



Atomic Energy Authority Act 1995

CHAPTER 37

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CHAPTER 37

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Atomic Energy Authority Act 1995

1995 CHAPTER 37

An Act to make provision for the transfer of property, rights and liabilities of the United Kingdom Atomic Energy Authority to other persons; and for connected purposes.

[8th November 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Transfer of property, rights and liabilities of the Authority

1.—(1) If so directed by the Secretary of State under section 2(1) of this Act, the United Kingdom Atomic Energy Authority (in this Act referred to as “the Authority”) shall make a scheme or schemes providing for the transfer to any person or persons of such property, rights and liabilities of the Authority as are specified in, or determined in accordance with, the scheme.

Atomic Energy Authority to make schemes for transfer of property, rights and liabilities if so directed.

(2) In this Act a “transfer scheme” means a scheme made under subsection (1) above (including a scheme so made by virtue of section 2(3) of this Act).

(3) No transfer scheme may provide for the transfer of—

- (a) a nuclear site licence (within the meaning of the Nuclear Installations Act 1965), or
- (b) the fee simple estate in any land which, immediately before the day on which the scheme comes into force, consists of or is wholly or partly comprised in a site in respect of which such a licence held by the Authority is in force.

1965 c. 57.

(4) The person or persons to whom anything is transferred by a transfer scheme may be or include one or more companies formed or acquired by the Authority or the Secretary of State for that purpose.

(5) Schedule 1 to this Act shall have effect with respect to transfer schemes.

(6) In the application of subsection (3)(b) above to Scotland, the reference to the fee simple estate shall be construed as a reference—

- (a) in the case of feudal property, to the estate or interest of the proprietor of the *dominium utile*, or
- (b) in the case of any property other than feudal property, to the estate or interest of the owner.

Powers of
Secretary of State.

2.—(1) The Secretary of State may from time to time direct the Authority to make, before a date specified in the direction, a transfer scheme which relates to such property, rights and liabilities as are specified in, or determined in accordance with, the direction and contains such other provisions as may be so specified.

(2) A transfer scheme shall not take effect unless it is approved by the Secretary of State and by the Treasury; and the Secretary of State may modify such a scheme before approving it.

(3) If—

- (a) the Secretary of State decides not to approve a scheme that has been submitted to him by the Authority (either with or without modifications), or
- (b) the Secretary of State has given a direction under subsection (1) above and the Authority have failed, before the date specified in the direction, to submit the scheme for the approval of the Secretary of State,

the Secretary of State may himself make a transfer scheme with the consent of the Treasury.

(4) Subsections (1) to (3) above shall have effect subject to section 1(3) of this Act.

(5) Subject to subsection (6) below, the Secretary of State shall not approve or make a transfer scheme containing any provision in accordance with which any person other than—

- (a) a company which is wholly owned by the Crown, or
- (b) a wholly-owned subsidiary of the Authority,

becomes entitled or subject to any property, rights and liabilities unless it appears to the Secretary of State that the person has consented to the provisions of the scheme so far as they relate to him.

(6) Subsection (5) above shall not require the consent of any person to so much of a transfer scheme as—

- (a) relates to property, rights or liabilities to which that person is already entitled or subject, and
- (b) appears to the Secretary of State to be made for purposes that are no more than supplemental or incidental to the other provisions of the scheme.

(7) Before—

- (a) declining to approve a transfer scheme, or
- (b) modifying or making such a scheme,

the Secretary of State shall consult the Authority.

(8) The Secretary of State may—

- (a) exercise his powers under this section,
- (b) give any direction to the Authority under subsection (2) of section 3 of the Atomic Energy Authority Act 1954 (general power of Secretary of State to give directions to the Authority) which in his opinion is appropriate for the purpose of facilitating—
 - (i) any transfer effected or proposed to be effected under section 1 of this Act, or
 - (ii) the disposal of securities of a successor company, and
- (c) do anything else which in his opinion is appropriate for that purpose,

1954 c. 32.

whether or not the exercise of those powers, the giving of that direction or the doing of that thing is consistent with promoting or controlling the development of atomic energy.

3. Without prejudice to any powers of the Authority apart from this section, the Authority shall have power to do anything which in their opinion is appropriate for the purpose of facilitating—

Supplementary provisions as to the Authority's powers.

- (a) any transfer effected or proposed to be effected under section 1 of this Act, or
- (b) the disposal of securities of a successor company.

4.—(1) The Authority may enter into any such agreement as they think fit for the purpose of accepting or imposing contractual obligations with respect to, or to anything connected with, the manner in which their powers by virtue of section 1 of this Act are to be exercised.

Agreements with respect to transfer schemes.

(2) The Secretary of State may enter into such agreement as he thinks fit with respect to, or to anything connected with, the manner and circumstances in which his powers under or by virtue of section 2 of this Act are to be exercised.

(3) Any agreement under this section may, in particular, provide for the making of payments to the Authority or the Secretary of State (by way of consideration or otherwise) in respect of anything transferred or created in accordance with a transfer scheme.

(4) The consent of the Treasury shall be required for the making of an agreement under this section; and the consent of the Secretary of State shall also be required for the making by the Authority of an agreement under this section.

(5) Any sums received by the Secretary of State in pursuance of an agreement under this section shall be paid into the Consolidated Fund.

5.—(1) It shall be the duty of the Authority to furnish the Secretary of State with all such information and other assistance as he may require for the purposes of, or in connection with—

Duty of Authority to assist Secretary of State in connection with transfer schemes.

- (a) the exercise of any of his powers in relation to a transfer scheme or in relation to any agreement under section 4 of this Act, or
- (b) the making by him of a transfer scheme or of any such agreement.

(2) The obligation of the Authority under this section shall include a duty to secure, as far as practicable, that their subsidiaries furnish all such information and assistance as the Secretary of State may require for the purposes of, or in connection with, the exercise of any such power, or the making of any such scheme or agreement, as is mentioned in subsection (1) above.

(3) A duty under this section to furnish information or assistance, or to secure that it is furnished, shall be performed within such period after the requirement giving rise to the duty as the Secretary of State may allow.

Successor companies

Successor companies.

6. Schedule 2 to this Act (which relates to successor companies) shall have effect.

Disposal by Authority or Secretary of State of shares in successor companies.
1981 c. 48.

7.—(1) In section 1 of the Atomic Energy (Miscellaneous Provisions) Act 1981 (extension of power of Authority and Secretary of State to dispose of shares), subsection (4) (which limits the power of the Authority to dispose of shares) and subsection (5) (which limits the power of the Secretary of State to dispose of shares) shall not apply in relation to shares in any successor company.

(2) The Authority shall not dispose of any securities of any successor company except with the consent of the Secretary of State and the Treasury.

Financial arrangements relating to transfers

Taxation provisions.

8. Schedule 3 to this Act (which relates to taxation) shall have effect.

Pensions.

