

SCHEDULES

SCHEDULE 13

TRANSITIONAL PROVISIONS AND SAVINGS

PART II

PROVISIONS AND SAVINGS FOR PART III OF ORDER

15. In this Part expressions which are used in Part III of this Order have the same meanings as in that Part.

16. Any licence granted under Article 10 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if granted to the appropriate successor company.

17. Any tariff fixed, or having effect as if fixed, under Article 21 by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed by or in relation to the appropriate successor company.

18. Any consent given under Article 39 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

19. Any consent given under Article 40 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

20. Any maximum price fixed, or having effect as if fixed, under Article 47 for the resale of electricity supplied by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.

21. A direction given under Article 58 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

22. Any land compulsorily acquired by Northern Ireland Electricity before the transfer date which was so acquired under Part I of Schedule 3, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by a successor company.

- 23.—**(1) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities which vest in the appropriate successor company under this Order; and
 - (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of Northern Ireland Electricity,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of Northern Ireland Electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

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24.—(1) Any agreement made, transaction effected or other thing done by, to or in relation to Northern Ireland Electricity which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as Northern Ireland Electricity; and accordingly references to Northern Ireland Electricity—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than a statutory provision) relating to or affecting any assets or liability of Northern Ireland Electricity which is transferred by this Order,

shall be taken as referring to the appropriate successor company.

(2) Nothing in sub-paragraph (1) shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of Article 69.

25. It is hereby declared for the avoidance of doubt that—

- (a) the effect of Part III of this Order in relation to any contract of employment with Northern Ireland Electricity which is in force immediately before the transfer date is merely to modify the contract by substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and
- (b) that Part is effective to vest the rights and liabilities of Northern Ireland Electricity under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of Northern Ireland Electricity;

and accordingly any period of employment with Northern Ireland Electricity or a wholly owned subsidiary of Northern Ireland Electricity, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be), a wholly owned subsidiary of the appropriate successor company.

26. Any agreement made under paragraph 12 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972^{F1} (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

- (a) the parties to the agreement on the employers' side were the successor companies and not Northern Ireland Electricity; and
- (b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

F1 1972 NI 9

27.—(1) It shall be the duty of Northern Ireland Electricity and the appropriate successor company to take, as and when during the transitional period that company considers appropriate, all such steps as may be requisite to secure that the vesting in that company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law.

(2) During the transitional period, until the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of Northern Ireland Electricity to hold that asset for the benefit of, or to discharge that liability on behalf of, the successor company.

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(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability.

(4) Northern Ireland Electricity shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—

- (a) it shall be the duty of the appropriate successor company during the transitional period to act on behalf of Northern Ireland Electricity (so far as possible) in performing the duty imposed on Northern Ireland Electricity by this paragraph; and
- (b) any foreign assets and liabilities acquired or incurred by Northern Ireland Electricity during that period shall immediately become assets and liabilities of the appropriate successor company.

(5) References in this paragraph to any foreign asset or liability are references to any asset 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.

(6) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

28.—(1) Notwithstanding the repeal of Articles 23 and 24 of the Electricity Supply (Northern Ireland) Order 1972^{F2} by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to prepare statements of accounts in accordance with the said Articles 23 and 24 in respect of each financial year ending before the transfer date, and the said Articles 23 and 24 shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.

(2) Notwithstanding the repeal of Article 12 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to make a report to the Department in accordance with the said Article 12 in respect of each financial year ending before the transfer date.

(3) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

F2 1972 NI 9

29.—(1) Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 12 has effect in relation to Northern Ireland Electricity that statutory provision shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

(2) Until the Department of Finance and Personnel makes an order under Article 39C of the Rates (Northern Ireland) Order 1977^{F3} the provisions of that Order which, immediately before the transfer date, have effect in relation to Northern Ireland Electricity shall, after that date, have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

F3 1977 NI 28

30. Without prejudice to the powers conferred by Article 95(2), every provision contained in subordinate legislation, which is in operation immediately before the transfer date and then applicable to Northern Ireland Electricity shall have effect as if—

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- (a) for references to Northern Ireland Electricity there were substituted references to the appropriate successor company; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of Northern Ireland Electricity there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.

31.—(1) Anything which, immediately before the transfer date, is in process of being done under the provisions relating to street works in Schedule 3 to the Electricity Supply (Northern Ireland) Order 1972^{F4} by or in relation to Northern Ireland Electricity (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

(2) Any notice or direction given or other thing whatsoever done under the said provisions of that Schedule by Northern Ireland Electricity shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

F4 1972 NI 9

32.—(1) An application or claim by Northern Ireland Electricity for hazardous substances consent which is effective on the transfer date shall have effect as if made by the appropriate successor company.

(2) A hazardous substances consent granted or deemed to be granted to Northern Ireland Electricity which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

33.—(1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies (Northern Ireland) Order 1986^{F5} (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

- (a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
- (b) references in Article 281 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of that Order of 1986 in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Part III of this Order had been a vesting of all the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liabilities of Northern Ireland Electricity vested in the successor company by virtue of the said Article 234 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by Northern Ireland Electricity in respect of the 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

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(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) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by Northern Ireland Electricity (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) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by Northern Ireland Electricity had been realised and retained by the successor company.

(4) The said accounts shall not be regarded as statutory accounts for the purposes of Article 78 of this Order.

(5) In this paragraph “the relevant year” means the last complete financial year ending before the transfer date.

F5 1986 NI 6

Changes to legislation:

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Changes and effects yet to be applied to :

- Instrument am. (ot.prosp.) by [1998 c. 41 s.66\(5\)Sch.10 Pt.III para.7](#)
- Instrument am. (prosp.) by [1998 c. 41 s.66\(5\)Sch.10 Pt.V para.17](#)
- Instrument rev. in pt. (prosp.) by [1998 c. 41 ss.66\(5\),74\(3\), Sch.10, Pt.V, para.17, Sch.14, Pt.II](#)

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

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

- art. 10E(7) inserted by [S.I. 2019/530 reg. 89\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10F(9)(10) inserted by [S.I. 2019/530 reg. 90\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 10K(8A) inserted by [S.I. 2019/530 reg. 94\(7\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 11B(6)(7) inserted by [S.I. 2019/530 reg. 99\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 18(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 5(2)(b) (as substituted) by [S.I. 2019/1245 reg. 22](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- art. 31A(1A) inserted by [S.I. 2019/530 reg. 100\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Regs. 84-103 omitted (15.9.2020) by virtue of S.I. 2020/1016, regs. 1(2), 3(30))
- art. 65(1A) inserted by [S.I. 2006/2955 \(N.I.\) art. 3\(2\)](#)
- art. 65(3)-(5) added by [S.I. 2006/2955 \(N.I.\) art. 3\(3\)](#)