



# British Aerospace Act 1980

## 1980 CHAPTER 26

*Vesting of property, etc., of British Aerospace in  
a company nominated by the Secretary of State*

### **1 Vesting of property, etc., of British Aerospace in a company nominated by the Secretary of State**

- (1) On the appointed day all the property, rights, liabilities and obligations to which British Aerospace was entitled or subject immediately before that day shall (subject to section 2 of this Act and to the following provisions of this section) become by virtue of this section property, rights, liabilities and obligations of a company nominated for the purposes of this section by the Secretary of State (referred to below in this Act as "the successor company").
- (2) The Secretary of State may, after consulting British Aerospace, by order made by statutory instrument nominate for the purposes of this section any company formed and registered under the Companies Act 1948; but on the appointed day the company in question must be a company limited by shares which is wholly owned by the Crown.
- (3) Any agreement made, transaction effected or other thing done by, to or in relation to British Aerospace which is in force or effective immediately before the appointed day shall have effect on and after that day as if made, effected or done by, to or in relation to the successor company, in all respects as if the successor company were the same person, in law, as British Aerospace; and accordingly references to British Aerospace—
  - (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 purpose of any proceeding before any court or other tribunal or authority; and
  - (c) in any other document whatsoever (other than an enactment) relating to or affecting any property, right, liability or obligation of British Aerospace which vests by virtue of this section in the successor company;

shall be taken on and after the appointed day as referring to the successor company.

- (4) Without prejudice to subsection (3) (b) above, any proceedings on an application made by British Aerospace before the appointed day under section 31(3) of the Act of 1977 may be continued on and after that day by the successor company, and any order made under subsection (9) of that section with respect to any loss resulting to British Aerospace from the transaction to which the application relates shall be made in favour of the successor company.
- (5) Any liability of British Aerospace under section 40(4) of the Act of 1977 shall not vest in the successor company by virtue of this section, but the Secretary of State 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 under Part II of that Act in respect of the vesting of any securities in British Aerospace (and any sums required by the Secretary of State for the purpose shall be paid out of moneys provided by Parliament).
- (6) Schedule 1 to this Act contains specific provisions with respect to the effect in certain respects of the vesting of the property, rights, liabilities and obligations of British Aerospace in the successor company by virtue of this section ; but nothing in those provisions shall be taken as prejudicing the general effect of the preceding provisions of this section.
- (7) References in this Act to property, rights, liabilities and obligations of British Aerospace are references to all such property, rights, liabilities and obligations, whether or not capable of being transferred or assigned by British Aerospace.
- (8) It is hereby declared for the avoidance of doubt that—
- (a) any reference in this Act to property of British Aerospace is a reference to property of British Aerospace whether situated in the United Kingdom or elsewhere ; and
  - (b) any such reference to rights, liabilities or obligations of British Aerospace is a reference to rights to which British Aerospace is entitled, or (as the case may be) liabilities or obligations to which British Aerospace 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.

## **2 Cancellation of certain Government investment in British Aerospace**

Subject to paragraphs 2 and 3 of Schedule 2 to this Act, any entitlement of the Secretary of State and any liability of British Aerospace—

- (a) in respect of the commencing capital of British Aerospace ;
- (b) in respect of the capital amounts outstanding immediately before the appointed day in respect of sums paid to British Aerospace by the Secretary of State under section 16 of the Act of 1977 ; and
- (c) in respect of the capital amounts outstanding immediately before that day in respect of sums paid to British Aerospace under section 45 of that Act but treated in accordance with the terms and conditions applicable to the payment as if they had been paid under section 16 of that Act;

shall be extinguished immediately before the appointed day.

### **3 Initial Government shareholding in the successor company**

- (1) As a consequence of the vesting in the successor company by virtue of section 1 of this Act of all the property, rights, liabilities and obligations of British Aerospace, the successor company shall issue—
  - (a) to the Secretary of State ; or
  - (b) to any person entitled to require the issue of the shares in question following their initial allotment to the Secretary of State;such shares in the company as the Secretary of State may direct.
- (2) Shares required to be issued in pursuance of this section shall be issued or allotted at such time or times and on such terms (as to allotment) as the Secretary of State may direct.
- (3) 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 Acts 1948 to 1980 as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.
- (4) The Secretary of State may not dispose of any shares issued or of any rights to shares initially allotted to him in pursuance of this section, or give any directions for the purposes of this section, without the consent of the Treasury.
- (5) Any dividends or other sums received by the Secretary of State in right of or on the disposal of any shares or rights acquired by virtue of this section shall be paid into the Consolidated Fund.
- (6) 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 certified by the Treasury as having been effected for the purpose of complying with the requirements of this section.