9. Schedule 4 to this Act (which relates to pensions) shall have effect.

Extinguishment of certain liabilities

Extinguishment of certain liabilities.

10.—(1) Subject to subsection (2) below, the Secretary of State may, at any time after the coming into force of a transfer scheme, by order extinguish all or any of the liabilities of the Authority in respect of the principal of such relevant loans as may be specified in the order to such extent as may be so specified.

(2) The aggregate amount of the liabilities extinguished under subsection (1) above shall not exceed the aggregate of—

- (a) any sums received by the Secretary of State or the Authority in pursuance of agreements under section 4 of this Act, and
- (b) any sums received by the Treasury, the Secretary of State or the Authority on the disposal of any securities of a successor company, or of rights to subscribe for such securities.

(3) The Secretary of State may by order extinguish all or any of the liabilities of a publicly owned successor company in respect of the principal of such relevant loans as may be specified in the order to such extent as may be so specified.

(4) Where any liabilities are extinguished under subsection (1) or (3) above, the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to the liabilities so extinguished.

(5) Where the Secretary of State has made an order under subsection (3) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to a successor company whose liabilities are extinguished by the order; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—

- (a) to the Treasury, the Secretary of State or the Authority, or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury, the Secretary of State or the Authority.

(6) No direction may be given to a successor company under subsection (5) above at any time after that company has ceased to be publicly owned.

(7) Unless the Secretary of State otherwise determines in any particular case, where a company is directed to issue debentures in pursuance of this section—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates 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 payable on the debentures to which the direction relates, and as to the payment of interest on those principal sums, shall be the same as the corresponding terms of the loans specified in the order.

(8) For the purposes of subsection (7) above, any express or implied terms of a 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.

(9) Paragraphs 1(4) and (5), 3 and 4 of Schedule 2 to this Act shall apply for the purposes of subsection (5) above as they apply for the purposes of paragraph 1 of that Schedule.

(10) The Secretary of State shall not exercise any power conferred on him by this section except with the consent of the Treasury.

(11) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(12) In this section “relevant loan”—

- (a) in relation to the Authority, means the Authority’s commencing capital debt under section 1 of the Atomic Energy Authority Act 1986 and any loan made to the Authority under section 4 of that Act, and
- (b) in relation to a successor company, means—
 - (i) any debt or loan mentioned in paragraph (a) above, if and to the extent that the liability to repay it is transferred to the company in accordance with a transfer scheme, and
 - (ii) any loan made to that company by the Secretary of State under paragraph 11 of Schedule 2 to this Act.

1986 c. 3.

Membership of the Authority

Membership of
the Authority.
1954 c. 32.

11.—(1) Section 1 of the Atomic Energy Authority Act 1954 shall be amended as follows.

(2) In subsection (2) (which provides that the Authority shall consist of a chairman and not less than seven nor more than fifteen other members) for “seven” there shall be substituted “four”.

(3) In subsection (3) (which provides that all the members are to be appointed by the Secretary of State and that certain of them are to have certain experience) the words from “and of those members” to the end shall be omitted.

Supplementary provisions

Expenses.

12. There shall be paid out of money provided by Parliament any increase attributable to this Act in—

- (a) the administrative expenses of the Secretary of State or the Treasury, or
- (b) the sums which under any other Act are payable out of money so provided.

Interpretation.

13.—(1) In this Act, unless the context otherwise requires—

“the Authority” means the United Kingdom Atomic Energy Authority;

“debentures” 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” and “wholly-owned subsidiary” have the same meaning as in the Companies Act 1985;

1985 c. 6.

“successor company” means any company which, at a time when it is wholly owned by the Crown or is a wholly-owned subsidiary of the Authority, becomes entitled or subject, in accordance with a transfer scheme, to any property, rights or liabilities;

“transfer scheme” has the meaning given by section 1 of this Act.

(2) A company shall be regarded for the purposes of this Act as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than by, or by a nominee of, the Treasury or the Secretary of State.

(3) A successor company shall be regarded for the purposes of this Act as publicly owned at any time when it—

- (a) is wholly owned by the Crown, or
- (b) is a wholly-owned subsidiary of the Authority.

Short title and
extent.

14.—(1) This Act may be cited as the Atomic Energy Authority Act 1995.

(2) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 1(5).

TRANSFER SCHEMES: SUPPLEMENTARY PROVISIONS

Contents and effect of scheme

1.—(1) A transfer scheme may define the property, rights and liabilities to be transferred to a particular person—

- (a) by specifying or describing the property, rights and liabilities in question,
- (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the Authority's undertaking, or
- (c) partly in one way and partly in the other.

(2) A transfer scheme shall appoint the day on which it is to come into force.

(3) This Act shall have effect, in relation to any provision of a transfer 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 scheme, and without further assurance, from the Authority to the person to whom they are allocated under the scheme and to vest them in that person; and the provisions of that scheme in relation to that transfer shall have effect from that time accordingly.

(4) This Act shall have effect, in relation to any provision of a transfer scheme for the creation, by virtue of paragraph 2 below, of any interest or right, so as to create the specified interests and rights, at the beginning of the day appointed for the coming into force of the scheme and without further assurance.

(5) The preceding provisions of this paragraph shall have effect subject to so much of a transfer scheme as provides for—

- (a) the transfer of any of the property, rights or liabilities to be transferred in accordance with the scheme, or
- (b) the creation of any of the rights or interests to be created 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) In their application to Scotland, sub-paragraphs (3) and (4) above shall have effect with the omission of the words "and without further assurance".

Division of Authority's undertaking by scheme

2.—(1) For the purposes of making any such division as the Authority consider appropriate of any of the property, rights and liabilities of the Authority between two or more persons (including any division between the Authority and any one or more other persons), a transfer scheme may contain provision—

- (a) for the creation in favour of the Authority 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 Authority,

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- (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 Authority,
- (e) for rights and liabilities enforceable 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 (including rights of indemnity and duties to indemnify) as between different transferees and as between any transferee and the Authority, and
- (g) without prejudice to paragraph (f) above, for imposing on any transferee or the Authority an obligation—
 - (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 of this Schedule (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 transfer 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 Authority consider 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 transfer 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 or determined under the scheme.

(4) The provision that may be contained in a transfer scheme by virtue of sub-paragraph (1)(f) above shall include the creation of such rights and liabilities as the Authority think fit for the purpose of converting into a contract between the transferee under the scheme and the Authority any arrangements between different parts of the Authority's undertaking which exist immediately before the day on which the scheme comes into force.

(5) 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.

(6) In relation to any transfer scheme made by the Secretary of State by virtue of section 2(3) of this Act, the first reference to the Authority in sub-paragraph (1) above, the reference to the Authority in sub-paragraph (2) above and the first such reference in sub-paragraph (4) above shall have effect as references to the Secretary of State.

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 transfer scheme shall include—

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the Authority,
- (b) property acquired at a time after the making of the scheme and before it 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 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
- (d) rights and liabilities under enactments.

