



# Gas Act 1986

## 1986 CHAPTER 44

### PART II

#### TRANSFER OF UNDERTAKING OF CORPORATION

#### **49 Vesting of property etc. of Corporation in a company nominated by the Secretary of State**

- (1) On such day as the Secretary of State may by order appoint for the purposes of this section (in this Act referred to as " the transfer date "), all the property, rights and liabilities to which the Corporation was entitled or subject immediately before that date shall (subject to section 50 below) become by virtue of this section property, rights and liabilities of a company nominated for the purposes of this section by title Secretary of State (in this Act referred to as " the successor company ").
- (2) The Secretary of State may, after consulting the Corporation, by order nominate for the purposes of this section any company formed and registered under the Companies Act 1985 ; but on the transfer date the company in question must be a company limited by shares which is wholly owned by the Crown.
- (3) References in this Act to property, rights and liabilities of the Corporation are references to all such property, rights and liabilities, whether or not capable of being transferred or assigned by the Corporation.
- (4) It is hereby declared for the avoidance of doubt that—
  - (a) any reference in this Act to property of the Corporation is a reference to property of the Corporation, whether situated in the United Kingdom or elsewhere; and
  - (b) any such reference to rights and liabilities of the Corporation is a reference to rights to which the Corporation is entitled, or (as the case may be) liabilities to which the Corporation is subject, whether under the law of the United Kingdom or of any part of the United Kingdom or under the law of any country or territory outside the United Kingdom.

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- (5) In the House of Commons Disqualification Act 1975 in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—

“Director of the successor company (within the meaning of the Gas Act 1986), being a director nominated or appointed by a Minister of the Crown or by a person acting on behalf of the Crown”;

and the like insertion shall be made in Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975.

## **50 British Gas Stock**

- (1) On the transfer date all the rights and liabilities to which the Corporation was entitled or subject immediately before that date under the terms of issue of British Gas Stock shall become by virtue of this section rights and liabilities of the Treasury.
- (2) As from the transfer date British Gas Stock shall be deemed for all purposes, but subject to the rights and liabilities mentioned in subsection (1) above, to have been created and issued under the National Loans Act 1968, and that Act and any other enactment, regulation or rule relating to securities issued under that Act shall apply accordingly to that Stock.
- (3) As from the transfer date British Gas 3% Guaranteed Stock, 1990-95 shall be renamed " 3% Exchequer Gas Stock, 1990-95 ".
- (4) Before the transfer date the Corporation shall pay to the Treasury an amount equal to the interest (without any deduction for income tax) accruing on British Gas Stock in the period from the date when the last instalment of interest became payable on the Stock down to the transfer date.
- (5) Any question arising between the Corporation and the Treasury as to the manner in which interest accrued on British Gas Stock is to be calculated for the purposes of subsection (4) above shall be determined by the Treasury; and the amount received by the Treasury under that subsection shall be paid into the National Loans Fund.
- (6) Before the transfer date the Corporation shall pay to the Bank of England a sum equal to the amounts accruing in respect of unclaimed interest or redemption money on British Gas Stock before the transfer date (after deduction of income tax in the case of interest), but excluding any amounts represented by money in the hands of the Bank of England.
- (7) The Bank of England shall deal with—
- (a) the money paid to them under subsection (6) above; and
  - (b) the money already in their hands which represents such unclaimed interest or redemption money as is mentioned in that subsection,
- as money entrusted to them for payment to holders of British Gas Stock and section 5 of the Miscellaneous Financial Provisions Act 1955 (which relates to unclaimed dividends etc. on Government Stock) shall apply accordingly.
- (8) In this section " British Gas Stock " means any stock created and issued under section 21 of the 1972 Act or section 43 of the Gas Act 1948.

## **51 Initial Government holding in the successor company**

- (1) As a consequence of the vesting in the successor company by virtue of section 49 above of property, rights and liabilities of the Corporation, the successor company shall issue such securities of the company as the Secretary of State may from time to time direct—
  - (a) to the Treasury or the Secretary of State ; or
  - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State.
- (2) The Secretary of State shall not give a direction under subsection (1) above at a time when the successor company has ceased to be wholly owned by the Crown.
- (3) Securities required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms as the Secretary of State may direct.
- (4) Shares issued in pursuance of this section—
  - (a) shall be of such nominal value as the Secretary of State may direct; and
  - (b) shall be issued as fully paid and treated for the purposes of the Companies Act 1985 as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (5) The Secretary of State shall not exercise any power conferred on him by this section, or dispose of any securities issued or of any rights to securities initially allotted to him in pursuance of this section, without the consent of the Treasury.
- (6) Any dividends or other sums received by the Treasury or the Secretary of State in right of or on the disposal of any securities or rights acquired by virtue of this section shall be paid into the Consolidated Fund.
- (7) Stamp duty shall not be chargeable under section 47 of the Finance Act 1973 in respect of any increase in the capital of the successor company which is effected by the issue of shares allotted at a time when the successor company was wholly owned by the Crown and is certified by the Treasury as having been—
  - (a) effected for the purpose of complying with the requirements of this section ; or
  - (b) where any convertible securities were issued in pursuance of this section, effected in consequence of the exercise of the conversion rights attached to those securities.

