

Aircraft and Shipbuilding Industries Act 1977

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ELIZABETH II



Aircraft and Shipbuilding Industries Act 1977

1977 CHAPTER 3

An Act to provide for the establishment of two bodies corporate to be called British Aerospace and British Shipbuilders, and to make provision with respect to their functions; to provide for the vesting in British Aerospace of the securities of certain companies engaged in manufacturing aircraft and guided weapons and the vesting in British Shipbuilders of the securities of certain companies engaged in shipbuilding and allied industries; to make provision for the vesting in those companies of certain property, rights and liabilities; to provide for payments to British Aerospace and its wholly owned subsidiaries, for the purpose of promoting the design, development and production of civil aircraft; and for connected purposes.

[17th March 1977]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

THE CORPORATIONS

Constitution and functions

- 1.—(1) There shall be constituted, subject to and in accordance with the provisions of this section,—
- (a) a body corporate to be called British Aerospace, and
 - (b) a body corporate to be called British Shipbuilders.

British
Aerospace
and British
Shipbuilders.

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(2) Each Corporation shall consist of—

- (a) a chairman appointed by the Secretary of State ; and
- (b) subject to subsection (3) below, not less than 7 nor more than 20 other members each appointed by the Secretary of State after consultation with the chairman.

(3) In relation to either Corporation, the Secretary of State may by regulations made by statutory instrument—

- (a) provide that subsection (2)(b) above shall have effect in relation to the Corporation with the substitution of a different minimum or maximum number of members ;
- (b) provide that, in addition to the office of chairman of the Corporation, there shall be other offices to which he may appoint members of the Corporation ;
- (c) make provision with respect to the appointment and tenure of office of, and the vacation of office by, members of the Corporation ;
- (d) make provision with respect to the disclosure by members of the Corporation of any interest (whether direct or indirect) in contracts made or proposed to be made by the Corporation or any of its wholly owned subsidiaries or in any other matter whatsoever which falls to be considered by the Corporation ;
- (e) make provision with respect to the quorum, proceedings and meetings of the Corporation, the execution of instruments by or on behalf of the Corporation and the proof of documents purporting to be executed, signed or issued by or on behalf of the Corporation or by or on behalf of any of the Corporation's members or employees ; and
- (f) make such provision supplementary or incidental to the matters specified in paragraphs (a) to (e) above as appears to the Secretary of State to be expedient.

(4) Subject to any provision made by virtue of subsection (3) above, the arrangements relating to meetings of each Corporation shall be such as it may determine ; and the validity of any proceedings of either Corporation shall not be affected by any vacancy among the members or in the office of chairman or by any defect in the appointment of a member.

(5) Each Corporation—

- (a) shall pay to the members thereof such remuneration and such allowances as may be determined by the Secretary of State with the consent of the Minister for the Civil Service ; and
- (b) if the Secretary of State with the consent of that Minister so determines in the case of a person who is

or has been a member of the Corporation, shall pay or make arrangements for the payment of a pension to or in respect of that person in accordance with the determination ; and

(c) if a person ceases to be a member of the Corporation and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, shall pay to that person a sum of such amount as the Secretary of State may with the consent of the Minister for the Civil Service determine.

(6) Neither Corporation is to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown, and its property is not to be regarded as property of or held on behalf of the Crown.

(7) The Secretary of State may by order made by statutory instrument specify a different name by which either Corporation is to be known ; and where any such different name is so specified, any reference in this Act or in any other enactment, instrument or document to British Aerospace or, as the case may be, to British Shipbuilders, shall be construed accordingly.

(8) The power to make an order under subsection (7) above includes power to vary or revoke any order previously made under that subsection ; and a statutory instrument containing regulations or an order made under any provision of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) The Secretary of State shall maintain in respect of each Corporation a register of members' financial interests and shall ensure that all members of a Corporation enter in the register kept in respect of it statements of such of their financial interests as, were they Members of the House of Commons, they would be required to register in accordance with resolutions of that House, any such resolution being construed, in its application to members of a Corporation, with appropriate modifications.

(10) In the House of Commons Disqualification Act 1975 and 1975 c. 24. in the Northern Ireland Assembly Disqualification Act 1975, in 1975 c. 25. Part II of Schedule 1 (bodies of which all members are disqualified), there shall be inserted, at the appropriate places in alphabetical order,—

“ British Aerospace ” ; and

“ British Shipbuilders ”.

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General
duties of the
Corporations.

2.—(1) It shall be the duty of British Aerospace, subject to section 7(3) below, to promote and secure the promotion by its wholly owned subsidiaries of—

- (a) the efficient and economical design, development, production, sale, repair and maintenance of civil and military aircraft, of guided weapons and of space vehicles ; and
- (b) research into matters relating thereto.

(2) It shall be the duty of British Shipbuilders to promote and secure the promotion by its wholly owned subsidiaries of—

- (a) the efficient and economical design, development, production, sale, repair and maintenance of ships and slow speed diesel marine engines ; and
- (b) research into matters relating thereto.

(3) It shall be the duty of each Corporation—

- (a) in carrying out its activities to have full regard to the requirements of national defence ; and
- (b) to secure that each of its wholly owned subsidiaries, in carrying out its activities, has full regard to those requirements.

(4) It shall be the duty of each Corporation to seek to secure the benefit of the knowledge and experience of persons employed by it and its wholly owned subsidiaries in the organisation and conduct of the tasks in which those persons are employed.

(5) The Secretary of State may, after consultation with a Corporation, by order made by statutory instrument, prescribe in relation to that Corporation—

- (a) activities which the Corporation and its wholly owned subsidiaries are to carry on, either in addition to the activities specified in subsections (1) and (2) above or in substitution for such of those activities as may be specified in the order ; and
- (b) objectives of a general character which the Corporation and its wholly owned subsidiaries are to pursue ; and
- (c) conditions of a general character subject to which any activities are to be carried on or any prescribed objectives are to be pursued.

(6) The power to make an order under subsection (5) above includes power to vary or revoke any such order previously made, and no order shall be made under that subsection unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

(7) It shall be the duty of each Corporation—

- (a) to carry on such activities, to pursue such objectives and in so doing to comply with such conditions as may for the time being be specified in accordance with subsection (5) above ; and
- (b) to secure that its wholly owned subsidiaries carry on any such activities, pursue any such objectives and comply with any such conditions ;

and in the event of any conflict between the duty imposed by this subsection and any duty imposed by the preceding provisions of this section, the duty imposed by this subsection shall prevail.

(8) In carrying out its functions under this Act, it shall be the duty of each Corporation to promote industrial democracy in a strong and organic form in its undertakings and the undertakings of its wholly owned subsidiaries.

(9) It shall be the duty of each Corporation to enter within 3 months of the relevant vesting date into consultation with the relevant trade unions as to the methods which it should adopt for the purpose of carrying out its duty under subsection (8) above.

(10) Nothing in this section shall be construed as imposing upon either Corporation, directly or indirectly, any form of duty or liability enforceable by proceedings before any court.

3.—(1) In addition to any activities which it is under a duty to carry on, each Corporation may carry on— Powers of the Corporations.

- (a) any activities which were carried on, immediately before the date of transfer, by a company which, by virtue of this Act, becomes the Corporation's wholly owned subsidiary ; and
- (b) with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State any other activities to which the consent or authority relates.

(2) Subject to subsection (3) below, each Corporation shall have power—

- (a) to acquire by agreement, and to hold, interests in other bodies corporate ;
- (b) to form or take part in forming bodies corporate ;
- (c) to enter into partnerships with other persons ; and
- (d) to exercise all rights conferred by the holding of interests in bodies corporate.

PART I

(3) Except with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State, neither Corporation shall have power—

- (a) to exercise any of the powers conferred by paragraphs (a) to (c) of subsection (2) above ; or
- (b) to dispose of an interest in any of its wholly owned subsidiaries, unless the disposal is to another such wholly owned subsidiary.

(4) The powers conferred by subsection (2) above in relation to bodies corporate shall be exercisable whether or not they are or will be incorporated in the United Kingdom ; and the power conferred by paragraph (c) of that subsection shall be exercisable whether or not the partnership will be governed by the law of any part of the United Kingdom.

1948 c. 38,
1960 c. 22.
(N.I.)

(5) Section 209 of the Companies Act 1948 and section 200 of the Companies Act (Northern Ireland) 1960 (power to acquire shares of shareholders dissenting from scheme or contract approved by majority) shall have effect in relation to the transfer of shares or any class of shares in a company to either of the Corporations ; and references to a transferee company in those sections shall be construed accordingly.

(6) Each Corporation shall have power—

- (a) with the consent of the Secretary of State to enter into and carry out agreements with the Minister of Overseas Development, being agreements whereunder the Corporation acts, at the expense of that Minister, as the instrument by means of which technical assistance is furnished by that Minister in exercise of the power conferred by section 1(1) of the Overseas Aid Act 1966 ; and
- (b) with the consent of the Secretary of State and the Minister of Overseas Development, to enter into and carry out agreements whereunder the Corporation, for any purpose specified in that section, furnishes technical assistance in a country or territory outside the United Kingdom against reimbursement to the Corporation of the cost of furnishing that assistance.

1966 c. 21.

(7) Each Corporation may, with the consent of the Secretary of State, promote Bills in Parliament, and may without any such consent oppose any Bill in Parliament ; and any reference in this subsection to a Bill in Parliament includes a reference to an order under the Private Legislation Procedure (Scotland) Act 1936 and a proposed Measure introduced in the Northern Ireland Assembly.

1936 c. 52.

(8) Each Corporation shall have power to do anything and to enter into any transaction (whether or not involving the expenditure of money, the borrowing or lending of money, the acquisition of any property or rights or the disposal of any property or rights) which in its opinion is calculated to facilitate the exercise or performance of the functions conferred on it under or by virtue of any enactment or which in its opinion is incidental or conducive to the exercise or performance of any such function.

(9) For the avoidance of doubt it is hereby declared that the preceding provisions of this section relate only to the capacity of each Corporation as a statutory corporation, and nothing in those provisions shall be construed as authorising the disregard by either Corporation of any enactment or rule of law.

4.—(1) Each Corporation shall give effect to any direction given to it under subsection (2) below or under any of the following provisions of this Act and shall secure, so far as appropriate, that each of its wholly owned subsidiaries also gives effect to any such direction.

Corporations to give effect to directions of Secretary of State.

(2) The Secretary of State may give directions of a general character as to the exercise and performance by either Corporation of its functions (including the exercise of rights conferred by the holding of interests in bodies corporate, whether or not incorporated in the United Kingdom) in relation to matters which appear to the Secretary of State to affect the national interest.

(3) Before giving any direction to either Corporation under subsection (2) above, the Secretary of State—

- (a) shall consider all factors relating to that Corporation that appear to him to be relevant to the proposed direction, and
- (b) shall consult the Corporation.

(4) Before giving any such direction to British Shipbuilders, the Secretary of State shall have full regard to the need—

- (a) to co-ordinate the operations of British Shipbuilders with those of the British shipping industry ;
- (b) to take account of any shipbuilding policy for the time being adopted by any international organisation of which the United Kingdom is a member ;
- (c) to ensure that British Shipbuilders is able to compete in world markets on equal terms with its competitors in other countries ; and
- (d) to take account of any special considerations relating to parts of the United Kingdom and in particular, but without prejudice to the generality of those considerations, relating to employment.

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(5) When the Secretary of State gives a direction under subsection (2) above, he shall lay a copy of it before each House of Parliament within 28 days of giving it, unless he has notified the Corporation to which it is given that he is of opinion that it is against the national interest to lay it or that he accepts the Corporation's contention that it is against the Corporation's commercial interests to lay it.

Duties of the Corporations to review and report on management of their affairs.

5.—(1) British Aerospace shall, forthwith after the aircraft industry vesting date and subsequently from time to time when it considers it appropriate or the Secretary of State so requires,—

(a) undertake a review of the affairs of the Corporation and its wholly owned subsidiaries for the purposes of determining—

(i) how the management of the activities of the Corporation and those subsidiaries can most efficiently be organised, taking account of the desirability of promoting the largest degree of decentralisation of management consistent with the proper discharge of its functions, and

(ii) what steps are necessary in order effectively to promote industrial democracy in its undertakings and the undertakings of its wholly owned subsidiaries; and

(b) make a report to the Secretary of State upon the Corporation's conclusions arising from the review and the action it proposes to take in the light of those conclusions.

(2) British Shipbuilders shall, forthwith after the shipbuilding industry vesting date and subsequently from time to time when it considers it appropriate or the Secretary of State so requires—

(a) undertake a review of the affairs of the Corporation and its wholly owned subsidiaries for the purposes—

(i) of determining how the management of the activities of the Corporation and those subsidiaries can most efficiently be organised, and what steps are necessary in order effectively to promote industrial democracy in its undertakings and the undertakings of its wholly owned subsidiaries; and

(ii) without prejudice to the generality of subparagraph (i) above, of seeking the largest degree, consistent with the proper discharge of its functions, of decentralisation of management and decision-taking to separate profit centres in the shipbuilding and ship-repairing areas of Great Britain, and in particular of Scotland and Wales and, without prejudice to the generality of the foregoing, in relation to

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sales, pricing, production, the formulation and implementation of investment programmes, manpower planning and management, industrial relations, and responsibility for financial performance; and

- (b) make a report to the Secretary of State upon the Corporation's conclusions arising from the review and the action it proposes to take in the light of those conclusions.

(3) Each Corporation's report on its first review under subsection (1) or (2) above shall be made to the Secretary of State before such date not more than 6 months after the relevant vesting date as he may after consultation with the Corporation determine.

(4) Before reaching conclusions in consequence of any review undertaken under subsection (1) or (2) above, each Corporation shall consult any relevant trade union.

(5) The Secretary of State shall lay before each House of Parliament—

- (a) a copy of any report under subsection (1) or (2) above,
or

- (b) where the Secretary of State is of the opinion that the disclosure of any part of the report is against the national interest, or is against the commercial interests of the Corporation, a copy of the report excluding that part,

and may, after doing so, and after considering the report and consulting the Corporation concerned about it, give to the Corporation such directions as he considers appropriate for securing that the general principles upon which the activities of the Corporation and its wholly owned subsidiaries are organised are calculated to produce the greatest efficiency in the management of those activities.

6.—(1) Except in so far as it is satisfied that adequate machinery exists for achieving the purposes of this section, it shall be the duty of each Corporation to consult any relevant trade union with a view to the conclusion between the Corporation and any such trade union of such agreements as appear to the parties to be desirable with respect to the establishment and maintenance of machinery for the purposes specified in subsection (2) below.

Machinery for settling terms and conditions of employment etc.

(2) The purposes referred to in subsection (1) above are—

- (a) the settlement by negotiation of terms and conditions of employment of persons employed by the Corporation and its wholly owned subsidiaries.

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1974 c. 52.

- (b) the resolution of trade disputes, within the meaning of the Trade Union and Labour Relations Act 1974,
- (c) the promotion and encouragement of measures affecting efficiency, in any respect, in the carrying on of their activities by the Corporation and its wholly owned subsidiaries, and
- (d) the discussion of other matters of mutual interest to the parties to the agreements.

(3) Nothing in this section shall be construed as prohibiting either Corporation or any wholly owned subsidiary of either Corporation from taking part together with other employers or organisations of employers in the establishment and maintenance of machinery for any of the purposes set out in subsection (2) above.

Formulation
of the
Corporations'
policies and
plans and
conduct of
their
operations.

7.—(1) It shall be the duty of each Corporation, after consulting any relevant trade union, to formulate in each year other than that in which it is constituted a corporate plan relating to the conduct, during such period beginning in that year as the Corporation considers appropriate, of the operations of the Corporation and its wholly owned subsidiaries and dealing, subject to subsection (2) below, with the following matters, namely,—

- (a) capital investment,
- (b) research and development,
- (c) employment of persons,
- (d) forecasts of income and expenditure on profit and loss account and of payments and receipts of the Corporation and its wholly owned subsidiaries,
- (e) such other matters as the Corporation considers appropriate, and
- (f) such other matters as the Secretary of State may for the purposes of this subsection specify in writing to the Corporation,

and, in formulating its corporate plan in each year and in determining the period to which the plan is to relate, and in the general conduct of the operations of the Corporation and its wholly owned subsidiaries in each year, the Corporation shall act on lines settled from time to time with the approval of the Secretary of State.

(2) If the Secretary of State gives a direction to either Corporation to that effect, the plan formulated by the Corporation in any year under subsection (1) above need not deal with such of the matters falling within paragraphs (a) to (d) of that subsection as may be specified in the direction.

(3) If the estimated cost to British Aerospace and its wholly owned subsidiaries of the development of any aircraft or guided weapon exceeds such amount as may for the time being be

notified to British Aerospace by the Secretary of State for the purposes of this subsection, British Aerospace shall secure that neither it nor any of its wholly owned subsidiaries undertake, or participate with others in the undertaking of, that development except with the consent of the Secretary of State.

(4) In this section

“estimated cost” does not include any cost which British Aerospace or any of its wholly owned subsidiaries expects to be reimbursed under the terms of a contract, and

“year” means the period of 12 months beginning on 1st January.

8.—(1) In such manner and at such times as the Secretary of State may specify in relation to it, each Corporation shall furnish the Secretary of State with such information—

Furnishing and publication of information by the Corporations.

- (a) as he may specify in writing to it, and
- (b) as the Corporation has or can reasonably be expected to obtain,

with respect to such matters relating to the Corporation or its wholly owned subsidiaries or the activities (past, present or future), plans or property of any of them as the Secretary of State may so specify.

(2) The Secretary of State may, by directions given to either Corporation, require it to publish, in such manner as may be specified in the directions, such information as may be so specified relating to—

- (a) the operations of the Corporation and its wholly owned subsidiaries; and
- (b) its policy and plans for the general conduct of its undertaking and the businesses of all or any of its wholly owned subsidiaries.

(3) Before giving any directions under subsection (2) above the Secretary of State shall consult the Corporation to which they are to be given.

9.—(1) Each Corporation shall secure that, notwithstanding anything in the memorandum or articles of association of any of its wholly owned subsidiaries, none of those subsidiaries—

Control by Corporations of wholly owned subsidiaries.

- (a) shall carry on any activity which the Corporation itself has no power to carry on or has power to carry on only with the consent of the Secretary of State, or
- (b) shall acquire any interest in a body corporate or form or take part in forming a body corporate, or

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(c) shall enter into a partnership with any other person, except with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State.

(2) Paragraph (b) of subsection (1) above shall apply whether or not the body corporate is or will be incorporated in the United Kingdom, and paragraph (c) shall apply whether or not the partnership will be governed by the law of any part of the United Kingdom.

(3) Each Corporation shall secure that, except with the consent of, or in accordance with the terms of any general authority given by, the Secretary of State, none of its wholly owned subsidiaries shall dispose of an interest in any other of its wholly owned subsidiaries, unless the disposal is to the Corporation itself or to another of its wholly owned subsidiaries.

*Financial provisions*Financial
duties of the
Corporations.

10.—(1) The financial duties of each Corporation shall be such as may from time to time be determined by the Secretary of State with the approval of the Treasury and after consultation with the Corporation concerned.

(2) In relation to each Corporation, the first determination under subsection (1) above shall be made within the period of 12 months beginning on the relevant vesting date.

(3) As soon as possible after the making of a determination under subsection (1) above the Secretary of State shall give notice thereof to the Corporation concerned.

(4) Each Corporation's report for any accounting year shall set out any determination made in relation to it under subsection (1) above, other than a determination which was wholly superseded before the beginning of the accounting year to which the report relates.

(5) The Secretary of State shall not make, and the Treasury shall not approve, a determination under subsection (1) above, unless satisfied that the duties to be imposed on the Corporation concerned by the determination are likely, taken together, to result in an adequate return on the capital employed by the Corporation and its subsidiaries.

(6) A determination under subsection (1) above—

(a) may relate to a period beginning before the date on which it is made ; and

(b) may contain incidental or supplemental provisions.

(7) As soon as possible after the making of any determination under subsection (1) above the Secretary of State shall lay a copy of the determination before each House of Parliament.

11.—(1) Subject to subsections (6) and (7) below, each Corporation may borrow money in accordance with the provisions of subsections (2), (3) and (4) below.

(2) Each Corporation may borrow temporarily, by way of overdraft or otherwise,—

(a) in sterling from the Secretary of State, or

(b) with the consent of the Secretary of State and the approval of the Treasury or in accordance with any general authority given by the Secretary of State with the approval of the Treasury, in sterling or a currency other than sterling from a person other than the Secretary of State,

such sums as may be required for meeting the obligations and discharging the functions of the Corporation or any of its wholly owned subsidiaries.

(3) Each Corporation may borrow, otherwise than by way of temporary loan,—

(a) in sterling from the Secretary of State, or

(b) with the consent of the Secretary of State and the approval of the Treasury, in sterling from the Commission of the European Communities or the European Investment Bank or in any currency other than sterling from a person other than the Secretary of State,

such sums as may be required by the Corporation or any of its wholly owned subsidiaries for capital purposes or for fulfilling any guarantee entered into by it.