(2) The transfers authorised by sub-paragraph (1)(a) above, and the interests and rights that may be created in accordance with a transfer 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 Authority are 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, to terminate, modify, acquire or claim an interest or right which is vested in the Authority at the passing of this Act or acquired by the Authority after that time, or to treat any such interest or right as modified or terminated, then—

- (a) for the purposes of the transfer of the interest or right in accordance with a transfer 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 5(2)(a) 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 by or under that agreement or instrument.

(5) A transfer 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 transfer 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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Certain debts owed to Secretary of State

- 1986 c. 3. 4. No liability of the Authority in respect of the Authority's commencing capital debt under section 1 of the Atomic Energy Act 1986 or in respect of any loan made to them under section 4 of that Act shall be transferred by a transfer scheme except to a company which—
- (a) is wholly owned by the Crown, or
 - (b) is a wholly-owned subsidiary of the Authority.

Supplementary provisions of schemes

- 5.—(1) A transfer scheme may contain supplemental, 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 transfer 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 transferee to be treated as the same person in law as the Authority,
 - (b) for agreements made, transactions effected or other things done by or in relation to the Authority 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,
 - (c) 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 Authority 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,
 - (d) for proceedings commenced by or against the Authority to be continued by or against the transferee, and
 - (e) for any such disputes as to the effect of the scheme as arise between different transferees, or between any transferee on the one hand and the Authority on the other, to be referred to such arbitration as may be specified in or determined under the scheme.
- (3) Where any person is entitled, in consequence of any transfer made in accordance with a transfer 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 production of the document and to delivery of copies of the document, 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.
- (4) Where any person is entitled, in consequence of any transfer made in accordance with a transfer 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 Scotland transferred in accordance with a transfer scheme, subsections (1) and (2) of section 16 of the Land Registration (Scotland) 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.
- 1925 c. 20.
- 1979 c. 33.

(5) 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 Authority in a case where the Authority are entitled to retain possession of any document following any transfer.

(6) Sub-paragraphs (2) to (4) above shall be without prejudice to the generality of sub-paragraph (1) above.

Proof of title by certificate

6.—(1) The Authority and any person to whom anything has been transferred in accordance with a transfer scheme may issue a joint certificate stating that—

- (a) any property specified in the certificate, or
- (b) any such interest in or right over any such property as may be so specified,

is property, or (as the case may be) an interest or right, which was intended to be and was vested by virtue of the scheme in such one of them as may be so specified; and any such certificate shall be conclusive evidence for all purposes of that fact.

(2) The Authority and any person to whom anything has been transferred in accordance with a transfer scheme may issue a joint certificate stating that any liability specified in the certificate is a liability which was intended to be, and was, vested by virtue of the scheme in such one of them as may be so specified.

(3) Any certificate under sub-paragraph (2) above—

- (a) shall, if given with the concurrence of every person who is entitled to enforce the liability at the time of the giving of the certificate, be conclusive evidence for all purposes of the fact referred to in that sub-paragraph, and
- (b) shall, in any other case, be conclusive evidence of that fact as between the persons giving or concurring in the giving of the certificate.

(4) If, after the end of the period of one month beginning with the date of a request from either the Authority or a transferee under a transfer scheme for the preparation of a joint certificate under sub-paragraph (1) or (2) above as respects any property, interest, right or liability, they have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as he may direct.

(5) 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 transfer scheme include references to a modification agreement as defined in paragraph 8(7) below.

Duties in relation to foreign property etc.

7.—(1) It shall be the duty of the Authority and of any person to whom any foreign property, right or liability is transferred to take all such steps as may be requisite to secure that the vesting in the transferee, in accordance with the scheme, of the foreign property, right or liability is effective under the relevant foreign law.

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(2) Until the vesting in the transferee in accordance with the scheme of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the Authority to hold that property or right for the benefit of, or to discharge that liability on behalf of, the transferee.

(3) Nothing in sub-paragraphs (1) and (2) above shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the transferee in accordance with the scheme of any foreign property, right or liability.

(4) The Authority shall have all such powers as may be requisite for the performance of their duties under this paragraph, but it shall be the duty of a person to whom a transfer is made in accordance with a transfer scheme to act on behalf of the Authority (so far as possible) in performing the duties imposed on them by this paragraph.

(5) Where—

- (a) any foreign property, rights or liabilities are acquired or incurred by the Authority in respect of any other property, rights or liabilities, and
- (b) by virtue of this paragraph the Authority holds the other property or rights for the benefit of another person or discharges the 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.

(6) 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 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.

(7) Any expenses incurred by the Authority under this paragraph shall be met by the person to whom the transfer in question is made.

(8) Any obligation imposed under this paragraph shall be enforceable as if contained in a contract between the Authority and the person to whom the transfer in question is made.

Modification of scheme by agreement

8.—(1) This paragraph applies where any person to whom anything has been transferred in accordance with a transfer scheme agrees in writing with the Authority or another person to whom anything has been transferred in accordance with that or any other transfer scheme that, for the purpose of modifying the effect of the scheme or, as the case may be, of modifying the effect of either or both of the schemes—

- (a) any 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 transfer scheme of property, rights or liabilities to any of its parties comes into force, and

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- (b) the Secretary of State, with the consent of the Treasury, 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 transfer scheme.

(3) Subject to the approval of the Secretary of State and to sub-paragraph (4) 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 transfer 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) Before—

- (a) refusing his approval for the purposes of this paragraph, or
 (b) giving his approval for those purposes in a case where the Authority are not a party to the proposed agreement,

the Secretary of State shall consult the Authority.

(6) In this paragraph references to a transfer in accordance with a transfer scheme include references to the creation of any interest, right or liability in accordance with such a scheme.

(7) 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

9.—(1) The 1981 regulations shall apply to any transfer of any undertaking or part of an undertaking in accordance with a transfer 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) It shall be the duty of the Secretary of State, before—

- (a) giving a direction under subsection (1) of section 2 of this Act,
 (b) modifying a transfer scheme by virtue of subsection (2) of that section,
 (c) making a transfer scheme by virtue of subsection (3) of that section, or
 (d) 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.

(3) In this paragraph—

- (a) “the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981, and S.I. 1981/1794.
 (b) “undertaking” has the same meaning as in the 1981 regulations.

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Compensation

10.—(1) Where, in consequence of any provisions included in a transfer 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 Authority 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 Authority, or
- (c) a liability of the third party to the Authority 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 Authority.

(3) Where—

- (a) a third party would, apart from any provisions of a transfer scheme or paragraph 3(3) above, have become entitled to, or to exercise, any interest or right arising or exercisable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, and
- (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) above, and
- (c) provision is not made by a transfer 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 being themselves 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 the modification in question,
- (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 rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

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(5) Where any liability falls by virtue of sub-paragraph (4) above on the Authority, that sub-paragraph shall have effect subject to so much of any transfer 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 be referred to and determined—

- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, by an arbitrator appointed by the Lord Chancellor, or
- (b) where the claimant requires the matter to be determined in Scotland, by 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 transfer scheme.

