
Changes to legislation: Energy Act 2004, SCHEDULE 7 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 7

Section 45

FINANCES AND ACCOUNTS OF TRANSFEREE COMPANIES

Interpretation of Schedule

- 1 (1) In this Schedule—
- “designated BNFL company” means a company designated for the purposes of this Schedule by an order made by the Secretary of State;
 - “transferee company” means a body corporate which is—
 - (a) a body corporate to which a transfer has been made in accordance with a nuclear transfer scheme; but
 - (b) not a subsidiary of the UKAEA;
 - “transferor”, in relation to a transfer scheme, means the person from whom property, rights and liabilities are transferred to a transferee company in accordance with the scheme.
- (2) The Secretary of State may designate a company for the purposes of this Schedule as a designated BNFL company only if, without being a subsidiary of the UKAEA, it is a publicly controlled company to which—
- (a) securities of BNFL or of a designated BNFL company,
 - (b) property, rights or liabilities of BNFL or of a designated BNFL company, or
 - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL or of a designated BNFL company,
- were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the person from whom they were transferred and the company to which they were transferred were publicly controlled.
- (3) For the purposes of this Schedule a body corporate is wholly-owned by the Crown if it is a company limited by shares each of which is held on behalf of the Crown.
- (4) A share in a company is held on behalf of the Crown if, and only if, it is held by—
- (a) the Treasury;
 - (b) a Minister of the Crown;
 - (c) another company which is wholly-owned by the Crown; or
 - (d) a nominee of a person falling within paragraphs (a) to (c).
- (5) An order designating a company for the purposes of this Schedule must be laid before Parliament.
- (6) References in this Schedule to a nuclear transfer scheme include references to any modification agreement (within the meaning of Schedule 5) relating to that scheme.
- (7) In this paragraph “company” [^{F1}means a company as defined in section 1(1) of the Companies Act 2006].

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Textual Amendments

- F1** Words in Sch. 7 para. 1(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(9)** (with art. 10)

Commencement Information

- I1** Sch. 7 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

Government lending to transferee companies

- 2 (1) Subject to paragraphs 5 and 6, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to—
- (a) a designated BNFL company which is publicly controlled; or
 - (b) a publicly controlled transferee company which is not a designated BNFL company.
- (2) Loans which the Secretary of State makes under this paragraph must be repaid to him at such times and by such methods as he may direct from time to time.
- (3) Interest on such loans must be paid to the Secretary of State at such rates and at such times as he may so direct.
- (4) The approval of the Treasury is required for a direction under sub-paragraph (2) or (3).
- (5) The Secretary of State must pay sums received by him by virtue of this paragraph into the Consolidated Fund.

Commencement Information

- I2** [Sch. 7 para. 2](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

Guarantees for designated BNFL companies

- 3 Section 1 of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL) shall have effect as if the references to BNFL included references to any designated BNFL company that is publicly controlled at the time when the guarantee is given.

Commencement Information

- I3** [Sch. 7 para. 3](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

Government guarantees for loans of undesignated publicly controlled transferee companies

- 4 (1) Subject to paragraph 6, the Secretary of State may guarantee—
- (a) the repayment of the principal of any sum borrowed otherwise than from him by a transferee company which is not a designated BNFL company but is publicly controlled at the time of the giving of the guarantee,
 - (b) the payment of interest on such a sum, and

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- (c) the discharge of any other financial obligation of such a transferee company in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this paragraph in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this paragraph, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) If sums are paid out by the Secretary of State under a guarantee given under this paragraph, the company whose obligations are fulfilled by the payment must pay him—
 - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
 - (b) interest, at such rates as he may direct, on amounts outstanding under this sub-paragraph.
- (5) Payments to the Secretary of State under sub-paragraph (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this paragraph, he must lay a statement relating to that sum before Parliament—
 - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
 - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of sub-paragraph (6) unless—
 - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under sub-paragraph (4); and
 - (b) the company in question is not at any time during that year subject to a liability to pay interest on amounts that became due under that sub-paragraph in respect of that sum.
- (8) The consent of the Treasury is required—
 - (a) for the giving of a guarantee under this paragraph; and
 - (b) for the giving of a direction under sub-paragraph (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of sub-paragraph (4) into the Consolidated Fund.

