rights or liabilities, at the beginning of the day appointed for the coming into force of the transfer and without further assurance, from the Corporation or, as the case may be, its wholly-owned subsidiary to the person to whom they are allocated under the scheme; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.
- (5) The preceding provisions of this paragraph shall have effect subject to so much of any restructuring scheme as provides for—

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- (a) the creation of any of the interests or rights to be created in accordance with the scheme, or
 - (b) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme,
- to be effected by or under any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) below.
- (6) The same restructuring scheme may contain provision made by virtue of subsection (1) of section 12 of this Act and provision made by virtue of subsection (2) of that section.
 - (7) Any matter which under this paragraph is to be included in a restructuring scheme, as well as any other matter for which provision may be made by such a scheme, may be included in the scheme wholly or partly by means of—
 - (a) a description framed by reference to the part of the Corporation’s undertaking which in accordance with the scheme is to be transferred to any person; or
 - (b) the application of any provision or description contained, in relation to that matter, in any agreement under section 13 of this Act.
 - (8) In their application to Scotland, sub-paragraphs (2) and (4) above shall have effect, respectively, with the omission of the words “without further assurance” and with the omission of the words “and without further assurance”.

Division of property by scheme

- 2 (1) For the purpose of making any such division as the Secretary of State considers appropriate of any of the property, rights and liabilities to which the Corporation and its wholly-owned subsidiaries are at any time entitled or subject between any two or more different persons (including, in so far as he thinks fit, any division between the Corporation or any such subsidiary and one or more other persons) a restructuring scheme may contain provision—
 - (a) for the creation, in favour of the Corporation or any of its wholly-owned subsidiaries, of an interest or right in or in relation to property transferred in accordance with that scheme to any person;
 - (b) for the creation, in favour of a person to whom any transfer is made, of an interest or right in or in relation to property so transferred to another;
 - (c) for giving effect to a transfer to any person by the creation, in favour of that person, of an interest or right in or in relation to property retained by the Corporation or any of its wholly-owned subsidiaries;
 - (d) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both one or more transferees and the Corporation or any of its wholly-owned subsidiaries;
 - (e) for rights and liabilities enforceable by or against more than one person in accordance with any provision falling within paragraph (d) above to be enforceable in different or modified respects by or against each or any of them;
 - (f) for the creation of new rights and liabilities as between different transferees and as between transferees and persons who, in pursuance of the division, continue to be entitled or subject to any property, rights or liabilities; and
 - (g) without prejudice to paragraph (f) above, for imposing on any transferee, the Corporation or any of its wholly-owned subsidiaries an obligation—

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- (i) to enter into such written agreements with any other person on whom any corresponding obligation is, could be or has been imposed by virtue of this paragraph (whether in the same or a different scheme), or
 - (ii) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) A restructuring scheme may contain such supplemental and incidental provision with respect to the interests, rights and liabilities of third parties in relation to anything to which the scheme relates as the Secretary of State considers to be necessary or expedient for the purposes of any such division as is mentioned in sub-paragraph (1) above, or in connection with anything contained in the scheme by virtue of that sub-paragraph.
- (3) The provision that may be contained in a restructuring scheme by virtue of sub-paragraph (2) above shall include provision for interests, rights or liabilities to which any third party is entitled or subject in relation to anything to which the scheme relates to be modified in such respects or in such manner as may be specified in or determined under the scheme.
- (4) An obligation imposed on any person by virtue of sub-paragraph (1)(g) above shall be enforceable by the bringing, by any person with or in favour of whom the agreement or instrument is to be entered into or executed, of civil proceedings for an injunction or for interdict or for other appropriate relief.
- (5) In this paragraph—
 - (a) references, in relation to a restructuring scheme, to a transferee include references to any person in whose favour any interest or right is created in accordance with the scheme; and
 - (b) the reference, in relation to such a scheme, to a third party is a reference to any person who (apart from any provision made by virtue of sub-paragraph (1)(e) or (2) above) is neither a transferee nor a person from whom any transfer is to be made in accordance with the scheme.
- (6) Sub-paragraphs (2) and (3) above shall be without prejudice to the generality of paragraph 4(1) below.