(8) In this paragraph “third party”, in relation to provisions capable of giving rise to compensation under this paragraph, means any person other than—

- (a) the Authority or any of their wholly-owned subsidiaries,
- (b) the Secretary of State,
- (c) any successor company which is wholly owned by the Crown at the time in relation to which those provisions have effect, or
- (d) any person whose consent to those provisions has been given for the purposes of section 2(5) of this Act or who has agreed to those provisions by virtue of being a party to a modification agreement.

SCHEDULE 2

Section 6.

SUCCESSOR COMPANIES

Initial Government holding in any successor company

1.—(1) As a consequence of the vesting in a successor company of property, rights and liabilities in accordance with a transfer scheme, that company shall issue such securities of the company as the Secretary of State may from time to time direct—

- (a) to the Treasury or the Secretary of State, or
- (b) to any person entitled to require the issue of the securities following their initial allotment, in accordance with directions of the Secretary of State, to the Treasury or the Secretary of State.

(2) As a consequence of the vesting referred to in sub-paragraph (1) above, any successor company which is a wholly-owned subsidiary of the Authority shall also issue such securities of the company as the Authority may with the consent of the Secretary of State from time to time direct—

- (a) to the Authority, or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Authority.

(3) No direction shall be given to a successor company under sub-paragraph (1) or (2) above at any time after that company has ceased to be publicly owned.

(4) Securities to be issued or allotted in pursuance of this paragraph shall be issued or allotted at such time or times, and (subject to sub-paragraph (5) below) on such terms, as may be specified in the direction.

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1985 c. 6

- (5) Any shares issued in pursuance of this paragraph—
- (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 Act 1985 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(6) The Secretary of State may not exercise any power conferred on him by this paragraph, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this paragraph, without the consent of the Treasury.

Government investment in securities of successor company

2.—(1) The Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire—

- (a) securities of a successor company, or
- (b) rights to subscribe for any such securities.

(2) The Secretary of State may not dispose of any securities or rights acquired by virtue of this paragraph without the consent of the Treasury.

(3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this paragraph shall be paid out of money provided by Parliament.

Exercise of functions through nominees

3.—(1) The Treasury or, with the consent of the Treasury, the Secretary of State may, for the purposes of paragraph 1 or 2 above, appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—

- (a) securities of a company may be issued under paragraph 1 above to any nominee of the Treasury or of the Secretary of State appointed for the purposes of that paragraph 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 paragraph 2 above may acquire securities or rights under that paragraph,

in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.

(2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of sub-paragraph (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

Payment of dividends etc. into Consolidated Fund

4. Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired by virtue of paragraph 1 or 2 above shall be paid into the Consolidated Fund.

Statutory accounts

5.—(1) The following provisions of this paragraph shall have effect for the purposes of any statutory accounts of a successor company.

(2) The vesting in the company effected by any transfer scheme shall be taken—

- (a) to have been effected immediately after the end of the last financial year of the Authority to end before the coming into force of the scheme, and

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(b) to have been a vesting of such property, rights and liabilities as are determined by or under the scheme.

(3) The value of any asset and the amount of any liability which is taken by virtue of sub-paragraph (2) above to have been vested in the company shall be taken to have been—

(a) in the case where the value or amount is determined by or under the transfer scheme, that value or amount, and

(b) in any other case, the value or amount assigned to the asset or liability for the purposes of the statements of account prepared by the Authority under section 4(3) of the Atomic Energy Authority Act 1954 in respect of their last financial year to end before the day on which the scheme comes into force.

1954 c. 32.

(4) In this paragraph “statutory accounts”, in relation to a company, means any accounts of that company prepared for the purposes of any provision of the Companies Act 1985 (including group accounts).

1985 c. 6.

Distributable reserves of successor companies

6.—(1) Where statutory accounts of a successor company prepared as at any time would show the company as having net assets in excess of the aggregate of—

(a) its called-up share capital, and

(b) the amount, apart from any property, rights and liabilities to which the company has become entitled or subject in accordance with any transfer scheme, of its undistributable reserves,

then, for the purposes of section 263 of the Companies Act 1985 (profits available for distribution) and of the preparation as at that time of any statutory accounts of the company, that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company’s accumulated realised profits over its accumulated realised losses.

(2) For the purposes of section 264 of the Companies Act 1985 (restriction on distribution of assets) so much of any excess of a company’s net assets as falls, in accordance with a direction under this paragraph, to be treated otherwise than as representing an excess of the company’s accumulated realised profits over its accumulated realised losses shall be treated (subject to any modification of that direction by a subsequent direction under this paragraph) as comprised in the company’s undistributable reserves.

(3) A direction under this paragraph may provide, in relation to any amount to which it applies, that, on the realisation (whether before or after the company in question ceases to be publicly owned) of such profits and losses as may be specified or described in the direction, so much of that amount as may be determined in accordance with the direction is to cease to be treated as mentioned in sub-paragraph (2) above and is to fall to be treated as comprised in the company’s accumulated realised profits.

(4) The Secretary of State shall not give a direction under this paragraph in relation to a successor company at any time after the company has ceased to be publicly owned.

(5) The consent of the Treasury shall be required for the giving of a direction under this paragraph.

(6) In this paragraph—

“called-up share capital” has the same meaning as in the Companies Act 1985;

“net assets” has the meaning given by subsection (2) of section 264 of that Act;

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“undistributable reserves” has the meaning given by subsection (3) of that section;

and references in this paragraph, in relation to a company, to statutory accounts are references to accounts of that company prepared in respect of any period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period.

Dividends

1985 c. 6.

7.—(1) Where a distribution is proposed to be declared during any accounting reference period of a successor company which includes a transfer date or before any accounts are laid or filed in respect of such a period, sections 270 to 276 of the Companies Act 1985 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

(a) references in section 270 to the company’s accounts or to accounts relevant under that section, and

(b) references in section 273 to initial accounts,

included references to such accounts as, on the assumptions stated in subparagraph (2) below, would have been prepared under section 226 of that Act in respect of the relevant year (in this paragraph referred to as “the relevant accounts”).

(2) Those assumptions are—

(a) that the relevant year had been a financial year of the successor company,

(b) that the vesting effected by this Act in accordance with the transfer scheme had been a vesting of all the property, rights and liabilities transferred to the company by that scheme and had been effected immediately after the beginning of that year,

(c) that the value of any asset and the amount of any liability of the Authority vested in the successor company by virtue of the transfer scheme had been the value or (as the case may be) amount determined by or under the transfer scheme or (if there is no such determination) the value or amount assigned to the asset or liability for the purposes of the statements of account prepared by the Authority under section 4(3) of the Atomic Energy Authority Act 1954 in respect of their financial year immediately preceding the relevant year,

1954 c. 32.

(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) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 5 above.