### **4 Financial structure of the successor company and its subsidiaries**

- (1) If the aggregate nominal value of the shares in the successor company issued in pursuance of section 3 of this Act is less than the aggregate amount of the former Government investment in British Aerospace, a sum equal to the amount of the difference shall be carried by the successor company to a reserve (" 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 40(2) (d) of the Companies Act 1980; 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 40(2)(c) as if it were unrealised profits of the company.
- (4) For the purposes of any statutory accounts of the successor company the value of any asset and the amount of any liability of British Aerospace vesting in that company on the appointed day (as at the date of vesting) shall be taken to be 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 British Aerospace in accordance with section 10(6) of this Act in respect of the last accounting year of British Aerospace ending before the appointed day.

- (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 British Aerospace (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 from time to time in any reserves of the successor company as representing its accumulated realised profits available for distribution shall be determined as if any profits realised and retained by British Aerospace had been realised and retained by the successor company.

- (6) References in this section to the former Government investment in British Aerospace are references to the aggregate of the following, that is to say—
- (a) the amount included in the closing statement of the accounts of British Aerospace as representing the commencing capital of British Aerospace ; and
  - (b) the capital amounts mentioned in section 2(b) and (c) of this Act;
- and in this subsection " the closing statement of the accounts of British Aerospace " means the statement of those accounts prepared by British Aerospace as mentioned in subsection (4) above.
- (7) 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 Acts 1948 to 1980 (including group accounts).

## **5 Government investment in shares and securities of the successor company**

- (1) The Secretary of State may at any time, with the consent of the Treasury, acquire—
- (a) ordinary voting shares in the successor company ;
  - (b) securities of the successor company or of any subsidiary of the successor company which are convertible into or carry rights to subscribe for ordinary voting shares in the successor company ; or
  - (c) rights to subscribe for any such shares.
- (2) In subsection (1) above " ordinary voting shares " means shares in the company which—
- (a) carry voting rights at general meetings of the company; and
  - (b) carry a right to participate in any distribution (whether of dividends or of capital) without limit as to amount (but the right to participate in distributions need not extend to a dividend declared out of profits earned during any period falling wholly or partly before the date of acquisition of the shares).
- (3) The Secretary of State may not dispose of any shares or other securities or rights acquired under this section without the consent of the Treasury.
- (4) Any expenses incurred by the Secretary of State in consequence of the provisions of this section shall be paid out of moneys provided by Parliament.

- (5) Any dividends or other sums received by the Secretary of State in right of, or on the disposal of, any shares or other securities or rights acquired under this section shall be paid into the Consolidated Fund.

## **6 Exercise of Secretary of State's functions under sections 3 and 5 through nominees**

- (1) The Secretary of State may with the consent of the Treasury appoint such person or persons as he thinks fit to act as his nominees for the purposes of section 3 or 5 of this Act; and—
- (a) shares in the successor company may be issued under section 3 of this Act to any nominee of the Secretary of State appointed for the purposes of that section, or to any person entitled to require the issue of the shares in question following their initial allotment to any such nominee ; and
  - (b) any such nominee appointed for the purposes of section 5 of this Act may acquire shares or other securities or rights in accordance with that section; in accordance with directions given from time to time by the Secretary of State with the consent of the Treasury.
- (2) Any person holding any shares or other securities or rights as a nominee of 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 Secretary of State may direct with the consent of the Treasury.

## **7 Target investment limit for Government shareholding under sections 3 and 5**

- (1) As soon as the successor company ceases to be wholly owned by the Crown, the Secretary of State shall by order made by statutory instrument fix a target investment limit in relation to the shares for the time being held in that company by the Secretary of State or his nominees by virtue of any provision of this Act (referred to below in this section as " the Government shareholding ").
- (2) The target investment limit shall be expressed as a proportion of the voting rights exercisable at general meetings of the successor company.
- (3) The first target investment limit fixed under this section shall be equal to the proportion of those 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 made by statutory instrument 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 Secretary of State so to exercise—
- (a) his powers under section 5 of this Act and his power to dispose of any shares held by him by virtue of any provision of this Act; and
  - (b) his power to give directions to his nominees ;
- as to secure that the Government shareholding does not carry a proportion of the voting rights exercisable at general meetings of the successor company exceeding any target investment limit for the time being in force under this section.