Property to which a scheme may relate

- 3 (1) The property, rights and liabilities that shall be capable of being transferred in accordance with a restructuring scheme shall include—
 - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Corporation or, as the case may be, its wholly-owned subsidiary;
 - (b) property acquired at a time after the making of the scheme and before the transfer comes into force, and rights and liabilities which arise or may arise in respect of anything occurring after the making of the scheme;
 - (c) property, rights and liabilities in relation to anything with respect to which provision has been made by a previous restructuring scheme;
 - (d) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom; and
 - (e) rights and liabilities under enactments.

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- (2) The transfers authorised by sub-paragraph (1)(a) above, and the interests and rights that may be created in accordance with a restructuring scheme, include transfers, interests and rights which are to take effect as if there were—
- (a) no such requirement to obtain any person's consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and
 - (c) no such interference with any interest or right,
- as there would be, in the case of any transaction apart from this Act, by reason of provisions having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the Corporation or any of its wholly-owned subsidiaries is entitled or subject to any property, right or liability.
- (3) Where apart from this sub-paragraph any person would have an entitlement, in consequence of anything done or likely to be done by or under this Act or the British Coal and British Rail (Transfer Proposals) Act 1993, to terminate, modify, acquire or claim an interest or right which, at the passing of this Act, is vested in the Corporation, or in any of its wholly-owned subsidiaries, or to treat any such interest or right as terminated or modified, then—
- (a) for the purposes of the transfer of the interest or right in accordance with a restructuring scheme, that entitlement shall not be enforceable in relation to that interest or right until after its transfer in accordance with such a scheme; and
 - (b) without prejudice to the preceding provisions of this paragraph or to paragraph 4(2)(b) below, that entitlement shall be enforceable in relation to the interest or right after its transfer only in so far as the scheme contains provision for it to be transferred subject to the provisions conferring that entitlement.
- (4) Subject to sub-paragraphs (5) and (6) below, nothing in sub-paragraph (1) or (2) above shall enable—
- (a) any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, or
 - (b) anything done under any such agreement,
- to give effect to any transfer, or to create any interest or right, which could not apart from this paragraph have been made or created by or under that agreement or instrument.
- (5) A restructuring scheme may provide for—
- (a) the transfers to which effect is to be given by or under any agreement or instrument entered into or executed in accordance with the scheme, or
 - (b) the interests or rights that are to be created by or under any such agreement or instrument,
- to include, to such extent as may be specified in the scheme, any such transfer, interest or right as is mentioned in sub-paragraph (2) above.
- (6) A restructuring scheme may provide that sub-paragraph (3) above shall apply in relation to the provisions of any agreement or instrument which is to be entered into or executed in accordance with the scheme, and in relation to any proposal for such an agreement or for the execution of such an instrument, as if the reference in sub-paragraph (3)(b) above to provision contained in the scheme included a reference to provision contained, in accordance with the scheme, in the agreement or instrument.

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Supplemental provisions of schemes