(4) In this paragraph—

“accounting reference period” has the meaning given by section 224 of the Companies Act 1985;

“complete financial year” means a financial year ending with 31st March;

“the relevant year”, in relation to any transfer date, means the last complete financial year ending before that date;

“a transfer date”, in relation to a successor company, means the date of the coming into force of any transfer scheme in accordance with which any property, rights and liabilities are transferred to that company.

Application of Trustee Investments Act 1961

8.—(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 a 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 every 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 sub-paragraph (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;

“the transfer date”, in relation to a successor company, means the first date on which any transfer scheme in accordance with which any property, rights and liabilities are transferred to that company comes into force.

Accounts to be laid before Parliament

9. As soon as practicable after the holding of any general meeting of a successor company which is wholly owned by the Crown, the Secretary of State shall lay before each House of Parliament a copy of any accounts which, in accordance with any requirement of the Companies Act 1985, are laid before the company at that meeting, and of any documents which are annexed or attached to any such accounts.

Temporary restrictions on borrowing of companies

10.—(1) If the articles of association of a 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 during any period by the group to which that company belongs, 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 sub-paragraph (1) above an alteration of the articles of association of a successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in that sub-paragraph, and
- (b) is made at a time when that company has ceased to be publicly owned.

(3) In this paragraph “group”, in relation to a company, means that company and all of its subsidiaries taken together.

Government lending to the companies

11.—(1) Subject to paragraph 13 below, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is wholly owned by the Crown.

(2) Subject to section 10 of this Act, any loans which the Secretary of State makes under this paragraph shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.

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(3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this paragraph.

(4) Any sums received under sub-paragraph (2) above by the Secretary of State shall be paid into the National Loans Fund.

(5) It shall be the duty of the Secretary of State as respects each financial year—

(a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of sub-paragraph (3) above and of sums received by him under sub-paragraph (2) above and of the disposal by him of the sums so issued or received, and

(b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

Treasury guarantees for loans

12.—(1) Subject to paragraph 13 below, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any successor company which is wholly owned by the Crown.

(2) Immediately after a guarantee is given under this paragraph, the Treasury shall lay a statement of the guarantee before each House of Parliament; and immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay a statement relating to that sum.

(3) Any sums required by the Treasury for fulfilling a guarantee under this paragraph shall be charged on and issued out of the Consolidated Fund.

(4) If any sums are issued in fulfilment of a guarantee given under this paragraph, the company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—

(a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued, and

(b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.

(5) Any sums received under sub-paragraph (4) above by the Treasury shall be paid into the Consolidated Fund.

Limit on borrowing by certain successor companies

13.—(1) The aggregate amount outstanding by way of principal in respect of—

(a) money borrowed by the Authority the liability to repay which is transferred in accordance with a transfer scheme to any of the companies to which this sub-paragraph applies,

(b) money borrowed by any of those companies,

(c) money borrowed for the repayment of which any of those companies is a guarantor or surety, and

(d) sums issued by the Treasury in fulfilment of guarantees under paragraph 12 above,

shall not exceed £100 million.

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(2) The companies to which sub-paragraph (1) above applies are successor companies which are wholly owned by the Crown and any such company's wholly-owned subsidiaries.

(3) In sub-paragraph (1)(a) above, the reference to money borrowed by the Authority includes a reference to the Authority's commencing capital debt under section 1 of the Atomic Energy Authority Act 1986.

1986 c. 3.

(4) Borrowing between a successor company and any of its wholly-owned subsidiaries, or between two such subsidiaries, shall not be taken into account for the purposes of sub-paragraph (1) above.

Certain persons not to be treated as shadow directors

14. None of the following persons, that is to say—

- (a) the Treasury,
- (b) the Secretary of State, or
- (c) the Authority,

shall be regarded for any purpose of the Companies Act 1985 as a shadow director, within the meaning of that Act, of any successor company which is publicly owned.

1985 c. 6.

The House of Commons Disqualification Act 1975

15. 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) the following entry—

1975 c. 24.

“Director of a publicly owned successor company (within the meaning of the Atomic Energy Authority Act 1995)”;

and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

1975 c. 25.

SCHEDULE 3

Section 8.

TAXATION PROVISIONS

PART I

CORPORATION TAX

Interpretation of Part I

1.—(1) In this Part of this Schedule—

“the 1988 Act” means the Income and Corporation Taxes Act 1988;

1988 c. 1.

“the Corporation Tax Acts” has the meaning given by section 831(1)(a) of the 1988 Act;

“the Gains Act” means the Taxation of Chargeable Gains Act 1992.

1992 c. 12.

(2) This Part of this Schedule shall be construed as one with the Corporation Tax Acts.

General

2. If a transfer scheme transfers property, rights and liabilities to a successor company, then, subject to paragraph 3 and paragraphs 15 to 19 below, the following provisions shall apply for the purposes of the Corporation Tax Acts in their application in respect of any accounting period beginning on or after the date on which the transfer scheme comes into force, namely—

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- (a) any trade or part of a trade carried on by the Authority which is transferred in accordance with the transfer scheme to the successor company shall be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by that company,
- (b) the trade or trades carried on by the successor company on and after the date on which the transfer scheme comes into force shall be treated as the same trade or trades as that which, by virtue of paragraph (a) above, is treated as carried on before that date,
- (c) all property, rights and liabilities of the Authority which are transferred in accordance with the transfer scheme to the successor company shall be treated as having been, at the time when they became vested in the Authority and at all times since that time, property, rights and liabilities of that company, and
- (d) anything done by the Authority in relation to property, rights and liabilities which are transferred in accordance with the transfer scheme to the successor company shall be treated as having been done by the company.

Chargeable gains: general

3. Paragraph 2 above shall not apply for the purposes of corporation tax on chargeable gains; and no provision included in a scheme by virtue of paragraph 5(2)(a) of Schedule 1 to this Act shall have effect for those purposes.

4.—(1) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a disposal in accordance with a transfer scheme from the Authority to a wholly-owned subsidiary of the Authority.

(2) In sub-paragraph (1) above “disposal” shall be construed in accordance with section 21(2) of the Gains Act (which relates to part disposals).

Chargeable gains: group transactions

5.—(1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any subsidiary of the Authority (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies including the Authority, the degrouped company shall not, by virtue of that transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which was at the time of acquisition a member of that group.

(2) Where, disregarding any preparatory transactions, a subsidiary of the Authority would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies including the Authority by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.

(3) In this paragraph—

“preparatory transaction” means anything done under or by virtue of the Atomic Energy Authority Act 1954, the Atomic Energy (Miscellaneous Provisions) Act 1981 or this Act for the purposes of initiating, advancing or facilitating the qualifying transaction in question;

“qualifying transaction” means—

- (a) the transfer of any property, rights or liabilities of the Authority in accordance with a transfer scheme, or
- (b) the disposal by the Authority of any securities of a successor company.

