



Electricity Act 1989

1989 CHAPTER 29

PART II

REORGANISATION OF THE INDUSTRY

Finances of successor companies

75 Statutory reserves.

- (1) If the Secretary of State with the approval of the Treasury so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding—
 - (a) in the case of a supply company, the accumulated realised profits of the transferor;
 - (b) in the case of a Scottish electricity company, the aggregate of such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme and any accumulated realised profits arising (after compliance with any direction to the company under subsection (2) of section 80 below) by virtue of the extinguishment of liabilities of the company by an order under subsection (1) of that section;
 - (c) in any other case, such proportion of the accumulated realised profits of the transferor as is determined by or under the transfer scheme,shall be carried by the company to a reserve (in this section referred to as “the statutory reserve”).
- (2) A company having a statutory reserve shall not apply it except 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 of a company shall not count as an undistributable reserve of the company for the purposes of section 264(3) (d) of the ^{M1}Companies Act 1985; but for the purpose of determining under that section whether a company with a statutory reserve may make a distribution at any time any

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amount for the time being standing to the credit of the reserve shall be treated for the purposes of section 264(3)(c) of that Act as if it were unrealised profits of the company.

Marginal Citations

M1 1985 c. 6.

76 Statutory accounts.

- (1) The following provisions of this section shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of the Companies Act 1985 (including group accounts).
- (2) The vesting in the company effected by virtue of this Part shall be taken to have been effected immediately after the end of the last complete accounting year of the transferor to end before the transfer date and—
 - (a) in the case of a supply company, to have been a vesting of all the property, rights and liabilities to which the transferor was entitled or subject immediately before the end of the year;
 - (b) in any other case, to have been a vesting of such of the property, rights and liabilities to which the transferor was so entitled or subject as are determined by or under the transfer scheme.
- (3) The value of any asset and the amount of any liability which is taken by virtue of subsection (2) above to have been vested in the company shall be taken to have been—
 - (a) in the case of a supply company, the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the transferor in respect of the last complete accounting year of the transferor to end before the transfer date;
 - (b) in any other case, the value or amount so assigned or, if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.
- (4) The amount to be included in respect of any item shall be determined as if—
 - (a) in the case of a supply company, anything done by the transferor (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);
 - (b) in any other case, so much of anything so done as may be determined by or under the transfer scheme,
 had been done by the company.
- (5) Without prejudice to the generality of the preceding provisions, the amount to be included from time to time in any reserves of the company as representing the company's accumulated realised profits shall be determined as if—
 - (a) in the case of a supply company, any profits realised and retained by the transferor;
 - (b) in any other case, such proportion of any such profits as is determined by or under the transfer scheme,

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had been realised and retained by the company.

- (6) In this section “complete accounting year,” in relation to the transferor, means an accounting year of the transferor ending on 31st March.

77 Temporary restrictions on borrowings etc.

- (1) If articles of association of a 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 an alteration of the articles of association of a successor company shall be disregarded if the alteration—
- (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.
- (3) In this section—
- “group”, in relation to a company, means that company and all of its subsidiaries taken together;
 - “subsidiary” [^{F1}has the meaning given by section 736 of]the ^{M2}Companies Act 1985.

Textual Amendments

F1 Words substituted by [S.I. 1990/1395, reg. 2](#)

Marginal Citations

M2 [1985 c. 6.](#)

78 Government lending to the companies.

- (1) Subject to section 81 below, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to any successor company which is for the time being wholly owned by the Crown.
- (2) Subject to section 80 below, any loans which the Secretary of State makes under this section shall be repaid to him at such times and by such methods, and interest thereon shall be paid to him at such rates and at such times, as he may, with the approval of the Treasury, from time to time direct.
- (3) The Treasury may issue out of the National Loans Fund to the Secretary of State such sums as are required by him for making loans under this section.
- (4) Any sums received under subsection (2) above by the Secretary of State shall be paid into the National Loans Fund.
- (5) It shall be the duty of the Secretary of State as respects each financial year—
- (a) to prepare, in such form as the Treasury may direct, an account of sums issued to him in pursuance of subsection (3) above and of sums received by him

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under subsection (2) above and of the disposal by him of the sums so issued or received; and

- (b) to send the account to the Comptroller and Auditor General not later than the end of the month of August in the following financial year;

and the Comptroller and Auditor General shall examine, certify and report on the account and shall lay copies of it and of his report before each House of Parliament.

