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## SCHEDULES

### SCHEDULE 7

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART I

##### SEPARATION OF ELECTRICITY SUPPLY AND DISTRIBUTION

###### *Application and purpose of Part I*

- 1 (1) This paragraph applies to any holder of an existing supply licence under section 6(1)(c) or (2) of the 1989 Act whose activities, immediately before the passing of this Act, include both—
- (a) the supply of electricity to premises; and
  - (b) the distribution of electricity for the purpose of giving a supply to premises or enabling a supply to be so given.
- (2) This Part of this Schedule has effect for the purpose of enabling the existing supply licence held by such a licence holder to have effect as if it were a distribution licence under section 6(1)(c) and a supply licence under section 6(1)(d), each granted to different persons.
- (3) Those persons must be—
- (a) the licence holder and one of his associates nominated for the purpose of holding whichever of the licences mentioned in sub-paragraph (2) is not to be retained by the licence holder; or
  - (b) any two associates of the licence holder nominated by him for the purpose of holding those licences.
- (4) If immediately before the passing of this Act a person to whom this paragraph applies holds two or more existing supply licences, sub-paragraph (2) applies in relation to such one or more of those licences as the licence holder may, with the approval of the Secretary of State, nominate.
- (5) If immediately before the passing of this Act a person to whom this paragraph applies—
- (a) generates electricity in pursuance of an existing generation licence; and
  - (b) transmits electricity in pursuance of an existing transmission licence,
- the provisions of this Part of this Schedule also have effect, if that person makes either or both of the nominations mentioned in sub-paragraph (6), for either or both of the purposes mentioned in sub-paragraph (6)(a) and (6)(b).
- (6) Those purposes are securing that—

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- (a) the licence holder's existing generation licence has effect as if it were a generation licence granted to an associate of his nominated by him for the purpose; and
  - (b) the licence holder's existing transmission licence has effect as if it were a transmission licence granted to an associate of his nominated by him for the purpose.
- (7) The same associate may not be nominated both for the purpose of sub-paragraph (6) (a) and for the purpose of sub-paragraph (3)(a) or (b) or (6)(b).

*Nominations and transfer schemes*

- 2 (1) Before such date as the Secretary of State may direct, a person to whom paragraph 1 applies may (subject to paragraph 3)—
- (a) make a nomination for the purposes of paragraph (a) of paragraph 1(3) and make a scheme for the division of all his property, rights and liabilities between himself and the associate nominated under that paragraph; or
  - (b) make two nominations for the purposes of paragraph (b) of paragraph 1(3) and make a scheme for the division of all his property, rights and liabilities between himself and the associates so nominated;
- and in this Part of this Schedule the person who makes such a scheme is referred to as “the supplier”.
- (2) A scheme under sub-paragraph (1) (referred to in this Part of this Schedule as “a transfer scheme”) may—
- (a) define the property, rights and liabilities to be allocated to a nominated associate—
    - (i) by specifying or describing the property, rights and liabilities in question;
    - (ii) by referring to all (or all but as much as may be excepted) of the property, rights and liabilities comprised in a specified part of the supplier's undertaking; or
    - (iii) partly in the one way and partly in the other;
  - (b) provide that any rights or liabilities specified or described in the scheme shall be enforceable either by or against any one or more of the persons between whom the supplier's property, rights and liabilities are being divided;
  - (c) impose on any of those persons an obligation to enter into such written agreements with, or execute such other instruments in favour of the other such person or, where sub-paragraph (1)(b) applies, either or both of the other such persons as may be specified in the scheme; and
  - (d) make such supplemental, incidental and consequential provision as the supplier considers appropriate.
- (3) Without prejudice to the generality of sub-paragraph (2)(d), a transfer scheme may, in relation to transfers or transactions effected in pursuance of the scheme, make provision, either generally or for specified purposes—
- (a) for the transfers or transactions to be regarded as taking place in a specified order; and
  - (b) for the nominated associate or, where sub-paragraph (1)(b) applies, either or both of the nominated associates to be treated as the same person in law as the supplier.