Commencement Information

I4 Sch. 7 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Financial limits of BNFL and publicly controlled companies that are designated

- 5 (1) Section 2 of the Nuclear Industry (Finance) Act 1977 (c. 7) (financial limits for BNFL) shall have effect—
- (a) as if the limit specified in subsection (1) of that section applied to BNFL and the designated BNFL companies, taken together, as it previously applied just to BNFL; and

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- (b) as if the amounts specified in sub-paragraph (2) were included, in the case of the application of subsection (1) of that section to BNFL and those companies, in the amounts specified in subsection (2) of that section.
- (2) The amounts treated as included in the amounts specified in section 2(2) of that Act of 1977 are—
- (a) the total paid after the passing of this Act by the Secretary of State or the Treasury for securities issued, otherwise than in pursuance of paragraph 2 of Schedule 6 to this Act, by a designated BNFL company which is publicly controlled both before and after the acquisition of those securities by the Secretary of State or the Treasury;
 - (b) the total amount outstanding in respect of the principal of loans made by virtue of paragraph 2 of this Schedule to a designated BNFL company;
 - (c) every sum for which the Secretary of State is liable in fulfilment of so much of a guarantee given under section 1(1) of that Act as relates to the principal of any loan to a company which is a designated BNFL company;
 - (d) every sum to which the Secretary of State may become so liable in default of payment by such a company;
 - (e) so much of every sum which the Secretary of State has paid in fulfilment of guarantees given for such a company under section 1(1) of that Act as has not been repaid under section 1(4) of that Act.
- (3) Section 2(3) of that Act of 1977 (limit of £400 million on certain other guarantees for BNFL) shall have effect as if references to BNFL included references to a designated BNFL company that was publicly controlled when the guarantee was given.
- (4) The Secretary of State may by order—
- (a) increase the limit for the time being specified in section 2(1) of that Act of 1977; or
 - (b) provide for the apportionment of that limit between the different companies in relation to which it applies and for its operation as apportioned.
- (5) An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil.
- (6) No order is to be made containing provision increasing that limit unless a draft of the order has been—
- (a) laid before Parliament; and
 - (b) approved by a resolution of the House of Commons.
- (7) An order under this paragraph providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament.

Commencement Information

I5 Sch. 7 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Financial limits for publicly controlled transferees that are not designated

- 6 (1) The aggregate amount outstanding by way of principal in respect of the amounts specified in sub-paragraph (2) must not exceed £100 million.
- (2) Those amounts are—

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- (a) money borrowed by BNFL or by the UKAEA the liability to pay which falls, by virtue of one or more nuclear transfer schemes, on a company which at the time when the scheme came into force was publicly controlled but was neither a designated BNFL company nor a subsidiary of the UKAEA;
 - (b) money borrowed by a transferee company which at the time of the borrowing was publicly controlled but not a designated BNFL company;
 - (c) borrowed money for the repayment of which a publicly controlled transferee company which is not a designated BNFL company is a guarantor or a surety; and
 - (d) sums paid by the Secretary of State in fulfilment of guarantees given under paragraph 4 in respect of borrowing by a transferee company which at the time of the giving of the guarantee was publicly controlled but was not a designated BNFL company.
- (3) Borrowing by a wholly-owned subsidiary of a company (“the holding company”) which would not otherwise be taken into account for the purposes of this paragraph shall be taken into account as if it were borrowing by the holding company; but borrowing—
- (a) between a company and any of its wholly-owned subsidiaries, or
 - (b) between two such subsidiaries,
- shall not be taken into account.
- (4) Nothing in this paragraph—
- (a) restricts the amount that may be borrowed by a company that has ceased to be publicly controlled; or
 - (b) requires amounts in respect of the liabilities of such a company to repay borrowing to be taken into account for the purposes of this paragraph, except in so far as they are liabilities to repay the Secretary of State.
- (5) The Secretary of State may by order—
- (a) increase the limit for the time being specified in sub-paragraph (1); or
 - (b) provide for the apportionment of that limit between the different companies in relation to which it applies and for its application as apportioned.
- (6) An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil.
- (7) No order is to be made containing provision increasing that limit unless a draft of the order has been—
- (a) laid before Parliament; and
 - (b) approved by a resolution of the House of Commons.
- (8) An order under this paragraph providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament.