- (6) Notwithstanding subsection (5) above, the Secretary of State may take up, or direct any nominee of his to take up, any rights for the time being available to him, or to that nominee, as an existing holder of shares or other securities of the successor company or of any subsidiary of the successor company ; but if as a result the Government shareholding at any time exceeds the target investment limit it shall be the duty of the Secretary of State to comply with subsection (5) as soon after that time as is reasonably practicable.
- (7) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**8 Liability of the successor company for defaulting subsidiary where cause of action arose before appointed day**

- (1) Subject to subsection (2) below, if any sum required by any judgment or order to be paid by a company which became a wholly owned subsidiary of the successor company on the appointed day by virtue of section 1 of this Act is not paid by the company concerned within the period of fourteen days beginning on the date on which the judgment or order becomes enforceable, the successor company shall be liable to pay that sum and that judgment or order shall be enforceable against the successor company accordingly.
- (2) Subsection (1) above applies only if the cause of action arose before the appointed day.
- (3) 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 defaulting company, the cause of action shall be regarded, for the purposes of this section, as having arisen at the time when the contract was made.

**9 Liability of Secretary of State in respect of obligations vesting in the successor company by virtue of section I, etc.**

- (1) This section applies where—
- (a) a resolution has been passed, in accordance with the provisions of the Companies Act 1948, for the voluntary winding up of the successor company, otherwise than merely for the purpose of reconstruction or amalgamation with another company; or
  - (b) without any such resolution having been passed before hand, an order has been made for the winding up of the successor company by the court under that Act.
- (2) The Secretary of State shall become liable on the commencement of the winding up to discharge any outstanding liability of the successor company in respect of—
- (a) any obligation of the successor company which vested in that company by virtue of section 1 of this Act; and
  - (b) any liability imposed on the successor company by section 8 of this Act.
- (3) Any sums required by the Secretary of State for discharging any liability imposed on him by this section shall be paid out of moneys provided by Parliament.
- (4) Where the Secretary of State makes a payment to any person in discharge of what appears to him to be a liability imposed on him by this section, he shall thereupon become a creditor of the successor company to the extent of the amount paid, his claim

being treated for the purposes of the winding up as a claim in respect of the original liability.

- (5) Any sums received by the Secretary of State in respect of any claim made by him by virtue of subsection (4) above in the winding up of the successor company shall be paid into the Consolidated Fund.
- (6) The reference in subsection (2) above to the commencement of the winding up is a reference—
  - (a) in a case within subsection (1)(a) above, to the passing of the resolution ; and
  - (b) in a case within subsection (1)(b) above, to the making of the order.

## **10 Dissolution of British Aerospace and transitional provisions**

- (1) Subject to the following provisions of this section and to the transitional provisions contained in Schedule 2 to this Act, Part I and sections 40(4), 41(4), 44(4), 48, 49, 50 and 53 of the Act of 1977 and paragraphs 3(2) and 9 of Schedule 5 to that Act shall cease to have effect on the appointed day in relation to British Aerospace; and any reference in those provisions or in paragraph 14 of Schedule 6 to the Act of 1977 (in whatever terms expressed) to either or both of the Corporations originally established by section 1 of that Act shall be construed after that day as a reference to the other Corporation so established (that is to say, British Shipbuilders).
- (2) Notwithstanding subsection (1) above, British Aerospace shall continue in existence after the appointed day, and section 1(1) to (4) and (6) of the Act of 1977 shall continue to have effect in relation to its constitution and proceedings, until it is dissolved in accordance with subsection (9) below; and the period of its continued existence after the appointed day is referred to below in this section as " the transitional period ".
- (3) It shall be the duty of British Aerospace and of the successor company to take, as and when during the transitional period the successor company considers appropriate, all such steps as may be requisite to secure that the vesting in the successor company by virtue of section 1 of this Act of any foreign property, right, liability or obligation of British Aerospace is effective under the relevant foreign law.
- (4) During the transitional period, until the vesting in the successor company by virtue of section 1 of any foreign property, right or obligation of British Aerospace is effective under the relevant foreign law, it shall be the duty of British Aerospace to hold that property or right for the benefit of the successor company and to perform that obligation as it falls to be performed.
- (5) Nothing in subsections (3) and (4) above shall be taken as prejudicing the effect under the law of the United Kingdom or of any part of the United Kingdom of the vesting in the successor company by virtue of section 1 of this Act of any property, right, liability or obligation of British Aerospace (including any foreign property, right, liability or obligation).
- (6) Notwithstanding subsection (1) above —
  - (a) it shall be the duty of British Aerospace to prepare statements of accounts in accordance with section 17(1)(6) and (c) of the Act of 1977 in respect of the last accounting year of British Aerospace ending before the appointed day, and that section shall continue to apply during the transitional period in relation to those statements and in relation also to the auditing of accounts kept in