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- (4) An obligation imposed by a provision included in a transfer scheme by virtue of sub-paragraph (2)(c) shall be enforceable by civil proceedings by the person or persons to whom it is owed for an injunction or for interdict or for any other appropriate relief or remedy.
- (5) A transaction of any description which is effected in pursuance of a provision included in a transfer scheme by virtue of sub-paragraph (2)(c)—
- (a) shall have effect subject to any statutory requirements for transactions of that description to be registered in any statutory register; but
  - (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.
- In this sub-paragraph “statutory requirements” means requirements imposed by or under any Act or any Act of the Scottish Parliament.
- (6) Where a lease of any land is granted in pursuance of a provision included in a transfer scheme by virtue of sub-paragraph (2)(c), any right of pre-emption or other like right affecting that land—
- (a) shall not become exercisable by reason of the grant of the lease; but
  - (b) shall have effect as if the lessee were the same person in law as the lessor.
- 3 (1) If the supplier is a supplier to whom paragraph 1(5) applies, he may, before such date as the Secretary of State may direct—
- (a) make such nomination or nominations as he thinks fit for either or both of the purposes mentioned in paragraph 1(6); and
  - (b) include the associate or associates so nominated among the persons between whom his property, rights and liabilities may be divided by the transfer scheme.
- (2) Paragraph 2 applies to a transfer scheme dividing property, rights and liabilities between persons including persons nominated for the purposes of paragraph 1(6) with the substitution—
- (a) in sub-paragraph (2)(c) for the words from “the other such” to “both”; and
  - (b) in sub-paragraph (3)(b) for the words from “the” (in the first place it appears) to “both”,
- of the words “any one or more”.
- 4 The Secretary of State may, on the application of a person to whom paragraph 1 applies, direct that paragraphs 1 and 2 are to apply to his existing supply licence (or such of his existing supply licences as may be nominated under paragraph 1(4)) as if—
- (a) in paragraph 1(2) for “a distribution licence” there were substituted “ two distribution licences ”;
  - (b) in paragraph 1(3) for “one” there were substituted “ two ” and for “two” there were substituted “ three ”;
  - (c) in paragraph 2(1)(a) for “a nomination” and “associate” there were substituted respectively “ two nominations ” and “ associates ”; and
  - (d) in paragraph 2(1)(b) for “two” there were substituted “ three ”.

*Secretary of State’s powers in relation to transfer schemes*

- 5 (1) A transfer scheme shall not take effect unless it is approved by the Secretary of State.

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- (2) The Secretary of State may if he thinks fit, before approving a transfer scheme, make such modifications of the scheme as he considers appropriate for the purpose of securing that the scheme makes only such provision as he considers to be requisite or expedient for the purposes of this Part of this Schedule.
- (3) The powers of the Secretary of State under this paragraph may in particular be exercised with a view to ensuring that a proposed transfer scheme does not operate against the public interest.
- (4) It shall be the duty of the supplier to provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the exercise of any function conferred on him by sub-paragraph (1) and (2).

*Effect of transfer scheme*

- 6 (1) Subject to the provisions of paragraph 7, on the effective date for a transfer scheme, all property, rights and liabilities—
  - (a) to which immediately before that day the supplier was entitled or subject; and
  - (b) which are allocated to a nominated associate by the transfer scheme,
 shall become by virtue of this paragraph property, rights and liabilities of that associate.
- (2) For the purposes of this Part of this Schedule, the “effective date”, in relation to a transfer scheme, is the day on which section 6(2) of the 1989 Act (as substituted by section 30 above) comes into force or such earlier day as the Secretary of State may direct for the purposes of the scheme.

*Supplementary provisions as to transfers*

- 7 (1) The provisions of Schedule 10 to the 1989 Act (supplementary provisions as to transfers) shall apply to any transfer which is effected by paragraph 6—
  - (a) with the modifications made by sub-paragraph (2); and
  - (b) to the extent mentioned in those provisions as so modified;
 and paragraph 6 shall have effect subject to those provisions as so modified.
- (2) For the purpose of its application to a transfer effected by paragraph 6, Schedule 10 to the 1989 Act shall apply as if—
  - (a) paragraphs 2(4) and (5), 3 and 6(2) and in paragraphs 4(4)(b) and 8(1) and (2) the words “or of a direction under paragraph 2(4) above” were omitted;
  - (b) any reference to transfers effected in pursuance of a transfer scheme were references to transfers effected by paragraph 6;
  - (c) any reference to the transferor were a reference to the supplier;
  - (d) any reference to a transfer of all property, rights and liabilities comprised in a specified part of the transferor’s undertaking were a reference to a transfer of all (or all but as much as may be excepted) of the property, rights and liabilities comprised in a specified part of the supplier’s undertaking;
  - (e) any reference to a transferee of a specified part or any other part of the transferor’s undertaking were a reference to a transferee of a specified part or any other part of the supplier’s undertaking; and

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- (f) any reference to the transfer date were a reference to the effective date for the transfer scheme.
- (3) For the purposes of sub-paragraphs (1) and (2)(b), (d) and (e), any property, rights or liabilities retained by the supplier in pursuance of the transfer scheme shall be deemed to be transferred to the supplier by paragraph 6 in pursuance of the scheme.

