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SCHEDULE

LOCH LEVEN AND LOCHABER WATER POWER

Provisional Order to amend the Loch Leven Water Power Act 1901, the Loch Leven Water Power (Transfer) Order 1910 and the Lochaber Water Power Acts 1921 to 1984; to enable the transfer of the undertaking of the Lochaber Power Company to Alcan Aluminium UK Limited; and for other purposes.

WHEREAS—

- (1) By the Loch Leven Water Power Act 1901, the Loch Leven Water Power (Amendment) Act 1904 and the Loch Leven Water Power Order 1908 the Loch Leven Water and Electric Power Company was incorporated and authorised to construct and maintain the waterworks, electrical generating stations, pier and other works described in the said Acts and Order for the supply of water, water power and electricity within an area of supply defined in the said Act of 1901:
- (2) By the Loch Leven Water Power (Transfer) Order 1910 the Loch Leven Water and Electric Power Company was authorised to sell and transfer the several portions of its undertaking to The British Aluminium Company Limited, and to two other companies incorporated for the purpose thereof, and pursuant to that Order transfers of the undertaking were made by deeds and otherwise to those companies:
- (3) In 1982 the whole of the issued share capital of The British Aluminium Company Limited was acquired by what is now British Alcan Aluminium plc (hereinafter referred to as “British Alcan”) and following subsequent internal reorganisation the relevant undertaking of The British Aluminium Company Limited is now carried on by its subsidiary Alcan Aluminium UK Limited (hereinafter referred to as “Alcan UK”):
- (4) By the Lochaber Water Power Acts 1921 to 1940 the Lochaber Power Company (hereinafter referred to as “the Power Company”) was incorporated and authorised to construct and maintain electrical generating stations, waterworks and other works and was, subject to and in accordance with the provisions contained in those enactments, authorised to develop, generate, use and supply water, water hydraulic and motive power and electricity:
- (5) Most of the water, water hydraulic and motive power and electricity generated by the Power Company was supplied to The British Aluminium Company Limited before its acquisition in 1982 by British Alcan and following internal reorganisation the Power Company now supplies Alcan UK:
- (6) The separate existence of the Power Company is no longer necessary, practicable or administratively convenient, and it is expedient to enable the transfer of its undertaking to Alcan UK and to amend the said enactments relating thereto:
- (7) In the context in which the electricity generating and supply industry operates following the enactment of the Electricity Act 1989 it is expedient that certain restrictions, limitations and provisions imposed on Alcan UK and the Power Company by the enactments relating to their respective undertakings should be removed and that the rights, benefits and powers attached to those undertakings should be clarified:
- (8) It is expedient that other provisions in this Order be enacted:

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- (9) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

Short title

- 1 (1) This Order may be cited as the Loch Leven and Lochaber Water Power Order 1995.

- (2) (a)

In respect of the Loch Leven undertaking the Acts of 1901 to 1910 and this Order may be cited together as the Loch Leven Water Power Acts 1901 to 1995;

- (b) In respect of the Lochaber undertaking the Acts of 1921 to 1940 and this Order may be cited together as the Lochaber Water Power Acts 1921 to 1995.

Interpretation

- 2 In this Order, except where the context otherwise requires—

“the Acts of 1901 to 1910” mean the Loch Leven Water Power Act 1901, the Loch Leven Water Power (Amendment) Act 1904, the Loch Leven Water Power Order 1908 and the Loch Leven Water Power (Transfer) Order 1910;

“the Acts of 1921 to 1940” means the Lochaber Water Power Acts 1921 to 1940;

“Alcan UK” means Alcan Aluminium UK Limited or its successors or assignees;

“the appointed day” means such day as, under section 3 (Appointed day) of this Order, is appointed;

“assignation” includes an assignment;

“convey” includes the execution of any deed or other instrument or document by which (whether with or without any other procedure) any property, or any estate, interest, security or other right in or over property is constituted, completed, disposed, assigned, transmitted or discharged; and cognate expressions are to be construed accordingly;