## **52 Government investment in securities of the successor company**

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may at any time acquire
  - (a) securities of the successor company; or
  - (b) rights to subscribe for any such securities.
- (2) The Secretary of State may not dispose of any securities or rights acquired under this section without the consent of the Treasury.
- (3) Any expenses incurred by the Treasury or the Secretary of State in consequence of the provisions of this section shall be paid out of money provided by Parliament.
- (4) Any dividends or other sums received by the Treasury or the Secretary of State in right of, or on the disposal of, any securities or rights acquired under this section shall be paid into the Consolidated Fund.

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- (5) Stamp duty shall not be chargeable under section 47 of the Finance Act 1973 in respect of any increase in the capital of the successor company which—
- (a) is effected by the issue of shares allotted at a time when the company was wholly owned by the Crown ; and
  - (b) is certified by the Treasury as having been effected by the issue of shares subscribed for by the Treasury or the Secretary of State under subsection (1) (a) above.

### **53 Exercise of functions through nominees**

- (1) The Treasury or, with the consent of the Treasury, the Secretary of State may for the purposes of section 51 or 52 above appoint any person to act as the nominee, or one of the nominees, of the Treasury or the Secretary of State; and—
- (a) securities of the successor company may be issued under section 51 above to any nominee of the Treasury or the Secretary of State appointed for the purposes of that section or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
  - (b) any such nominee appointed for the purposes of section 52 above may acquire securities or rights under that section,
- in accordance with directions given from time to time by the Treasury or, with the consent of the Treasury, by the Secretary of State.
- (2) Any person holding any securities or rights as a nominee of the Treasury or the Secretary of State by virtue of subsection (1) above shall hold and deal with them (or any of them) on such terms and in such manner as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

### **54 Target investment limit for Government shareholding**

- (1) As soon as he considers expedient and, in any case, not later than six months after the successor company ceases to be wholly owned by the Crown, the Secretary of State shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Treasury and their nominees and by the Secretary of State and his nominees (in this section referred to as " the Government shareholding ").
- (2) The target investment limit shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the successor company (in this section referred to as " the ordinary voting rights ").
- (3) The first target investment limit fixed under this section shall be equal to the proportion of the ordinary voting rights which is carried by the Government shareholding at the time when the order fixing the limit is made.
- (4) The Secretary of State may from time to time by order fix a new target investment limit in place of the one previously in force under this section; but—
- (a) any new limit must be lower than the one it replaces; and
  - (b) an order under this section may only be revoked by an order fixing a new limit.
- (5) It shall be the duty of the Treasury and of the Secretary of State so to exercise—
- (a) their powers under section 52 above and any power to dispose of any shares held by virtue of any provision of this Part; and

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- (b) their power to give directions to their respective nominees,  
as to secure that the Government shareholding does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this section.
- (6) Notwithstanding subsection (5) above, the Treasury or the Secretary of State may take up, or direct any nominee of the Treasury or of the Secretary of State to take up, any rights for the time being available to them or him, or to that nominee, as an existing holder of shares or other securities of the successor company; but if, as a result, the proportion of the ordinary voting rights carried by the Government shareholding at any time exceeds the target investment limit, it shall be the duty of the Treasury or, as the case may be, the Secretary of State to comply with subsection (5) above as soon after that time as is reasonably practicable.
- (7) For the purposes of this section the temporary suspension of any of the ordinary voting rights shall be disregarded.

## **55 Financial structure of the successor company**

- (1) If the Secretary of State so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum (not exceeding the accumulated realised profits of the Corporation) as may be specified in the direction shall be carried by the successor company to a reserve (in this section referred to as "the statutory reserve").
- (2) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.
- (3) Notwithstanding subsection (2) above, the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of section 264(3) (d) of the Companies Act 1985 ; but for the purpose of determining under that section whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of section 264(3) (c) as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company—
- (a) the vesting effected by virtue of section 49 above shall be taken to have been a vesting of all the property, rights and liabilities to which the Corporation was entitled or subject immediately before the end of the last complete financial year of the Corporation ending before the transfer date (other than any rights and liabilities which vest in the Treasury by virtue of section 50 above) and to have been effected immediately after the end of that year; and
- (b) the value of any asset and the amount of any liability of the Corporation taken to have been vested in the successor company by virtue of paragraph (a) above shall be taken to have been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the corresponding statement of accounts prepared by the Corporation in respect of that year.
- (5) For the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by the Corporation (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

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

- (6) References in this section to the statutory accounts of the successor company are references to any accounts prepared by the successor company for the purposes of any provision of the Companies Act 1985 (including group accounts); and in this section " complete financial year " means a financial year ending with 31st March.

