



# Electricity Act 1947

## 1947 CHAPTER 54

### PART II

#### ACQUISITION OF ELECTRICITY UNDERTAKINGS.

*Control of Dividends and Interest and Safeguarding of Assets pending transfer.*

#### **26 Control of dividends, interest and other payments.**

- (1) Where any body to whom this Part of this Act applies, being a company, have paid pursuant to a resolution passed after the tenth day of January, nineteen hundred and forty-seven, interest or a dividend on any of their securities in respect of the last complete financial year before the said day or any subsequent period, being payments which, regard being had to any interest or interim dividend paid before the said day in respect of that year or period, are in excess of the payments of interest or dividend permitted under this section, all persons who were directors of the body at the time when the resolution of the directors' was passed authorising or recommending the payments shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amount of the excess.
- (2) The payments of interest or dividend permitted under this section are as follows:—
  - (a) in the case of securities in respect of which rates of interest are fixed, payments at those rates;
  - (b) in the case of securities in respect of which rates of preferential dividend are fixed but which give no other rights to participate in the profits of the body, payments at those rates; or
  - (c) in the case of any other class of securities, payments of dividend at a rate not exceeding four per cent. per annum or the annual rate paid on that class of securities in respect of the last complete financial year in respect of which a final dividend was paid before the said tenth day of January-, nineteen hundred and forty-seven, whichever is the higher;

Provided that:

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (i) such payments shall only be made out of the net revenue of the body for the period in respect of which the payment is made, or out of any funds applicable in accordance with the normal practice for the purpose of maintaining interest payments and equalising rates of dividend, and any payment shall, so far as it is made otherwise than out of that revenue, or out of those funds, not be permitted under this section; and
  - (ii) where a fresh issue has been made after the said date of securities of a class mentioned in paragraph (c) hereof, being a class on which the annual rate of dividend paid in respect of the said last complete financial year exceeded four per cent. per annum, the payments of dividend permitted under this section on the securities so issued shall not, except with the approval of the Minister, exceed a rate of four per cent. per annum.
- (3) Where any such body as aforesaid have, without the approval of the Minister, paid after the tenth day of January, nineteen hundred and forty-seven, a dividend in respect of any period prior to the last complete financial year before the said day, all persons who were directors of the body at the time when the resolution of the directors was passed authorising or recommending the payments shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amounts of the payments:

Provided that this subsection shall not apply to payments of dividend on cumulative preference shares or stock, being payments which are required to be made in priority to the payment of any dividend on ordinary capital and are made out of the 'net revenue of the body for the said last complete financial year or any subsequent period.

- (4) Where, at any time after the tenth day of January, nineteen hundred and forty-seven, any such body as aforesaid have, without the approval of the Minister,—
- (a) made any payments to their members for the purpose of reducing the share capital of the body otherwise than by redemption, off any redeemable preference shares;
  - (b) made any other payments to their members out of capital moneys; or
  - (c) distributed assets other than money to their members;

all persons who were directors of the body at the time when the resolution of the directors was passed authorising or recommending the payments or distribution shall, subject to the provisions of this section, be liable to pay to the Central Authority an amount equal to the total amount of the payments or, as the case may be, the total value of the assets distributed:

Provided that this subsection shall not apply to any such payment or distribution to any such member otherwise than in his- capacity as a member.

- (5) Where, at any time after the said day, any such body as aforesaid have redeemed any securities which the body were not under an obligation to redeem before the vesting date, or made payments in respect of the redemption of any securities which exceed the minimum payments required to satisfy the rights existing on the said day of the holders of the securities, all persons who were directors of the body at the time when the resolution of the directors authorising or recommending the redemption or the payments in respect thereof was passed shall, subject to the provisions of this section, be liable to pay to the Central Authority—
- (a) in the case of securities which the body were not obliged to redeem, the amount (if any) by which the sums paid in respect of the redemption of those