(4) Each Corporation may borrow from any of its wholly owned subsidiaries, without any consent, approval or other authority.

(5) It shall be the duty of each Corporation to secure that none of its wholly owned subsidiaries borrows otherwise than from the Corporation or from another of its wholly owned subsidiaries except with the consent of the Secretary of State and the approval of the Treasury.

(6) The aggregate of—

(a) the amounts for the time being outstanding, otherwise than by way of interest, in respect of money borrowed by British Aerospace and each of its wholly owned subsidiaries, other than money borrowed on excluded loans, and

(b) the public dividend capital received by British Aerospace,

shall not exceed £175 million or such greater sum, not exceeding £250 million, as the Secretary of State may, with the consent of the Treasury, specify by order made by statutory instrument.

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Borrowing powers of the Corporations and their wholly owned subsidiaries.

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(7) The aggregate of—

(a) the amounts for the time being outstanding, otherwise than by way of interest, in respect of money borrowed by British Shipbuilders and each of its wholly owned subsidiaries, other than money borrowed on excluded loans, and

(b) the public dividend capital received by British Shipbuilders,

shall not exceed £200 million or such greater sum, not exceeding £300 million, as the Secretary of State may, with the consent of the Treasury, specify by order made by statutory instrument.

(8) No part of the commencing capital of the Corporations specified under section 15(1) below shall be taken into account under subsection (6) or (7) above.

(9) A loan is an excluded loan for the purposes of subsections (6) and (7) above if—

(a) it consists of money borrowed—

(i) by a Corporation from one of its wholly owned subsidiaries, or

(ii) by one of a Corporation's wholly owned subsidiaries from another such subsidiary or from the Corporation ; or

(b) it is a loan under—

1949 c. 67.

(i) section 1 of the Civil Aviation Act 1949 (development of civil aviation, etc.),

1968 c. 32.

(ii) section 8 of the Industrial Expansion Act 1968 (finance for Concorde project),

1972 c. 63.

(iii) section 7 or section 8 of the Industry Act 1972 (assistance for industry), or

(iv) section 45 below ; or

(c) it is a loan guaranteed under section 10 of the Industry Act 1972 (construction credits for ships) ; or

(d) the purpose of the loan is to pay off the whole or any part of the commencing debt (within the meaning of section 15 below) of either Corporation ; or

(e) the purpose of the loan is to pay off a previous loan which was itself an excluded loan by virtue of paragraph (d) above or this paragraph.

(10) The power to make an order under subsection (6) or subsection (7) above includes power to vary or revoke any order previously made in the exercise of that power ; and no such

order shall be made unless a draft of it has been laid before and approved by the Commons House of Parliament.

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12.—(1) Without prejudice to his powers under any other enactment, the Secretary of State may, with the approval of the Treasury, lend to either Corporation any sums which it has power to borrow from him under section 11 above and the Treasury may issue to the Secretary of State out of the National Loans Fund any sums necessary to enable the Secretary of State to make loans in pursuance of this subsection. Loans by the Secretary of State to the Corporations.

(2) Any loans made in pursuance of subsection (1) above shall be repaid to the Secretary of State at such times and by such methods, and interest on the loans shall be paid to him at such times and at such rates, as he may, with the approval of the Treasury, from time to time direct.

(3) All sums received by the Secretary of State in pursuance of subsection (2) above shall be paid into the National Loans Fund.

(4) The Secretary of State shall prepare in respect of each financial year two accounts (one relating to British Aerospace and the other relating to British Shipbuilders) of—

- (a) the sums issued to him in pursuance of subsection (1) above and the sums received by him in pursuance of subsection (2) above and of the disposal by him of those sums; and
- (b) the public dividend capital received and the public dividend paid by the Corporation.

(5) The Secretary of State shall send each of the accounts referred to in subsection (4) above to the Comptroller and Auditor General before the end of the month of November next following the end of the financial year to which it relates; and the Comptroller and Auditor General shall examine, certify and report on each of the accounts and lay copies of each and of his report thereon before each House of Parliament.

(6) The form of the accounts prepared in pursuance of subsection (4) above and the manner of preparing them shall be such as the Treasury may direct.

13.—(1) The Treasury may guarantee, in such manner and on such conditions as they think fit, the repayment of the principal of and the payment of interest on any sums which either Corporation borrows from a person other than the Secretary of State. Treasury guarantees.

(2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling

PART I

the guarantee so given the Treasury shall, as soon as possible after the end of each financial year (beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged), lay before each House of Parliament a statement relating to that sum.

(3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.

(4) If any sums are issued in fulfilment of a guarantee given under this section, the Corporation to whose loan the guarantee relates shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct, payments of such amounts as the Treasury so direct in or towards repayment of the sums so issued and payments of interest, at such rate as the Treasury so direct, on what is outstanding for the time being in respect of sums so issued.

(5) Any sums received by the Treasury in pursuance of subsection (4) above shall be paid into the Consolidated Fund.

Transfer to
Corporations
of rights and
obligations
with respect
to certain
government
loans.

14.—(1) On the aircraft industry vesting date any rights or obligations of the Secretary of State in existence on that date with respect to any loan which—

(a) falls within subsection (3) below, and

(b) was made to a company which comes into public ownership as, or as the wholly owned subsidiary of, a company the securities of which vest in British Aerospace,

shall, by virtue of this section, become rights or obligations of British Aerospace.

(2) On the shipbuilding industry vesting date any rights or obligations of the Secretary of State in existence on that date with respect to any loan which—

(a) falls within subsection (3) below, and

(b) was made to a company which comes into public ownership as, or as the wholly owned subsidiary of, a company the securities of which vest in British Shipbuilders,

shall, by virtue of this section, become rights or obligations of British Shipbuilders.

(3) The loans referred to in subsections (1) and (2) above are—

1949 c. 67.

(a) loans under section 1 of the Civil Aviation Act 1949 (development of civil aviation, etc.);

1965 c. 4.

(b) loans under section 5 of the Science and Technology Act 1965 (support of scientific research, etc.);

- (c) loans under section 4 of the Shipbuilding Industry Act 1967 (loans by the Shipbuilding Industry Board, the rights and obligations under which vested in the Secretary of State under section 9(3) of that Act) ;
- (d) loans under section 8 of the Industrial Expansion Act 1968 (finance for Concorde project) ;
- (e) loans under Part II of the Industry Act 1972 (financial assistance for industry) ; and
- (f) a loan of £4½ million made in 1971 to Yarrow (Shipbuilders) Limited and in respect of which a supplementary sum was included in Vote 7 in Part 15 of Schedule (B) to the Appropriation Act 1971.

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1967 c. 40.

1968 c. 32.

1972 c. 63.

1971 c. 67.

15.—(1) As soon as possible after the passing of this Act, the Secretary of State shall by notice in writing given to each Corporation—

The
commencing
capital of each
Corporation.

- (a) specify as the commencing capital of the Corporation such amount as he may with the approval of the Treasury determine, and
- (b) specify the amount of that commencing capital which, with the approval of the Treasury, he determines is to be treated for the purposes of this Act as public dividend capital received by the Corporation,

and so much of the commencing capital of a Corporation as is not specified as mentioned in paragraph (b) above is in this section referred to as “the commencing debt” of the Corporation.

(2) The commencing capital of a Corporation shall not exceed the aggregate of—

- (a) the amount determined by the Secretary of State, with the approval of the Treasury, to be necessary to recoup the Crown expenses and liabilities incurred by reason of the provisions of section 35 below and paragraph 3 of Schedule 4 to this Act ; and
- (b) the amount determined by the Secretary of State with the approval of the Treasury as being the amount that would have been necessary to recoup the Crown expenses and liabilities which would have been so incurred in relation to such of the securities vested in the Corporation by virtue of Part II of this Act as—

(i) were held by or on behalf of the Crown immediately before they were so vested, and

(ii) do not relate to any loan to which subsection (1) or subsection (2) of section 14 above applies,

PART I

if those securities had not been held as mentioned in sub-paragraph (i) above ; and

- (c) in the case of British Aerospace, the aggregate of the principal outstanding on the aircraft industry vesting date in respect of the loans to which section 14(1) above applies ; and
- (d) in the case of British Shipbuilders, the aggregate of the principal outstanding on the shipbuilding industry vesting date in respect of the loans to which section 14(2) above applies.

(3) On the relevant vesting date each Corporation shall assume a liability to the Secretary of State in respect of the commencing capital of the Corporation.

(4) The rate of interest payable on so much of the principal of the commencing debt of a Corporation as is for the time being outstanding, the date from which interest is to begin to accrue, the arrangements for paying off the principal of the debt, and the other terms of the debt shall be such as the Secretary of State may, with the approval of the Treasury, from time to time determine ; and different rates and dates may be determined under this subsection with respect to different portions of the commencing debts.

(5) Any sums received by the Secretary of State by way of interest on or repayment of the commencing debt of a Corporation shall be paid into the National Loans Fund.

Public
dividend
capital and
public
dividends.

16.—(1) Subject to section 11 above, the Secretary of State may with the approval of the Treasury pay to either Corporation such sums (in this Act referred to as “ public dividend capital ”) as he thinks fit.

(2) In consideration of receiving public dividend capital, each Corporation shall make payments to the Secretary of State (in this Act referred to as “ public dividends ”) in accordance with subsection (4) or subsection (5) below.

(3) Each Corporation shall, in respect of each of its accounting years, decide whether or not to propose to the Secretary of State to pay any public dividend and, if it decides to make such a proposal, the amount it proposes to pay.

(4) If either Corporation makes a proposal under subsection (3) above in respect of an accounting year of the Corporation and the proposal is agreed by the Secretary of State with the consent of the Treasury, the Corporation shall in respect of that accounting year pay a public dividend of the amount so proposed.

(5) If, in respect of any of its accounting years,—

(a) a Corporation makes no proposal under subsection (3) above, or

(b) a proposal by a Corporation under that subsection is not agreed as mentioned in subsection (4) above,

the Corporation shall, in respect of that accounting year, pay a public dividend of such amount, if any, as the Secretary of State may determine with the consent of the Treasury and after consultation with the Corporation.

(6) Any sums required by the Secretary of State for making payments of public dividend capital shall be defrayed out of moneys provided by Parliament, and any public dividends received by him shall be paid into the Consolidated Fund.

17.—(1) Subject to the following provisions of this section, Accounts
and audit. it shall be the duty of each Corporation—

(a) to keep proper accounts and proper records in relation thereto,

(b) to prepare in respect of each accounting year of the Corporation a statement of accounts giving a true and fair view of the state of affairs and profit or loss of the Corporation, and

(c) to prepare in respect of each accounting year of the Corporation such a statement or statements of consolidated accounts dealing with, and giving a true and fair view of the state of affairs and profit or loss of,—

(i) the Corporation and all of its subsidiaries (in this section referred to as “the group”), or

(ii) some but not all the members of the group, as the Corporation may determine and the Secretary of State and the Treasury may for the time being approve.

(2) If the Secretary of State with the consent of the Treasury so requires a Corporation by notice in writing, the Corporation shall, in respect of any accounting year of the Corporation to which the notice relates, comply with its obligation under subsection (1)(c) above, so far as it relates to those members of the group which are specified in the notice, by preparing a statement of consolidated accounts dealing with the members of the group specified in the notice and giving a true and fair view of their state of affairs and profit or loss.

(3) Every statement of accounts prepared by a Corporation in accordance with this section shall comply with any requirement which the Secretary of State has, with the consent of the Treasury, notified in writing to the Corporation relating to—

(a) the information to be contained in the statement ;

PART I

- (b) the manner in which that information is to be presented ;
and
- (c) the methods and principles according to which the statement is to be prepared.

(4) Subject to any requirement notified to the Corporation under subsection (3) above, in preparing any statement of accounts in accordance with this section, each Corporation shall follow, with respect to each of the matters specified in paragraphs (a) to (c) of that subsection, such course as may for the time being be approved by the Secretary of State with the consent of the Treasury.

(5) The first accounting year of each Corporation shall end on such date as the Secretary of State may direct in relation to that Corporation and, subject to subsection (6) below, each subsequent accounting year of each Corporation shall be the period of 12 months beginning immediately after the end of the previous accounting period.

(6) If the Secretary of State so directs in relation to an accounting year of either Corporation, that accounting year shall end on such date as may be specified in the direction (whether before or after the date on which it would otherwise expire).

(7) The accounts kept, and all statements prepared, by a Corporation under this section shall be audited by auditors appointed for each accounting year of the Corporation by the Secretary of State.

(8) A person shall not be qualified for appointment under subsection (7) above unless he is a member of one or more bodies of accountants established in the United Kingdom, and for the time being recognised for the purposes of section 161(1)(a) of the Companies Act 1948 by the Secretary of State:

1948 c. 38.

Provided that a Scottish firm may be so appointed if each of the partners therein is qualified to be so appointed.

(9) As soon as the accounts kept, and the statements prepared, by a Corporation under this section have been audited, the Corporation shall send to the Secretary of State—

- (a) a copy of the statements, and
- (b) copies of the statements of accounts for such of its subsidiaries as the Corporation may, with the approval of the Secretary of State and the consent of the Treasury, determine, and
- (c) if the Secretary of State with the consent of the Treasury so requires by notice in writing, copies of the statements of accounts for each subsidiary of the Corporation which is specified in the notice,

together with a copy of any report made by the auditors on the statements or on the accounts of the Corporation; and the Secretary of State shall lay a copy of every statement and report of which a copy is received by him in pursuance of this subsection before each House of Parliament.

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18.—(1) It shall be the duty of each Corporation to make to the Secretary of State, as soon as possible after the end of each of its accounting years, a report on the operations of the Corporation and its wholly owned subsidiaries during that year. Annual report.

(2) The report of a Corporation under subsection (1) above for any accounting year shall set out any direction under this Act given to it during that year by the Secretary of State unless the Secretary of State has given a notice concerning it under section 4(5) above and has not revoked it.

(3) The Secretary of State may at any time revoke a notice under section 4(5) above by notice given to the Corporation concerned.

(4) The report for any accounting year shall contain a statement about the performance of the Corporation's duty under section 2(8) above.

(5) A copy of the register under section 1(9) above maintained by the Secretary of State in respect of the Corporation shall be annexed to each such report.

(6) The Secretary of State shall lay before each House of Parliament a copy of every report made to him under subsection (1) above.

PART II

VESTING OF SECURITIES AND OTHER ASSETS IN THE CORPORATIONS AND ACQUIRED COMPANIES

Acquisition of securities and assets

19.—(1) Subject to the provisions of this Part of this Act, on the aircraft industry vesting date all securities of the companies which on 29th October 1974 were known by the names specified in Part I of Schedule 1 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Aerospace free from all trusts and incumbrances. Vesting in British Aerospace or British Shipbuilders of securities of Scheduled companies.

(2) Subject to the provisions of this Part of this Act, on the shipbuilding industry vesting date, all securities of the companies which on 31st July 1974 were known by the names specified in

PART II

Part I of Schedule 2 to this Act, being the companies other than any excepted company which on that date fulfilled the conditions in Part II of that Schedule, shall, by virtue of this section, vest in British Shipbuilders free from all trusts and incumbrances.

(3) Each Corporation shall, in respect of the securities of any company which vest in it by virtue of this Part of this Act, be entitled or subject, as from the date of transfer, to the exclusion of the previous holders thereof, to all the rights, privileges and advantages and all the liabilities and obligations arising from the holding of those securities, in all respects as if the securities had been duly transferred to the Corporation in accordance with the enactments and rules of law (other than this Act) applicable thereto and everything necessary to make those rights, privileges, advantages, liabilities and obligations fully effective had been duly done.

(4) Without prejudice to subsection (3) above, all persons concerned with the keeping of the register of the holders of any such securities as are referred to in that subsection shall forthwith register the relevant Corporation therein and the company concerned shall forthwith issue to that Corporation the appropriate documents of title relating to the securities of the company which vest in that Corporation by virtue of this Part of this Act.

(5) In this section—

“excepted company” means any company—

(a) which before 21st November 1975 a court has ordered to be wound up; or

(b) which before that day has passed a resolution for voluntary winding up; or

(c) of whose property a receiver has been appointed before that date; and

“securities”, in relation to a company, does not include any security forming part of the loan capital of the company, the terms of which enable it to be redeemed, either without notice or upon not more than one year's notice, at a price not exceeding the nominal amount of the security together with any outstanding interest, at any time after the creation of the security or the expiry of a period not exceeding one year after the creation of the security.

Vesting in acquired company of certain assets of privately-owned companies in same group.

20.—(1) Subject to subsection (5) below, where immediately before the date of transfer an acquired company was the wholly owned subsidiary of the person from whom it was acquired, any property, rights or liabilities to which this subsection applies shall vest in the acquired company on the date of transfer of the company.

(2) The property, rights and liabilities to which subsection (1) above applies are any property, rights and liabilities of an associated privately owned company which—

- (a) satisfy a vesting condition for the purposes of this section, and
- (b) would remain vested in the associated privately owned company but for this section.

(3) Property, rights and liabilities satisfy a vesting condition for the purposes of this section if—

- (a) they are wholly appurtenant to the undertaking carried on by the acquired company, or
- (b) they are mainly appurtenant to property, rights or liabilities which are wholly appurtenant to that undertaking, or
- (c) they cannot reasonably be severed from property, rights or liabilities of the acquired company or property, rights or liabilities such as are mentioned in paragraph (a) or (b) above.

(4) In the application of subsections (1) to (3) above in a case where the acquired company fulfils the criteria in paragraph 2 of Part II of Schedule 2 to this Act, the references in subsection (3) above to the undertaking carried on by the acquired company shall be construed as references to the shipbuilding undertaking carried on at a shipyard or other works in which the acquired company had an interest in possession on 31st July 1974.

(5) The rights and liabilities under any agreement for the rendering of personal services by any person shall be vested in the acquired company by virtue of this section if, and only if, immediately before the date of transfer, his employment under the agreement was wholly or mainly for the purposes of the undertaking carried on as mentioned in subsection (3) or, as the case may require, subsection (4) above.

(6) The provisions of Schedule 3 to this Act shall have effect for supplementing the preceding provisions of this section.

(7) In this section and Schedule 3 to this Act—

“associated privately owned company” means any privately owned company which immediately before the date of transfer was the holding company of an acquired company or the wholly owned subsidiary of a company whose securities do not vest but which was the holding company of an acquired company; and

“privately owned company” means a company whose securities do not vest, and which is not a subsidiary of a company whose securities vest, in either of the Corporations by virtue of this Part of this Act.

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Certain loans from associated persons to be treated as securities.

21.—(1) In any case where—

- (a) immediately before the date of transfer, an acquired company or the wholly owned subsidiary of an acquired company owes a debt to an associated person, and
- (b) it appears to the Secretary of State that the circumstances in which and the purposes for which the debt was incurred were of such a nature that, had the acquired company or its wholly owned subsidiary sought to borrow the money in question from a person who was not an associated person, the terms of the provision of that money would have been likely, assuming the debtor not to be the subsidiary of any company, to be such as to require the issue to the lender by the debtor of securities,

the Secretary of State may, at any time within the period of 9 months beginning on the date of transfer, serve a notice on the person to whom the debt is owed stating that, in the opinion of the Secretary of State, the right to repayment of the whole or part of the debt should be treated as a security of the acquired company for the purposes of vesting and compensation.

(2) Subject to subsection (5) below, where a notice is served under subsection (1) above, no person—

- (a) shall be entitled to exercise any right to repayment of the debt in question, or
- (b) shall be subject to any obligation to repay it.

(3) Where a notice has been served under subsection (1) above, the questions—

- (a) whether the right to repayment of the whole or part of the debt ought to be treated for the purposes of vesting and compensation as a security of the acquired company by whom or by whose wholly owned subsidiary the debt is owed, and
- (b) on what date and terms and for what consideration any such security should be treated for those purposes as having been issued by the acquired company,

shall be settled by agreement between the Secretary of State and the person on whom the notice was served within the period of 3 months beginning on the day on which he was so served or, in default of such agreement, by arbitration under this Act.

(4) If the arbitration tribunal are satisfied that the right to repayment of the whole or any part of the debt in question ought to be treated as a security of the acquired company for the purposes of vesting and compensation, they shall confirm the Secretary of State's notice under subsection (1) above with any necessary amendments but otherwise shall revoke it.

(5) If, by reason—

- (a) of an agreement under subsection (3) above, or
- (b) of the revocation or amendment of a notice under subsection (4) above,

the right to repayment of the debt or of any part of it does not fall to be treated as a security for the purposes of vesting and compensation, subsection (2) above shall to that extent cease to apply on the date of the agreement or the date when the notice is revoked or amended.

