

## SCHEDULES

### SCHEDULE 13

Article 95(3).

#### TRANSITIONAL PROVISIONS AND SAVINGS

### PART I

#### PROVISIONS AND SAVINGS FOR PART II OF ORDER

**1.** In this Part—

“day appointed” means the day appointed under Article 1(2);

“the 1972 Order” means the Electricity Supply (Northern Ireland) Order 1972;

and expressions which are used in Part II of this Order have the same meanings as in that Part.

**2.** In so far as any requisition made under paragraph 8 of Schedule 3 to the 1972 Order or otherwise under that Order which is effective on the day appointed for the coming into operation of Article 19 requires electricity to be supplied, it shall have effect as if made under Article 19(1); and the provisions of Part II of this Order shall apply accordingly.

**3.** Any tariff fixed under Article 26 of the 1972 Order which is effective on the day appointed for the coming into operation of Article 21 of this Order shall have effect as if fixed under paragraph (1) of the said Article 21; and the provisions of Part II of this Order shall apply accordingly.

**4.** Any regulations made under Article 36 of the 1972 Order which are effective on the day appointed for the coming into operation of Article 32 of this Order shall have effect as if they were made under the said Article 32; and the provisions of Part II of this Order shall apply accordingly.

**5.—(1)** Where any application made under Article 33 of the 1972 Order is effective on the day appointed for the coming into operation of Article 39 of this Order—

- (a) the application shall have effect as if made under the said Article 39;
- (b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and
- (c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 39 of this Order shall not apply in relation to—

- (a) the construction of a generating station, or its application as constructed; or
- (b) the extension of a generating station, or its operation as extended,

if its construction or, as the case may be, extension is authorised by a consent given or having effect as if given under Article 33 of the 1972 Order, before the day appointed for the coming into operation of the said Article 39.

**6.—(1)** Where any application made under Article 39 of the 1972 Order is effective on the day appointed for the coming into operation of Article 40 of this Order—

- (a) the application shall have effect as if made under the said Article 40;

(b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and

(c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 40 of this Order shall not apply in relation to an electric line if its installation is authorised by a consent given under Article 39 of the 1972 Order before the day appointed for the coming into operation of the said Article 40.

7. Any maximum charge fixed by Northern Ireland Electricity under paragraph 17 of Schedule 3 to the 1972 Order for the resale of electricity supplied by it which is effective on the day appointed for the coming into operation of Article 47 shall have effect as a maximum price fixed by the Director under Article 47 for the resale of electricity so supplied.

8. Where any representation or reference made under, or in such circumstances as are mentioned in, any of the following statutory provisions, namely—

(a) Articles 26(1) and 27(2), (3), (4) and (5) of the 1972 Order, and

(b) Article 6 of the General Consumer Council (Northern Ireland) Order 1984,

is effective on the day appointed for the coming into operation of the repeal of that statutory provision by Article 95(4) and Schedule 14, the representation or reference shall have effect as if it were a representation made to the Director; and the provisions of Part II of this Order shall apply accordingly.

9.—(1) Any land which has been compulsorily acquired under Article 8 of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall be treated for the purposes of that Part as compulsorily acquired under that Part.

(2) Any vesting order made by the Department under Article 8(2) of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall have effect as if made under paragraph 1 of that Part; and the provisions of that Schedule shall apply accordingly.

10. Any consent given under Article 38(4) and (6) of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if granted under paragraph 10(4) of that Schedule; anything done before that day with a view to, or otherwise in connection with, the giving of a consent under, the said Article 38(4) and (6) shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

11. Any order made under Article 40 of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if made under paragraph 14(6) of that Schedule; anything done under that Article before that day with a view to, or otherwise in connection with, the making of an order under the said Article 40 shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

12.—(1) Paragraph 3(1)(a) and (b) of Schedule 7 shall not apply in relation to a meter installed before (and not moved since) the day appointed for the coming into operation of that Schedule until, in the case of sub-paragraph (b)—

(a) electricity is supplied through the meter in pursuance of a notice given under Article 19(2) more than 12 months after that day; or

(b) the period of 10 years beginning with the date of that day expires,

whichever first occurs.

(2) Paragraph 13(2) of Schedule 7 shall not prevent a pre-payment meter from being used as mentioned in that sub-paragraph under an agreement made before the day appointed for the coming into operation of that Schedule.

**13.—(1) Where—**

- (a) any sum was deposited with Northern Ireland Electricity by way of security under any provision of the 1972 Order; and
- (b) on and after the day appointed for the coming into operation of any provision of Part II of this Order that sum is treated by the appropriate successor company as deposited under that provision of that Part,

any period beginning 6 months or less before that day, being a period during which the sum was deposited with Northern Ireland Electricity, shall be treated for the purposes of the payment of interest on that sum as a period during which the sum was deposited under that provision of that Part.

(2) In this paragraph “successor company” has the same meaning as in Part III of this Order.

**14.—(1) Where immediately before the day appointed for the coming into operation of any provision of Part II of this Order there is in force an agreement which—**

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities; and
- (b) refers (in whatever terms and whether expressly or by implication) to any provision of the 1972 Order, to Northern Ireland Electricity’s statutory electricity undertaking or to statutory purposes,

the agreement shall have effect, in relation to anything falling to be done on or after that day, as if that reference included or, as the case may require, were a reference to the corresponding provision of this Order, to Northern Ireland Electricity’s undertaking as a person authorised by a licence to generate, transmit or supply electricity or to purposes connected with the generation, transmission or supply of electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

## **PART II**

### **PROVISIONS AND SAVINGS FOR PART III OF ORDER**

**15.** In this Part expressions which are used in Part III of this Order have the same meanings as in that Part.

**16.** Any licence granted under Article 10 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if granted to the appropriate successor company.