“debenture” includes a floating charge or any instrument containing a floating charge;

“enactment” means an enactment in this Order, in the Act confirming this Order or in any general or local Act or in any order, rule or regulation made under any Act;

“existing” means existing, outstanding or in force immediately before the appointed day;

“liabilities” includes duties and obligations of every description (whether present or future, actual or contingent);

“the Lochaber undertaking” means the undertaking of the Power Company relating to the generation, use and supply of water, water hydraulic and motive power and electricity and other purposes pursuant to the Acts of 1921 to 1940;

“the Loch Leven undertaking” means the undertaking of Alcan UK relating to the generation, use and supply of water, water hydraulic and motive power and electricity and other purposes pursuant to the Acts of 1901 to 1910;

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“the Power Company” means the Lochaber Power Company;

“property” means property and assets of every description (whether present or future, actual or contingent, heritable or moveable, corporeal or incorporeal), and includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description;

“security” includes a standard security or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), hypothecation, assignation by way of security, indemnity, right of set off, undertaking or other means of securing payment or discharge of a debt or liability (whether present or future, actual or contingent);

“standard security” includes a mortgage, an assignation or disposition ex facie absolute and any agreement qualifying the same, a bond and disposition or assignation in security, a cash credit bond and disposition or assignation in security, an assignation in security and any real right or burden of whatever kind in the nature of a security; and

“undertaking” means all existing property and liabilities of whatever nature.

Appointed day

- 3 (1) The directors of Alcan UK may appoint a day to be the appointed day for the purposes of this Order.
- (2) Not less than 14 days before the day so appointed Alcan UK shall publish in the Edinburgh Gazette and the London Gazette notice of the day so appointed, stating that it is the appointed day for the purposes of this Order.
- (3) The publication of notice of a day under subsection (2) above shall be conclusive evidence that that day is the appointed day for the purposes of this Order, and a reproduction of a page or part of a page of the Edinburgh Gazette or the London Gazette containing the notice, certified by the secretary of Alcan UK shall be evidence of the publication of the notice.

Transfer and vesting of Lochaber undertaking in Alcan UK

- 4 (1) On the appointed day the Lochaber undertaking shall, by virtue of this Order and without further act or deed, be transferred to, and vest in, Alcan UK to the intent that Alcan UK shall succeed to the Lochaber undertaking as if in all respects Alcan UK were the same person in law as the Power Company.
- (2) To enable Alcan UK to complete a title, if thought fit, to any property vested in it by virtue of this Order by notice of title or otherwise, or to deduce title, this Order shall be deemed to be a general disposition, conveyance or, as the case may be, assignation of such property in favour of Alcan UK.

Lochaber Power Company

- 5 Upon the day one year after the appointed day the Power Company shall be dissolved.

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Application of enactments, documents, etc

- 6 Subject to the proviso to section 7 (Contracts to be binding on or enforceable by Alcan UK) of this Order, where—
- (1) any enactment other than an enactment in this Order or in the Act confirming this Order;
 - (2) any document whensoever made or executed; or
 - (3) any resolution by a company or by directors of a company;
contains any reference express or implied to the Power Company such reference shall on and after the appointed day and except where the context otherwise requires, have effect as a reference to Alcan UK.

Contracts to be binding on or enforceable by Alcan UK

- 7 All existing agreements, awards, contracts, conveyances, deeds, leases, licences, guarantees, bonds, indemnities, instructions and other instruments or undertakings entered into by or made with or addressed to the Power Company whether alone or with any other person and whether as principal or as agent shall on and after the appointed day be as binding and of as full force and effect in every respect against or in favour of Alcan UK and may be enforced as fully and effectually as if instead of the Power Company Alcan UK had been a party thereto, bound thereby or entitled to the benefit thereof.
- Provided that no director, secretary or auditor of the Power Company shall by this Order become a director, secretary or auditor of Alcan UK.