- 4 (1) A restructuring scheme may contain supplemental, incidental, consequential and transitional provision for the purposes of, or in connection with, any transfer of property, rights or liabilities for which the scheme provides or in connection with any other provisions contained in the scheme; and any such provision may include different provision for different cases or different purposes.
- (2) A restructuring scheme may, in relation to transfers in accordance with the scheme, make provision, either generally or for such purposes as may be specified in the scheme—
- (a) for the transfers to be regarded as taking place in a specified order;
 - (b) for the transferee to be treated as the same person in law as the Corporation or, as the case may be, its wholly-owned subsidiary;
 - (c) for agreements made, transactions effected or other things done by or in relation to the Corporation or any of its wholly-owned subsidiaries to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
 - (d) for references in any agreement (whether or not in writing) or in any deed, bond, instrument or other document to, or to any member or officer of, the Corporation or any of its wholly-owned subsidiaries to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme;
 - (e) for proceedings commenced by or against the Corporation or any of its wholly-owned subsidiaries to be continued by or against the transferee;
 - (f) for any such questions about the effect of the scheme as arise between different transferees, or between any of the transferees on the one hand and the Corporation or any of its wholly-owned subsidiaries or a transferee under another scheme on the other, to be referred to such arbitration as may be specified in or determined under the scheme in question, and for determinations in any such arbitrations to be conclusive;
 - (g) for a certificate as to the effect of the scheme which is given—
 - (i) jointly by the Corporation and any one or more persons who are transferees under the scheme, or
 - (ii) by the Corporation or any such transferee with the concurrence as to the statements contained in the certificate of any other persons,to be conclusive as between the persons giving, or concurring in the giving of, the certificate.
- (3) Where any person is entitled, in consequence of any transfer made in accordance with a restructuring scheme or in pursuance of any provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in England and Wales—
- (a) the scheme may contain provision for treating that person as having given another person an acknowledgment in writing of the right of that other person to the production of the document and to delivery of copies thereof; and
 - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

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- (4) Where any person is entitled, in consequence of any transfer made in accordance with a restructuring scheme or in pursuance of provision made under this paragraph, to possession of a document relating in part to the title to, or to the management of, any land or other property in Scotland transferred in accordance with a restructuring scheme, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) shall have effect in relation to the transfer as if the transfer had been effected by deed and as if from each of those subsections the words “unless specially qualified” were omitted.
- (5) Where a restructuring scheme makes provision in relation to any agreement contained in a licence granted under section 36 of the 1946 Act (licensing by Corporation of certain coal-mining operations and of coal exploration), that provision may include such modifications of that agreement, together with such modifications for the purposes of section 25(3) of this Act, as the Secretary of State considers appropriate in consequence of the provisions of Parts II and III of this Act.
- (6) In this paragraph—
- (a) references to a transfer include references to the creation in any person’s favour of any interest or right, and references to a transferee shall be construed accordingly; and
 - (b) references to a person who is entitled, in consequence of any transfer, to possession of a document, include references to the Corporation or any of its wholly-owned subsidiaries in a case where the Corporation or that subsidiary is entitled to retain possession of any document following any transfer.
- (7) Sub-paragraphs (2) to (5) above shall be without prejudice to the generality of sub-paragraph (1) above.

Duties in relation to foreign property etc.

- 5 (1) A restructuring scheme may provide for the imposition of duties on—
- (a) the Corporation or any of its wholly-owned subsidiaries, and
 - (b) any person to whom anything is transferred in accordance with the scheme, to take all such steps as may be requisite to secure that the vesting in that person, in accordance with the scheme, of any foreign property, right or liability is effective under the relevant foreign law.
- (2) The provisions of a restructuring scheme may require the Corporation or any of its wholly-owned subsidiaries, in performing any duty imposed on it by virtue of sub-paragraph (1) above, to comply with any directions of a person to whom anything is transferred in accordance with the scheme.
- (3) A restructuring scheme may provide that, until the vesting of any foreign property, right or liability of the Corporation or any of its wholly-owned subsidiaries in any person is effective under the relevant foreign law, it shall be the duty of the Corporation or that subsidiary to hold that property or right for the benefit of that person or, as the case may be, to discharge that liability on behalf of that person.
- (4) Nothing in any provision included by virtue of this paragraph in a restructuring scheme shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in any person in accordance with the scheme of any foreign property, right or liability.

