

SCHEDULES

SCHEDULE 5

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

PUBLIC GAS SUPPLIERS' AUTHORISATIONS

Preliminary

- 1 (1) The provisions of this Part of this Schedule have effect as respects each person who is a public gas supplier immediately before the appointed day (in this Part of this Schedule referred to as “the public gas supplier”) for the purpose of securing that his authorisation under section 7 of the 1986 Act has effect on and after that day as if it were—
- (a) a licence under that section (licensing of public gas transporters) granted to one of the persons mentioned in sub-paragraph (2) below;
 - (b) a licence under subsection (1) of section 7A of that Act (licensing of gas suppliers) granted to the other of those persons; and
 - (c) a licence under subsection (2) of that section (licensing of gas shippers) granted to the person mentioned in paragraph (b) above.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) the public gas supplier; and
 - (b) such one of his associates as may be nominated by him for the purposes of this sub-paragraph (in this Part of this Schedule referred to as the nominated associate).
- (3) For the purposes of this paragraph a company is an associate of the public gas supplier if—
- (a) the company is registered under the Companies Act 1985 and is limited by shares; and
 - (b) either the company is wholly owned by the supplier or the supplier is wholly owned by the company.

Duty of public gas supplier to nominate associates and make transfer scheme

- 2 (1) Before such date as the Secretary of State may direct, the public gas supplier shall—
- (a) make such nomination as he thinks fit for the purposes of sub-paragraph (2) of paragraph 1 above; and
 - (b) make a scheme for the division of all his property, rights and liabilities between the persons mentioned in that sub-paragraph.
- (2) Such a scheme may—

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- (a) define the property, rights and liabilities to be allocated to the nominated associate—
 - (i) by specifying or describing the property, rights and liabilities in question;
 - (ii) by referring to all (or all but as much as may be excepted) of the property, rights and liabilities comprised in a specified part of the public gas supplier’s undertaking; or
 - (iii) partly in the one way and partly in the other;
 - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against either, or by or against both, of the persons mentioned in paragraph 1(2) above;
 - (c) impose on either of those persons an obligation to enter into such written agreements with, or execute such other instruments in favour of, the other of those persons as may be specified in the scheme; and
 - (d) make such supplemental, incidental and consequential provision as the supplier considers appropriate.
- (3) Without prejudice to the generality of sub-paragraph (2)(d) above, such a scheme may, in relation to transfers or transactions effected in pursuance of the scheme, make provision, either generally or for specified purposes—
- (a) for the transfers or transactions to be regarded as taking place in a specified order; and
 - (b) for the nominated associate to be treated as the same person in law as the public gas supplier.
- (4) An obligation imposed by a provision included in such a scheme by virtue of sub-paragraph (2)(c) above shall be enforceable by civil proceedings by the other person for an injunction or for interdict or for any other appropriate relief or remedy.
- (5) A transaction of any description which is effected in pursuance of such a provision as is mentioned in sub-paragraph (4) above—
- (a) shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register; but
 - (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- (6) Where a lease of any land is granted in pursuance of such a provision as is mentioned in sub-paragraph (4) above, any right of pre-emption or other like right affecting that land—
- (a) shall not become exercisable by reason of the grant of the lease; but
 - (b) shall have effect as if the lessee were the same person in law as the lessor.

Functions of Secretary of State in relation to nominations and transfer scheme

- 3 (1) If the public gas supplier fails, before the date specified in the Secretary of State’s direction under paragraph 2 above, to make a nomination for the purposes of sub-paragraph (2) of paragraph 1 above, the Secretary of State may himself make a nomination for the purposes of that sub-paragraph.

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- (2) A scheme under paragraph 2 above shall not take effect unless it is approved by the Secretary of State; and the Secretary of State may if he thinks fit, before approving such a scheme, make such modifications of the scheme as he considers appropriate for the purpose of securing that the scheme makes such provision, and only such provision, as he considers requisite or expedient for the purposes of this Part of this Schedule.
- (3) If, in relation to such a scheme—
- (a) the public gas supplier fails, before the date specified in the Secretary of State's direction under paragraph 2 above, to submit the scheme for the approval of the Secretary of State; or
 - (b) the Secretary of State decides not to approve the scheme that has been submitted to him by the supplier because (even with modifications) it would not make such provision, and only such provision, as he considers requisite or expedient for the purposes of this Part of this Schedule,
- the Secretary of State may himself make the scheme.