(6) If—

- (a) the parties have agreed under subsection (3) above that the right to repayment of the debt or of any part of it ought to be treated as a security, or
- (b) the arbitration tribunal confirm the Secretary of State's notice as respects the right to repayment of the debt or any part of it,

the right which falls to be treated as a security shall vest in the relevant Corporation on the operative date of the notice as a security of the acquired company issued to the creditor on such date and terms and for such consideration as have been determined by agreement or arbitration under subsection (3) above and be treated as such a security—

- (i) for the purposes of section 19 above, and
- (ii) subject to subsection (7) below, for the purposes of any provision of this Part of this Act relating to compensation for securities or the issue of securities.

(7) A right to repayment shall not be so treated for the purpose of any provision of this Part of this Act relating to compensation under which it is necessary to determine, at any time before the operative date of the notice,—

- (a) the persons who are the holders of, or of any class of, securities of the acquired company concerned ; or
- (b) whether any matter was agreed to by a majority or any particular majority of any such persons.

(8) Where a matter is referred to the arbitration tribunal under subsection (3) above, the tribunal shall, in determining the issue before them, have regard to all factors which appear to them to be relevant and, in particular, to—

- (a) the structure of the capital of the acquired company ;
- (b) the nature and amounts of that company's assets and liabilities ; and
- (c) the length of time over which the debt in question has been outstanding on the date of transfer.

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(9) If the terms on which a security is to be treated under this section as having been issued include any charge on assets of the acquired company, subsection (5) of section 38 below shall not apply for the purpose of determining the base value of that security.

(10) In this section—

“operative date”, in relation to a notice means—

(a) where paragraph (a) of subsection (6) above applies, the date of the agreement,

(b) where paragraph (b) applies, the date of confirmation of the notice by the arbitration tribunal; and

“securities” has the same meaning as in section 19 above.

Determination of rights to require the issue of securities or to nominate directors.

22.—(1) If, after the date of transfer, a person other than a Corporation or a company which comes into public ownership would, apart from this section, have—

(a) a right to require the issue of, or to subscribe for or purchase or otherwise acquire, any securities of such a company, or

(b) a right to appoint any person, or to be appointed, otherwise than by virtue of an agreement for rendering personal services, to the office of director of such a company,

that right shall cease as from the date of transfer.

(2) Where the right referred to in subsection (1) above was conferred on a person as an incident of—

(a) an agreement conferring other rights on that person, or

(b) the holding of any securities of a company,

nothing in that subsection shall affect the continued existence of any other rights or liabilities under that agreement or, as the case may be, under the terms upon which those securities were held.

(3) Where any person suffers loss by reason of the determination, by virtue of this section, of any such right relating to a company as is referred to in subsection (1) above, being a right conferred by an agreement made, or by virtue of the holding of securities issued, before the initial date, or on or after that date with the approval in writing of the Secretary of State, he shall be entitled to claim from the relevant Corporation compensation under this section in respect of that loss.

(4) Any question whether any person has a right to claim compensation under this section or as to the amount of that compensation shall, in default of agreement, be determined by

arbitration under this Act ; but no claim for compensation under this section shall be made after the expiry of the period of 12 months beginning on the date of transfer of the company concerned.

PART II

Payments of dividend and interest

23.—(1) If, without the prior approval in writing of the Secretary of State, an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer,—

Control of dividends and interest.

- (a) made, in respect of a period of control, such payments of dividend or interest, other than payments by way of capital or special dividend, on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, or
- (b) made payments of dividend on any of its securities in respect of a period prior to the first of the periods of control,

then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of the excess referred to in paragraph (a) above or, as the case may require, to the payments falling within paragraph (b) above.

(2) If, without the prior approval in writing of the Secretary of State, a company which, at the date of the resolution concerned, was a wholly owned subsidiary of an acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after the safeguarding date and before the date of transfer, made, in respect of a period of control, such payments of interest on any of its securities or on any loan as exceed the maximum permitted for that period by section 24 below, then, subject to the following provisions of this section, all persons who were directors of the company at the time when the resolution was passed shall be liable to pay to the relevant Corporation an amount equal to the amount of that excess.

(3) A claim by the relevant Corporation for the payment of an amount due under subsection (1) or subsection (2) above shall be made within the period of 9 months beginning on the date of transfer of the company concerned and, if so made and not settled by agreement, shall be determined by arbitration under this Act.

(4) If the arbitration tribunal decide the claim in favour of the relevant Corporation, they shall make such orders against all

PART II or any of the directors of the company in respect of their liability on the claim as the tribunal think just, having regard to all the circumstances.

(5) For the purposes of this section and section 24 below, any payment by a company out of its net revenue to its members in their capacity as such shall be treated as a payment of dividend, and references in this section and that—

1972 c. 41.

(a) to payments of dividend shall be construed, in the case of payments of dividend which are qualifying distributions within the meaning of Part V of the Finance Act 1972, as references to the franked payments, within the meaning of that Part, of which those distributions form part ; and

(b) to payments of interest shall be construed as references to the gross amount of those payments, that is to say, in any case where those payments were made under deduction of income tax, to the amounts thereof before any deduction was made therefrom in respect of income tax.

(6) In determining the amount recoverable under this section from the directors of a company by virtue of subsection (1) or (2) above, there shall be deducted from the amount which, apart from this subsection, would be so recoverable, a sum equal to income tax on that amount at the basic rate or, as the case may require, the standard rate for the relevant year of assessment, that is to say,—

(a) in the case of an amount which is so recoverable by virtue of a payment of interest, the year of assessment in which that payment was made ; and

(b) in the case of an amount which is so recoverable by virtue of a payment of dividend, the year of assessment in which the dividend was paid.

(7) For the purposes of this section and sections 24 and 25 below, the periods of control, in relation to a company, are the last financial year of the company ending before the safeguarding date and any subsequent period or periods ending before the date of transfer.

(8) In this section and in sections 24 and 25 below—

1948 c. 38.

“ financial year ” has the same meaning as in the Companies Act 1948 ; and

“ net revenue ”, in relation to a company, means the revenue of that company, after deducting therefrom proper provision for taxation and for the redemption of capital and all charges which are proper to be made to revenue account including, in particular, proper provision for

the depreciation of assets or for the renewal of assets and provision for interest on the loan capital of the company.

PART II

(9) For the purposes of this section and section 24 below, the certified net revenue of a company for a period of control is such amount as the company's auditor certifies to be the company's net revenue for that period as disclosed by a profit and loss account for that period which, in his opinion, gives a true and fair view of the company's profit or loss.

24.—(1) Subject to the following provisions of this section, for the purposes of section 23 above the payments of dividend or interest permitted for any period of control of a company are as follows—

Permitted dividends and interest.

(a) in the case of securities forming part of the loan capital of the company, other than cumulative loan stock, and in the case of other loans under which the company is the debtor, payments of interest at the minimum rate required to prevent the company from committing any default in respect of its obligations to the holders of those securities or, as the case may be, the creditors under those loans ;

(b) in the case of cumulative loan stock, payments of interest at the minimum rate required to prevent any interest being carried over for subsequent payment ; and

(c) in the case of securities forming part of the share capital of the company, payments of dividend of amounts which, when aggregated, do not exceed whichever is the less of—

(i) the certified net revenue of the company for the period of control, and

(ii) the total amount of dividend paid before 29th October 1974, otherwise than as a capital or special dividend, on securities forming part of the share capital of the company in respect of the basis financial year or, if no final dividend was paid at any time before that date, such amount as the Secretary of State may approve for the purposes of this section.

(2) In this section—

“ basis financial year ” means the last financial year for which a final dividend was paid before 29th October 1974, and

“ final dividend ” means a dividend declared by a company at its annual general meeting.

(3) If, with respect to any period of control of a company the maximum permitted payments of dividend in respect of

PART II securities forming part of the share capital of the company are those specified in sub-paragraph (ii) of subsection (1)c) above, payments of dividend—

- (a) which are made in respect of cumulative preference shares, and by virtue of cumulative rights attaching to those shares, and
- (b) which, when aggregated with other payments falling within subsection (1)c) above and made in respect of that period, do not exceed the certified net revenue of the company for that period,

shall be within the maximum permitted for that period for the purposes of section 23 above.

(4) In any case where the number of days comprised in a period of control exceeds, or is less than, the number of days comprised in the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount by the fraction of which the numerator is the number of days comprised in the period of control and the denominator is the number of days comprised in the basis financial year.

(5) In any case where the issued share capital of a company at the end of a period of control exceeds, or is less than, its issued share capital at the end of the basis financial year, then, in the application of subsection (1) above to that period of control, the total amount of the dividends paid by the company in the basis financial year shall be treated as increased or, as the case may be, reduced by multiplying that amount or, where subsection (4) above applies, that amount as varied under that subsection, by the fraction of which the numerator is the amount of the issued share capital of the company at the end of the period of control and the denominator is the amount of the issued share capital of the company at the end of the basis financial year.

(6) For the purposes of subsection (5) above, the amount of a company's issued share capital at the end of a period of control shall be computed by taking the amount of its issued share capital at the end of the basis financial year and adjusting it—

- (a) by adding the amount or value of any consideration actually received in the period between the end of the basis financial year and the end of that period of control for the issue of share capital or in payment up of issued share capital, and

(b) by deducting the amount or value of any money or other assets paid or transferred by the company during the period referred to in paragraph (a) above for the repayment or redemption of any share capital,

and the amount of the company's issued share capital at the end of the basis financial year shall be what is then the amount of the company's paid-up share capital and of any share premium account (or other comparable account by whatever name called).

(7) Any reference in this section to payments of dividend shall be construed, in the case of payments made before 6th April 1973, as a reference to the gross amount of those payments, that is to say, to the amounts thereof before any deduction was made therefrom in respect of income tax; and if any such payment made by a company before that date was made without deduction of income tax, the amount of that payment shall be treated for the purposes of this section as a net amount paid after deduction of tax, and the gross amount of the payment shall be calculated accordingly for those purposes.

25.—(1) As soon as possible after the date of transfer, each acquired company shall make the following payments to the persons who, immediately before that date, were the holders of securities of the company in respect of which compensation is payable under this Part of this Act, namely—

Final payments of dividend and interest.

(a) payments on all securities forming part of the loan capital of the company of interest which has accrued up to the date of transfer and has not been paid, at the rates permitted under section 24 above or, if rates in excess of those rates have been approved under section 23(1) above, at the highest rates so approved; and

(b) payments of dividend for the final financial period on any other securities of the company of such amounts as to ensure that the aggregate payments of dividend for that period on those securities are equal to the maximum amounts permitted under section 24 above, or, if larger amounts have been approved under section 23(1) above, to the largest amounts so approved.

(2) As soon as possible after the date of transfer, each acquired company and each wholly owned subsidiary of an acquired company shall make to the persons who, immediately before that date, were owed any sums the rights to repayment of which are treated as securities under section 21(6) above, payments of interest which has accrued in respect of them up to the date of transfer, and has not been paid, at the rates permitted under

PART II

section 24 above or, if rates in excess of those rates have been approved under section 23(1) or (2) above, at the highest rates so approved.

(3) For the purpose of any such payments as are referred to in subsections (1) and (2) above, the statutory or other provisions relating to the company shall be deemed to permit payments of interest or dividend in respect of the final financial period.

(4) In this section the expression "final financial period", in relation to a company, means, subject to subsection (5) below, such part of the financial year during which the date of transfer occurs as precedes that date.

(5) In any case where the accounts of a company in respect of the last financial year ending before the date of transfer have not been laid before the company in general meeting before that date, the expression "final financial period", in relation to that company, means that financial year together with such part of the financial year during which the date of transfer occurs as precedes that date.

Safeguarding of assets, avoidance of certain transactions, etc.

Power to
acquire
securities of
certain
additional
companies.

26.—(1) If it appears to the Secretary of State that a company which, apart from this section, would not come into public ownership—

- (a) operates or owns the whole, or a substantial or essential part, of works which, at any time on or after the initial date, were operated or owned (as the case may be) by an acquired company or an excluded company or by a company which on that date was the subsidiary of an acquired company or an excluded company, or
- (b) was on the initial date the wholly owned subsidiary of an acquired company but ceased to be such a subsidiary before the date of transfer of the acquired company, or
- (c) was on the initial date the wholly owned subsidiary of an excluded company but ceased to be such a subsidiary before the relevant vesting date,

then, subject to subsection (2) below, the Secretary of State may, at any time before the relevant vesting date or within the period of 3 months beginning on that date, serve on that company a notice (in this Act referred to as a "notice of acquisition") stating that, subject to the following provisions of this section, the securities of the company will vest in the Corporation specified in the notice in like manner as the securities of the acquired companies.

(2) No notice of acquisition may be served on a company under subsection (1) above if—

(a) in a case falling within paragraph (a) of that subsection—

(i) the Secretary of State has approved in writing for the purposes of this section, either before or after they were effected, all transactions entered into after the initial date resulting, directly or indirectly, in the transfer or grant to the company of rights of ownership in, or rights in respect of the user of, any of the works referred to in that paragraph, and

(ii) the Secretary of State undertook that the powers conferred by this section would not be used in relation to those works ; or

(b) in a case falling within paragraph (b) or paragraph (c) of that subsection, the Secretary of State has approved in writing for the purposes of this section, either generally or specially, the making of the arrangements which led to the company ceasing to be the wholly owned subsidiary of an acquired company or an excluded company.

(3) The Secretary of State may also serve a notice of acquisition on a company, at any time before the relevant vesting date or within the period of 3 months beginning on that date, if it appears to him—

(a) that the whole of the equity share capital of the company is held by or on behalf of the Crown, and

(b) that it has as a subsidiary an acquired company falling within Part I of Schedule 1 or Schedule 2 to this Act.

(4) A company on which a notice of acquisition has been served may, within the period of 3 months beginning on the date of the service of the notice, serve a notice on the Secretary of State contending that none of the conditions specified in subsection (1) or (3) above was fulfilled in relation to the company, and the notice shall set out the grounds of that contention.

(5) Where a notice is served on the Secretary of State under subsection (4) above and neither that notice nor the notice of acquisition is withdrawn, the question whether the contention of the company is correct shall be determined by arbitration under this Act, and, on any such arbitration, the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the notice of acquisition, but shall otherwise confirm it.

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(6) Every notice of acquisition shall specify a date, which shall not be earlier than the relevant vesting date nor earlier than the expiry of 3 months after the service of the notice, and, subject to subsection (7) below, the date so specified shall be the date of transfer in relation to the company on which the notice is served.

(7) The Secretary of State and the company on which a notice of acquisition is served may by agreement substitute another date for the date specified in accordance with subsection (6) above, and where a reference to arbitration is made under the preceding provisions of this section and the arbitration tribunal confirm the notice, the date of transfer shall be whichever is the latest of the following dates, namely—

- (a) the date specified in the notice of acquisition in accordance with subsection (6) above ;
- (b) any date substituted for that date in accordance with the preceding provisions of this subsection ; and
- (c) the date on which expires the period of 2 months beginning on the date of the decision of the arbitration tribunal.

(8) Where a notice of acquisition is served on a company and is not withdrawn or revoked, the securities of the company shall, on the date of transfer, vest in the Corporation specified in the notice.

(9) When a notice of acquisition has been served on a company under this section and either—

- (a) the period within which the company may serve a notice under subsection (4) above has expired without such a notice being served, or
- (b) the question whether or not the notice is to have effect has been finally settled in favour of the Secretary of State,

the company shall forthwith give notice to every holder of its securities of the fact that its securities are to be acquired by the Corporation specified in the notice ; **and the notice—**

- (i) shall, in the case of security holders whose names are entered in any register kept by or on behalf of the company, be given in the same manner as the company gives notice to its members of its general meetings, and
- (ii) shall, in any other case, be given by advertisement or in any way allowed by the company's articles of association for giving notice to its members.

27.—(1) If it appears to the Secretary of State, in relation to a company which, apart from this section, would be an acquired company or in relation to a subsidiary of such a company,—

PART II
Removal of
company from
companies to
be acquired.

- (a) that one of the conditions specified in subsection (2) below is fulfilled, or
- (b) that both the conditions specified in subsection (3) below are fulfilled,

the Secretary of State may, at any time before the date which, if the company were to come into public ownership, would be its date of transfer, serve a notice on the company stating that, subject to the following provisions of this section, the securities of the company will not vest in the relevant Corporation by virtue of this Act.

(2) The conditions mentioned in subsection (1)(a) above are—

(a) in relation to a company which apart from this section would be an acquired company, the following conditions, namely—

(i) that the company does not operate or own the whole, or a substantial or essential part, of works which at any time on or after the initial date were owned by the company,

(ii) that on or after 21st November 1975 the company has passed a resolution for its winding up or has been ordered to be wound up by a court, and

(iii) that a receiver has been appointed in respect of the undertaking of the company or in respect of any part of that undertaking which comprises works which at any time after that date were owned by the company; and

(b) in relation to a subsidiary of such a company the same conditions, but with the substitution of a reference to the subsidiary for any reference to the company and a reference to the initial date for any reference to 21st November 1975.

(3) The conditions mentioned in subsection (1)(b) above are—

(a) that the company is included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act, and

(b) that before the relevant vesting date the Secretary of State has served a notice of acquisition on a company (in this section referred to as “the acquired company”) of which, at the date of service, it is the subsidiary.

(4) A notice served on a company under this section because it appeared to the Secretary of State that the conditions specified

PART II in subsection (3) above were fulfilled shall cease to have effect if the notice of acquisition served on the acquired company is withdrawn or revoked.

(5) Without prejudice to subsection (4) above, a company on which a notice has been served under this section may, within the period of 3 months beginning on the date of the service of that notice, serve a notice on the Secretary of State contending that the circumstances at the date of service did not fall within subsection (2) or (3) above.

(6) Where a notice is served on the Secretary of State under subsection (5) above, and neither that notice nor the Secretary of State's notice is withdrawn, any question whether the circumstances at the date of service of the Secretary of State's notice fell within subsection (2) or (3) above shall be determined by arbitration under this Act, and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the company is correct, revoke the Secretary of State's notice but shall otherwise confirm it.

(7) Where a notice under this section has been served by the Secretary of State on any company—

- (a) the securities of the company shall not vest in a Corporation by virtue of section 19 above during the period within which a notice may be served by the company under subsection (5) above or, if such a notice has been served by the company, pending the final settlement of the question whether or not the Secretary of State's notice is to have effect, and
- (b) if the Secretary of State withdraws his notice or the arbitration tribunal revoke that notice and, but for this subsection, the vesting of securities would have already taken place or would take place within the period of 2 months beginning on the date of the withdrawal or, as the case may be, the decision of the arbitration tribunal, the date of transfer shall be the date on which expires the period of 2 months beginning on the date of the withdrawal or decision.

(8) Where—

- (a) a notice under this section has been served on a company because it appeared to the Secretary of State that the conditions specified in subsection (3) above were fulfilled in relation to it, and
- (b) the acquired company transfers to any other person any of the securities held by it in the company on which the notice was served,

the transfer shall be void unless—

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(i) the prior consent of the Secretary of State was obtained for it, or

(ii) the notice of acquisition was withdrawn or revoked before it.

(9) If a notice served on a company ceases to have effect by virtue of subsection (4) above, the securities of the company shall vest in the relevant Corporation on its date of transfer or on the date on which the notice of acquisition was withdrawn or revoked, whichever is the later.

(10) Where a notice is served on a company under this section and is neither withdrawn nor revoked, and does not cease to have effect by virtue of subsection (4) above, the provisions of this Act other than this section and sections 28 and 29 below shall have effect, and be deemed always to have had effect, as if the company had never been included among the companies falling within Part I of Schedule 1 or Schedule 2 to this Act or, as the case may be, as if no notice of acquisition had ever been served on the company under section 26 above.

(11) In this Act “excluded company” means a company in relation to which this Act has effect as mentioned in subsection (10) above.

(12) Where the Secretary of State has served a notice on a company under this section and either the period within which the company may serve a notice under subsection (3) above has expired without such a notice being served or the question whether or not the Secretary of State’s notice is to have effect has been finally settled in favour of the Secretary of State—

(a) the effect of the latter notice shall be published in the London, Edinburgh and Belfast Gazettes, and

(b) the company shall give the like notice thereof to the holders of its securities as in the case of a notice of acquisition under section 26 above.

28.—(1) Subject to subsection (4) below, it shall not be lawful for an acquired company or a company which is the subsidiary of an acquired company to enter at any time before the date of transfer into a transaction transferring or granting to any person any rights of ownership in, or rights in respect of the user of, any works or part of any works used by that company or by any subsidiary of it. Prohibition of transfer of certain works.

(2) Subject to subsection (4) below, it shall not be lawful for any company (not being a company falling within subsection (1) above) which has acquired any rights of ownership in, or any rights in respect of the user of, any works or part of any

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works which, at any time on or after the initial date, were owned or operated by an acquired company or a company which at any such time was a subsidiary of an acquired company, to enter into any transaction transferring or granting to any person any rights of ownership in those works or any part thereof, or any rights in respect of the user of those works or any part thereof—

(a) at any time before the relevant vesting date or within the period of 3 months beginning on that date, or

(b) if a notice of acquisition is served on the company under section 26 above, at any time before the date of transfer of that company or, if the notice is withdrawn or revoked, the date of such withdrawal or revocation.