(4) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

Chargeable gains: debts

6.—(1) Where—

- (a) any debt owed to the Authority is transferred to a successor company in accordance with a transfer scheme, and
- (b) the Authority would have been the original creditor in relation to that debt for the purposes of section 251 of the Gains Act (debts: general provisions),

the successor company shall be treated as the original creditor for those purposes.

(2) Where, in accordance with a transfer scheme, any obligations of the Authority under a guarantee of the repayment of a loan are transferred to a successor company, the successor company shall be treated for the purposes of section 253(4) of the Gains Act (relief for guarantors) as a person who gave the guarantee.

Securities issued in pursuance of Act

7.—(1) For the purposes of the Corporation Tax Acts, any securities of a company issued in pursuance of section 10 of, or paragraph 1 of Schedule 2 to, this Act shall be treated as having been issued for a new consideration equal—

- (a) in the case of a share, to its nominal value, and
- (b) in the case of a debenture, to the principal sum payable under the debenture.

(2) The liability of a successor company under any debentures issued as mentioned in sub-paragraph (1) above shall be treated for the purposes of the Corporation Tax Acts as having been incurred wholly and exclusively for the purposes of the trade carried on by the company.

Group relief

8.—(1) None of the following, namely—

- (a) the existence of the powers of the Secretary of State or the Authority under the relevant provisions,
- (b) any direction given by the Secretary of State under any of the relevant provisions or section 3 of the Atomic Energy Authority Act 1954 so far as that direction relates to a restructuring transfer, or 1954 c. 32.
- (c) any arrangements so far as relating to a restructuring transfer,

shall be regarded as constituting arrangements falling within subsection (1) or (2) of section 410 of the 1988 Act (arrangements for the transfer of a company to another group or consortium).

(2) Neither the existence of the powers of the Secretary of State or the Authority under the relevant provisions nor a direction given as mentioned in sub-paragraph (1)(b) above shall be regarded as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to the 1988 Act.

(3) In this paragraph—

- “arrangements” has the meaning given by section 410(5) of the 1988 Act;
- “the relevant provisions” means sections 1 to 6 and 10 of, and Schedules 1 and 2 to, this Act;
- “a restructuring transfer” means—

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(a) the transfer in accordance with a transfer scheme of property, rights and liabilities of the Authority to a company wholly owned by the Crown, or

(b) the transfer by the Authority to the Secretary of State or the Treasury or his or their nominee of shares of a successor company.

Leases

9.—(1) Section 35 of the 1988 Act (charge on lease granted at an undervalue) shall not apply in the case of any lease which, in accordance with a transfer scheme, is granted—

(a) to a successor company, or

(b) by a successor company to the Authority.

(2) Section 87 of the 1988 Act (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for sub-paragraph (1) above; and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.

(3) In this paragraph “lease” has the same meaning as in Part II of the 1988 Act.

Sale and lease back

10. Subsections (1) and (2) of section 779 of the 1988 Act (sale and lease back) shall not apply where the liability of the transferor (within the meaning of that section) or of the person associated with that transferor is as a result of—

(a) the creation in favour of a successor company or the Authority in accordance with a transfer scheme of any interest or right,

(b) any other transaction for which a transfer scheme transferring property, rights and liabilities to a successor company provides, or

(c) the grant by a successor company (“the relevant company”) to the Authority or to another successor company of any interest or right, at a time when the relevant company remains publicly owned, in a case where the ability of the relevant company to grant that interest or right derives from the vesting in the company in accordance with a transfer scheme of an estate or interest in land.

Leased assets

11.—(1) For the purposes of section 781 of the 1988 Act (assets leased to traders and others), where the interest of the lessor or the lessee under a lease, or any other interest in an asset, vests in a successor company or the Authority in accordance with a transfer scheme, the vesting shall be treated as being effected without any capital sum having been obtained in respect of that interest by the Authority or the successor company.

(2) Section 782 of the 1988 Act (deduction of payment under leases: special cases) shall not apply to any payments made by a successor company or the Authority—

(a) under any lease granted to a successor company or the Authority for the purposes of the creation in accordance with a transfer scheme of any leasehold interest, including, where effect has been given without the grant of a lease to the creation of a leasehold interest in accordance with such a scheme, any lease to which effect is so given, or

(b) under any lease—

(i) which is granted to or by a successor company at a time when it remains publicly owned, and

(ii) which is a lease of an asset which at any time before the creation of the lease was used by the Authority for the purposes of a trade carried on by the Authority and which was, when so used, owned by the Authority.

(3) In this paragraph “lease” and “asset” have the meanings given by section 785 of the 1988 Act and references to a leasehold interest are references to any such interest as may subsist under a lease.

Write-off of government investment

12.—(1) Subsection (1) of section 400 of the 1988 Act (write-off of government investment: restriction of tax losses) shall not have effect—

- (a) in relation to any extinguishment by order under section 10 of this Act of—
 - (i) any liabilities of the Authority, or
 - (ii) any liabilities of a successor company which fall within section 10(12)(b)(i) of this Act, or
- (b) in relation to any extinguishment by order under that section of any liabilities of a successor company which fall within section 10(12)(b)(ii) of this Act, if and to the extent that those liabilities are replaced by securities issued by the company in accordance with a direction under section 10(5) of this Act.

(2) Subsection (6) of section 400 of the 1988 Act shall apply in relation to any extinguishment of any liabilities of a successor company by an order under section 10 of this Act as if the reference to the body in question were a reference to the company whose liabilities are extinguished.

Modifications of transfer scheme

13. Where the effect of any transfer scheme is modified in pursuance of any agreement which takes effect under paragraph 8(2) of Schedule 1 to this Act, the Corporation Tax Acts and this Part of this Schedule shall have effect as if—

- (a) the scheme originally made had been the scheme as modified, and
- (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

PART II

CAPITAL ALLOWANCES

Interpretation of Part II

14.—(1) In this Part of this Schedule—

- “the 1988 Act” means the Income and Corporation Taxes Act 1988; 1988 c. 1.
- “the Capital Allowances Acts” has the meaning given by section 832(1) of the 1988 Act.

(2) In any provision of this Part of this Schedule “the prescribed amount”, in relation to any successor company, means such amount as may be specified by the Secretary of State by order for the purposes of that provision in its application to that company.

(3) This Part of this Schedule shall be construed as one with the Capital Allowances Acts.

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Industrial buildings and structures

1990 c. 1.

15. The Secretary of State may, for the purposes of section 3 of the Capital Allowances Act 1990 (writing-down allowances in respect of expenditure on industrial buildings and structures) by order make provision specifying—

- (a) the amount to be taken for the purposes of subsection (3) of that section as the residue, on the date on which a transfer scheme comes into force, of any expenditure in relation to which any property vested in a successor company in accordance with that transfer scheme is a relevant interest for the purposes of that section, and
- (b) the part of the period mentioned in subsection (3) of that section which is to be treated, in relation to any such property, as unexpired on that date.