- accordance with subsection (1)(a) of that section in respect of that accounting year; and
- (b) it shall be the duty of British Aerospace to make a report to the Secretary of State in accordance with section 18 of that Act in respect of that accounting year (but subsection (5) of that section shall not apply to any such report).
- (7) British Aerospace shall have all such powers as may be requisite for the performance of its duties under this section; but—
- (a) it shall be the duty of the successor company during the transitional period to act on behalf of British Aerospace (so far as possible) in performing any duty imposed on British Aerospace by subsection (3) or (4) above; and (6) it shall be the duty of British Aerospace to make a report to the Secretary of State in accordance with section 18 of that Act in respect of that accounting year (but subsection (5) of that section shall not apply to any such report).
- (b) any rights, liabilities and obligations acquired or incurred by British Aerospace during that period in the performance of any such duty shall become rights, liabilities and obligations of the successor company after the dissolution of British Aerospace in accordance with subsection (9) below.
- (8) Any expenses incurred by British Aerospace in performing any of its duties under this section shall be met by the successor company.
- (9) The Secretary of State may, by order made by statutory instrument after consulting British Aerospace and the successor company, dissolve British Aerospace on a day specified in the order, as soon as he is satisfied that nothing further remains to be done by British Aerospace under subsection (3) or (6) above.
- (10) References in this section to any foreign property, right, liability or obligation of British Aerospace are references respectively to—
- (a) property of British Aerospace situated in a country or territory outside the United Kingdom ; and
- (b) any right to which British Aerospace is entitled or (as the case may be) any liability or obligation to which it is subject under the law of any such country or territory.

*Miscellaneous and supplemental*

**11 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 appointed day 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 any 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.

## **12 Corporation tax and development land tax**

- (1) Subject to subsection (2) below, the successor company shall be treated for all purposes of corporation tax and development land tax as if it were the same person as British Aerospace.
- (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).

## **13 Administrative expenses**

Any administrative expenses incurred by the Secretary of State in consequence of the provisions of this Act shall be paid out of moneys provided by Parliament.

## **14 Interpretation**

- (1) In this Act—
- "the Act of 1977 " means the Aircraft and Shipbuilding Industries Act 1977 ;
  - " appointed day " means such day as the Secretary of State may appoint by order made by statutory instrument after consulting British Aerospace and the Treasury;
  - " share " includes stock ;
  - " subsidiary " has the same meaning as in the Companies Act 1948;
  - " the successor company " has the meaning given by section 1(1) of this Act; and
  - " wholly owned subsidiary" has the same meaning as it has for the purposes of section 150 of the Companies Act 1948.
- (2) An order under section 1 of this Act nominating any company for the purposes of that section and an order under subsection (1) above appointing a day may be varied or revoked by a subsequent order at any time before any property, rights, liabilities or obligations of British Aerospace vest in any company by virtue of section 1.
- (3) A company shall be regarded for the purposes of this Act as wholly owned by the Crown at any time when all the issued shares in the company are held by or on behalf of the Crown.

## **15 Citation, repeals and extent**

- (1) This Act may be cited as the British Aerospace Act 1980.
- (2) Subject to section 10 of and Schedule 2 to this Act, the enactments mentioned in Schedule 3 to this Act are repealed on the appointed day to the extent specified in column 3 of that Schedule.
- (3) It is hereby declared that this Act extends to Northern Ireland.