(3) Subject to subsection (7) below, any transaction purporting to effect such a transfer or grant as is mentioned in subsection (1) or (2) above shall be void.

(4) Nothing in subsection (1) or subsection (2) above shall apply to a transfer or grant which is approved in writing for the purposes of this section by the Secretary of State, either generally or specially; and the Secretary of State may approve a transfer or grant which would otherwise fall within either of those subsections at a time after it has been made and, in that case, the transfer or grant shall be deemed always to have been valid.

(5) Any approval under subsection (4) above may be given subject to conditions, including conditions enabling the relevant Corporation to require the transfer, surrender or grant of rights in respect of the works or part of the works in question to the Corporation itself or to a company which comes into public ownership.

(6) Any question whether a transaction is rendered void by subsection (1) or subsection (2) above shall, unless settled by agreement between the relevant Corporation and the parties to the transaction and the parties to any subsequent transaction relating to the same works, be determined by arbitration under this Act between that Corporation and those parties.

(7) If proceedings for the determination of such a question are not commenced within the period of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, the transaction shall be deemed always to have been valid (but without prejudice to the effect of any agreement under subsection (6) above).

(8) If a Corporation suffers damage by reason of any transaction which is unlawful by virtue of subsection (1) or subsection (2) above, the Corporation may, at any time within the period

of 9 months beginning on the date of transfer or (if the company concerned has no date of transfer) the relevant vesting date, make an application to the arbitration tribunal, and all parties to the transaction and, subject to subsection (9) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.

(9) In the case of a transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (8) above relating to that transaction.

(10) If, on an application under subsection (8) above, the arbitration tribunal are satisfied that the Corporation concerned has suffered such damage as is referred to in that subsection, they shall make such orders against any of the parties to the application as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and to all the circumstances of the case, for the payment by them to the Corporation of sums sufficient to enable the loss, or such part thereof as the tribunal think just, to be made good.

(11) No person shall be liable to any criminal proceedings by reason only of a contravention of subsection (1) or subsection (2) above.

29.—(1) In any case where

(a) it appears to the Secretary of State that a company which comes into public ownership or an excluded company or a company which on the relevant vesting date is a wholly owned subsidiary of an excluded company has, at any time after the initial date and before the date of transfer, entered into any transaction which—

(i) transferred or granted to any person, other than a company which comes into public ownership, any rights of ownership in any works or rights in respect of the user of any works, or

(ii) transferred or granted any industrial or intellectual property to any such person, and

(b) the transfer or grant has not been approved in writing for the purposes of this section by the Secretary of State (whether before or after the date of the transfer or grant), and

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assets
transferred
away.

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(c) it appears to the Secretary of State that it is necessary, for the purpose of enabling one of the Corporations fully to carry out its functions under this Act, that the rights or property so transferred or granted, or any rights derived from those rights or that property should vest in or be surrendered to that Corporation or to a company which comes into public ownership, he may authorise the Corporation to serve on any person entitled to the rights or property in question a notice (in this Act referred to as a "Schedule 4 notice") stating that Schedule 4 below applies to rights or property specified in the notice.

(2) A Schedule 4 notice may be served at any time within the period of 3 months beginning on the date of transfer.

(3) Subject to subsection (4) below, subsection (1) above shall apply in relation to a transaction entered into by a company (in the following provisions of this section referred to as "the former subsidiary") which—

(a) was on the initial date the wholly owned subsidiary of an acquired company or an excluded company (in the following provisions of this section referred to as "the parent company"), and

(b) ceased to be such a subsidiary before the date of transfer of the parent company,

as if the first reference in paragraph (a) of that subsection to a company which comes into public ownership were a reference to the former subsidiary and as if, in relation to the former subsidiary, the reference to the date of transfer were a reference to the date which is the date of transfer in relation to the parent company.

(4) In any case where, after the date of transfer of the parent company, the former subsidiary comes into public ownership by virtue of section 26 above, nothing in subsection (3) above shall affect the operation of subsection (1) above in relation to a transaction entered into by the former subsidiary after the date of transfer of the parent company but before the date of transfer of the former subsidiary.

(5) An approval given under paragraph (b) of subsection (1) above may be given subject to conditions, including conditions enabling the Corporation concerned to require the transfer, surrender or grant of rights in respect of the works, or property in question to the Corporation or to a company which comes into public ownership.

(6) In any case where—

(a) consequentially on the service of a notice under section 27 above, the securities of a company do not vest in a Corporation, and

- (b) the grounds for the service of that notice were those specified in subsection (2)(a)(ii) or (iii) of that section, and
- (c) any such property or rights as are specified in subsection (1)(a)(i) or (ii) above remain vested in the company or have become vested in a receiver,

subsection (1) above, with the omission of paragraph (b), shall apply as if the property or rights had been transferred or granted as mentioned in paragraph (a) of that subsection.

(7) Any person on whom a Schedule 4 notice has been served may, within the period of 3 months beginning on the date of service of that notice, serve a notice on the Corporation concerned contending that the circumstances stated in the Schedule 4 notice as having appeared to the Secretary of State in accordance with paragraph (a) of subsection (1) above do not exist or, where the Schedule 4 notice was served by virtue of subsection (6) above, that any one or more of the conditions specified in paragraphs (a) to (c) of that subsection is or are not fulfilled, and the notice shall set out the grounds of that contention.

(8) Where a notice is served on a Corporation under subsection (7) above, and neither that notice nor the Schedule 4 notice is withdrawn, the question whether the circumstances referred to in that subsection exist or whether the condition or conditions referred to in that subsection is or are fulfilled shall be determined by arbitration under this Act; and on any such arbitration the arbitration tribunal shall, if they are satisfied that the contention of the person who served the notice under that subsection is correct, revoke the Schedule 4 notice, but shall otherwise confirm it.

(9) Where a Schedule 4 notice is served and is not withdrawn or revoked, Schedule 4 to this Act shall have effect.

(10) In relation to an excluded company or a company which on the relevant date is a subsidiary of an excluded company, references in this section and Schedule 4 to this Act to the date of transfer shall be construed as references to the relevant vesting date.

30.—(1) Subject to subsection (2) below, this section applies where any company which comes into public ownership has, after the safeguarding date and before the date of transfer,—

- (a) made any payments to its members for the purpose of reducing the share capital of the company otherwise than by the redemption of any redeemable securities;
- or
- Dissipation of assets by transactions involving holders of securities etc.

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- (b) redeemed any securities which the company was not under any obligation to redeem before the date of transfer or made payments in respect of the redemption of any securities which exceed the minimum payments required to satisfy the rights existing on the safeguarding date of the holders of those securities ; or
- (c) made any other payment to the holders of its securities (in their capacity as such) out of capital moneys, or distributed assets other than money to the holders of its securities (in their capacity as such) ; or
- (d) made to the holders of any of its securities any payment by way of special dividend in respect of the securities ;
or
- (e) repaid any sum the right to repayment of which, if the sum had not been repaid, would, following the service of a notice under section 21 above, have been treated as a security or part of a security under subsection (6) of that section ; or
- (f) entered into any transaction the effect of which is that property or rights of the company are transferred or granted to any person and the consideration for the transfer or grant is received by the holders of securities of the company or any of them (in their capacity as such) ; or
- (g) effected a transfer of rights of ownership in any works to another company of which it was at the time of the transfer a subsidiary or to another subsidiary of that company ;

and in the following provisions of this section the transactions specified in paragraphs (a) to (g) above are, subject to subsection (2) below, referred to as "material transactions".

(2) For the purposes of this section a transaction is not a material transaction if it has been approved in writing by the Secretary of State for those purposes, either generally or specially, and whether before or after the date of the transaction.

(3) An approval given by the Secretary of State under subsection (2) above may specify as a condition of the approval such of the conditions (if any) falling within subsection (4) below as is appropriate to the transaction to which the approval relates, but the Secretary of State shall not give an approval subject to any such condition unless he is satisfied that, after not less than 14 days notice in writing, a meeting has been held of the holders for the time being of the securities which would be affected by the condition and that a majority in number representing three-fourths in value of those holders who are present and voting either in person or by proxy at the meeting have agreed to the condition.

(4) The conditions referred to in subsection (3) above are—

- (a) in the case of a transaction falling within any of paragraphs (a), (c), (d) and (f) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of the securities of the members or holders concerned to be reduced to such extent as may be specified in the approval or as may be subsequently determined in a manner so specified; and
- (b) in the case of a transaction falling within paragraph (g) of subsection (1) above, a condition requiring the compensation payable under this Act in respect of such securities of the company effecting the transfer as may be specified in the approval to be reduced to such extent as may be so specified or as may be subsequently determined in a manner so specified.

(5) The relevant Corporation may, in the case of any company which comes into public ownership, at any time within the period of 9 months beginning on the date of transfer, make an application to the arbitration tribunal in respect of any transaction which in the opinion of the Corporation is a material transaction and, subject to subsection (6) below,—

- (a) all persons who were directors of the company at the time when the transaction was entered into, and
- (b) in the case of a transaction mentioned in paragraph (f) of subsection (1) above, or any transaction mentioned in paragraph (c) thereof where the payments made or assets distributed represent the consideration for the transfer or grant of property or rights by the company to any other person, the persons to whom the property or rights were transferred or granted,

shall, unless the tribunal otherwise direct, be made parties to the application.

(6) In the case of any transaction entered into in pursuance of a resolution of the directors of a company, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to an application under subsection (5) above relating to that transaction.

(7) If the arbitration tribunal are satisfied that a transaction in respect of which an application under subsection (5) above is made is a material transaction, they shall determine the extent of the net loss resulting to the Corporation from the transaction and shall make such orders against any of the parties to the application as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case,

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for the payment by them to the Corporation of sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.

Onerous transactions: disclaimer and recovery of losses.

31.—(1) Subject to subsection (2) below, the provisions of this section apply in any case where, on or after the appropriate date and before the date of transfer, a company which comes into public ownership has entered into a transaction which, in the opinion of the relevant Corporation, was of such a nature as, and at the time it was entered into could reasonably have been foreseen by the company to be likely,—

- (a) to cause a loss to the company, or
- (b) to impose a liability on it substantially greater than any benefit accruing to it,

and which, in the opinion of the relevant Corporation, either—

- (i) was both an unusual transaction for the company to enter into, having regard to the activities in which the company was engaged at the time of the transaction, and not reasonably necessary for the purpose of those activities, having regard to the circumstances at that time ; or
- (ii) was a transaction entered into otherwise than in the ordinary course of the company's business and on such terms or with such a party as to indicate an unreasonable lack of prudence on the part of the company, having regard to the circumstances at the time of the transaction ;

and for the purposes of this subsection “ the appropriate date ” means, in relation to a transaction consisting of the making or variation of an agreement or lease, the initial date and, in the case of any other transaction, the day after the safeguarding date ; and a transaction falling within this subsection is in the following provisions of this section referred to as an “ onerous transaction ”.

(2) For the purposes of this section, a transaction is not an onerous transaction if—

- (a) it consists of a payment to which section 23 above applies ; or
- (b) it is a material transaction within the meaning of section 30 above or would be a material transaction but for an approval given under subsection (2) of that section ; or
- (c) it is made or entered into for any charitable purpose ; or
- (d) it is made or entered into in connection with the determination of any question, dispute or matter falling to be determined by or under any provision of this Part of this Act ; or

(e) it has been approved in writing for the purposes of this section by the Secretary of State, either generally or specifically, and either before or after the time of the transaction.

(3) At any time within the period of 9 months beginning on the date of transfer, the relevant Corporation may make an application to the arbitration tribunal in respect of any onerous transaction entered into by a company on or after the day after the safeguarding date; and all parties to the transaction and, subject to subsection (4) below, all persons who were directors of the company at the time when the transaction was entered into shall, unless the tribunal otherwise direct, be made parties to the application.

(4) Where an application under subsection (3) above relates to a transaction entered into in pursuance of a resolution of the directors of the company concerned, no person who was not a director at the time when the resolution authorising or recommending the transaction was passed shall, by reason of his directorship, be made a party to the application.

(5) If, in the case of an onerous transaction which consists of the making or variation of an agreement or lease, the agreement or lease remains, in whole or in part, unperformed or unexpired on the date of transfer, the company shall, if so directed by the relevant Corporation, by notice in writing given to the other parties to the agreement or lease at any time within the period of 6 months beginning on the date of transfer, disclaim the agreement or lease.

(6) In this Act a notice under subsection (5) above is referred to as a "notice of disclaimer".

(7) Where a company gives a notice of disclaimer, any of the other parties to the agreement or lease concerned may, within the period of 2 months beginning on the date on which the notice is served, refer to arbitration under this Act the question whether or not the agreement or lease ought to be disclaimed under this section, and the relevant Corporation, as well as the company concerned, shall be made a party to the arbitration.

(8) If, on an application under subsection (3) or a reference under subsection (7) above, the arbitration tribunal are themselves satisfied, having regard to all relevant factors, that the transaction concerned—

- (a) was of such a nature as to cause such a loss, or to impose such a liability, as is referred to in subsection (1) above, and
- (b) at the time it was entered into could reasonably have been foreseen by the company to be likely to cause such a loss or impose such a liability,

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and that it falls within either paragraph (i) or paragraph (ii) of that subsection, the tribunal shall—

- (i) in the case of an application under subsection (3) above, determine the extent of the net loss resulting to the Corporation from the transaction, and
- (ii) in the case of a reference under subsection (7) above, confirm the notice of disclaimer,

unless (in either case) the tribunal are satisfied that the transaction was not entered into with a view to defeating the object of any provision made by this Act or (if the transaction was entered into before the passing of this Act) with a view to defeating any provision which might reasonably have been anticipated to be likely to be contained in this Act.

(9) Where the arbitration tribunal make a determination of a net loss under subsection (8)(i) above, they shall make such orders against any of the parties to the application concerned as they think just, having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case, for the payment by them to the relevant Corporation of sums sufficient to enable the net loss, or such part thereof as the tribunal think just, to be made good or met.

(10) If on a reference under subsection (7) above the arbitration tribunal do not confirm the notice of disclaimer, they shall revoke it.

Provisions
supple-
mentary to
section 31.

32.—(1) Where a notice of disclaimer is given with respect to an agreement or lease and that notice is not revoked by the arbitration tribunal, the agreement shall be deemed to be frustrated or, as the case may be, the lease shall be deemed to be surrendered, on the date on which the notice of disclaimer becomes final, and for that reason the parties thereto shall be deemed to be discharged from the further performance of their obligations under the agreement or lease.

(2) Where an agreement is deemed to be frustrated by virtue of subsection (1) above, neither—

(a) the following enactments, namely—

(i) section 2(3) of the Law Reform (Frustrated Contracts) Act 1943, and

(ii) section 2(3) of the Frustrated Contracts Act (Northern Ireland) 1947,

(each of which requires the court to give effect to any provision of a contract intended to operate on or notwithstanding the frustration of the contract), nor

(b) any rule of the common law of Scotland corresponding to those enactments,

shall apply to that agreement.

1943 c. 40.

1947 c. 2
(N.I.).

(3) Where, on a reference to the arbitration tribunal under section 31(7) above, the notice of disclaimer is confirmed, the arbitration tribunal shall have exclusive jurisdiction to determine claims arising under the agreement or lease in question with respect to the period before the frustration or surrender and, in the case of an agreement, any claims arising as a result of its frustration, and the tribunal may, in the case of a lease, on the application of either party thereto, make such modifications (if any) of the provisions of the lease relating to repairing obligations or any other provisions taking effect on or within a limited time before the determination of the lease as the tribunal think just.

(4) For the purposes of this section, a notice of disclaimer which is not revoked shall be deemed to become final on the following date, that is to say,—

- (a) if no reference to arbitration is made under section 31(7) above, the date on which the period for making such a reference expires ; and
- (b) in any other case, the date on which the notice is confirmed by the arbitration tribunal.

33.—(1) Where it appears to the arbitration tribunal that a transaction in respect of which an application is made under section 30 or section 31 above is or may be one of a group of inter-connected transactions which ought to be treated for the purposes of that section as a single transaction, they may order such additional persons as they think fit, being parties to any transaction comprised in the group, to be made parties to the application, and, if the tribunal are satisfied that the whole or part of the group of transactions ought to be treated as a single transaction for the purposes of that section, they may give a direction to that effect, and that section shall have effect accordingly.

Supplementary provisions relating to dissipation of assets.

(2) The serving of a Schedule 4 notice in relation to any property or rights shall not prejudice the taking of proceedings under either of the sections referred to in subsection (1) above with respect to any transaction relating to that property or those rights, and any such proceedings and any proceedings pursuant to the notice may, if the arbitration tribunal think fit, be heard together, and any sums ordered by the tribunal in the proceedings under either of those sections to be paid by any person may, if the tribunal think fit, be set off against any compensation payable to that person in the proceedings pursuant to the notice.

34.—(1) Where—

- (a) the Secretary of State has approved in writing any transaction before the passing of this Act, and

Approvals and undertakings given before passing of Act.

PART II

(b) the approval was expressed to be given for the purposes of any provision of this Part of this Act when that provision should come into operation, or to be subject to a condition affecting the operation of any provision of this Part of this Act, and

(c) the approval sufficiently identifies the provision in question,

the approval shall have effect for the purposes of or in relation to that provision in like manner as if it had been given after the passing of this Act.

(2) Where the Secretary of State has given an undertaking in writing before the passing of this Act with respect to the use of any powers to be conferred by any provision of this Part of this Act, and the undertaking sufficiently identifies the provision in question, the undertaking shall have effect in relation to that provision in like manner as if it had been given after the passing of this Act.

Compensation

Compensation
for vesting of
securities.

35.—(1) Compensation for the vesting in a Corporation by virtue of this Part of this Act of the securities of any company shall be satisfied by the issue of government stock, that is to say, stock the principal whereof and the interest whereon shall be charged on the National Loans Fund with recourse to the Consolidated Fund; and in this Part of this Act government stock issued by way of compensation in accordance with this section is referred to as “compensation stock”.

(2) No compensation shall be payable in respect of securities which, immediately before they become vested in a Corporation by virtue of this Part of this Act, are held by or on behalf of the Crown.

(3) Subject to section 30(4) above, and to subsection (4) below, the amount of compensation due to any person in respect of any securities of a company which are held by him immediately before the date of transfer of that company shall be an amount equal to the base value of those securities less any deduction which is appropriate in his case by virtue of section 39 below.

(4) Where—

(a) on any date after 6th November 1975 but before the relevant vesting date—

(i) a payment is made to a company by virtue of section 1 of the Civil Aviation Act 1949, or

(ii) financial assistance for a company is provided under Part II of the Industry Act 1972, and

1949 c. 67.

1972 c. 63.

- (b) the Secretary of State makes a special declaration with respect to the payment or assistance before the offer to make the payment or provide the assistance is accepted,

the amount of compensation due to any person in respect of the securities of the company which are held by him immediately before its date of transfer shall be the reduced amount.

(5) Where compensation stock falls to be issued in satisfaction of an amount of compensation due to any person, the amount of stock so issued shall be such as, in the opinion of the Treasury, is equal on the date of issue to that amount of compensation, regard being had (in estimating the value of the compensation stock so issued) to the market value of other government securities at or about that date.

- (6) In this section—

“the reduced amount” means whichever of the following amounts is specified in a stockholders’ representative’s notice, namely—

(a) 5 per cent. of the amount which would have been payable under subsection (3) above, if the special declaration had not been made, or

(b) the amount which, if the company had not received the payment or assistance mentioned in subsection (4) above, and had in consequence been wound up, the holders of the securities would have received in the winding-up ;

“special declaration” means a declaration by the Secretary of State that in his opinion either—

(a) the company would be unable to pay its debts as they fall due without the payment or assistance in question ; or

(b) the state of the company’s affairs is such that in all the circumstances it is probable that in the foreseeable future it would become unable so to pay them without that payment or assistance ; and

“stockholders’ representative’s notice” means a notice served on the Secretary of State within 3 months after the relevant vesting date by the stockholders’ representative appointed under section 41 below.

(7) If no stockholders’ representative’s notice is served, the reduced amount is the amount specified in paragraph (a) of the definition in subsection (6) above.

- (8) If any question arises as to—

(a) the amount of compensation payable under subsection (4) above, or

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(b) when the company would have been wound up but for the payment or assistance,
it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.

(9) Schedule 5 to this Act shall have effect for supplementing the provisions of this section.

Payment of
compensation.

36.—(1) Subject to subsections (6) to (8) below, compensation shall not be payable in respect of the vesting of any class of securities of a company in a Corporation before such date (in this Part of this Act referred to as “the conversion date”) as may be specified in relation to that class of securities in an order made by the Secretary of State.

(2) An order of the Secretary of State under subsection (1) above may not specify as the conversion date for any class of a company's securities a date earlier than the date of transfer of that company.

(3) The date specified in such an order as the conversion date for the equity share capital of a company or for rights which are treated as securities by virtue of section 21(6) above (and in respect of which a deduction may accordingly fall to be made under section 39(8)(b) below) shall be the first convenient date which falls after the relevant conditions have been fulfilled in relation to the company.