Duty of Secretary of State to make licensing scheme

- 4 (1) As soon as practicable after the date specified in the Secretary of State's direction under paragraph 2 above and in any event before the appointed day, the Secretary of State shall make a scheme providing for the public gas supplier's authorisation under section 7 of the 1986 Act to have effect as mentioned in paragraph 1(1) above.
- (2) In making a scheme under this paragraph, the Secretary of State shall have regard to the provisions of the scheme made under paragraph 2 above.
- (3) Subject to sub-paragraph (4) below, a scheme under this paragraph shall provide that each condition which by virtue of section 8(2) of this Act is a standard condition for the purposes of—
- (a) licences under section 7 of the 1986 Act;
 - (b) licences under subsection (1) of section 7A of that Act; or
 - (c) licences under subsection (2) of that section,
- shall be incorporated in the licence treated as granted under that section or, as the case may be, the licence treated as granted under that subsection.
- (4) Such a scheme may provide that each licence which is treated as so granted (including the terms and conditions which are derived from the authorisation and the standard conditions which are incorporated by virtue of sub-paragraph (3) above) shall have effect with—
- (a) such incidental, consequential and supplementary amendments as appear to the Secretary of State to be necessary or expedient;
 - (b) such amendments as the Secretary of State thinks fit for varying the period of notice required for the revocation of the licence in accordance with any term contained in it; and
 - (c) such other amendments (if any) as may be agreed between the Secretary of State and the public gas supplier;
- and such a scheme may also make such transitional provision as appears to the Secretary of State to be necessary or expedient.
- (5) As soon as practicable after making a scheme under this paragraph, the Secretary of State shall publish the text of each licence which by virtue of the scheme is treated

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as granted under section 7 or 7A(1) or (2) of the 1986 Act; and any text so published shall be treated as authoritative unless the contrary is shown.

Information etc. for purposes of Secretary of State's functions

- 5 (1) It shall be the duty of the public gas supplier to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise of any function conferred on him by paragraph 3 or paragraph 4(1) to (4) above.
- (2) The Secretary of State shall not exercise any function conferred on him by paragraph 3 or paragraph 4(1) to (4) above except after consultation with the public gas supplier.

Effect of schemes

- 6 (1) Subject to the provisions of paragraph 7 below, on the appointed day all property, rights and liabilities—
- (a) to which immediately before that day the public gas supplier was entitled or subject; and
 - (b) which are allocated to the nominated associate by the scheme under paragraph 2 above,
- shall become by virtue of this paragraph property, rights and liabilities of that associate.
- (2) On the appointed day the public gas supplier's authorisation under section 7 of the 1986 Act shall have effect as provided for by the scheme under paragraph 4 above.

Supplementary provisions as to transfers

- 7 (1) The provisions of Schedule 10 to the Electricity Act 1989 (supplementary provisions as to transfers under sections 66 and 67 of that Act) shall apply—
- (a) with the modifications made by sub-paragraph (2) below; and
 - (b) to the extent mentioned in those provisions as modified by that sub-paragraph,
- to any transfer which is effected by paragraph 6 above; and that paragraph shall have effect subject to those provisions as so modified.
- (2) The provisions of that Schedule shall apply as if—
- (a) paragraphs 2(4) and (5), 3 and 6(2), and in paragraphs 4(4)(b) and 8(1) and (2) the words “or of a direction under paragraph 2(4) above”, were omitted;
 - (b) any reference to transfers effected in pursuance of a transfer scheme were references to transfers effected by paragraph 6 above in pursuance of the scheme under paragraph 2 above;
 - (c) any reference to the transferor were a reference to the public gas supplier;
 - (d) any reference to a transfer of all property, rights and liabilities comprised in a specified part of the transferor's undertaking were a reference to a transfer of all (or all but as much as may be excepted) of the property, rights and liabilities comprised in a specified part of the supplier's undertaking;
 - (e) any reference to the transferee of a specified part or any other part of the transferor's undertaking were a reference to a transferee of a specified part or any other part of the supplier's undertaking; and
 - (f) any reference to the transfer date were a reference to the appointed day.

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- (3) For the purposes of sub-paragraphs (1) and (2)(b), (d) and (e) above, any property, rights or liabilities retained by the public gas supplier in pursuance of the scheme under paragraph 2 above shall be deemed to be transferred to the supplier by paragraph 6 above in pursuance of the scheme.

Shares issued to public gas supplier by transferee

- 8 Any shares issued to the public gas supplier by the transferee in pursuance of the scheme under paragraph 2 above—
- (a) shall be of such nominal value as may be specified in or determined under the scheme;
 - (b) shall be issued or allotted on such terms as may be so specified or determined; and
 - (c) 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 transferee in cash of their nominal value and, if the scheme so provides, such premium as may be so specified or determined.

