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STATUTORY INSTRUMENTS

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**1992 No. 231**

**The Electricity (Northern Ireland) Order 1992**

**PART III**

**REORGANISATION OF THE INDUSTRY**

*Transfers to successor companies*

*Transfer of assets, etc., of Northern Ireland Electricity*

**69.**—(1) Before such date as the Department may direct, Northern Ireland Electricity shall make a scheme (a “transfer scheme”) for the division of all its assets and liabilities (other than excepted rights and liabilities) between 2 or more companies nominated by the Department for the purposes of this paragraph; and of the companies so nominated—

- (a) one shall be designated as a generating company; and
- (b) one shall be designated as a transmission and supply company.

(2) Subject to paragraph (3), the Department may, after consultation with Northern Ireland Electricity, by order nominate for the purposes of paragraph (1) any company formed and registered under the Companies (Northern Ireland) Order 1986 (a “successor company”).

(3) On such day as the Department may by order appoint for the purposes of paragraph (4) (the “transfer date”) each successor company must be a company limited by shares which is wholly owned by the Crown.

(4) Subject to the provisions of Article 72, on the transfer date all assets and liabilities to which immediately before that date Northern Ireland Electricity was entitled or subject (other than excepted rights and liabilities) shall become by virtue of this paragraph, assets and liabilities of the successor company to which they are allocated by a scheme under paragraph (1).

(5) The Department shall not exercise any power conferred by this Article or Article 70 or 71 except with the consent of the Department of Finance and Personnel.

(6) In this Article “excepted rights and liabilities” means—

- (a) any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);
- (b) any rights and liabilities arising under an agreement which relates to any such assets and liabilities as are mentioned in sub-paragraph (a) and is specified or is of a description specified by the transfer scheme;
- (c) any rights and liabilities transferred by Article 90; and
- (d) such other rights and liabilities as the Department may determine.

*Transfer schemes under Article 69*

**70.**—(1) A transfer scheme may—

- (a) define the assets and liabilities to be allocated to a particular successor company—
    - (i) by specifying or describing the assets and liabilities in question;
    - (ii) by referring to all the assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking; or
    - (iii) partly in the one way and partly in the other;
  - (b) provide that any assets or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of 2 or more successor companies;
  - (c) impose on any successor company an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other successor company as may be specified in the scheme; and
  - (d) make such supplemental, incidental and consequential provision as Northern Ireland Electricity considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).
- (2) An obligation imposed by a provision included in a transfer scheme under paragraph (1)(c) shall be enforceable by civil proceedings by the other successor company for an injunction or for any other appropriate relief.
- (3) A transaction of any description which is effected under such a provision as is mentioned in paragraph (2)—
- (a) shall have effect subject to the provisions of any statutory provision 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 paragraph, have required the consent or concurrence of any other person.
- (4) Where a lease of any land is granted in pursuance of such a provision as is mentioned in paragraph (2), any right or obligation affecting that land—
- (a) shall not become exercisable or enforceable 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.
- (5) It is hereby declared that the provisions of a transfer scheme in so far as they relate to any asset or liability of Northern Ireland Electricity in which there is a Crown interest bind the Crown, including the Crown in right of Her Majesty’s Government in the United Kingdom to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

*Functions of the Department in relation to transfer schemes*

**71.**—(1) A transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify such a scheme before approving it.

(2) If, in relation to a transfer scheme—

- (a) Northern Ireland Electricity fails, before the date specified in the Department’s direction under Article 69(1), to submit the scheme for the approval of the Department; or
- (b) the Department decides not to approve the scheme that has been submitted to the Department by Northern Ireland Electricity (either with or without modifications),

the Department may make the scheme.

(3) It shall be the duty of Northern Ireland Electricity to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with Northern Ireland Electricity.

*Supplementary provisions as to transfers under Article 69*

**72.** The provisions of Schedule 10 shall apply, to the extent there mentioned, to any transfer which is effected by Article 69(4); and that paragraph shall have effect subject to the provisions of that Schedule.