(4) The relevant conditions referred to in subsection (3) above are—

(a) that the base value of the equity share capital and of the rights mentioned in that subsection has been determined in accordance with the following provisions of this Part of this Act; and

(b) that there has been determined the amount of any deduction or deductions falling to be made by virtue of section 39 below in determining the amount of the compensation payable to any person in respect of any of the equity share capital or rights in question.

(5) Except in a case to which subsection (3) above applies, the date specified as the conversion date for any class of a company's securities shall be the first convenient date which falls after the date on which the base value of the securities of that class has been determined in accordance with the following provisions of this Part of this Act.

(6) At any time on or after the date of transfer of a company such sum may be paid on account of compensation in respect of the vesting of its securities as the Secretary of State thinks

fit, with the approval of the Treasury, notwithstanding that the total amount of the compensation payable is not yet ascertained.

(7) A payment under subsection (6) above may be made on such terms and conditions as the Secretary of State, with the approval of the Treasury, thinks fit.

(8) Subsections (1), (2) and (9) of section 35 above shall apply for the purposes of subsection (6) above; and subsection (5) of that section shall apply for the purposes of subsection (6) above with the substitution of the words "to be paid on account" for the word "due".

37.—(1) In the case of securities of any class that were listed in the Stock Exchange Daily Official List on each of the relevant days, the base value of securities of that class for the purposes of section 35 above shall, subject to the provisions of this section, be deemed to be the average of the mean of the quotations for securities of that class appearing in that List on each of the relevant days, such addition, if any, being made to the average as is necessary to make it a complete multiple of one halfpenny.

Base value of securities of a listed class.

(2) Where, in the case of securities of any class whose base value would, apart from this subsection, fall to be ascertained under subsection (1) above, there has been, at any time after the last of the relevant days, a fresh issue of securities of that class, the base value of every security of that class for the purposes of section 35 above shall (subject to subsection (3) below) instead of being ascertained under subsection (1) above, be deemed to be the average of the base values of all the securities of that class calculated on the basis that—

- (a) the base value of each of the securities comprised in that issue is the price at which it was issued or, if it was issued free, is nil; and
- (b) the base value of the remaining securities is that which they had or would have had for the purposes of that section immediately before the issue took place.

(3) Where, at any time after the last of the relevant days, any securities whose base value would, apart from this subsection, fall to be ascertained under subsection (1) or (2) above have been converted into securities of a different nominal value—

- (a) the base value of those securities as so converted shall, for the purposes of section 35 above, be deemed to be a value bearing to the base value which the securities had or would have had for the purposes of that section immediately before the conversion took place the same proportion as the nominal value of the securities as converted bears to the nominal value of the securities immediately before the conversion took place; and

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(b) subsection (2) above shall apply to any fresh issue of securities which have been converted as mentioned above, but if a part only of a class of securities has been so converted, the converted securities shall, for the purposes of that subsection, be treated as securities of a different class from that of the unconverted securities.

(4) If all the securities of any issue were originally disposed of to a person who did not become the registered holder of those securities, the price of each of the securities shall, for the purposes of subsection (2) above, be deemed to be either—

(a) the price paid for the security by the first registered holder thereof, or

(b) the price received by the company for the security plus an amount equal to $2\frac{1}{2}$ per cent. of that price,

whichever is the lower.

(5) If any question arises under the preceding provisions of this section as to the base value of any securities, it shall be settled by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.

(6) Calculations for the purposes of this section are to be completed correct to five places of decimals.

(7) In this section—

“convert” means, in relation to any securities, to consolidate and divide those securities into units of larger nominal value or to sub-divide those securities into units of smaller nominal value, without in either case making any change in the aggregate nominal value of the securities ;

“the mean of the quotations” means the average of the two figures shown in the Stock Exchange Daily Official List on the date in question in respect of the security in question under the heading “Quotations” ;

“quotation” has the same meaning as in the Stock Exchange Daily Official List, and accordingly does not include the statements of the business that was done ; and

“the Stock Exchange Daily Official List” means the publication known as the Stock Exchange Daily List of Officially Quoted Securities which is published by and under the authority of the Council of the Stock Exchange, London ;

and for the purposes of subsection (1) above, an alteration effected, after the last of the relevant days, in rights attaching

to securities shall not be taken to have changed them into different securities. PART II

38.—(1) Subject to the following provisions of this section, the base value for the purposes of section 35 above of any securities of a class which were issued on or before the last of the relevant days but were not listed in the Stock Exchange Daily Official List on each of those days shall be such as may be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, as may be determined by arbitration under this Act to be the base value which the securities would have had under section 37 above if they had been listed in the Stock Exchange Daily Official List on all of the relevant days. Base value of other securities.

(2) Subsections (2), (3), (4) and (6) of section 37 above shall have effect in relation to securities to which subsection (1) above applies as they have effect in relation to securities to which subsection (1) of that section applies.

(3) The arbitration tribunal, in determining the base value that any securities would have had if they had been listed as mentioned in subsection (1) above, shall have regard to all relevant factors.

(4) Where securities of a class were issued on or after the first of the relevant days and before the end of the last of the relevant days, the base value of those securities and of all other securities of that class issued before the first of the relevant days shall be determined in accordance with subsection (1) above on the assumption that the securities were issued and the consideration therefor was given immediately before the first of the relevant days.

(5) For the purposes of determining in accordance with subsection (1) above the base value of securities of any company, it shall be assumed that the assets of that company were not subject to any charge on any of the relevant days.

(6) If on any of the relevant days—

- (a) a company the base value of the securities of which falls to be determined in accordance with subsection (1) above was a subsidiary of another body corporate (in this subsection referred to as "the parent company"), and
- (b) the undertaking carried on by the company formed a substantial part of the undertakings of the group of companies of which the company and the parent company were members, and

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- (c) shares forming part of the equity share capital of the parent company were listed in the Stock Exchange Daily Official List,

one of the relevant factors to which the arbitration tribunal shall have regard in determining the base value of the company's securities in accordance with subsection (1) above shall be the quotation of the shares referred to in paragraph (c) above.

(7) If, by virtue of section 20 above, any property, rights or liabilities become vested in a company on the date of transfer, then, for the purpose of determining the base value of any securities of the company in accordance with subsection (1) above, it shall be assumed that, immediately before each of the relevant days, there were vested in the company such property, rights or liabilities as on that day corresponded to the property, rights or liabilities which become so vested and as would have satisfied a vesting condition for the purposes of the said section 20.

- (8) In any case where—

- (a) prior to any relevant day, a Minister of the Crown had paid any sum to a company with a view to rendering financial assistance to it, and
- (b) on that day the detailed terms on which the company was to hold the sum had not been agreed and, pending an agreement on those terms, the company held the sum on the terms that immediate repayment could be required at any time, and
- (c) the detailed terms referred to in paragraph (b) above were not agreed before 28th February 1974,

then, in determining the base value of the company's securities in accordance with subsection (1) above, it shall be assumed that the sum referred to in paragraph (a) above had never been paid to the company.

(9) Without prejudice to subsection (8) above, in determining, in accordance with subsection (1) above, the base value which securities of any company would have had under section 37 above, no account shall be taken of any prospects which, on or before any relevant day, the company might have had of receiving financial assistance from any Minister of the Crown, other than—

- (a) grants under Part I of the Industry Act 1972 (regional development grants); and
- (b) other assistance which on that relevant day the company had a statutory or contractual right to receive.

(10) Subject to subsection (11) below, where securities of a new class have been issued after the last of the relevant days,

the base value of the securities of that class for the purpose of section 35 above shall be deemed to be the price at which they were issued or, if they were issued free, shall be deemed to be nil; and—

- (a) subsections (2) and (3) of section 37 above shall have effect in relation to any fresh issue or conversion of securities of the new class, and
- (b) subsections (4) to (6) of that section shall have effect for the purposes of this subsection.

(11) Where—

- (a) apart from this subsection the base value of securities would fall to be ascertained under subsection (10) above, and
- (b) they were issued for a consideration consisting in whole or in part of the transfer to the company by which they were issued (in this subsection referred to as “the transferee”) of the whole or any part of an undertaking of another company (in this subsection referred to as “the transferor”) which at the date of that transfer was a member of the same group of companies as the transferee,

the base value shall instead be determined in accordance with subsection (1) above, on the assumptions—

- (i) that the securities were in existence on each of the relevant days; and
- (ii) that on each of the relevant days the undertaking of the transferee included the whole or, as the case may require, the part of the undertaking carried on on that day by the transferor which then corresponded to the undertaking or part thereof transferred to the transferee by way of consideration for the issue of the securities; and
- (iii) that, in any case where the transfer of the undertaking, or part thereof formed only part of the consideration for the issue of the securities, the remainder of that consideration was an asset of the transferee on each of the relevant days.

(12) Expressions to which a meaning is assigned by subsection (7) of section 37 above have the same meanings in this section.

39.—(1) Subject to and in accordance with the provisions of this section, a deduction shall be made from the amount of the compensation which would otherwise be due to any person under section 35 above in respect of the vesting in a Corporation of any securities of an acquired company—

- (a) if any of the conditions specified in subsection (2) below is fulfilled, and
- (b) in a case to which subsection (5) below applies.

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(2) The conditions referred to in subsection (1) above are—

- (a) that the acquired company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, made payments of dividend or interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the acquired company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(1) above ;
- (b) that a company has, in pursuance of an authority or recommendation contained in a resolution of the directors of the company passed after 27th February 1974 and not later than the safeguarding date, and at a date on which it was a wholly owned subsidiary of an acquired company, made payments of interest of such a nature and amount that, on the relevant hypothesis, all persons who were directors of the company at the time when the resolution was passed would be liable to make a payment to the relevant Corporation under section 23(2) above ;
- (c) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be a material transaction, within the meaning of section 30 above ; and
- (d) that the acquired company or a company which at the material time was a wholly owned subsidiary of it has entered into a transaction which, on the relevant hypothesis, would be an onerous transaction, within the meaning of section 31 above.

(3) The fulfilment with respect to a wholly owned subsidiary of an acquired company of a condition specified in paragraph (c) or (d) of subsection (2) above shall be treated for the purposes of subsection (1) above as its fulfilment with respect to the acquired company itself.

(4) For the purposes of this section, the relevant hypothesis is that—

- (a) for any reference to the safeguarding date in section 23 or 30 above there were substituted a reference to 27th February 1974 ;
- (b) for the references to 29th October 1974 in section 24(1)(c) and (2) above there were substituted references to 27th February 1974 ;

(c) in section 31—

(i) for any reference to the day after the safeguarding date there were substituted a reference to 28th February 1974 ; and

(ii) in subsection (1) the words from “ in relation to ” to “ any other transaction ” were omitted ; and

(d) for any reference to the date of transfer in section 23, 30 or 31 above there were substituted a reference to the day after the safeguarding date.

(5) This subsection applies where, within the period beginning on 28th February 1974 and ending—

(a) on the date of service of a notice under section 21(1) above, or

(b) 9 months after the date of transfer,

whichever is the earlier, there has been repayment of any sum the right to repayment of which, if the sum had not been repaid, would, following the service of such a notice, have been treated as a security or part of a security under section 21(6) above.

(6) In any case where, by virtue of the preceding provisions of this section, a deduction falls to be made as mentioned in subsection (1) above, that deduction (in the following provisions of this section referred to, in relation to the securities of the company concerned, as “ the appropriate deduction ”) shall be the aggregate of,—

(a) if the condition specified in subsection (2)(a) or (b) above is fulfilled, the amount which, on the relevant hypothesis, would become due to the Corporation concerned under subsection (1) of section 23 above on a claim made as mentioned in subsection (3) thereof ; and

(b) if the condition specified in subsection (2)(c) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (5) of section 30 above, would be determined under subsection (7) of that section to result from the transaction referred to in subsection (2)(c) above ; and

(c) if the condition specified in subsection (2)(d) above is fulfilled, the net loss which, on the relevant hypothesis and on an application under subsection (3) of section 31 above, would be determined under subsection (8)(i) of that section to result from the transaction referred to in subsection (2)(d) above ; and

(d) in a case to which subsection (5) above applies, the net loss to the Corporation resulting from the repayment in question.

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(7) The question—

- (a) whether any, and if so which, of the conditions specified in subsection (2) above is fulfilled, or
- (b) whether, in any case, subsection (5) above applies, and any question as to—
 - (i) the amount of the appropriate deduction to be made in respect of any securities, or
 - (ii) any amount to be included in such a deduction by virtue of subsection (6) above.

shall be determined by agreement between the Secretary of State and the stockholders' representative or, in default of such agreement, by arbitration under this Act.

(8) No deduction shall be made by virtue of this section from the compensation otherwise due to any person in respect of a security unless—

- (a) the security forms part of the equity share capital of a company, or
- (b) in the case of a right which is treated as a security by virtue of section 21(6) above, that security is of such a nature that, if it existed as such, it would form part of a company's equity share capital,

and securities in respect of which a deduction falls to be so made are in the following provisions of this section referred to as "equities".

(9) Subject to subsection (10) below, the appropriate deduction for a company's securities, as calculated under subsection (6) above, shall be apportioned among all the persons who, immediately before the date of transfer, held equities of the company so that the amount of the appropriate deduction which is apportioned to any such person bears to the total amount of the appropriate deduction the same proportion as the base value for the purposes of section 35 above of the equities so held by him bears to the aggregate of the base values for those purposes of all the company's equities.

(10) Where, apart from this subsection, the amount of the appropriate deduction apportioned to any person under subsection (9) above in respect of equities held by him immediately before the date of transfer of the company concerned would otherwise exceed the base value of those equities for the purposes of section 35 above, the amount so apportioned to him shall be reduced to an amount equal to that base value (but without affecting the amount of the appropriate deduction so apportioned to any other person).

General provisions as to compensation stock.

40.—(1) Compensation stock shall bear such rate of interest and be subject to such conditions as to repayment, redemption and other matters as the Treasury may determine.

(2) The Treasury may by regulations made by statutory instrument make provision as to the issue of compensation stock by the Bank of England.

(3) Regulations under subsection (2) above may contain such incidental or supplementary provisions as the Treasury consider appropriate.

(4) The Corporation in which any securities become vested shall be liable to indemnify the Bank of England against any loss suffered by them arising out of, or in connection with, the issue of compensation stock in respect of the vesting of those securities.

(5) Any expenses incurred in connection with the issue or repayment of compensation stock shall be charged on and issued out of the National Loans Fund.

(6) References in the preceding provisions of this section to compensation stock include references to stock issued by way of compensation in accordance with paragraph 5 of Schedule 4 to this Act.

41.—(1) In the case of every company whose securities are to vest in either Corporation by virtue of this Part of this Act, there shall be appointed an individual (in this Act referred to as “the stockholders’ representative”) to represent the interests of holders of securities of that company in connection with the determination of the base value of those securities under the preceding provisions of this Part of this Act. Stockholders’
representatives.

(2) The provisions of Schedule 6 to this Act shall have effect with respect to the office of stockholders’ representative and meetings of the holders of securities whose interests are represented by a stockholders’ representative and matters incidental thereto.

(3) References in this section and Schedule 6 to this Act to securities do not include securities of a company which, immediately before the date of transfer, are held by or on behalf of the Crown.

(4) The Secretary of State shall pay, out of money provided by Parliament, to a stockholders’ representative such remuneration (whether by salary or fees) and such allowances, and such expenses incurred by him in the exercise of his functions, as may be determined by the Secretary of State with the approval of the Minister for the Civil Service; and any sums paid by the Secretary of State under this section shall, on demand, be repaid to him by the Corporation in which vest the securities to which his functions relate.

(5) Any sums repaid to the Secretary of State under subsection (4) above shall be paid into the Consolidated Fund.

(6) Where a stockholders’ representative is appointed for a company, then—

(a) the company,

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- (b) any person to whom property or rights of the company have been disposed of after the date of transfer,
- (c) any person by whom any property or rights have been disposed of to the company, and
- (d) any other company which, at any time between 5th September 1973 and the date of transfer is a member of the same group of companies,

shall make available to the stockholders' representative such facilities for the examination of and the making of extracts from or copies of books, accounts and documents of the company or person, and such services of employees of that company or of any such person, as he may reasonably request for the purposes of his duties or, in the event of any question arising between the stockholders' representative and the company or person whether any request is reasonable, as may be directed by the Secretary of State.

PART III

MISCELLANEOUS AND GENERAL

Arbitration and the Arbitration Tribunal

The
arbitration
tribunal.

42.—(1) For the purpose of determining—

- (a) any question or dispute which, under any provision of this Act, is expressly required to be determined by or is referred to “arbitration under this Act”, or
- (b) any matter in respect of which jurisdiction is given to the arbitration tribunal under this Act,

there shall be established a tribunal called the Aircraft and Shipbuilding Industries Arbitration Tribunal (in this Act referred to as “the arbitration tribunal”).

(2) The arbitration tribunal shall be a court of record and shall have an official seal which shall be judicially noticed.

(3) The arbitration tribunal shall, as the Lord Chancellor may direct, either sit as a single tribunal or sit in two or more divisions and, subject to subsection (4) below, shall, for the hearing of any proceedings, consist of—

- (a) a president who shall be a barrister or solicitor of not less than 7 years' standing appointed by the Lord Chancellor, and
- (b) two other members appointed by the Secretary of State, after consultation with all the stockholders' representatives, one being a person of experience in business and the other being a person of experience in finance.

(4) In its application to proceedings which, by virtue of this Act, are to be treated as Scottish proceedings, subsection (3)

above shall have effect with the substitution, for paragraph (a) thereof, of the following paragraph:—

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“(a) a president who shall be an advocate or solicitor of not less than 7 years’ standing who has practised in Scotland and who shall be appointed by the Lord President of the Court of Session”.

(5) The members of the arbitration tribunal shall hold office for such period as may be determined at the time of their respective appointments and shall be eligible for re-appointment but, notwithstanding that the period for which a member was appointed has not expired,—

- (a) a member may, at any time by not less than one month’s notice in writing to his appointor, resign his office;
- (b) the appointor of a member may declare the office of that member vacant on the ground that he is unfit to continue in his office; and
- (c) if any member becomes bankrupt or makes a composition with his creditor or, in Scotland, if a sequestration of a member’s estate is awarded or a member makes a trust deed for behoof of his creditors or a composition contract, his office shall thereupon become vacant.

(6) If any member of the arbitration tribunal becomes, by reason of illness or other infirmity, temporarily incapable of performing the duties of his office, his appointor shall appoint some other fit person to discharge his duties for any period not exceeding 6 months at one time, and the person so appointed shall during that period have the same powers as the person in whose place he was appointed.

(7) The provisions of Schedule 7 to this Act shall have effect with respect to the proceedings of the arbitration tribunal and matters relating thereto.

(8) In this section “appointor”, in relation to a member of the arbitration tribunal, means—

- (a) in the case of a member appointed under paragraph (a) of subsection (3) above, the Lord Chancellor or, if subsection (4) above applies, the Lord President of the Court of Session; and
- (b) in the case of any other member, the Secretary of State.

(9) In the House of Commons Disqualification Act 1975 and in the Northern Ireland Assembly Disqualification Act 1975, in

1975 c. 24.
1975 c. 25.

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Part II of Schedule 1 (bodies of which all members are disqualified), there shall be inserted at the appropriate point the words—

“The Aircraft and Shipbuilding Industries Arbitration Tribunal”.

1971 c. 62.

(10) In Part I of Schedule 1 to the Tribunals and Inquiries Act 1971 (tribunals under direct supervision of Council on Tribunals) after the entry the first column of which reads “Agriculture” there shall be inserted the following entry:—

“Aircraft and shipbuilding industries.

1A. The Aircraft and Shipbuilding Industries Arbitration Tribunal established under section 42 of the Aircraft and Shipbuilding Industries Act 1977.”.

Scottish proceedings.

43.—(1) Where any such question, dispute or matter as is referred to in section 42(1) above arises out of or in connection with the vesting of the securities or of any property, rights or liabilities of any company or in connection with the recovery of assets of any company or in connection with any transactions of any company and either—

(a) the company’s principal United Kingdom place of business, or

(b) the place of the company’s principal United Kingdom works,

is situated in Scotland, then, subject to subsection (3) below, the proceedings before the tribunal in respect of the question, dispute or matter shall be treated as Scottish proceedings.

(2) If, at any stage in any proceedings before the arbitration tribunal which would not otherwise fall to be treated as Scottish proceedings, the tribunal are satisfied that, by reason of the fact that questions of Scottish law arise, or for any other reason, the proceedings ought thereafter to be treated as Scottish proceedings, the tribunal may order that they shall thereafter be so treated and the provisions of this Act shall have effect accordingly.

(3) If, at any stage in any proceedings before the arbitration tribunal which would otherwise be treated as Scottish proceedings, the tribunal are satisfied that, by reason of the fact that questions of English law arise or for any other reason, the proceedings ought not to be treated as Scottish proceedings, they may make an order that the proceedings shall thereafter not be treated as Scottish proceedings and the provisions of this Act shall have effect accordingly.