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- (5) The Corporation and its wholly-owned subsidiaries shall each have all such powers as may be requisite for the performance of any duty imposed on it by virtue of this paragraph; but such a scheme may require a person to whom a transfer is made in accordance with the scheme to act (so far as possible) on behalf of the Corporation or its subsidiary for the purposes of, or in connection with, the performance of any such duty.
- (6) A restructuring scheme may provide that where—
- (a) any foreign property, rights or liabilities are acquired or incurred by the Corporation or any of its wholly-owned subsidiaries in respect of any other property, rights or liabilities, and
 - (b) by virtue of this paragraph the Corporation or its wholly-owned subsidiary holds the other property or rights for the benefit of another person or discharges the other liability on behalf of another person,
- the property, rights or liabilities acquired or incurred are immediately to become property, rights or liabilities of that other person; and the preceding provisions of this paragraph shall have effect accordingly in relation to the property, rights or liabilities acquired or incurred.
- (7) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with any rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (8) A restructuring scheme may provide—
- (a) for any obligation imposed by virtue of this paragraph to be enforceable as if contained in a contract between the person to whom the transfer in question is made and the Corporation or, as the case may be, its wholly-owned subsidiary; and
 - (b) for expenses incurred by the Corporation or any of its wholly-owned subsidiaries in consequence of any provision made by virtue of this paragraph to be met by that person.

Modification of effect of scheme by agreement

- 6 (1) This paragraph applies where any person to whom anything has been transferred in accordance with a restructuring scheme agrees in writing with another person to or from whom anything has been transferred in accordance with that or any other restructuring scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying either or both of the schemes—
- (a) any or all of the property, rights or liabilities transferred in accordance with the scheme or either of them, and
 - (b) any or all of the property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,
- should be transferred from one to the other as from a date appointed by the agreement.
- (2) If—
- (a) the agreement is entered into within the period of twelve months after the time when a transfer in accordance with a restructuring scheme of property, rights or liabilities to any of its parties takes effect, and

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- (b) the Secretary of State has given his approval to the transfer for which the agreement provides and to its terms and conditions,
then the transfer for which the agreement provides shall take effect on the date appointed by the agreement in the like manner as a transfer for which provision is made by a restructuring scheme.
- (3) Subject to the approval of the Secretary of State and to sub-paragraphs (4) to (6) below, the provisions that may be contained in a modification agreement shall include any such provision in relation to any transfer for which it provides as may be contained, in relation to any transfer for which a restructuring scheme provides, in that scheme.
- (4) Nothing in any modification agreement shall provide for any interests or rights to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (5) A modification agreement shall have effect subject to the provisions of any enactment or subordinate legislation which makes provision, in relation to any transactions with the same effect, for the registration of anything in a statutory register.
- (6) The consent of the Treasury shall be required for the inclusion in a modification agreement of any provision having the effect of modifying any provision which is contained in a restructuring scheme for any of the purposes of Schedule 4 to this Act.
- (7) In this paragraph references to a transfer in accordance with a restructuring scheme include references to the creation of any interest, right or liability in accordance with such a scheme.
- (8) In this paragraph and the following provisions of this Schedule “modification agreement” means any agreement providing for a transfer which is to take effect in accordance with sub-paragraph (2) above.

The Transfer of Undertakings (Protection of Employment) Regulations 1981

- 7 (1) The 1981 regulations shall apply to any transfer of any undertaking or part of an undertaking in accordance with a restructuring scheme or modification agreement as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person in whom that undertaking or part was vested immediately before the coming into force of the transfer.
- (2) Nothing in the preceding provision of this Schedule shall authorise the making of any provision modifying the operation of the 1981 regulations in relation to any such transfer as is mentioned in sub-paragraph (1) above.
- (3) It shall be the duty of the Secretary of State, before making a restructuring scheme or approving a modification agreement, to give such notice of his proposals to such persons as he considers appropriate for enabling any provisions of the 1981 regulations applicable to any transfer in accordance with the scheme or agreement to be complied with by the person who for the purposes of the regulations is the transferor in relation to that transfer.
- (4) In this paragraph—
 “the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981; and
 “undertaking” has the same meaning as in the 1981 regulations.

(5) This paragraph shall be without prejudice to the provisions of Schedule 5 to this Act.