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- securities exceed the compensation which would have been payable under this Part of this Act (but for the redemption) to the holders of those securities; or
- (b) in the case of securities which the body were obliged to redeem but for which the payments made exceeded the said minimum payments, an amount equal to the total amount of the excess.
- (6) For the purposes of this section—
- (a) any payment by a body to its members in their capacity as members out of the net revenue of the body shall be deemed to be a payment of dividend; and
- (b) any transaction the effect of which is that assets of a body are transferred to any person otherwise than in the capacity of a member of the body, and the consideration for such transfer is given to the members of the body or any class thereof, shall be deemed to be a distribution of those assets to the members of the body or that class thereof.
- (7) Any claim under this section by the Central Authority against the directors of any such body as aforesaid shall be made before the expiration of a period of twelve months beginning with the vesting date, and if so made, shall be determined by arbitration under this Act, and, if the arbitration tribunal decides the claim in favour of the Central Authority, it shall make such orders against all or any of the said directors in respect of their liability on the claim as it thinks just, having regard to all the circumstances.
- (8) References in this section to any payments of interest or dividend made or permitted to be made, by any body shall be construed as references to the gross amounts of those payments, that is to say, to the amounts thereof before any deduction is made therefrom in respect of income tax, and, if any such payment has been made by a body without deduction of income tax, the amount paid shall be deemed for the purposes of this section to be a net amount paid after deduction of income tax, and the gross amount of that payment for the purposes of this section shall be calculated accordingly:
- Provided that, in determining the amount recoverable under this section from the directors of any body in respect of payments of interest or dividend made by that body, there shall be deducted from the amount which would, but for this proviso, be so recoverable a sum equal to the income tax chargeable on that amount at the standard rate for the year in which the payments became due.
- (9) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for references to the Central Authority of references to the North of Scotland Board.
- (10) This section shall, in relation to any composite company, have effect subject to the following modifications:—
- (a) subsections (1), (3), (4) and (5) shall only apply to payments and distributions made, and redemptions carried out, before the vesting date;
- (b) any liabilities arising under this section shall be liabilities of the company and not of the directors; and
- (c) any such liability shall be reduced by applying thereto the proportion ascertained under paragraph (b) of subsection (1) of section twenty-five of this Act.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

## 27 Final payment of dividends and interest.

(1) As soon as possible after the vesting date, there shall, in the case of any body to whom this Part of this Act applies other than a local authority or a composite company, be ascertained and certified by an auditor appointed by the Minister after consultation with the Central Authority and the stockholders' representative—

- (a) the net revenue of the body for the final financial period;
- (b) the total gross amounts paid by the body by way of interest or interim dividend on any securities in respect of the final financial period; and
- (c) the amount (if any) by which the said net revenue exceeds the said total amounts;

and the Central Authority shall pay to the stockholders' representative the amount referred to in paragraph (c) hereof. In appointing an auditor under this subsection in the case of any body, the Minister shall first offer the appointment to one of the auditors who signed the last balance sheet of the body or examined that balance sheet on behalf of the Electricity Commissioners, and there shall be paid to the auditor out of moneys provided by Parliament such remuneration (whether by way of salary or fees) and such allowances as the Minister may, with the approval of the Treasury, determine, and the amount of the remuneration and allowances shall be repaid to the Minister by the Central Authority on demand.

(2) The Central Authority, if they think fit, may, before the auditor's certificate is given, make payments to the stockholders' representative on account.

(3) The stockholders' representative shall apply the sums paid to him under the foregoing provisions of this section (so far as they will go) for the following purposes and in the following order of priority:—

- (a) in making interest payments on any debentures or debenture stock of the body, which have accrued up to the vesting date and have not been paid, at the rates permitted under the last foregoing section;
- (b) in making such a distribution as is mentioned in the next following subsection to the holders of other securities, if any, of the body; and
- (c) in repaying the balance, if any, to the Central Authority.

(4) The distribution falling to be made under paragraph (b) of the last foregoing subsection shall be a distribution under which the holders of the securities there referred to become entitled to the same gross amounts as they would have become entitled to if—

- (a) the statutory or other provisions relating to the body had permitted payments of interest or dividend in respect of the final financial period;
- (b) the body had had available for distribution the sums paid to the stockholders' representative under this section less the amount applied in making the payments mentioned in paragraph (a) of the last foregoing subsection; and
- (c) the body had applied the amount so available for distribution, or so much thereof as was required for the purpose, in making payments of interest or dividend for the final financial period, at the rates permitted under the last foregoing section, to the holders of the securities in question, in the proper order of priority, and according to their respective rights, due regard being had to any interest or interim dividend already paid in respect of the final financial period and all necessary adjustments being made where the said period is not a period for which interest or dividend would be payable under the statutory or other provisions relating to those securities:

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

Provided that the amounts to which the holders would have become entitled by way of interest or dividend for the final financial period in the event contemplated by paragraph (c) of this subsection shall be computed as if the amounts deducted in respect of income tax from the payments mentioned in paragraph (a) of the last foregoing subsection and from any payments made under paragraph (b) of that subsection in respect of any securities were not available for paying any other interest or dividend.

(5) Where the sums paid to the stockholders' representative under the foregoing provisions of this section are insufficient to enable him—

- (a) to make the interest payments referred to in paragraph (a) of subsection (3) of this section at the maximum rates permitted under the last foregoing section; and
- (b) to distribute to the holders of the securities referred to in paragraph (b) of that subsection gross amounts equal to payments of interest or dividend on those securities at the maximum rates so permitted;

and the body possessed immediately before the vesting date funds applicable in accordance with the normal practice for the purpose of maintaining payments of interest and equalising rates of dividend, the Central Authority shall pay to the stockholders' representative an additional amount equal to the total amount of the said funds so possessed or to the total amount of the said deficiency, whichever is the less, and the stockholders' representative shall apply that amount in like manner as the other sums paid to him under this section.

(6) The persons who receive any payment made by a stockholders' representative under the foregoing provisions of this section, shall, subject to the provisions of the next following subsection, hold the payment in the same right and on the same trusts and subject to the same powers, privileges, charges and liabilities as those in, on, or subject to which, any payment of interest or dividend in respect of the securities in question would have been held by them.