Statutory accounts

- 9 (1) This paragraph has effect for the purposes of any statutory accounts of the transferee, that is to say, any accounts prepared by the transferee for the purpose of any provision of the Companies Act 1985 (including group accounts).
- (2) Subject to sub-paragraph (3) below, the value or amount to be assigned to any asset or liability which is vested in the transferee by virtue of paragraph 6 above shall be—
- (a) the value or amount (if any) assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the public gas supplier in respect of the last complete accounting year of the supplier to end before the appointed day; or
 - (b) if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the scheme under paragraph 2 above; or
 - (c) if no value or amount is given by paragraph (a) or (b) above or the value or amount so given is inappropriate in all the circumstances of the case, such value or amount as may be determined, on the basis of the supplier's accounting records, by or under that scheme.
- (3) The amount to be included in respect of any item shall be determined as if so much of anything done by the public gas supplier (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) as may be determined by or under the scheme under paragraph 2 above had been done by the transferee.
- (4) Without prejudice to the generality of the preceding provisions of this paragraph, the amount to be included from time to time in any reserves of the transferee as representing the transferee's accumulated realised profits shall be determined as if such proportion of any profits realised and retained by the public gas supplier as is determined by or under the scheme under paragraph 2 above had been realised and retained by the transferee.
- (5) In this paragraph, in relation to the public gas supplier—

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“accounting records” means accounting records kept by the supplier in pursuance of section 221 of the Companies Act 1985;

“complete accounting year” means a financial year of the supplier determined in accordance with section 223 of that Act.

Corporation tax

- 10 (1) Any shares issued to the public gas supplier by the transferee in pursuance of the scheme under paragraph 2 above shall be treated for the purposes of the Corporation Tax Acts as if they had been issued wholly in consideration of a subscription paid to the transferee (and attributable equally between those shares) of an amount equal to the difference between—
- (a) the value, on the appointed day, of the property, rights and liabilities vested in the transferee by paragraph 6 above; and
 - (b) the principal sum payable under any debentures issued to the supplier by the transferee in pursuance of the scheme.
- (2) The value required to be determined for the purposes of sub-paragraph (1)(a) above is market value, as defined in section 272 of the Taxation of Chargeable Gains Act 1992.
- (3) Any debenture issued to the public gas supplier by the transferee in pursuance of the scheme under paragraph 2 above shall be treated for the purposes of the Corporation Tax Acts as if it had been issued—
- (a) wholly in consideration of a loan made to the transferee of an amount equal to the principal sum payable under the debenture; and
 - (b) wholly and exclusively for the purposes of the trade or business carried on by the transferee.
- (4) For the purposes of Chapter II of Part VI of the Income and Corporation Taxes Act 1988 (definition of distributions), where in the case of any transfer under paragraph 6 above any consideration given or treated as given in respect of a security relating to—
- (a) any liability; or
 - (b) the use of the principal to which any liability, being a liability to interest or an equivalent liability, relates,
- would fall (apart from this sub-paragraph) to be regarded for those purposes as new consideration received by the public gas supplier, that consideration shall be treated instead, to the extent that it relates to so much of the liability as falls in consequence of the transfer to be discharged by the transferee, as if it were new consideration received by the transferee.

Petroleum revenue tax and gas levy

- 11 Where any transfer is effected by paragraph 6 above, the transferee shall be treated—
- (a) for the purposes of section 10(1)(a) of the Oil Taxation Act 1975; and
 - (b) for the purposes of the Gas Levy Act 1981,
- as if it were the same person in law as the public gas supplier.

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Consequential modifications of rating provisions

- 12 (1) This paragraph applies where any transfer effected by paragraph 6 above is a transfer of a hereditament which, immediately before the appointed day, falls within the description set out in Part 3 of the Schedule to the Central Rating Lists Regulations 1994.
- (2) The Secretary of State may by order make such modifications of that Part of that Schedule, and of the British Gas plc (Rateable Values) Order 1994, as may appear to him necessary or expedient as a consequence of the transfer.
- (3) An order under this paragraph which is made after the appointed day may have effect as from that day or any later day.
- (4) Where, by virtue of sub-paragraph (3) above, an order under this paragraph has effect from a day earlier than that on which it is made, any necessary alteration shall be made with effect from that earlier day to any central rating list in which the hereditament is shown.
- (5) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.