Staff and expenses of arbitration tribunal.

44.—(1) The arbitration tribunal may appoint such staff as they consider necessary for assisting them in the proper execution of their duties.

(2) There shall be paid to the members of the arbitration tribunal such remuneration (whether by way of salaries or fees) and such allowances as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

(3) There shall be paid to any staff appointed under subsection (1) above and any person to whom proceedings are referred by the arbitration tribunal under paragraph 13 of Schedule 7 to this Act for inquiry and report such remuneration (whether by way of salary or fees) and such allowances as the arbitration tribunal may determine.

(4) Any such remuneration and allowances as are referred to above and any other expenses of the arbitration tribunal shall be defrayed in the first instance by the Secretary of State out of money provided by Parliament, but the amounts from time to time so paid by the Secretary of State shall be repaid to him on demand by such one of the Corporations as he may determine or, where he considers it appropriate in the case of any amount, by the two Corporations in such proportions as he may determine.

(5) Any sums repaid to the Secretary of State under subsection (4) above shall be paid into the Consolidated Fund.

The Corporations

45.—(1) For the purpose of promoting the design, development or production of civil aircraft, the Secretary of State with the consent of the Treasury may, at any time after the aircraft industry vesting date, make payments in accordance with this section to British Aerospace or any of its wholly owned subsidiaries. Payments to British Aerospace and wholly owned subsidiaries.

(2) No payments may be made under this section unless—

- (a) the Secretary of State is of opinion that it is in the national interest that payments on the scale and in the way proposed should be made; and
- (b) it appears to the Secretary of State that, if the payments are not made, it would be inconsistent with the duties imposed on British Aerospace by or under sections 7 and 10 of this Act for British Aerospace or any of its wholly owned subsidiaries to undertake the design, development or production in question.

(3) Payments under this section may be made on any terms and conditions, and, without prejudice to the generality of this subsection, by way of fees or by any description of investment or lending or by the making of grants.

(4) The aggregate of the sums paid under this section, less any sums received by the Secretary of State, otherwise than by

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way of payment of interest on money lent under this section, in pursuance of the terms and conditions on which any such payment was made shall not at any time exceed £30 million or such greater sum, not exceeding £50 million, as the Secretary of State may with the consent of the Treasury specify by order made by statutory instrument.

(5) The power to make an order under subsection (4) above includes power to vary or revoke any order previously made in the exercise of that power ; and no such order shall be made unless a draft of it has been laid before and approved by the Commons House of Parliament.

(6) There shall be defrayed out of moneys provided by Parliament any sums required by the Secretary of State for making payments under this section and any sums received by the Secretary of State in pursuance of the terms and conditions on which payments are made under this section shall be paid into the Consolidated Fund.

Restrictions on payments under Civil Aviation Act 1949. 1949 c. 67.

46.—(1) Subject to subsection (2) below, in carrying out his duty under section 1(1) of the Civil Aviation Act 1949 of organising, carrying out and encouraging measures for the designing, development and production of civil aircraft, the Secretary of State shall not, on and after the aircraft industry vesting date, make or agree to make any payment to British Aerospace or any of its wholly owned subsidiaries except in the exercise of his powers under this Act.

(2) Nothing in subsection (1) above shall apply to a payment to a company if the terms have been settled between the Secretary of State and the company before the aircraft industry vesting date.

Right of persons to object to practices of British Shipbuilders or their wholly owned subsidiaries.

47.—(1) Subsections (3) to (6) below shall have effect where a person engaged in shipbuilding, other than—

(a) British Shipbuilders, or

(b) one of its wholly owned subsidiaries, or

(c) a body corporate the whole of whose equity share capital is held by or on behalf of the Crown,

makes to the Secretary of State a written complaint that a practice employed by British Shipbuilders or one of its wholly owned subsidiaries in relation to that or those activities is unfair to the complainant for a reason specified in the complaint.

(2) Subsections (3) to (6) below shall also have effect where a person engaged in shiprepairing, other than—

(a) British Shipbuilders, or

(b) one of its wholly owned subsidiaries, or

(c) a body corporate the whole of whose equity share capital is held by or on behalf of the Crown,

makes to the Secretary of State a written complaint that a practice employed by British Shipbuilders or one of its wholly owned subsidiaries in relation to the provision of shiprepairing services is unfair to the complainant for a reason specified in the complaint.

In this subsection "shiprepairing" includes refitting, converting or maintaining ships, and "the provision of shiprepairing services" has a corresponding meaning.

(3) The Secretary of State shall forthwith after receiving the complaint send a copy of it to British Shipbuilders and, after such period for consideration of, and comment upon, the complaint by British Shipbuilders as the Secretary of State thinks reasonable has elapsed, shall send to the complainant a statement of any comments made by British Shipbuilders on the complaint and, if he is of opinion—

(a) that the complaint raises a question of substance, and

(b) that the complainant has a reasonable case to make in support of it,

shall afford the complainant and the Corporation an opportunity of making representations in relation to the matter to a person appointed by the Secretary of State.

(4) The Secretary of State shall consider the report of the person appointed under subsection (3) above and, if it appears to him that the practice complained of is unfair to the complainant, shall give British Shipbuilders such directions as appear to him to be requisite to secure the removal of the ground on which it is unfair.

(5) The Secretary of State shall furnish the complainant with a statement of any such directions.

(6) When a complainant avails himself of the right to make representations conferred by subsection (3) above, the Secretary of State shall furnish the complainant and British Shipbuilders each with a copy of the report of the person appointed under that subsection, and a statement of the conclusions reached by the Secretary of State on considering the report.

48.—(1) In carrying out their respective functions, British Aerospace and British Shipbuilders shall each have full regard to the need to consult, and wherever possible co-ordinate their activities with those of, any company incorporated in Northern Ireland which is engaged in one or more of the relevant activities and at any general meeting of which the Crown is entitled to

Duty of the
Corporations
to consult
etc. with
Northern
Ireland state-
controlled
bodies.

PART III exercise or to control the exercise of at least one third of the voting power.

- (2) In subsection (1) above “relevant activities” means—
- (a) in relation to British Aerospace, the activities specified in subsection (1) of section 2 above, and
 - (b) in relation to British Shipbuilders, the activities specified in subsection (2) of that section.

Pensions etc.

Provisions as to pension rights.

49.—(1) Each Corporation may, in the case of such of the persons who are or have been employed by the Corporation or any of its wholly owned subsidiaries as it may determine,—

- (a) pay such pensions to or in respect of those persons,
- (b) make such payments towards the provision of such pensions, or
- (c) establish and maintain such schemes for the payment of such pensions,

as it may determine.

(2) A scheme under subsection (1) above may provide that, subject to subsection (3) below, where a person participating in the scheme as an employee of a Corporation or any of its wholly owned subsidiaries becomes a member of that Corporation, his service as a member shall be treated for the purposes of the scheme as if it were service as an employee.

(3) To the extent that a scheme under subsection (1) above provides that any description of benefit may, or may in particular circumstances, be conferred on a person only on the request or with the consent of a Corporation, the scheme may not make the provision referred to in subsection (2) above unless it also provides that, except with the approval of the Secretary of State and the Minister for the Civil Service, no such request or consent shall be made or given in the case of a benefit for or in respect of a member of the Corporation.

(4) Subject to subsection (6) below, the Secretary of State may by regulations made by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament, make, in relation to any pension scheme not made under subsection (1) above (in this section referred to as an “existing scheme”) which provides for pensions to or in respect of persons who are or have been employed by a company which becomes a wholly owned subsidiary of either Corporation, such provision as appears to him to be expedient in consequence of its having become such a subsidiary

(5) Without prejudice to the generality of subsection (4) above, regulations under that subsection may make provision—

- (a) for the complete or partial amalgamation of existing schemes either with other such schemes or with schemes established under subsection (1) above ;
- (b) for amending, repealing or revoking any existing schemes, any enactment relating to an existing scheme or to a scheme resulting from an amalgamation under paragraph (a) above or any trust deed, rules or other instrument made for the purposes of an existing scheme or of a scheme resulting from such an amalgamation ;
- (c) for the complete or partial transfer of liabilities and obligations under existing schemes or for reducing or extinguishing such liabilities or obligations ;
- (d) for the complete or partial transfer, or the winding-up, of any pension fund held for the purposes of an existing scheme ; and
- (e) for supplemental or consequential matters.

(6) Nothing in subsection (4) or (5) above shall authorise the making of provision for the diversion of any pension fund to purposes other than the payment of pensions to or in respect of persons to whom subsection (1) above applies.

(7) Subject to subsection (8) below, regulations under subsection (4) above shall be so framed as to secure that persons having pension rights under an existing scheme, whether such persons as are mentioned in subsection (1) of this section or not, are not placed in any worse position by reason of the regulations.

(8) Regulations under subsection (4) above may make exceptional provisions to meet cases in which, in connection with any provision made by this Act or in anticipation of the making of any such provision, pension rights have been created otherwise than in the ordinary course.

(9) Regulations under subsection (4) above shall not be invalid by reason that in fact they fail to secure the result referred to in subsection (7) above but, if the Secretary of State is satisfied that they have failed to secure it, or it is so determined as hereinafter mentioned, the Secretary of State shall as soon as possible make the necessary amending regulations.

(10) Any question whether or not the result referred to in subsection (7) above has been secured by regulations under subsection (4) above, including any question whether it has been secured by amending regulations under that subsection made in pursuance of subsection (9) above, shall be referred to and determined by a tribunal established under section 12 of the Industrial 1964 c. 16.

PART III Training Act 1964 or, as the case may require, section 13 of the
1964 c. 18 Industrial Training Act (Northern Ireland) 1964.
(N.I.).

(11) Regulations under subsection (4) above may be made so as to have effect from a date prior to the making thereof, so, however, that so much of any regulations as provide that any provision thereof is to have effect from a date prior to the making thereof shall not place any person other than a Corporation or its wholly owned subsidiary in a worse position than he would have been in if the regulations had been made to have effect only as from the date of the making thereof.

(12) Where, by reason of any provision in regulations made under subsection (4) above, other than a provision expressed to be made to meet a case such as is mentioned in subsection (8) above, loss is suffered by any person who is liable to make contributions or to pay pensions under an existing scheme (other than a wholly owned subsidiary of the relevant Corporation) the relevant Corporation shall pay compensation to that person in respect of the loss, and the amount thereof shall, in default of agreement between the Corporation and that person, be determined by arbitration under this Act.

(13) In subsection (12) above “the relevant Corporation” means the Corporation which is the holding company of the company for or in respect of whose employees or former employees the existing scheme provides pensions.

(14) The power to make regulations under subsection (4) above includes power to provide by those regulations—

- (a) for the determination of questions of fact or of law which may arise in giving effect to the regulations, and
- (b) for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including—
 - (i) provision as to the mode of proof of any matters,
 - (ii) provision as to parties and their representation,
 - (iii) provision for the right to appear and be heard (as well in court proceedings as otherwise) of the Secretary of State or other authorities, and
 - (iv) provision as to awarding costs of proceedings (other than court proceedings) for the determination of such questions, determining the amount thereof and the enforcement of awards thereof.

(15) References in this section to employment by a wholly owned subsidiary of a Corporation include references—

- (a) to employment before the date of transfer by a company which becomes such a subsidiary; and
- (b) to employment under an agreement for the rendering of personal services which ceased to be in force before the date of transfer of a company and under which, had it remained in force on that date, rights or liabilities would, by virtue of section 20 above, have vested in that company.

50.—(1) The Secretary of State may by regulations made by statutory instrument require the relevant Corporation to pay, in such cases and to such extent as may be determined by or under the regulations, compensation to or in respect of those employees of any company which comes into public ownership who suffer loss of employment, or loss or diminution of emoluments or pension rights, in consequence of the company coming into public ownership.

(2) Different regulations may be made under subsection (1) above in relation to different classes of persons, and any such regulations may be so framed as to have effect as from a date prior to the making thereof, so, however, that so much of any regulations as provides that any provision thereof is to have effect from a date earlier than the making thereof shall not place any person other than a Corporation or its wholly owned subsidiary in a worse position than he would have been in if the regulations had been made to have effect only as from the date of the making thereof.

(3) Regulations under subsection (1) above—

- (a) shall prescribe the procedure to be followed in making claims for compensation, and the manner in which and the person by whom the question whether any or what compensation is payable is to be determined, and
- (b) shall in particular contain provisions enabling appeals from any determination as to whether any or what compensation is payable to be brought, in such cases and subject to such conditions as may be prescribed by the regulations, before a tribunal established under section 12 of the Industrial Training Act 1964 or, as the case may require, section 13 of the Industrial Training Act (Northern Ireland) 1964.

1964 c. 16.
1964 c. 18.
(N.I.).

(4) In this section “emoluments” includes any allowances, privileges or benefits, whether obtaining legally or by customary practice.

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(5) A statutory instrument containing regulations under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Information

Furnishing of information to the Secretary of State.

51.—(1) Subject to subsection (4) below, it shall be the duty of every person to whom this subsection applies—

- (a) to produce to any person authorised by the Secretary of State (on production by that person if so required of a duly authenticated document showing his authority) such books of account, records and documents, and to supply copies of or extracts from such books, records and documents, and to furnish such other information, as may reasonably be required by a Corporation or the Secretary of State for the purposes of this Act ; and
- (b) to provide facilities for the examination of any such books, records and documents, and the taking of copies thereof and extracts therefrom, and facilities for inspecting any property of that person for the purpose of verifying the information furnished by him under this subsection.

(2) Subsection (1) above shall apply to the following persons, namely,—

- (a) any acquired or excluded company,
- (b) where an acquired or excluded company was on or after 5th September 1973 a member of a group of companies, any company which on or after that date was a member of that group,
- (c) any person in whom is or are vested any property or rights which on the initial date were, or thereafter (whether before or after the passing of this Act) became, property or rights of a company falling within paragraph (a) or paragraph (b) above, or which are derived from any such property or rights,
- (d) any person who is or has been employed by a company falling within paragraph (a), (b) or (c) above, and
- (e) any person who is or has been a director or auditor of any such company,

but shall not apply to a company after it has come into public ownership.

(3) Where it appears to a person authorised by the Secretary of State for the purposes of subsection (1)(a) above that any books of account, records or documents which a person is under a duty to produce by virtue of subsection (1) above are

in the possession of another person (in this subsection referred to as "the transferee") who does not fall within subsection (2) above, the person so authorised may (on production if so required of a duly authenticated document showing his authority) require the transferee to produce those books, records or documents and to permit him to inspect and copy them.

(4) Subsection (1) above shall cease to have effect on the expiry of the period of 2 years beginning on the relevant vesting date.

(5) A person who—

(a) without reasonable excuse, refuses or fails to comply with a requirement imposed on him under this section, or

(b) in purported compliance with such a requirement, furnishes any information which he knows to be false in a material particular or recklessly furnishes any information which is so false, or

(c) with intent to deceive, produces, in purported compliance with such a requirement, any book, record or document which is false in a material particular, or

(d) in purported compliance with a requirement imposed on him under subsection (1)(a) above to supply a copy of, or extract from, a book of account, record or document—

(i) supplies a document purporting to be such a copy or extract but which he knows to differ in a material particular from the book, record or document of which it purports to be a copy or, as the case may be, from the passage which it purports to reproduce, or

(ii) recklessly supplies a document purporting to be such a copy or extract but which so differs,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400; and a person convicted of an offence under subsection (5)(a) above shall, if the default in respect of which he is so convicted is continued without reasonable excuse after the conviction, be guilty of a further offence and shall be liable in respect of that offence, on summary conviction, to a fine not exceeding £40 for each day on which the default is so continued.

(6) Where an offence under subsection (5) above which has been committed by a body corporate or a Scottish firm is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate

PART III or firm, or a person who was purporting to act in any such capacity, he, as well as the body corporate or, as the case may be, the firm, shall be guilty of that offence and shall be liable to be proceeded against accordingly.

Restriction on disclosure of information.

52.—(1) No information obtained under section 51 above shall be disclosed except—

- (a) with the consent of the person carrying on the undertaking or business to which related the books, records or other documents from which it was obtained, or
- (b) for the purpose of enabling a Corporation or the Secretary of State to discharge their functions under this Act, or
- (c) with a view to the institution of, or otherwise for the purpose of, any criminal proceedings pursuant to, or arising out of, this Act.

(2) If a disclosure is made by a person in contravention of subsection (1) above, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £200, or both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

Liabilities, etc.

Liabilities of Corporations etc.

53.—(1) If any sum required by any judgment or order to be paid by a company which at the time of the judgment or order is a wholly owned subsidiary of a Corporation or has at any time since the cause of action arose been such a subsidiary is not paid by the company within the period of 14 days beginning on the date on which execution becomes leviable to enforce the judgment or order, the Corporation shall be liable to pay that sum and that judgment or order shall be enforceable against the Corporation accordingly.

(2) Where any such sum as is referred to in subsection (1) above is required to be paid in respect of a liability arising under a contract made by the company concerned, the cause of action shall be deemed, for the purposes of this section, to have arisen at the time when the contract was made.

(3) When a company becomes a wholly owned subsidiary of a Corporation, any person to whom this subsection applies and who is liable in respect of any debt or liability of the company under a contract of guarantee or indemnity made before the company became such a subsidiary shall cease to be so liable.

(4) The persons to whom subsection (3) above applies are persons who, immediately before the company became a wholly owned subsidiary of the Corporation,—

- (a) were associated persons, or
- (b) controlled some other company or body corporate which controlled it.

(5) The assets of an acquired company or of any wholly-owned subsidiary of such a company shall be released, upon the date of transfer of that company, from all charges to which they are subject immediately before that date.

(6) Subject to subsection (7) below, no person shall, in respect of a loan,—

- (a) become entitled to exercise any right, or
- (b) become subject to any obligation,

on the ground—

- (i) of the passing of this Act, or
- (ii) of anything done by virtue of this Act, or
- (iii) of anything done following the passing of this Act in relation to an acquired company or a wholly owned subsidiary of such a company, or
- (iv) of anything necessarily resulting from the passing of this Act or from anything done as mentioned in paragraph (ii) or (iii) above.

(7) Subsection (6) above shall not have effect—

- (a) in relation to any right vested in a person to whom subsection (3) above applies in respect of a loan made by him after the last of the relevant days to an acquired company, or a wholly owned subsidiary of such a company or
- (b) in relation to any obligation owed to such a person by the debtor in respect of such a loan.

General

54.—(1) This section shall have effect in relation to any notice or other document required or authorised by or under this Act to be given to or served on any person. Service of notices.

(2) Any such document may be given to or served on the person in question—

- (a) by delivering it to him, or
- (b) by leaving it at his proper address, or
- (c) except in the case of a notice to which paragraph (d) below applies, by sending it by post to him at that address, or

PART III

(d) in the case of any such notice as is referred to in section 21, 26, 27, 29 or 31 above, by sending it in a prepaid registered letter addressed to him at that address.

(3) Any such document may—

(a) in the case of a body corporate, be given to or served on the secretary or clerk of that body ;

(b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

1889 c. 63.

(4) For the purposes of this section and section 26 of the Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—

(a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body ;

(b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership ;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be given or served with any document mentioned in subsection (1) above has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section 26 of the Interpretation Act 1889 as his proper address.

(6) If the name or address of any person having an interest in premises to or on whom any document mentioned in subsection (1) above is to be given or served cannot after reasonable enquiry be ascertained, the document may be given or served—

(a) by addressing it to him either by name or by the description of “ the owner ” or, as the case may be, “ the occupier ” of the premises and describing them, and

(b) either by delivering it to some responsible person on the premises or by affixing it, or a copy of it, to some conspicuous part of the premises.

55. Any administrative expenses incurred by the Secretary of State in connection with the provisions of this Act shall be defrayed out of moneys provided by Parliament. PART III
Administrative
expenses.

56.—(1) In this Act, except where the context otherwise requires,— Interpretation.

“accounting year” shall be construed in accordance with section 17 of this Act ;

“acquired company” means—

(a) a company falling within Part I of Schedule 1 or Schedule 2 to this Act, or

(b) a company in respect of which the obligation to give notice under section 26(9) above has arisen, other than an excluded company ;

“aircraft industry vesting date” means such date as the Secretary of State may by order made by statutory instrument specify for the purposes of section 19(1) of this Act ;

“associated person”, in relation to a company or its wholly owned subsidiary, means—

(a) a person who controls the company, or

(b) a body corporate controlled by a person who also controls the company ;

“the Corporations” means British Aerospace and British Shipbuilders, and references to a Corporation shall be construed accordingly ;

“date of transfer” shall be construed in accordance with subsection (5) below ;

“enactment” includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly ;

“equity share capital” has the meaning assigned to it by section 154 of the Companies Act 1948 or, in the case of a company incorporated in Northern Ireland, section 148(5) of the Companies Act (Northern Ireland) 1960 ; 1948 c. 38.
1960 c. 22
(N.I.).