79 Treasury guarantees for loans made to the companies.

- (1) Subject to section 81 below, the Treasury may guarantee, in such manner and on such terms as they may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Secretary of State by any successor company which is for the time being wholly owned by the Crown.
- (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 immediately after any sum is issued for fulfilling a guarantee so given, the Treasury shall so lay 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 company whose obligations are so fulfilled shall make to the Treasury, at such times and in such manner as the Treasury may from time to time direct—
 - (a) payments of such amounts as the Treasury may so direct in or towards repayment of the sums so issued; and
 - (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Treasury may so direct.
- (5) Any sums received under subsection (4) above by the Treasury shall be paid into the Consolidated Fund.

80 Conversion of certain loans etc. to the Scottish companies.

- (1) The Secretary of State may by order extinguish all or any of the liabilities of a successor company in Scotland in respect of the principal of such relevant loans as may be specified in the order; and the assets of the National Loans Fund shall accordingly be reduced by amounts corresponding to any liabilities so extinguished.
- (2) Where the Secretary of State has made an order under subsection (1) above and he considers it appropriate to do so, he may from time to time give a direction under this subsection to the company whose liabilities are extinguished by the order, or to a company or companies wholly owning the company whose liabilities are so extinguished; and a company to which such a direction is given shall, as a consequence of the making of the order, issue such securities of the company as may be specified or described in the direction—
 - (a) to the Treasury or the Secretary of State;
 - (b) to any person entitled to require the issue of the securities following their initial allotment to the Treasury or the Secretary of State; or
 - (c) if it is the company whose liabilities are extinguished by the order, to a company or companies wholly owning that company.

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- (3) For the purposes of any statutory accounts of a company to whom securities are issued by virtue of subsection (2)(c) above, the value at the time of its issue of any such security shall be taken—
- (a) in the case of a share, to have been equal to its nominal value; and
 - (b) in the case of debenture, to have equal to the principal sum payable under the debenture,
- and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.
- (4) In subsection (3) above “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of the ^{M3}Companies Act 1985 (including group accounts).
- (5) The Secretary of State shall not—
- (a) make an order under subsection (1) above extinguishing the liability of any company; or
 - (b) give a direction under subsection (2) above for the issue of securities,
- except at a time when the company whose liability is extinguished by the order or, as the case may be, the company which is directed to issue securities is wholly owned by the Crown; and he shall not give a direction under paragraph (c) of the said subsection (2) except at a time when the company or companies to whom the securities are to be issued is, or are, so owned.
- (6) Except as may be agreed between the Secretary of State and a company which is directed to issue debentures in pursuance of this section—
- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
 - (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.
- (7) For the purposes of subsection (6) above any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.
- (8) Subsections (3) to (6) of section 71 above shall apply for the purposes of this section as they apply for the purposes of that section.
- (9) In this section “relevant loan”, in relation to a successor company in Scotland, means—
- (a) any loan made, or deemed to have been made, by the Secretary of State or from the National Loans Fund the liability to repay which vests in that company by virtue of section 67(4) above;
 - (b) any loan made to that company by the Secretary of State under section 78 above; and
 - (c) any sums payable under debentures issued as a consequence of the making of an order under this section.
- (10) In this section and section 81 below “successor company in Scotland” means a company nominated for the purposes of section 67(1) above.

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Marginal Citations

M3 1985 c. 6.

81 Financial limits on borrowing etc.

- (1) The aggregate of any amounts outstanding by way of principal in respect of—
 - (a) loans made by the Secretary of State under section 78 above to successor companies in England and Wales; and
 - (b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to such companies,shall not exceed £2,000 million.
- (2) The aggregate of any amounts outstanding by way of principal in respect of—
 - (a) relevant loans within the meaning of section 80 above; and
 - (b) sums issued under section 79 above in fulfilment of guarantees given in respect of loans made to successor companies in Scotland,shall not exceed £3,000 million.
- (3) In this section “successor company in England and Wales” means a company nominated for the purposes of section 65(1) or 66(1) or (2) above.

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