*Shares issued in pursuance of a transfer scheme*

- 8 Any shares issued to the supplier or to an associate of his by a transferee in pursuance of the transfer scheme—
- (a) shall be of such nominal value as may be specified in or determined under the scheme;
  - (b) shall be issued or allotted on such terms as may be so specified or determined; and
  - (c) shall be issued as fully paid and treated for the purposes of the <sup>M1</sup>Companies Act 1985 as if they had been paid up by virtue of the payment to the transferee in cash of their nominal value and, if the scheme so provides, such premium as may be so specified or determined.

**Marginal Citations**

**M1** 1985 c. 6.

*Statutory accounts*

- 9 (1) This paragraph has effect for the purposes of any statutory accounts of a transferee, that is to say, any accounts prepared by the transferee for the purpose of any provision of the <sup>M2</sup>Companies Act 1985 (including group accounts).
- (2) Subject to sub-paragraph (3), the value or amount to be assigned to any asset or liability which is vested in the transferee by virtue of paragraph 6 shall be—
- (a) the value or amount (if any) assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by the supplier in respect of the last complete accounting year of the supplier to end before the effective date; or
  - (b) 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; or
  - (c) if no value or amount is given by paragraph (a) or (b) or the value or amount so given is inappropriate in all the circumstances of the case, such value or amount as may be determined, on the basis of the supplier's accounting records, by or under the transfer scheme.
- (3) The amount to be included in respect of any item shall be determined as if so much of anything done by the supplier (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) as may be determined by or under the transfer scheme had been done by the transferee.
- (4) Without prejudice to the generality of the preceding provisions of this paragraph, the amount to be included from time to time in any reserves of the transferee as

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representing the transferee’s accumulated realised profits shall be determined as if such proportion of any profits realised and retained by the supplier as is determined by or under the transfer scheme had been realised and retained by the transferee.

(5) In this paragraph, in relation to the supplier—

“accounting records” means accounting records kept by the supplier in pursuance of section 221 of the <sup>M3</sup>Companies Act 1985;

“complete accounting year” means a financial year of the supplier determined in accordance with section 223 of that Act.

#### Marginal Citations

**M2** 1985 c. 6.

**M3** 1985 c. 6.

#### *Consequential modifications of rating provisions*

- 10 (1) This paragraph applies where any transfer effected by paragraph 6 is a transfer of a hereditament which, immediately before the effective date is a hereditament which falls within—
- (a) the description set out in Part 2 of the Schedule to the <sup>M4</sup>Central Rating List (England) Regulations 2000; or
  - (b) the description set out in Part 2 of the Schedule to the <sup>M5</sup>Central Rating List (Wales) Regulations 1999.
- (2) The Secretary of State may by order make such modifications of that Part of that Schedule, and of the <sup>M6</sup>Electricity Supply Industry (Rateable Values)(England) Order 2000 or the <sup>M7</sup>Electricity <sup>M8</sup>Supply Industry (Rateable Values)(Wales) Order 2000, as may appear to him necessary or expedient as a consequence of the transfer.
- (3) An order under this paragraph which is made after the effective date may have effect as from that day or any later day.
- (4) Where, by virtue of sub-paragraph (3), an order under this paragraph has effect from a day earlier than that on which it is made, any necessary alteration shall be made with effect from that earlier day to any central rating list in which the hereditament is shown.
- (5) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

**M4** S.I. 2000/525.

**M5** S.I. 1999/3453 (W. 50).

**M6** S.I. 2000/947.

**M7** S.I. 2000/1163 (W. 91).

**M8** S.I. 2000/1163 (W. 91).

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### *Interpretation*

- 11 In this Part of this Schedule—
- “effective date” has the meaning given by paragraph 6(2);
  - “existing” in relation to an electricity licence, means in force immediately before the passing of this Act;
  - “the supplier” means the person who makes a transfer scheme;
  - “transferee” means the transferee under a transfer effected by paragraph 6;
  - “transfer scheme” means a scheme under paragraph 2.
- 12 (1) For the purposes of this Part of this Schedule a company is an associate of the supplier if—
- (a) the company is a wholly owned subsidiary of the supplier;
  - (b) the supplier is a wholly owned subsidiary of the company; or
  - (c) the company and the supplier are both wholly owned subsidiaries of another company;
- and the company is registered under the <sup>M9</sup>Companies Act 1985 as a company limited by shares.
- (2) The references in sub-paragraph (2) to a wholly owned subsidiary shall be construed in accordance with section 736 of the Companies Act 1985.

#### **Marginal Citations**

**M9** 1985 c. 6.

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