“excluded company” has the meaning assigned to it by section 27(11) above ;

“functions” includes powers and duties ;

“group of companies” means a company and all other companies which are its subsidiaries ;

“guided weapon” does not include a torpedo ;

“holding company” shall be construed in accordance with section 154 of the Companies Act 1948 ;

PART III

- “ industrial or intellectual property ” includes, without prejudice to its generality, patents, designs, trade marks, know-how and copyrights ;
- “ initial date ” means—
- (a) in relation to British Aerospace or a company which becomes, or would but for the provisions of section 27 of this Act become, a wholly owned subsidiary of British Aerospace, 4th November 1974, and,
- (b) in relation to British Shipbuilders or a company which becomes, or would but for the provisions of section 27 of this Act become, a wholly owned subsidiary of British Shipbuilders, 31st July 1974 ;
- “ know-how ” means any industrial information and techniques likely to assist in the manufacture or processing of goods or material or the repair of goods ;
- “ lease ” includes an agreement for a lease and any tenancy agreement ;
- “ loan capital ”, in relation to any company, means the securities of the company which do not form part of the share capital ;
- “ mortgage ” in relation to Scotland, means a heritable security within the meaning of section 9(8) of the Conveyancing and Feudal Reform (Scotland) Act 1970 ;
- “ notice of acquisition ” has the meaning assigned to it by section 26(1) above ;
- “ notice of disclaimer ” has the meaning assigned to it by section 31(6) above ;
- “ operate ”, in relation to any works, means to be actively engaged, whether alone or with others, in the management of the works, but a person shall not be deemed to operate works by reason only that he exercises an indirect control of their management by means of the holding of shares in the operating company or otherwise ;
- “ pension ”, in relation to any person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions or insurance premiums to a pension fund with or without interest or any other addition ;
- “ pension rights ” includes all forms of right to or eligibility for, the present or future payment of a pension to or in respect of a person, and any expectation of the accruer of a pension to or in respect of a person under any

customary practice, and also includes a right of allocation in respect of the present or future payment of a pension ;

“ pension scheme ” includes any form of arrangements for the payment of pensions, whether subsisting by virtue of an Act, trust, contract or otherwise, and also includes any customary practice under which pensions are paid ;

“ public dividend capital ” and “ public dividends ” have the meaning assigned to them by section 16 of this Act ;

“ the relevant Corporation ”, in relation to a company which comes into public ownership, or in relation to any securities of such a company, means the Corporation in which vest, on the date of transfer, the securities of that company or of the company of which it is a wholly owned subsidiary ;

“ the relevant days ” means 27th December 1973 and every Wednesday, other than 26th December 1973, in the period of 6 months beginning on 1st September 1973 ;

“ relevant trade union ”, in relation to either Corporation, means any independent trade union, as defined in section 30(1) of the Trade Union and Labour Relations Act 1974, which the Corporation or any of its wholly owned subsidiaries recognises for the purposes of collective bargaining, as defined by section 126(1) of the Employment Protection Act 1975, or as to which the Advisory Conciliation and Arbitration Service has made a recommendation for such recognition under the said Act of 1975 which is operative within the meaning of section 15 of that Act ;

1974 c. 52.

1975 c. 71.

“ the relevant vesting date ” means—

(a) in relation to British Aerospace or a company which becomes, or would but for the provisions of section 27 of this Act become, a wholly owned subsidiary of British Aerospace, the aircraft industry vesting date, and

(b) in relation to British Shipbuilders or a company which becomes, or would but for the provisions of section 27 of this Act become, a wholly owned subsidiary of British Shipbuilders, the shipbuilding industry vesting date ;

“ safeguarding date ” means—

(a) in relation to a company on which the Secretary of State serves a notice of acquisition, the date of service of the notice, and

PART III

(b) in relation to any other company, 17th March 1975 ;

- “ Schedule 4 notice ” has the meaning assigned to it by section 29(1) above ;
- “ securities ”, in relation to a company, means any shares, debentures, debenture stock, loan stock, income notes, income stock, funding certificates and securities of a like nature ;
- “ share ” includes stock resulting from the conversion of any share into stock ;
- “ shipbuilding industry vesting date ” means such date as the Secretary of State may by order made by statutory instrument specify for the purposes of section 19(2) of this Act ;
- “ shipyard ” includes any berth, dock or slipway used for the construction of ships ;
- “ stockholders’ representative ” means, in relation to a company or the securities of a company, the individual appointed under section 41 of this Act to represent the holders of securities of that company ;
- 1948 c. 38. “ subsidiary ” has the same meaning as in the Companies Act 1948 ;
- “ voting power ” does not include voting rights which arise only in limited circumstances ;
- “ wholly owned subsidiary ” has the same meaning as it has for the purposes of section 150 of the Companies Act 1948 and section 144 of the Companies Act (Northern Ireland) 1960 ; and
- 1960 c. 22. (N.I.) “ works ” means, subject to subsection (6) below,—
- 1961 c. 34. (a) any factory, within the meaning of the Factories Act 1961,
- 1971 c. 75. (b) any aerodrome, as defined in section 64(1) of the Civil Aviation Act 1971,
- (c) any shipyard which does not fall within paragraph (a) above, and
- (d) any premises used by way of trade or business for the purposes of the storage, transport or distribution of any articles or for the supply of electricity or other form of power,
- together with any machinery or equipment installed in any such factory, shipyard or premises and any land occupied for the purposes referred to in paragraph (d) above.

(2) For the purposes of this Act, in relation to land in England, Wales or Northern Ireland,—

- (a) “own” includes hold on lease ;
- (b) “rights of ownership” means an estate in fee simple or a lease ; and
- (c) property owned by a member of a partnership and held by him for the purposes of the partnership shall be deemed to be owned by each of the members of the partnership.

(3) For the purposes of this Act, in relation to land in Scotland,—

- (a) “own” includes hold on lease ;
- (b) “rights of ownership” means—
 - (i) if the land is feudal property, the estate or interest of the proprietor of the *dominium utile*, or
 - (ii) if the land is not feudal property, the estate or interest of the owner, or
 - (iii) a lease ; and
- (c) property owned by a member of a partnership and held by him for the purposes of the partnership shall be deemed to be owned by the firm.

(4) Any reference in this Act to a company which comes into public ownership is a reference to an acquired company or a company which, on the date of transfer of an acquired company, is a wholly owned subsidiary of that company ; and any reference to a company coming into public ownership shall be construed accordingly.

(5) Subject to section 27(7)(b) of this Act, in relation to a company which comes into public ownership, any reference in this Act to the date of transfer is a reference—

- (a) in the case of a company falling within Part I of Schedule 1 or Schedule 2 to this Act or the wholly owned subsidiary of such a company, to the relevant vesting date ; and
 - (b) in the case of any other company which comes into public ownership, to the date on which the securities of the company or, as the case may be, of the company of which it is a wholly owned subsidiary vest in a Corporation by virtue of section 26 above.
- (6) For the purposes of this Act—

- (a) notwithstanding anything in subsection (1) above, the expression “works” does not include any factory, aerodrome, shipyard or other premises or land situated outside the United Kingdom ;

PART III

- (b) the extension, alteration or re-equipment of any works or the replacement of any machinery or equipment therein shall not be deemed to change the identity of the works ; and
- (c) in determining whether a company is operating any works at a particular time, any temporary closing of the works at that time owing to holidays, repairs or for any other reason shall be disregarded.

(7) For the purposes of this Act the securities of a company to which the same rights attach shall be deemed to constitute a class of securities, and the date of issue of any securities shall be deemed to be the date on which a resolution allotting those securities is passed.

(8) For the purposes of this Act a person controls a company or other body corporate if he is entitled to exercise or to control the exercise of at least one third of the voting power at any general meeting of that body corporate.

Short title
and extent.

57.—(1) This Act may be cited as the Aircraft and Shipbuilding Industries Act 1977.

(2) This Act extends to Northern Ireland.

SCHEDULES

SCHEDULE 1

Section 19(1).

AIRCRAFT INDUSTRY

PART I

COMPANIES WHOSE SECURITIES ARE TO VEST IN
BRITISH AEROSPACE

British Aircraft Corporation Limited
Hawker Siddeley Aviation Limited
Hawker Siddeley Dynamics Limited
Scottish Aviation Limited

PART II

QUALIFYING CONDITIONS

1. On 29th October 1974 each of the companies specified in Part I of this Schedule fulfilled the following conditions, namely,—

- (a) the company was incorporated and had its principal place of business in Great Britain ; and
- (b) the company was engaged in manufacturing complete aircraft or guided weapons ; and
- (c) the aggregate of—
 - (i) the company's turnover for the relevant financial year, as stated or otherwise shown in its accounts, and
 - (ii) the turnover of each of the company's subsidiaries for the relevant financial year, as stated or otherwise shown in its accounts,
 exceeded £7.5 million ; and
- (d) the company was not a wholly owned subsidiary of a company which fulfilled each of the preceding conditions.

2. In paragraph 1 above—

“ aircraft ” does not include—

- (a) hovercraft ;
- (b) lighter than air aircraft ;
- (c) rotary-wing aircraft ;
- (d) non-motorised and motorised gliders ;
- (e) aircraft designed to fly unmanned ; and
- (f) replicas of aircraft of historic interest ; and

“ relevant financial year ”, in relation to a company, means that one of the company's financial years, within the meaning of the Companies Act 1948, for which accounts were last laid before it in general meeting before 29th October 1974. 1948 c. 38.

SCHEDULE 2

Section 19(2).

SHIPBUILDING INDUSTRY

PART I

COMPANIES WHOSE SECURITIES ARE TO VEST IN BRITISH SHIPBUILDERS

Shipbuilding companies

Appledore Shipbuilders Limited
Austin & Pickersgill Ltd.

SCH. 2

Brooke Marine Limited
 Cammell Laird Shipbuilders Limited
 Clelands Shipbuilding Company Ltd.
 Ferguson Brothers (Port Glasgow) Limited
 The Goole Shipbuilding & Repairing Co. Ltd.
 Govan Shipbuilders Limited
 Hall Russell & Company Ltd.
 Lithgows Limited
 Robb Caledon Shipbuilders Limited
 Scott and Sons (Bowling) Limited
 Scotts' Shipbuilding Company Limited
 Smith's Dock Company Ltd.
 Sunderland Shipbuilders Limited
 Swan Hunter Shipbuilders Limited
 Vickers Shipbuilding Group Limited
 Vosper Thornycroft Limited
 Yarrow (Shipbuilders) Limited

Companies manufacturing slow speed diesel marine engines

Barclay, Curle & Company Limited
 George Clark & NEM Limited
 Hawthorn Leslie (Engineers) Ltd.
 John G. Kincaid & Company Limited
 Scotts' Engineering Company Limited

Training companies

The Scott Lithgow Training Centre Limited
 Swan Hunter Training and Safety Company Limited
 Yarrow (Training) Limited

PART II

QUALIFYING CONDITIONS

1. On 31st July 1974 each of the companies specified in Part I of this Schedule fulfilled the following conditions, namely,—
 - (a) the company was incorporated and had its principal place of business in Great Britain, and
 - (b) the company fulfilled the criteria in any one of paragraphs 2 to 4 below as a shipbuilding company, a manufacturer of slow speed diesel marine engines or a training company, and
 - (c) the company was not a wholly owned subsidiary of a company which fulfilled both of the preceding conditions.

2.—(1) For the purposes of paragraph 1 above a company is a shipbuilding company if—

- (a) it was, on 31st July 1974, entitled, either alone or together with another company which was then a member of the same group of companies, to an interest in possession in a shipyard which on that date was being used for the construction of ships; and
- (b) the aggregate of the total tonnage of the ships completed in that shipyard and in any associated shipyards during the period of three years ending on 31st July 1974 exceeded the specified minimum.

(2) The specified minimum tonnage referred to in sub-paragraph (1) above is—

- (a) 750 standard displacement tons in respect of warships, or
- (b) 15,000 gross tons in respect of other ships, or
- (c) 500 standard displacement tons in respect of warships and 10,000 gross tons in respect of other ships.

(3) For the purposes of paragraph (b) of sub-paragraph (1) above, a shipyard is associated with one in which a company falling within paragraph (a) of that sub-paragraph has an interest in possession on 31st July 1974 if, on that date, either that company or another company which was then a member of the same group of companies was entitled, either alone or together with another company which was then a member of the same group, to an interest in possession in it.

3. For the purposes of paragraph 1 above, a company is a manufacturer of slow speed diesel marine engines if on 31st July 1974 it was engaged in the business of manufacturing diesel engines—

- (a) designed for use for the main propulsion of ships; and
- (b) designed to deliver continuously, at a crankshaft speed of less than 160 revolutions per minute, a power output greater than 4,000 horsepower, as measured under the operating conditions specified in the British Standard Specification published on 19th February 1958 under the number B.S.649:1958 (specification for the performance of reciprocating compression-ignition (diesel) engines, utilising liquid fuel only, for general purposes).

4. For the purpose of paragraph 1 above, a company is a training company if on 31st July 1974—

- (a) it was engaged in the business of training persons in any of the skills required for the repairing, refitting, conversion, maintenance and construction of ships; and
- (b) it was a member of a group of companies of which another member was a company which fulfilled the conditions in paragraph 1 above but does not fall within this paragraph.

5.—(1) In this Part of this Schedule “ship” means a floating or submersible vessel with an integral hull and, except in the case of a warship, of over 100 gross tons, but does not include a hovercraft

- SCH. 2** or a mobile offshore installation ; and for the purposes of this Part of this Schedule—
- 1894 c. 60. (a) the gross tonnage of a ship shall be determined in the same manner as for registration under the Merchant Shipping Act 1894 (whether or not the ship is in fact so registered) ; and
- (b) the standard displacement tonnage of a warship means that tonnage as determined in accordance with the Treaty for the Limitation of Naval Armament signed in London on 25th March 1936.
- 1972 c. 63. (2) In sub-paragraph (1) above “mobile offshore installation” has the same meaning as in Part III of the Industry Act 1972, namely, any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation and can move by water from place to place without major dismantling or modification, whether or not it has its own motive power.

Section 20.**SCHEDULE 3****VESTING OF ASSETS OF UNDERTAKINGS IN ACQUIRED COMPANIES****1. In this Schedule—**

“the principal section” means section 20 of this Act ;

“the relevant undertaking” means, in relation to the acquired company, the undertaking carried on as mentioned in subsection (3) or, as the case may require, subsection (4) of the principal section.

2.—(1) Subject to sub-paragraph (2) below, any question whether any particular property, rights or liabilities vests or vest in the acquired company by virtue of the principal section shall be determined by agreement between the Secretary of State and the associated privately owned company in whom the property, rights or liabilities is or are vested immediately before the date of transfer of the acquired company or, in default of such agreement, by arbitration under this Act.

(2) In its application to any question relating to any rights or liabilities in respect of a person's services sub-paragraph (1) above shall have effect as if the person concerned were required to be a party to the agreement referred to in that sub-paragraph.

3. Where any rights or liabilities vested in the acquired company by virtue of the principal section are rights or liabilities under an agreement to which an associated privately owned company was a party immediately before the date of transfer, then, except in so far as the context otherwise requires, whether or not the agreement is in writing or of such a nature that rights and liabilities under it could be assigned by that privately owned company, the agreement shall have effect on and after that date as if—

- (a) for any reference (however worded and whether express or implied) to the privately owned company there were substituted, with respect to anything falling to be done on or after that date, a reference to the acquired company, and

(b) any reference (however worded and whether express or implied) to a person holding a particular post in the privately owned company were, with respect to anything falling to be done on or after that date, a reference to such person as the acquired company may appoint or, in default of appointment, to the person holding the most nearly equivalent post in the acquired company.

4. Without prejudice to the generality of paragraph 3 above, where any rights or liabilities vest in the acquired company by virtue of the principal section, the acquired company and any other person shall, as from the date of transfer, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings) for ascertaining, perfecting or enforcing any right or liability vested in the acquired company by virtue of the principal section as it or he would have had if that right or liability had at all times been a right or liability of the acquired company.

5. Any legal proceedings pending on the date of transfer by or against the privately owned company concerned, in so far as they relate to any property, rights or liabilities vested in the acquired company by virtue of the principal section or to any agreement relating to any such property, rights or liabilities, shall be continued by or against the acquired company to the exclusion of the privately owned company.

6. Without prejudice to the provisions of paragraph 3 above, the vesting of any property, rights or liabilities in the acquired company by virtue of the principal section shall be binding on all other persons, notwithstanding that any transfer of that property or of those rights or liabilities would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

7. Where any property, rights or liabilities which by virtue of the principal section fall to be vested in the acquired company cannot be properly so vested because transfers of that property or those rights or liabilities are governed otherwise than by the law of a part of the United Kingdom, the privately owned company concerned shall take all practicable steps for the purpose of securing that the ownership of the property is or, as the case may be, the rights or liabilities are, effectively transferred to the acquired company, but for the purposes of this Act, other than this paragraph, any such property, rights or liabilities shall continue to be treated as vested in the acquired company by virtue of that section and not by virtue of any steps taken in accordance with this paragraph.

8. Section 12 of the Finance Act 1895 (which requires certain Acts to be stamped as conveyances on sale) (including that section as it applies to Northern Ireland) shall not apply to a vesting of property or rights in the acquired company by the principal section; and stamp duty shall not be payable either in Great Britain or in Northern Ireland on any instrument executed in pursuance of paragraph 7 above. 1895 c. 16.

SCH. 4

SCHEDULE 4

Section 29

ACQUISITION OF CERTAIN ASSETS

1. Where a Schedule 4 notice is served by a Corporation and not withdrawn or revoked, then, on such date not earlier than the relevant vesting date as may be agreed by the Corporation and the person on whom the notice is served (in this Schedule referred to as "the transferor") or, in default of agreement, as may be determined by arbitration under this Act, there shall vest by virtue of this Act in such body as may be specified in the notice, being either the Corporation or a company which comes into public ownership,—

- (a) the property or rights to which the notice relates ;
- (b) in a case where the vesting of the property or rights involves the transfer of the operation of any works from the transferor to the body so specified, all such property and rights of the transferor as may be so agreed or determined to be property and rights held by the transferor wholly or mainly for the purposes of the business carried on by him at the works ; and
- (c) such other property and rights, being property or rights held by the transferor for the purposes of the business carried on by him, as may be so agreed or determined to be property or rights which cannot reasonably be severed from property or rights referred to in sub-paragraph (a) or sub-paragraph (b) above and ought to be held in the same ownership.

2. All such agreements, whether in writing or not and whether or not of such a nature that the rights or liabilities thereunder could be assigned by the transferor, being agreements to which the transferor was a party and which are agreed by the Corporation concerned and the transferor or, in default of agreement, determined by arbitration under this Act,—

- (a) to have been entered into for the purposes of, or in connection with, the use or exercise of any property or rights which vest in pursuance of the Schedule 4 notice, and
- (b) to be agreements which ought to be transferred with that property or those rights,

shall have effect as from the date referred to in paragraph 1 above (in the following provisions of this Schedule referred to as "the acquisition date")—

- (i) as if the body specified in the Schedule 4 notice had been a party to the agreement, and
- (ii) for any reference (however worded and whether express or implied) to the transferor there were substituted as respects anything falling to be done on or after that date, a reference to that body, and

- (iii) with such other modifications as may be necessary to transfer rights, liabilities and obligations under the agreement, so far as unperformed, from the transferor to that body:

SCH. 4

Provided that, if the arbitration tribunal are satisfied, on the application of the Corporation concerned that any such agreement could, if the transferor had been a company whose securities vested in the Corporation by virtue of section 19 of this Act have been disclaimed under Part II of this Act, they shall exclude that agreement from transfer under this paragraph.

3.—(1) Subject to sub-paragraph (2) below, there shall be paid to the transferor, by way of compensation for the property and rights vested or transferred in pursuance of the Schedule 4 notice, such amount as they might have been expected to realise if—

- (a) they had been sold on the acquisition date in the open market by a willing seller to a willing buyer, and
- (b) in calculating the price for which they were to be sold, any charges to which they were subject had been disregarded, and
- (c) in so far as they comprised a business capable of being sold as a going concern, they had been so sold, and
- (d) this Act had not been passed.

(2) In any case where the property and rights vested or transferred in pursuance of a Schedule 4 notice constitute the whole or any part of the undertaking of a company which by virtue of section 27(2)(a)(ii) or (iii) above does not come into public ownership, the compensation payable under this paragraph shall not exceed the amount of compensation which would have been due under section 35 of this Act in respect of the securities of that company if it had remained an acquired company.

(3) Any question as to the amount of compensation to be paid under this paragraph shall, in default of agreement between the Corporation concerned and the transferor, be determined by arbitration under this Act.

4.—(1) All property and rights which vest under this Schedule shall vest free of any mortgage or other like incumbrance, but, where any such property or right was, immediately before the acquisition date, subject to a mortgage or other like incumbrance (other than a floating charge which will attach to the compensation), so much of any compensation as is properly referable to that property or right shall be paid to the incumbrancer; and if the property or right was subject to two or more mortgages or other like incumbrances, the payment shall be made to the incumbrancer whose mortgage or other incumbrance has priority.