Actions not to terminate

- 8
- (1) If immediately before the appointed day any claim (including any contingent claim), action, arbitration or proceeding or any cause of action, arbitration or proceeding is pending or existing against or in favour of the Power Company it shall not terminate or be discontinued or in anywise be prejudicially affected by reason of this Order but may be continued, prosecuted and enforced only by or against or in favour of Alcan UK as and when it might have been continued, prosecuted and enforced by or against or in favour of the Power Company if the Act confirming this Order had not been passed.
 - (2) Any judgment, decree or award obtained by or against the Power Company and not fully satisfied before the appointed day shall be enforceable only by or against Alcan UK.
 - (3) Nothing in this Order shall terminate or prejudicially affect the appointment of any receiver or of any administrative receiver or liquidator of the Power Company.

Documents to remain evidence

- 9
- (1) In subsection (2) below “documents” has the same meaning as in section 9 of the Civil Evidence (Scotland) Act 1988.
 - (2) All books, documents and other records which if the Lochaber undertaking had not been transferred to and vested in Alcan UK by this Order would have been admissible

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in evidence in respect of any matter for or against the Power Company shall be admissible in evidence in respect of the same matter for or against Alcan UK.

Transfer and vesting of interests in land and other property

- 10 (1) In subsection (2) below “interest in a lease” means the interest of the lessee of land under a lease or, as the case may be, the interest of the sub-lessee of land under a sub-lease, and “reversionary interest” means the interest of a landlord in land subject to a lease or, as the case may be, the interest of the lessee of land who is the landlord under a sub-lease.
- (2) The transfer and vesting of any land or other property by virtue of this Order shall not—
- (a) constitute an assignation, transfer, devolution, alienation, parting with possession or other disposition or conveyance of property or of an interest in property for the purposes of any provision in any instrument, contract (whether in writing or not) or order of any court concerning that property or that interest; or
 - (b) give rise to any forfeiture or irritancy; or
 - (c) invalidate or discharge any contract or security; or
 - (d) operate so as to merge any interest in a lease with the reversionary interest in it.

Evidence of transfer and vesting

- 11 (1) The production of a Queen’s Printer’s copy of the Act confirming this Order, and such evidence of publication of notice of the appointed day as is specified in subsection (3) of section 3 (Appointed day) of this Order shall, for all purposes, be conclusive evidence of the transfer of the property and liabilities of the Power Company to Alcan UK, and of the vesting thereof in Alcan UK, in accordance with the provisions of this Order.
- (2) Without prejudice to the generality of subsection (1) above any document made or executed on or after the appointed day whereby Alcan UK, whether alone or jointly with any other person, purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by the Power Company immediately before the appointed day, whether alone or jointly with any other person, shall be sufficient evidence that the interest of the Power Company in that property has been transferred to and vested in Alcan UK under this Order.

Loch Leven and Lochaber undertakings

- 12 (1) In this section “electricity” means electricity generated by water power.
- (2) Subject to—
- (a) the Acts of 1901 to 1910;
 - (b) the Acts of 1921 to 1940; and
 - (c) the Electricity Act 1989;
- the Loch Leven undertaking and the Lochaber undertaking shall include all necessary rights, benefits and powers to enable the use, supply or transmission of electricity by

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or to any person for any purpose and upon such terms and conditions as Alcan UK or the Power Company, as the case may be, see fit.

Repeals

- 13 (1) The enactments specified in Part I of the Schedule to this Order are hereby repealed to the extent specified.
- (2) Upon the day that the Power Company is dissolved in accordance with section 5 (Lochaber Power Company) of this Order the enactments specified in Part II of the Schedule to this Order are hereby repealed to the extent specified.

Costs of Order

- 14 The costs, charges and expenses preliminary to and of and incidental to the preparing for, obtaining and confirming of this Order or otherwise in relation thereto shall be paid by Alcan UK and may in whole or in part be defrayed out of revenue.