## **56 Temporary restrictions on successor company's borrowings etc.**

- (1) If articles of association of the successor company confer on the Secretary of State powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the national interest notwithstanding any rule of law and the provisions of any enactment.
- (2) For the purposes of this section any alteration of the articles of association of the successor company which—
- (a) has the effect of conferring or extending any such power as is mentioned in subsection (1) above ; and
  - (b) is made at a time when that company has ceased to be wholly owned by the Crown,
- shall be disregarded.
- (3) In this section " group " means the successor company and all of its subsidiaries taken together.

## **57 Dissolution of the Corporation**

- (1) The Corporation shall continue in existence after the transfer date until it is dissolved in accordance with subsection (2) below; and the period of its continued existence after the transfer date is in this Act referred to as "the transitional period ".
- (2) The Secretary of State may by order, after consulting the Corporation and the successor company, dissolve the Corporation on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by the Corporation under Schedule 8 to this Act.
- (3) During the transitional period section 1 of the 1972 Act shall have effect as if for subsection (2) (composition of Corporation) there were substituted the following subsection—
- “(2) The Corporation shall consist of—
- (a) a chairman appointed by the Secretary of State; and
  - (b) such one or more other persons as may be so appointed.”

## **58 Statements in connection with flotation**

- (1) This section shall apply where—

- (a) an offer for sale to the public of any securities of the successor company is made by or on behalf of the Crown;
  - (b) any invitation or advertisement is issued (whether or not in documentary form) by or on behalf of the Crown in connection with the offer; and
  - (c) that invitation or advertisement does not contain all the listing particulars.
- (2) None of the persons mentioned in subsection (3) below shall incur any civil liability by reason of the invitation or advertisement, or any omission from it, if—
- (a) the contents of the invitation or advertisement were submitted to the Council of The Stock Exchange;
  - (b) that Council did not object to the contents of the invitation or advertisement; and
  - (c) the invitation or advertisement and the listing particulars, taken together, would not be likely to mislead persons of the kind likely to consider the offer.
- (3) The persons referred to in subsection (2) above are—
- (a) the Crown;
  - (b) any person acting on behalf of the Crown in connection with the offer;
  - (c) the maker of any statement contained in the invitation or advertisement;
  - (d) any person responsible for the preparation of, or of any part of, the listing particulars.
- (4) The reference in subsection (2) above to a person mentioned in subsection (3) above incurring civil liability shall include a reference to any other person being entitled as against the person so mentioned to be granted any civil remedy or to rescind or repudiate any agreement.
- (5) In this section " the listing particulars ", in relation to the offer, means such particulars as, by virtue of any provision of any enactment other than this section or of any subordinate legislation, have been approved by the Council of The Stock Exchange for the purposes of the admission of the securities to which the offer relates to the Official List of The Stock Exchange.

## **59 Application of Trustee Investments Act 1961 in relation to investment in the successor company**

- (1) For the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the five years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of the successor company during the calendar year in which the transfer date falls (" the first investment year ") or during any year following that year, the successor company shall be deemed to have paid a dividend as there mentioned—
- (a) in every year preceding the first investment year which is included in the relevant five years; and
  - (b) in the first investment year, if that year is included in the relevant five years and the successor company does not in fact pay such a dividend in that year.
- (2) In subsection (1) above " the relevant five years " means the five years immediately preceding the year in which the investment in question is made or proposed to be made.

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## **60 Tax provisions**

- (1) The successor company shall be treated—
  - (a) for all purposes of corporation tax and petroleum revenue tax; and
  - (b) for the purposes of the Gas Levy Act 1981,as if it were the same person as the Corporation.
- (2) The successor company shall not by virtue of subsection (1) above be regarded as a body falling within section 272(5) of the Income and Corporation Taxes Act 1970 (bodies established for carrying on industries or undertakings under national ownership or control).
- (3) Where any debentures are issued in pursuance of section 51 above, any annual payment secured by those debentures shall be treated for all purposes of corporation tax as if it were a charge on income of the successor company.
- (4) In consequence of the provisions of this Part, the said Act of 1981 shall have effect with the amendments specified in Schedule 6 to this Act.

## **61 Interpretation etc. of Part II**

- (1) In this Part—
  - " debenture " includes debenture stock;
  - " securities ", in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
  - " shares " includes stock;
  - " subsidiary " has the same meaning as in the Companies Act 1985.
- (2) An order under section 49 above nominating any company for the purposes of that section and an order under subsection (1) of that section appointing the transfer date may be varied or revoked by a subsequent order at any time before any property, rights or liabilities vest in any company by virtue of section 49 above.
- (3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when each of the issued shares in the company is held by, or by a nominee of, the Treasury or the Secretary of State.