
Changes to legislation: Energy Act 2004, SCHEDULE 6 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 6

Section 39

STRUCTURE ETC. OF TRANSFEREE COMPANIES

Application and interpretation of Schedule

- 1 (1) This Schedule applies where—
- (a) property, rights and liabilities are transferred to a company (“the transferee company”) in accordance with provisions of a nuclear transfer scheme authorised by section 39; and
 - (b) that company is publicly owned when the transfer takes effect.
- (2) In this Schedule—
- “the Authorities” means the NDA and the UKAEA;
 - “the relevant scheme”, in relation to the transferee company, means—
 - (a) the nuclear transfer scheme containing the provisions authorised by section 39 in accordance with which property, rights and liabilities are vested in that company; and
 - (b) any modification agreement (within the meaning of Schedule 5) relating to that scheme;
 - “transferee company” is to be construed in accordance with subparagraph (1);
 - “transferor”, in relation to the transferee company, means the person or body from whom property, rights or liabilities are transferred to the transferee company in accordance with the relevant scheme.
- (3) In this paragraph “company” [^{F1}means a company as defined in section 1(1) of the Companies Act 2006].

Textual Amendments

- F1** Words in Sch. 6 para. 1(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(8\)\(a\)](#) (with art. 10)

Commencement Information

- II** Sch. 6 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Initial Government holding in the transferee company

- 2 (1) As a consequence of the vesting, in accordance with the relevant scheme, of property, rights and liabilities in the transferee company, that company must issue to—
- (a) the Treasury, or
 - (b) a Minister of the Crown,

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such securities of the company as the Secretary of State may from time to time direct.

- (2) In a case where the transferee company is a wholly-owned subsidiary of one of the Authorities, that company must, as a consequence of the vesting in that company of property, rights and liabilities, issue to the Authority in question such securities of the company as the Authority may from time to time direct.
- (3) A direction under sub-paragraph (1) or (2) may be given to a company only at a time when the company is publicly owned.
- (4) Securities issued in accordance with a direction under this paragraph—
 - (a) shall be of such nominal value as the Secretary of State may direct;
 - (b) shall be issued as fully paid; and
 - (c) shall be treated for the purposes of [^{F2}the Companies Act 2006] as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (5) The consent of the Treasury is required for—
 - (a) the exercise by the Secretary of State or either of the Authorities of a power conferred by the preceding provisions of this paragraph; or
 - (b) the disposal by a Minister of the Crown, or by either of the Authorities, of securities issued to him or to that Authority in accordance with this paragraph.
- (6) The consent of the Secretary of State is required for the giving of a direction by either of the Authorities under sub-paragraph (2).

Textual Amendments

F2 Words in Sch. 6 para. 2(4)(c) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 220(8)(b) (with art. 10)

Commencement Information

I2 Sch. 6 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Government investment in securities of transferee company

- 3 (1) The Treasury or a Minister of the Crown may use money provided by Parliament for the acquisition of—
 - (a) securities of the transferee company; or
 - (b) rights to subscribe for such securities.
- (2) The consent of the Treasury is required for—
 - (a) an acquisition by a Minister of the Crown under sub-paragraph (1); or
 - (b) a disposal by a Minister of the Crown of securities or rights acquired by virtue of this paragraph.

Commencement Information

I3 Sch. 6 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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Exercise of functions through nominees

- 4 (1) The Treasury, a Minister of the Crown or either of the Authorities may appoint a person to act as a nominee of the Treasury, of that Minister or of that Authority—
- (a) in the case of the Treasury or such a Minister, for the purposes of paragraph 2 or 3; and
 - (b) in the case of one of the Authorities, for the purposes of paragraph 2.
- (2) The consent of the Treasury is required for the appointment of a nominee by a Minister of the Crown.
- (3) The issue of securities under paragraph 2 to a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions (if any) as are given from time to time—
- (a) by the Treasury; or
 - (b) with the consent of the Treasury, by the Minister.
- (4) The acquisition of securities or rights under paragraph 3 by a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions (if any) as are given from time to time—
- (a) by the Treasury; or
 - (b) with the consent of the Treasury, by a Minister of the Crown.
- (5) A person who by virtue of paragraph 2 or 3 and this paragraph holds securities or rights as a nominee of the Treasury or of a Minister of the Crown must hold them and deal with them—
- (a) on such terms, and
 - (b) in such manner,
- as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

Commencement Information

I4 Sch. 6 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Payment of dividends etc. into Consolidated Fund

- 5 Dividends or other sums received by the Treasury or a Minister of the Crown in right of, or on the disposal of, securities or rights acquired by virtue of this Schedule must be paid into the Consolidated Fund.