(2) Where a payment is made to an incumbrancer under this paragraph, the incumbrancer shall be liable to account therefor as if payment had accrued to him as proceeds of sale of the property or right in question arising under a power of sale exercised by him immediately before the acquisition date.

SCH. 4

5. The compensation payable under the preceding provisions of this Schedule shall be satisfied by the issue to the transferor or incumbrancer to whom it is payable of such amount of government stock (that is to say, stock the principal whereof and the interest whereon shall be charged on the National Loans Fund, with recourse to the Consolidated Fund) as, in the opinion of the Treasury, is of a value equal on the date of the issue to the amount of the compensation, regard being had (in estimating the value of the stock so issued) to the market values of other government securities on or about that date ; and the Treasury shall be liable to pay interest on that amount, at such rates as they may determine, in respect of the period from the acquisition date until the date of payment.

6. References in this Schedule to the vesting of rights shall, in the case of rights which have been granted out of or derived from greater rights held by the company specified in the Schedule 4 notice, so that the surrender thereof results in their merger in those greater rights, be construed as references to the surrender of the rights so granted or derived.

1895 c. 16

7. Section 12 of the Finance Act 1895 (which requires certain Acts to be stamped as conveyances on sale) (including that section as it applies to Northern Ireland) shall not apply to the vesting by this Schedule of property or rights in a company which comes into public ownership ; and stamp duty shall not be payable either in Great Britain or Northern Ireland on any instrument of transfer, surrender or grant of rights executed in pursuance of a Schedule 4 notice.

Section 35

SCHEDULE 5

SATISFACTION OF COMPENSATION BY ISSUE OF COMPENSATION STOCK

1. In this Schedule "the principal section" means section 35 above.

2. This Schedule applies to securities which are vested in a Corporation by virtue of Part II of this Act and in respect of the vesting of which compensation stock falls to be issued under the principal section ; and, in relation to any such securities, any reference in this Schedule to the date of transfer is a reference to the date of transfer of the company whose securities they are.

3.—(1) During the period beginning with the date of transfer and ending immediately before the conversion date, the persons who, immediately before the date of transfer, were the holders of securities to which this Schedule applies shall have the right to have the amount of compensation stock to which they are entitled in accordance with the principal section less any amount issued to them by virtue of the application of subsections (1), (2), (5) and (9) of that section to section 36(6) above.

(2) During the period specified in sub-paragraph (1) above, the right specified in that sub-paragraph shall be transferable in the like manner as the securities concerned were transferable, before the date

of transfer, and the Corporation in which those securities vest shall make arrangements for recording the persons who are the holders thereof.

4. Every holder of any such right as is specified in paragraph 3(1) above shall, by virtue of this Act, become instead on the conversion date the holder of the amount of compensation stock to which he is entitled as mentioned in that paragraph.

5. The interest on compensation stock issued in respect of securities to which this Schedule applies shall be treated as accruing as from the date of transfer.

6. In any case where—

- (a) by virtue of the preceding provisions of this Schedule, a person who immediately before the date of transfer was the holder of any securities to which this Schedule applies becomes instead the holder of compensation stock, or
- (b) there is conferred on a person the right specified in paragraph 3(1) above,

he shall hold that stock or right in the same right and on the same trusts and subject to the same powers, privileges, charges, restraints and liabilities as those in, on or subject to which he held the securities by virtue of which he acquired the stock or right; and any provision of any deed, will, disposition or other instrument and any statutory provision as to what is to be done by the holder of the securities or the redemption moneys thereof shall, with any necessary modifications, have the like effect in relation to the compensation stock or the right as it would have had in relation to the securities if they had not vested in a Corporation by virtue of this Act.

7. Nothing in this Schedule affects the making of any payment of interest or dividend, in accordance with section 25 of this Act, to the holders of securities to which this Schedule applies.

8. The power conferred on the Treasury by section 74 of the Finance Act 1948 to direct, in connection with any statutory scheme 1948 c. 49 for the carrying on of an industry under national ownership under which provision is made for the transfer of the undertaking of a body corporate, that as from the date of the transfer of the undertaking transfers of the securities of the body corporate shall be exempt from all stamp duties, shall extend to a direction, as respects the right specified in paragraph 3(1) above, that, as from the date of transfer, transfers of that right shall be so exempt.

9. Each Corporation shall have, in relation to the right specified in paragraph 3(1) above, the like power as the company which issued the securities by virtue of which that right is conferred has, in relation to those securities, under the Forged Transfers Acts 1891 and 1892.

SCH. 6

SCHEDULE 6

Section 41.

PROVISIONS AS TO OFFICE OF STOCKHOLDERS' REPRESENTATIVE,
MEETINGS OF HOLDERS OF SECURITIES AND INCIDENTAL MATTERS*Appointment and tenure of office*

1.—(1) Subject to sub-paragraphs (2) and (3) below, a stockholders' representative shall be appointed for each company by the holders of securities, at a meeting of those holders called by the company, and shall be appointed not later than the end of the period of one month from the passing of this Act.

(2) In the case of a company the securities of which vest in a Corporation by virtue of section 26 of this Act, the stockholders' representative shall be appointed not later than the end of the period of one month from the service on the company of the notice of acquisition under that section.

(3) If the holders of securities fail to appoint a stockholders' representative within the required time, the Secretary of State shall appoint such a representative.

2. Where the office of a stockholders' representative is about to become vacant or has become vacant, otherwise than in consequence of the completion of his duties under this Act, a stockholders' representative to fill the vacancy shall be appointed at a meeting of the holders of securities called—

(a) if the office is not yet vacant, by the stockholders' representative,

(b) if the office is vacant and the meeting is called before the relevant vesting date, by the company, or

(c) in any other case, by the Secretary of State,

but if the appointment has not been made within the period of 2 months beginning on the date on which the vacancy occurred, the appointment may be made by the Secretary of State.

3. Every stockholders' representative shall, as soon as practicable after his appointment, give notice in writing thereof to the Secretary of State (unless he was appointed by the Secretary of State) and to the registrar of companies and shall, except in the case of a private company, insert an advertisement of his appointment in such one or more newspapers as in his opinion is or are best calculated to bring the appointment to the notice of the holders of securities; and the advertisement shall state the name of the company, the full name and description of the stockholders' representative, the address to which communications for him are to be sent and any other matters which the stockholders' representative thinks fit to include.

4.—(1) Subject to the following provisions of this paragraph—

(a) a stockholders' representative may resign his office by giving not less than one month's notice in writing to the Secretary of State and, if he was appointed by the holders

of securities, to every such holder, and his office shall become vacant on the date specified in the notice ;

- (b) a stockholders' representative may be removed from his office by a resolution passed at a meeting of the holders of securities, and his office shall become vacant on the passing of the resolution ; and
- (c) in the case of a stockholders' representative appointed by the Secretary of State, who becomes, in the Secretary of State's opinion, unfit to continue in his office or incapable of performing his duties, the Secretary of State may, by notice in writing to the holders of securities and to the stockholders' representative, declare his office to be vacant ; and his office shall become vacant on the date specified in the notice.

(2) A resolution for the removal of a stockholders' representative shall not be moved unless 14 days' notice of the intention to do so has been given to every holder of securities, and any such notice may be included in the notice calling the meeting and, if not so included, may be given in like manner as the notice calling the meeting.

(3) Where a stockholders' representative resigns his office—

- (a) he shall, before his resignation takes effect, call a meeting of the holders of securities for the appointment of his successor ;
- (b) if a new stockholders' representative is appointed before the day preceding the taking effect of his resignation, he shall, before it takes effect, deliver all books kept by him in the performance of his duties to his successor, and in any other case he shall deliver them to the Secretary of State on the day before his resignation takes effect ; and
- (c) he shall furnish such information with respect to any matters which have arisen in connection with the performance of his duties as his successor may reasonably require.

(4) When a stockholders' representative is removed from his office, he shall deliver to the Secretary of State, or as the Secretary of State may direct, all books kept by him in the performance of his duties and shall furnish to the Secretary of State such information relating to any matters which have arisen in connection with the performance of those duties as the Secretary of State may reasonably require.

5.—(1) Where a stockholders' representative dies not less than 14 days before the date of transfer of a company, the company shall forthwith give notice thereof to the Secretary of State and to every holder of securities, and the books referred to in paragraph 4(4) above shall as soon as practicable be delivered by his legal personal representative or, so far as any of them are in the possession or control of any other person, by that other person, to the Secretary of State, or as the Secretary of State may direct.

SCH. 6

(2) Where a stockholders' representative dies less than 14 days before, or on or after the date of transfer of a company, the appropriate person specified in sub-paragraph (1) above shall forthwith give notice thereof to the Secretary of State, and shall as soon as practicable deliver any such books as aforesaid to the Secretary of State or as the Secretary of State may direct.

Meetings of holders of securities

6.—(1) A stockholders' representative may at any time call a meeting of holders of securities, and shall call such a meeting within 21 days of the service on him of such a requisition as is mentioned in this paragraph.

(2) A stockholders' representative may at any time call a meeting of such class or classes of holders of securities as are exclusively affected by any matter dealt with by him in the performance of his duties, so, however, that the business of any such meeting shall be confined to matters affecting exclusively the class or classes summoned to that meeting.

(3) A requisition to a stockholders' representative to call a meeting of holders of securities may be made by holders of securities representing not less than—

- (a) one-tenth of the aggregate nominal value of the securities of the company in respect of which compensation is payable under this Act; or
- (b) one-fifth of the aggregate nominal value of any class of such securities;

and every requisition shall state the purpose of the meeting and shall be signed by the requisitionists and deposited with the stockholders' representative, and may consist of several documents in like form each signed by one or more of the requisitionists.

(4) If, in a case falling within sub-paragraph (3) above, the stockholders' representative does not within 21 days after the deposit of the requisition proceed duly to call the meeting, the requisitionists, or any of them representing not less than one-twentieth of the aggregate nominal value of the securities referred to in that sub-paragraph or, as the case may be, one-tenth of the aggregate nominal value of the class of securities referred to in that sub-paragraph, may themselves call the meeting.

(5) Any expenses reasonably incurred by the requisitionists in calling a meeting under sub-paragraph (4) above shall be repaid to them by the stockholders' representative and shall, except to the extent of any excess over the expenses which would have been incurred by the stockholders' representative if the meeting had been called by him, be deemed to be expenses incurred by him in the exercise of his functions.

7.—(1) A meeting of holders of securities shall be called by notice in writing served on every such holder not less than 14 and not more than 40 days before the date of the meeting.

(2) A notice under sub-paragraph (1) above shall state that the meeting is to be held under this Schedule, shall state the purpose of the meeting and the place, date and time at which it is to be held, and shall draw attention to the provisions of this Schedule relating to proxies and specify the address at which proxies for the meeting are to be deposited; and, if the notice is served, a form of instrument for appointing a proxy, being the form set out in the Appendix to this Schedule, shall be served together with it.

(3) If a meeting is adjourned for more than two weeks this paragraph shall apply to the adjourned meeting as it applies to the original meeting, except that it shall not be necessary to give notice of an adjourned meeting.

(4) The accidental omission to give notice to, or the non-receipt of a notice by, any holder of securities shall not invalidate the proceedings at the meeting.

8.—(1) An instrument appointing a proxy shall be in the form set out in the Appendix to this Schedule or in a form as near thereto as circumstances admit, and shall be in writing under the hand of the appointor or of an attorney duly authorised by him in writing, or, if the appointor is a corporation, shall be either under seal or under the hand of an officer or attorney duly authorised by the corporation in writing.

(2) A proxy need not be a holder of securities.

(3) The appointment of a proxy shall not be valid unless the instrument of appointment, and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of that power or authority, is deposited at the address specified for the purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting.

(4) An appointment of a proxy may be made for one or more meetings, and any appointment for a meeting shall be deemed to apply to any adjournment thereof.

Procedure at meetings

9.—(1) The holders of securities present in person at any meeting shall choose one of their number to be chairman, and for that purpose the persons present in person at any meeting shall be a quorum.

(2) Subject as aforesaid, holders of securities present in person or by proxy representing not less than one-twentieth of the aggregate nominal value of the securities of the company in respect of which compensation is payable under this Act shall be a quorum.

(3) If within half an hour of the time appointed for any meeting a quorum is not present, the chairman shall adjourn the meeting to a place, date and time determined by him (which shall if practicable be the same place and the same day and time in the following week), and if at that adjourned meeting a quorum is not present at the appointed time or within 30 minutes thereafter, the holders of securities present in person or by proxy shall be a quorum.

SCH. 6

(4) At any meeting voting shall be by holders of securities present in person or by proxy, and a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by persons present in person or by proxy representing not less than one-twentieth of the aggregate nominal value aforesaid.

(5) A poll, if so demanded, shall be taken in such manner as the chairman may direct, and on any such poll every holder voting shall be entitled to one vote for each pound by nominal value of the securities held by him.

(6) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting shall be entitled to a second or casting vote.

(7) An entry in any minutes or record kept with respect to any meeting by the stockholders' representative, or, before the appointment of a stockholders' representative or during a vacancy in that office, by a person authorised in that behalf by the chairman of the meeting, shall, if signed by the chairman of the meeting or by the chairman of a meeting at which the minutes or record were or was read, be evidence of the matter so recorded.

(8) The proceedings at any meeting of holders of securities shall not be invalidated by any defect discovered after the meeting in the qualifications to vote of any person who voted at the meeting.

10.—(1) In the case of a joint holding of securities, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand or stood in the relevant register or, if there is no register, in the relevant document of title.

(2) Any person who has been duly authorised to act on behalf of a holder of securities who is of unsound mind may vote on his behalf.

11. Where any class of securities is secured by a trust deed and any trustee thereof is not a holder of securities, notice of any meeting of holders of securities held under this Schedule shall be served on him, and any such trustee may attend and speak at any such meeting, but shall not be entitled to vote.

12. The provisions of paragraphs 7 to 11 above shall with the requisite modifications apply in relation to a meeting of a class or classes of holders of securities as they apply in relation to a meeting of holders of securities of all classes.

13. Any body corporate which is a holder of securities may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of holders of securities, and the person so authorised shall be entitled

to exercise the same powers on behalf of the body which he represents as that body could exercise if it were an individual holder of securities.

SCH. 6

Service of documents

14. In addition to the methods of serving documents under section 54 of this Act, any notice or statement required under this Schedule to be served on, or given or sent to, any holder of securities who is entered in a register kept by the company or any record kept by the Corporation concerned under Schedule 5 to this Act, may be so served, given or sent by sending it in a prepaid letter addressed to that holder at the address entered in the register or record and, in the case of a joint holding of securities, may be sent to the senior holder as determined for the purpose of paragraph 10 above.

(2) In the case of holders of bearer securities, any notice required under this Schedule to be given or served may be given by advertisement in such one or more newspapers as in the opinion of the person required to give or serve the notice is or are best calculated to bring the matter in question to the notice of those holders.

Supplementary

15.—(1) Every stockholders' representative shall keep proper books in which shall appear—

- (a) a record of every matter dealt with by him in the performance of his duties under this Act; and
- (b) minutes of the proceedings of every meeting of holders of securities, which shall include a record of every resolution passed.

(2) All such books shall be open at any reasonable hour to inspection by any holder of securities or by any person authorised in writing in that behalf by any such holder.

16. As soon as practicable after he has completed his duties under this Schedule, each stockholders' representative shall—

- (a) prepare a statement showing how he has carried out those duties,
- (b) send copies of that statement to the Secretary of State, to the Corporation in which vest the securities to which his duties relate and to every holder of securities, and
- (c) call a meeting of the holders of securities,

and the stockholders' representative shall present the statement at the meeting and shall give any explanation of the statement that may reasonably be required by any holder of securities present at the meeting.

17.—(1) In this Schedule the expression "holder of securities", in relation to a stockholders' representative or the appointment of a stockholders' representative, means any holder of securities of the

SCH. 6 company for which he is or is to be appointed or any holder of rights in respect of those securities under Schedule 5 to this Act, or any person to whom those securities or rights are transferred.

(2) Expressions to which meanings are assigned by any provision of this Act shall bear the same meanings in any notice, minute or other document, given, served, or made under this Schedule.

APPENDIX

SCH. 6

AIRCRAFT AND SHIPBUILDING INDUSTRIES ACT 1977

Appointment of proxy for voting

[The] [Company] Limited.
 I/WE,
 of in the County of
 as a holder of (a) in the above named
 company HEREBY APPOINT
 of [or, failing him,
 of]
 as my/our proxy to vote for me/us on my/our behalf at the meeting
 of holders of securities to be held under Schedule 6 to the above-
 mentioned Act on the day of 19.....
 and at any adjournment thereof $\frac{\text{in favour of}}{\text{against}}$ (b) the resolution to
 be submitted.

Dated this day of 19.....
 (c)

- (a) Name the class of the company's securities which are held or in respect of which rights under Schedule 5 to the above mentioned Act are held.
- (b) Delete whichever is not desired; if neither is deleted, the proxy will vote as he thinks fit.
- (c) Signature of appointor or attorney or, in the case of a company, seal of the company or signature of authorised officer or attorney.

SCHEDULE 7

Section 42.

PROCEDURE ETC. OF ARBITRATION TRIBUNAL

PART I

PROCEEDINGS OTHER THAN SCOTTISH PROCEEDINGS

1. The provisions of this Part of this Schedule shall have effect with respect to proceedings of the arbitration tribunal other than those which, by virtue of this Act, are to be treated as Scottish proceedings, and references in the following provisions of this Part of this Schedule to proceedings shall be construed accordingly.

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1950 c. 27.
1937 c. 8 (N.I.).

2. The provisions of the Arbitration Act 1950 or, in Northern Ireland, the Arbitration Act (Northern Ireland) 1937 with respect to—

- (a) the administration of oaths and the taking of affirmations,
- (b) the correction in awards of mistakes and errors,
- (c) the summoning, attendance and examination of witnesses and the production of documents, and
- (d) the costs of the reference and award,

shall, with any necessary modifications, apply in respect of proceedings before the arbitration tribunal but, except as provided by this paragraph, the provisions of that Act shall not apply to any such proceedings.

3. The arbitration tribunal may, and if so ordered by the Court of Appeal shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before them.

4. An appeal shall lie to the Court of Appeal on any question of law or fact from any determination or order of the arbitration tribunal with respect to a claim by either Corporation—

- (a) against the directors of a company to enforce a liability arising under section 23 of this Act, or
- (b) for compensation for loss arising from any transaction referred to the tribunal under any of sections 28, 30 and 31 of this Act.

5.—(1) Subject to the provisions of this Schedule, the procedure in or in connection with any proceedings before the arbitration tribunal shall be such as may be determined by rules made by the Lord Chancellor by statutory instrument.

(2) A statutory instrument containing rules made under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART II

SCOTTISH PROCEEDINGS

6. The provisions of this Part of this Schedule shall have effect with respect to proceedings of the arbitration tribunal which, by virtue of this Act, are to be treated as Scottish proceedings, and references in the following provisions of this Part of this Schedule to proceedings shall be construed accordingly.

7. The arbitration tribunal shall have the like powers for securing the attendance of witnesses and the production of documents and with regard to the examination of witnesses on oath and the awarding of expenses as if the arbitration tribunal were an arbiter under a submission.

8. The arbitration tribunal may, and if so directed by the Court of Session shall, state a case for the opinion of that Court on any question of law arising in the proceedings.

9.—(1) An appeal shall lie to the Court of Session on any question of law or fact from any determination or order of the arbitration tribunal with respect to a claim by either Corporation—

- (a) against the directors of a company to enforce a liability arising under section 23 of this Act, or
- (b) for compensation for loss arising from any transaction referred to the tribunal under any of sections 28, 30 and 31 of this Act.

(2) An appeal shall lie, with the leave of the Court of Session or of the House of Lords, from any decision of the Court of Session under this paragraph, and such leave may be given on such terms as to costs or otherwise as the Court of Session or the House of Lords may determine.

10.—(1) Subject to the provisions of this Schedule, the procedure in or in connection with any proceedings before the arbitration tribunal shall be such as may be determined by rules made by the Lord Advocate by statutory instrument.

(2) A statutory instrument containing rules made under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11. Unless the arbitration tribunal consider that there are special reasons for not doing so, they shall sit in Scotland for the hearing and determination of any proceedings which, by virtue of this Act, are to be treated as Scottish proceedings.

PART III

ALL PROCEEDINGS

12. Every order of the arbitration tribunal—

- (a) shall be enforceable in England and Wales and Northern Ireland as if it were an order of the High Court; and
- (b) may be recorded for execution in the books of Council and Session and may be enforced accordingly.

13. The arbitration tribunal may, at any stage in any proceedings before them, refer to a person or persons appointed by them for the purpose any question arising in the proceedings, other than a question which in their opinion is primarily one of law, for inquiry and report, and the report of any such person or persons may be adopted wholly or partly by the tribunal and, if so adopted, may be incorporated in an order of the tribunal.