Compensation

- 8 (1) Where, in consequence of any provisions included in a restructuring scheme for the purposes of any such division as is mentioned in paragraph 2(1) above, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2) below, the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights; or
 - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) above are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
 - (i) an interest in only part of that property; or
 - (ii) separate interests in different parts of that property;
 - (b) a right of the third party against the Corporation or any of its wholly-owned subsidiaries is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the Corporation or that subsidiary;
 - (c) a liability of the third party to the Corporation or any such subsidiary is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the Corporation or that subsidiary; or
 - (d) any interests, rights or liabilities of the third party are altered in such other manner as does not either—
 - (i) relate to the identity of the person or persons against whom the third party's interests or rights are enforceable or of the person or persons by whom the liabilities to which he is or may become subject are enforceable; or
 - (ii) effect a modification in relation to which sub-paragraph (3) below would apply but for paragraph (c) of that sub-paragraph.
- (3) Where—
- (a) a third party would, apart from any provisions of a restructuring scheme or paragraph 3(3) above, have become entitled to, or to exercise, any interest or right arising or exercisable—
 - (i) in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, or
 - (ii) otherwise in respect of anything done by or under this Act or the British Coal and British Rail (Transfer Proposals) Act 1993,
 - (b) the provisions of that scheme or of paragraph 3(3) above have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a)(i) or (ii) above, and

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- (c) provision is not made by a restructuring scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

- (4) A liability to pay compensation under this paragraph shall fall on the persons not themselves being third parties who, as the case may be—
- (a) have interests in the whole or any part of the property affected by the modification in question;
 - (b) are subject to the rights of the person to be compensated which are affected by that modification;
 - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification; or
 - (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3) above;

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

- (5) Where any liability falls by virtue of sub-paragraph (4) above on the Corporation or any of its wholly-owned subsidiaries, that sub-paragraph shall have effect subject to so much of any restructuring scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.
- (6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall, according to whether the claimant requires the matter to be determined in England and Wales or in Scotland, be referred to and determined by—
- (a) an arbitrator appointed by the Lord Chancellor; or
 - (b) an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, and to any modification agreement, as it has effect in relation to the provisions of a restructuring scheme.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to a right to compensation under this paragraph, means any person other than—
- (a) the Corporation or any of its wholly-owned subsidiaries;
 - (b) the Authority or the Secretary of State;
 - (c) a company which is wholly owned by the Crown at the time in relation to which those provisions have effect; or
 - (d) where the provisions in question are the provisions of a restructuring scheme, any person whose consent to those provisions has been given for the purposes of section 12(4) of this Act or who has agreed to those provisions by virtue of being a party to an agreement under section 13 of this Act or a modification agreement.

Notice to persons affected by scheme

- 9 (1) It shall be the duty of the Secretary of State, where it appears to him in the case of any restructuring scheme or modification agreement that there are persons whose property, rights or liabilities are affected in a manner that may give rise to an entitlement to compensation under paragraph 8 above, to give notice under this paragraph to every such person.
- (2) A notice to be given by the Secretary of State under this paragraph shall be given as soon as reasonably practicable after he makes the scheme or, as the case may be, gives his approval in relation to the agreement.
- (3) A notice under this paragraph shall set out the general effect of the scheme or, as the case may be, of the agreement and shall describe the respects in which it appears to the Secretary of State that the property, rights or liabilities of the person to whom it is given are affected.
- (4) For the purposes of section 63(3) of this Act, so far as it relates to the service of a notice under this paragraph, any address which—
- (a) has been specified to the Corporation or any of its wholly-owned subsidiaries, and
 - (b) is notified to the Secretary of State in pursuance of the Corporation's duty under section 14 of this Act,
- shall be deemed to have been specified to the Secretary of State.
- (5) Where it is not reasonably practicable for the notice under this section to any person to be given to that person in accordance with section 63 of this Act, the Secretary of State shall, instead, take such steps for publishing the contents of the notice as he may consider appropriate for the purpose of bringing the matters to which the notice relates to the attention of that person.