Commencement Information

I5 Sch. 6 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Distributable reserves of transferee companies

- 6 (1) This paragraph applies where statutory accounts of the transferee company prepared as at a particular time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital; and

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- (b) the amount, apart from the property, rights and liabilities to which the company has become entitled or subject in accordance with the relevant scheme, of its undistributable reserves.
- (2) For the purposes of—
- (a) [^{F3}section 830 of the Companies Act 2006] (profits available for distribution), and
- (b) the preparation of statutory accounts of the company,
- that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company’s accumulated realised profits over its accumulated realised losses.
- (3) For the purposes of [^{F4}section 831 of the Companies Act 2006] (restriction on distribution of assets), so much of the excess as is the subject of a direction under sub-paragraph (2), shall be treated as comprised in the company’s undistributable reserves (subject to any modification of the direction by a subsequent direction under sub-paragraph (4)).
- (4) The Secretary of State may give a direction for treatment as profits in relation to an amount equal to the whole or a part of an amount falling to be treated as mentioned in sub-paragraph (3).
- (5) A direction for treatment as profits is one that provides that, on the realisation (whether before or after the company in question ceases to be publicly owned) of such profits and losses as may be specified or described in the direction, so much of the amount in relation to which the direction is given as may be determined in accordance with it—
- (a) is to cease to be treated as mentioned in sub-paragraph (3); and
- (b) is to be treated as comprised in the company’s accumulated realised profits.
- (6) The Secretary of State must not give a direction under any provision of this paragraph at any time after the transferee company has ceased to be publicly owned.
- (7) The consent of the Treasury is required for the giving of a direction under this paragraph.
- (8) In this paragraph—
- “accounting reference period” has the meaning given by [^{F5}section 391 of the Companies Act 2006];
- “called-up share capital” has the meaning given by [^{F6}section 547 of that Act];
- “net assets” has the meaning given by [^{F7}section 831(2) of [^{F8}that Act]];
- “statutory accounts”, in relation to a company, means accounts of the company prepared in respect of a period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period;
- “undistributable reserves” has the meaning given by [^{F9}section 831(4)] of that Act.

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Textual Amendments

- F3** Words in Sch. 6 para. 6(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 228\(2\)\(a\)](#) (with arts. 6, 11, 12)
- F4** Words in Sch. 6 para. 6(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 228\(2\)\(b\)](#) (with arts. 6, 11, 12)
- F5** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 228\(2\)\(c\)\(i\)](#) (with arts. 6, 11, 12)
- F6** Words in Sch. 6 para. 6(8) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(8\)\(c\)\(i\)](#) (with art. 10)
- F7** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 228\(2\)\(c\)\(iii\)](#) (with arts. 6, 11, 12)
- F8** Words in Sch. 6 para. 6(8) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(8\)\(c\)\(ii\)](#) (with art. 10)
- F9** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 228\(2\)\(c\)\(iv\)](#) (with arts. 6, 11, 12)

Commencement Information

- I6** Sch. 6 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Dividends

- 7 (1) This paragraph applies where a distribution is proposed to be declared—
- (a) during an accounting reference period of the transferee company which includes a transfer date; or
 - (b) before any accounts are laid or filed in respect of such a period.
- (2) [^{F10}sections 836 to 840][^{F11}of the Companies Act 2006] (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
- (a) references in [^{F12}section 836] to the company’s accounts and to accounts relevant under that section, and
 - (b) references in [^{F13}section 839] to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (3), would have been prepared under [^{F14}section 394] of that Act in respect of the relevant year (“the relevant accounts”).
- (3) Those assumptions are—
- (a) that the relevant year was a financial year of the transferee company;
 - (b) that the vesting of property, rights and liabilities in accordance with the relevant scheme was effected immediately after the beginning of that year;
 - (c) that so much of the relevant scheme as contains provision by or under which there is a determination of the value of an asset to which the company becomes entitled in accordance with the scheme has effect for determining the value of that asset for the purposes of the accounts in question;
 - (d) that so much of the relevant scheme as contains provision by or under which there is a determination of the amount of a liability to which the company

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- becomes subject in accordance with the scheme has effect for determining the amount of that liability for the purposes of the accounts in question;
- (e) that securities of the transferee company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (f) such other assumptions as may appear to the directors of the transferee company to be necessary or expedient for the purposes of this paragraph.
- (4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 8 of Schedule 7.
- (5) In this paragraph—
- “accounting reference period” has the meaning given by ^[F15]section 391 of the Companies Act 2006];
- “complete financial year” means a financial year ending with 31st March;
- “distribution” has the same meaning as in ^[F16]Part 23 of the Companies Act 2006 (see section 829 of that Act)];
- “the relevant year”, in relation to a transfer date, means the last complete financial year ending before that date;
- “a transfer date”, in relation to the transferee company, means the date of the coming into force of the relevant scheme.

Textual Amendments

- F10** Words in Sch. 6 para. 7(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 228(3)(a)(i)** (with arts. 6, 11, 12)
- F11** Words in Sch. 6 para. 7(2) inserted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 220(8)(d)(i)** (with art. 10)
- F12** Words in Sch. 6 para. 7(2)(a) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 228(3)(a)(ii)** (with arts. 6, 11, 12)
- F13** Words in Sch. 6 para. 7(2)(b) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 228(3)(a)(iii)** (with arts. 6, 11, 12)
- F14** Words in Sch. 6 para. 7(2) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 228(3)(a)(iv)** (with arts. 6, 11, 12)
- F15** Words in Sch. 6 para. 7(5) substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 228(3)(b)** (with arts. 6, 11, 12)
- F16** Words in Sch. 6 para. 7(5) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 220(8)(d)(ii)** (with art. 10)

Commencement Information

- I7** Sch. 6 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

Saving for inherent powers of Ministers

- 8 Nothing in this Schedule is to be construed as prejudicing the ability of a Minister of the Crown or the Treasury, apart from the powers conferred on him or them by or under this Act or any other enactment—
- (a) to acquire or dispose of securities of a company other than the transferee company; or

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(b) to act through nominees for the purpose.

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18 Sch. 6 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)