**17.** Any tariff fixed, or having effect as if fixed, under Article 21 by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed by or in relation to the appropriate successor company.

**18.** Any consent given under Article 39 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

**19.** Any consent given under Article 40 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

**20.** Any maximum price fixed, or having effect as if fixed, under Article 47 for the resale of electricity supplied by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.

**21.** A direction given under Article 58 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

**22.** Any land compulsorily acquired by Northern Ireland Electricity before the transfer date which was so acquired under Part I of Schedule 3, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by a successor company.

**23.—(1)** Where immediately before the transfer date there is in force an agreement which—

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities which vest in the appropriate successor company under this Order; and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of Northern Ireland Electricity,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of Northern Ireland Electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

**24.—(1)** Any agreement made, transaction effected or other thing done by, to or in relation to Northern Ireland Electricity which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as Northern Ireland Electricity; and accordingly references to Northern Ireland Electricity—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than a statutory provision) relating to or affecting any assets or liability of Northern Ireland Electricity which is transferred by this Order,

shall be taken as referring to the appropriate successor company.

(2) Nothing in sub-paragraph (1) shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of Article 69.

**25.** It is hereby declared for the avoidance of doubt that—

- (a) the effect of Part III of this Order in relation to any contract of employment with Northern Ireland Electricity which is in force immediately before the transfer date is merely to modify the contract by substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and
- (b) that Part is effective to vest the rights and liabilities of Northern Ireland Electricity under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of Northern Ireland Electricity;

and accordingly any period of employment with Northern Ireland Electricity or a wholly owned subsidiary of Northern Ireland Electricity, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be), a wholly owned subsidiary of the appropriate successor company.

**26.** Any agreement made under paragraph 12 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972 (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

- (a) the parties to the agreement on the employers' side were the successor companies and not Northern Ireland Electricity; and
- (b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

**27.—(1)** It shall be the duty of Northern Ireland Electricity and the appropriate successor company to take, as and when during the transitional period that company considers appropriate, all such steps as may be requisite to secure that the vesting in that company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law.

(2) During the transitional period, until the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of Northern Ireland Electricity to hold that asset for the benefit of, or to discharge that liability on behalf of, the successor company.

(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability.

(4) Northern Ireland Electricity shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—

- (a) it shall be the duty of the appropriate successor company during the transitional period to act on behalf of Northern Ireland Electricity (so far as possible) in performing the duty imposed on Northern Ireland Electricity by this paragraph; and
- (b) any foreign assets and liabilities acquired or incurred by Northern Ireland Electricity during that period shall immediately become assets and liabilities of the appropriate successor company.

(5) References in this paragraph to any foreign asset or liability are references to any asset or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(6) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

**28.—(1)** Notwithstanding the repeal of Articles 23 and 24 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to prepare statements of accounts in accordance with the said Articles 23 and 24 in respect of each financial year ending before the transfer date, and the said Articles 23 and 24 shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.

(2) Notwithstanding the repeal of Article 12 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to make a report to the Department in accordance with the said Article 12 in respect of each financial year ending before the transfer date.

(3) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

**29.—(1)** Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 12 has effect in relation to Northern Ireland Electricity that statutory provision

shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

(2) Until the Department of Finance and Personnel makes an order under Article 39C of the Rates (Northern Ireland) Order 1977 the provisions of that Order which, immediately before the transfer date, have effect in relation to Northern Ireland Electricity shall, after that date, have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

**30.** Without prejudice to the powers conferred by Article 95(2), every provision contained in subordinate legislation, which is in operation immediately before the transfer date and then applicable to Northern Ireland Electricity shall have effect as if—

- (a) for references to Northern Ireland Electricity there were substituted references to the appropriate successor company; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of Northern Ireland Electricity there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.

**31.—**(1) Anything which, immediately before the transfer date, is in process of being done under the provisions relating to street works in Schedule 3 to the Electricity Supply (Northern Ireland) Order 1972 by or in relation to Northern Ireland Electricity (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

(2) Any notice or direction given or other thing whatsoever done under the said provisions of that Schedule by Northern Ireland Electricity shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

**32.—**(1) An application or claim by Northern Ireland Electricity for hazardous substances consent which is effective on the transfer date shall have effect as if made by the appropriate successor company.

(2) A hazardous substances consent granted or deemed to be granted to Northern Ireland Electricity which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

**33.—**(1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies (Northern Ireland) Order 1986 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

- (a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
- (b) references in Article 281 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of that Order of 1986 in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Part III of this Order had been a vesting of all the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;

- (c) that the value of any asset and the amount of any liabilities of Northern Ireland Electricity vested in the successor company by virtue of the said Article 234 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by Northern Ireland Electricity in respect of the financial year immediately preceding the relevant year;
  - (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
  - (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.
- (3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by Northern Ireland Electricity (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.
- Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by Northern Ireland Electricity had been realised and retained by the successor company.
- (4) The said accounts shall not be regarded as statutory accounts for the purposes of Article 78 of this Order.
- (5) In this paragraph “the relevant year” means the last complete financial year ending before the transfer date.

## PART III

### OTHER SAVINGS

- 34.** An order by the Department of Finance and Personnel under paragraph 18(2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972 prescribing the rate of interest payable under that paragraph shall apply to the rate of interest payable upon any outstanding compensation under the Electricity (Supply) Act (Northern Ireland) 1948 as if the interest were payable under that paragraph.
- 35.** Notwithstanding the repeal of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, paragraphs 1 to 6 of Schedule 3 to that Order of 1972 shall continue to have effect for the purpose of any order under section 11(1) of the Telecommunications Act 1984.
- 36.** The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954.