

## SCHEDULES

### 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.
- (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.

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- (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
  - (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.

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- (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).

*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 subparagraph (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;
  - “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.

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### *Dividends*

- 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,
  - (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

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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

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- (d) sums issued by the Treasury in fulfilment of guarantees under paragraph 12 above,  
shall not exceed £100 million.
- (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.
- (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.

*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—

“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.