Commencement Information

I6 Sch. 7 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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Temporary restrictions on borrowing of transferee companies

- 7 (1) This paragraph applies if the articles of association of a transferee company confer on a Minister of the Crown powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money that may be borrowed or raised during any period by some or all of the members of the group to which that company belongs.
- (2) Those powers shall be exercisable in the national interest notwithstanding any rule of law or the provisions of any enactment.
- (3) For the purposes of this paragraph, an alteration of the articles of association of the company shall be disregarded if the alteration—
- (a) has the effect of conferring or extending any power mentioned in sub-paragraph (1); and
 - (b) is made at a time when the company is not publicly owned.
- (4) In this paragraph “group”, in relation to a company, means the following companies, taken together—
- (a) that company;
 - (b) all of its subsidiaries;
 - (c) every company of which that company is a subsidiary; and
 - (d) every company not mentioned in the preceding paragraphs which is a subsidiary of a company falling within paragraph (c).

Commencement Information

I7 Sch. 7 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Statutory accounts of transferee companies

- 8 (1) This paragraph has effect for the purposes of the statutory accounts of each of the following—
- (a) a transferee company;
 - (b) a subsidiary of the UKAEA to which a transfer has been made in accordance with a nuclear transfer scheme;
 - (c) a company that is the transferor in relation to a transfer in accordance with such a scheme to a company falling within paragraph (a) or (b).
- (2) The vesting in the company mentioned in sub-paragraph (1)(a) or (b) of property, rights and liabilities in accordance with the nuclear transfer scheme shall be taken to have been effected immediately after the end of the last accounting year of the transferor.
- (3) Where a nuclear transfer scheme—
- (a) specifies the value of an asset or the amount of a liability transferred in accordance with the scheme, or
 - (b) provides for the determination of that value or amount,
- the value or amount shall be taken to be the value or amount specified in or determined in accordance with the provisions of the scheme.
- (4) In this paragraph—

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“accounting year”, in relation to a body corporate, means the period for which its annual accounts are prepared;

“last accounting year”, in relation to a nuclear transfer scheme, means the last complete accounting year ending before the scheme comes into force; and

“statutory accounts”, in relation to a company, means accounts of that company prepared for the purposes of a provision of [^{F2}the Companies Act 2006], including group accounts.

Textual Amendments

F2 Words in Sch. 7 para. 8(4) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 229\(a\)](#) (with arts. 6, 11, 12)

Commencement Information

I8 Sch. 7 para. 8 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Accounts of Crown owned transferee companies to be laid before Parliament

9 As soon as practicable after the holding of a general meeting of a transferee company which, at the time of the meeting, is wholly-owned by the Crown, a Minister of the Crown must lay before Parliament a copy of—

- (a) all accounts which, in accordance with a requirement of [^{F3}the Companies Act 2006], are laid before the company at that meeting, and
- (b) all documents which are annexed or attached to those accounts.

Textual Amendments

F3 Words in Sch. 7 para. 9(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 229\(b\)](#) (with arts. 6, 11, 12)

Commencement Information

I9 Sch. 7 para. 9 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)