Machinery and plant

16. For the purposes of Part II of the Capital Allowances Act 1990 (capital allowances in respect of machinery and plant) property which is vested in a successor company in accordance with a transfer scheme shall be treated as if—

- (a) it had been acquired by that company, for the purposes for which it is used by that company on and after the date on which the scheme comes into force, on that date, and
- (b) capital expenditure of the prescribed amount had been incurred on that date by that company on the acquisition of the property for the purposes mentioned in paragraph (a) above.

Scientific research

17.—(1) For the purposes of Part VII of the Capital Allowances Act 1990 (scientific research), a successor company in which an asset representing allowable scientific research expenditure is vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, expenditure of a capital nature of the prescribed amount on the scientific research in question; and that research shall be taken to have been directly undertaken by the successor company or on its behalf.

(2) In sub-paragraph (1) above “allowable scientific research expenditure” means expenditure of a capital nature incurred by the Authority on scientific research directly undertaken by the Authority or on their behalf.

(3) In this paragraph “asset” and “scientific research” have the meaning given by subsection (1) of section 139 of the Capital Allowances Act 1990; and references to expenditure incurred on scientific research shall be construed in accordance with that subsection.

Patent rights

18.—(1) For the purposes of section 520 of the 1988 Act (allowances for expenditure on purchase of patent rights), a successor company in which any patent rights of the Authority are vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, capital expenditure of the prescribed amount on the purchase of those patent rights for use in any trade in which they are, or are to be, used on or after that date.

(2) In this paragraph “patent rights” has the meaning given by section 533 of the 1988 Act.

Know-how

19.—(1) For the purposes of section 530 of the 1988 Act (disposal of know-how), a successor company in which any know-how of the Authority is vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, capital expenditure of the prescribed amount on the acquisition of that know-how for use in any trade in which it is, or is to be, used on or after that date.

(2) Subsections (2) and (7) of section 531 of the 1988 Act (provisions supplementary to section 530) shall not apply in relation to any disposal from the Authority to a successor company in accordance with a transfer scheme.

(3) In this paragraph “know-how” has the meaning given by section 533(7) of the 1988 Act.

Connected persons

20. In Part II of the Capital Allowances Act 1990 (machinery and plant) and Chapter I of Part XIII of the 1988 Act (intellectual property) references to a transaction (however described) between connected persons within the meaning of section 839 of the 1988 Act shall not include references to—

- (a) a transfer to a successor company in accordance with a transfer scheme of any property, rights and liabilities, or
- (b) the creation in favour of a successor company or the Authority in accordance with a transfer scheme of any interest or right.

Orders under Part II

21.—(1) The Secretary of State shall not make an order under this Part of this Schedule in relation to any successor company except with the consent of the Treasury and at a time when the company is publicly owned.

(2) In exercising any power to make an order under this Part of this Schedule in relation to any asset vested in a successor company in accordance with a transfer scheme, the matters to which the Secretary of State shall have regard include such information as he considers appropriate as to the price which the asset would fetch or have fetched if sold on the open market on the date on which the transfer scheme comes into force.

(3) Any power of the Secretary of State to make an order under this Part of this Schedule—

- (a) shall be exercisable by statutory instrument, and
- (b) shall include power to make different provision for different cases, including different provision in relation to different assets or descriptions of assets.

Modifications of transfer scheme

22. Where the effect of any transfer scheme is modified in pursuance of any agreement which takes effect under paragraph 8(2) of Schedule 1 to this Act, the Capital Allowances Acts and this Part of this Schedule shall have effect as if—

- (a) the scheme originally made had been the scheme as modified, and
- (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

PART III

STAMP DUTY AND STAMP DUTY RESERVE TAX

Transactions attracting exemptions

23. For the purposes of this Part of this Schedule a transaction is an exempt transaction if it is a transaction by virtue of which property, rights or liabilities are vested by or under this Act in any of the following persons, that is to say—

- (a) the Authority,
- (b) a company which is wholly owned by the Crown, and
- (c) a wholly-owned subsidiary of the Authority.

Stamp duty

24.—(1) Subject to sub-paragraph (2) below, an exempt transaction shall not give rise to any charge to stamp duty except in so far as the charge to duty is on an instrument under this Act which is neither a transfer scheme nor an instrument that has been certified to the Commissioners of Inland Revenue by the Secretary of State to have been made—

- (a) in pursuance of a transfer scheme, or
- (b) by virtue of any provision of this Act, for the purpose of modifying the effect of such a scheme.

(2) No instrument which is certified as mentioned in sub-paragraph (1) above shall be taken to be duly stamped unless—

- (a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable, or
- (b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.

Stamp duty reserve tax

25. No agreement for the purposes of, or for purposes connected with giving effect to—

- (a) so much of any transfer scheme as relates to an exempt transaction, or
- (b) any exempt transaction to which effect is given by the modification of any transfer scheme,

shall give rise to a charge to stamp duty reserve tax.

Section 9.

SCHEDULE 4

PENSIONS

Interpretation

1.—(1) In this Schedule—

1954 c. 32. “Authority pension scheme” means any pension scheme maintained by the Authority under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954;

“participant”, in relation to a pension scheme, means a person to whom pension rights are accruing under the scheme by virtue of his employment in a class or description of employment to which the scheme relates, and cognate expressions shall be construed accordingly.

(2) Any reference in this Schedule to a transfer scheme includes a reference to a modification agreement as defined in paragraph 8(7) of Schedule 1 to this Act.

Application of Authority pension schemes to employees of publicly owned successor companies

- 2.—(1) Subject to sub-paragraphs (2) and (4) below—
- (a) no person who in consequence of a transfer scheme becomes an employee of a successor company (in this paragraph referred to as a “transferred employee”) and who immediately before the coming into force of the transfer scheme is a participant in an Authority pension scheme, shall cease to be a participant in that scheme by reason only that he has ceased to be employed by the Authority, and
 - (b) no transferred employee who immediately before the coming into force of the transfer scheme is not a participant in such a pension scheme, but—
 - (i) is eligible to become such a participant, or
 - (ii) would have become eligible to become such a participant on attaining an age or fulfilling a condition specified in the scheme,shall be precluded from being or, as the case requires, becoming eligible for participation in that scheme by reason only that he has ceased to be employed by the Authority.
- (2) A transferred employee shall not by virtue of sub-paragraph (1) above be entitled to participate in an Authority pension scheme at any time after he has with his agreement become a participant—
- (a) in a pension scheme maintained by the successor company of which he became an employee, or
 - (b) by virtue of his employment by that successor company, in a pension scheme maintained by any other person.
- (3) An Authority pension scheme may apply to persons, other than transferred employees, who are employed by any publicly owned successor company, as well as to—
- (a) transferred employees to whom the scheme is applicable by virtue of sub-paragraph (1) above, and
 - (b) persons to whom the scheme is applicable apart from the provisions of this Schedule.
- (4) Where a successor company ceases to be publicly owned, no person employed by the company shall, from the time when it so ceases, be entitled to participate in any Authority pension scheme by virtue of his employment with the company.

Power of Secretary of State to require amendment of schemes

- 3.—(1) The Secretary of State may direct the Authority to make such amendments of any Authority pension scheme as may be specified in the direction for any of the following purposes—
- (a) for providing that, in the case of any director or other officer of a publicly owned successor company who, immediately before he becomes such a director or other officer—
 - (i) is a participant in an Authority pension scheme, or
 - (ii) is not such a participant, but was or would have become eligible as mentioned in paragraph 2(1)(b)(i) or (ii) above,the provisions of any Authority pension scheme having effect in relation to employees of the successor company shall have effect with such modifications as may be specified,
 - (b) for requiring or enabling funds to be transferred under an Authority pension scheme in cases where, by virtue of paragraph 2(4) above or on becoming in consequence of a transfer scheme employees of a person other than the Authority or a successor company, persons cease to be

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included in an Authority pension scheme and for prescribing the method of calculating the amounts to be transferred and the assumptions to be used in calculating those amounts, and

(c) for giving effect to paragraph 2 above.

(2) A direction under this paragraph may require the Authority to make such supplemental, consequential and transitional provision amending any Authority pension scheme as the Secretary of State considers appropriate.

(3) It shall be the duty of the Secretary of State, before giving a direction under this paragraph, to consult the Authority, the Treasury and persons appearing to him to represent the employees of the Authority likely to be affected by the direction.

(4) No direction under this paragraph affecting employees of a successor company may be given after that company has ceased to be publicly owned.

(5) Sub-paragraphs (1) to (4) above shall be without prejudice to the power of the Secretary of State to give directions under section 3 of the Atomic Energy Authority Act 1954.

1954 c. 32.

Payments to Authority by successor companies

4. In respect of—

(a) any payments falling to be made by the Authority in consequence of the participation by virtue of paragraph 2 or 3 above in an Authority pension scheme of persons employed by any successor company or of directors or other officers of such a company, or

(b) the accruing liability of the Authority for any such payments,

the company shall pay to the Authority such sums as may be agreed between the company and the Authority or as, in default of such agreement, the Secretary of State may direct.

Establishment of pension scheme by successor company

5. Except with the consent of the Secretary of State, a publicly owned successor company shall not—

(a) establish or maintain any pension scheme, or

(b) enter into any arrangement under which employees of the company become eligible to participate, by reference to their employment with the company, in a pension scheme maintained by any other person.

Duties owed where employee transferred by scheme

6.—(1) Before the coming into force of any transfer scheme in consequence of which any employee of the Authority is to become the employee of a person (“the transferee”) other than the Authority or a company which will, by virtue of that transfer scheme, be a successor company, the Authority shall, after such consultation as is required by sub-paragraph (5) below, satisfy themselves—

(a) that every person to whom the duty imposed by this sub-paragraph is owed will be afforded, and will be entitled to exercise (or, in a case falling within sub-paragraph (2)(b)(ii) below, entitled on attaining the age or fulfilling the condition to exercise), an option of becoming—

(i) a participant in a pension scheme maintained by the transferee, or

(ii) by virtue of his employment by the transferee, a participant in a pension scheme maintained by any other person, and

(b) that in his case the provisions of that scheme (taken as a whole) confer benefits which, taking into account other benefits which he will obtain as a result of his employment by the transferee, are no less favourable

than the benefits conferred by the provisions, as in force immediately before the coming into force of the transfer scheme, of the Authority pension scheme in which he is then or, as the case requires, would be entitled to become, a participant.

(2) The duty imposed by sub-paragraph (1) above shall be owed to every transferred employee who—

- (a) is for the time being a participant in an Authority pension scheme, or
- (b) is not for the time being such a participant but—
 - (i) is eligible to participate in an Authority pension scheme, or
 - (ii) would become eligible to participate in such a scheme on attaining an age or fulfilling a condition specified in the scheme.

(3) In sub-paragraph (2) above a “transferred employee”, in relation to any transfer scheme, means any person who, in consequence of the scheme, becomes an employee of the transferee.

(4) In relation to any transfer scheme made by the Secretary of State by virtue of section 2(3) of this Act, the duty under sub-paragraph (1) above is owed by the Secretary of State instead of the Authority.

(5) The consultation required by this sub-paragraph is—

- (a) in a case where the duty under sub-paragraph (1) above is owed by the Authority, consultation with the Secretary of State, the Treasury and persons appearing to the Authority to represent transferred employees, and
- (b) in a case where that duty is owed by the Secretary of State, consultation with the Authority, the Treasury and persons appearing to the Secretary of State to represent transferred employees.

(6) Nothing in this paragraph shall be regarded as limiting the powers of the Authority or the Secretary of State in relation to the making of transfer schemes.

Duties owed where successor company ceases to be publicly owned

7.—(1) Before a successor company ceases to be publicly owned, the relevant owner shall, after such consultation as is required by sub-paragraph (4) below, satisfy himself—

- (a) that every person to whom the duty imposed by this sub-paragraph is owed will be afforded, and will be entitled to exercise (or, in a case falling within sub-paragraph (3)(b)(ii) below, entitled on attaining the age or fulfilling the condition to exercise), an option of becoming—
 - (i) a participant in a pension scheme maintained by the successor company, or
 - (ii) by virtue of his employment by that successor company, a participant in a pension scheme maintained by any other person, and
- (b) that in his case the provisions of that scheme (taken as a whole) confer benefits which, taking into account other benefits which he will obtain as a result of his employment by the successor company, are no less favourable than the benefits conferred by the provisions, as in force immediately before the company ceases to be publicly owned, of the Authority pension scheme in which he is then or, as the case requires, would be entitled to become, a participant.

(2) In sub-paragraph (1) above, “the relevant owner” means—

- (a) in relation to a company wholly owned by the Crown, the Secretary of State, and
- (b) in relation to a wholly-owned subsidiary of the Authority, the Authority.

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(3) The duty imposed by sub-paragraph (1) above shall be owed to every person employed by the successor company immediately before it ceases to be publicly owned who—

(a) is for the time being a participant in an Authority pension scheme, or

(b) is not for the time being such a participant but—

(i) is eligible to participate in an Authority pension scheme, or

(ii) would become eligible to participate in such a scheme on attaining an age or fulfilling a condition specified in the scheme.

(4) The consultation required by this sub-paragraph is—

(a) in a case where the company is wholly owned by the Crown, consultation with the Authority, the Treasury and persons appearing to the Secretary of State to represent employees of the company, and

(b) in a case where the company is a wholly-owned subsidiary of the Authority, consultation with the Secretary of State, the Treasury and persons appearing to the Authority to represent employees of the company.

(5) Nothing in this paragraph shall be regarded as limiting the powers of the Authority, the Treasury or the Secretary of State to dispose of any securities of a successor company.

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