(7) Where any body to whom this Part of this Act applies were the holder of, or had any interest in, any securities of another such body the Central Authority shall have the like right to receive and hold, or benefit from, a payment under paragraph (a) or paragraph (b) of subsection (3) of this section as they would have had if they had been the holder of, or had had that interest in, those securities:

Provided that, in the case of any such body other than a local authority, the gross amounts of any such payments or of the benefit therefrom shall be included in the net revenue of the body for the final financial period for the purposes of this section.

(8) Where, before the vesting date, there became due from any body to whom this Part of this Act applies, other than a local authority, any payment by way of interest or dividend or any payment by way of a redemption of any security, and, by reason only that it was not possible to discover the person entitled thereto, or that the title to the payment had not been established, or that a cheque or warrant issued for the purpose of effecting the payment had not been encashed, that payment was not made before the vesting date, the liability in respect of that payment shall pass to the Central Authority.

(9) Where the stockholders' representative is for any reason unable to effect payment of any sum falling to be paid by him under this section, or where a receipt cannot effectively be given for any such sum, the stockholders' representative may pay that sum to the Central Authority and, on the said sum being so paid to the Authority, the

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

liability of the stockholders' representative for the payment of that sum shall pass to the Central Authority.

- (10) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for references to the Central Authority of references to the North of Scotland Board and for the references to the Minister of references to the Secretary of State.
- (11) The following provisions shall have effect in the case of a composite company, that is to say:—
- (a) there shall be ascertained and certified as soon as possible after the vesting date by an auditor appointed by the Minister the net revenue of the company for the final financial period;
  - (b) there shall be ascertained and certified by the said auditor as soon as possible after the vesting date the amount required to enable the company to make payments of interest or dividend in respect of the final financial period on all their securities at the full rates permitted under the last foregoing section, assuming that the statutory or other provisions relating to the company permitted payments of interest or dividend in respect of that period and due regard being had to any interest or interim dividend already paid in respect of that period; and
  - (c) the said net revenue shall not, except to the extent (if any) to which it exceeds the amount ascertained and certified under paragraph (b) hereof, be subject to apportionment as between the company and the Electricity Board concerned under the foregoing provisions of this Part of this Act relating to the apportionment of the cash and investments of composite companies.

The provisions of subsection (1) of this section relating to the appointment of an auditor, except the requirement as to consultation with the stockholders' representative, shall apply to an auditor appointed under this subsection and there shall be paid to the auditor by the Central Authority such remuneration (whether by way of salary or fees) and such allowances as the Minister may with the approval of the Treasury determine.

- (12) In this section the expression " final financial period " means such part of the financial year during which the vesting date occurs as precedes that date:

Provided that, where any body has not made the payments of interest or dividends permitted under section twenty-six of this Act in respect of the last complete financial year before the vesting date, the said expression means that year together with such part of the financial year during which the vesting date occurs as precedes the vesting date.

## **28 Income tax provisions.**

- (1) This section shall be construed as one with the Income Tax Acts.
- (2) The gross amounts of any payments made by a stockholders' representative under the last foregoing section shall be deemed to be income for all the purposes of the Income Tax Acts, and the stockholders' representative making the payments shall deduct income tax therefrom at the standard rate for the year in which the payments become due and any amounts so deducted shall, notwithstanding anything in the Income Tax Acts, be paid over to the Central Authority for their own use and benefit.

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (3) If—
- (a) the payments of any interest of money, annuity or other annual payment charged with tax under Schedule D made by a body to whom this Part of this Act applies other than a local authority or a composite company in the year or years of assessment falling wholly or partly within the final financial period as defined by the last foregoing section; plus
  - (b) any payments made by the stockholders' representative to the holders of securities of the body under the last foregoing section being securities bearing interest;
- together exceed—

- (i) the total income of the body for the said year or years; plus
- (ii) the total of the assessments made for the said year or years under Rule 21 of the General Rules in respect of payments by the body,

the said Rule 21 shall have effect as if a payment of a gross amount equal to the excess had been made by the Central Authority, as if that payment were a payment of interest of money charged with tax under Schedule D not payable out of profits or gains brought into charge to tax and as if the Central Authority had deducted tax at the appropriate rates in making that payment:

Provided that, in calculating whether there is such an excess as aforesaid or the extent thereof, any payment which has been reimbursed to the body by any person or is charged to capital shall be disregarded, but the said Rule 21 shall have the like effect in relation to the whole of any such payment as it has effect, or would have effect, under this subsection in relation to such an excess as aforesaid.

In this subsection, the expression " the appropriate rates " means the rates which were applied in making deductions of income tax from the payments referred to in paragraph (b) of this subsection, the lowest rate being taken first and applied to an amount of the excess equal to the amount to which it was applied as aforesaid, and then so with the next lowest rate, and so on.

- (4) Any reference in this section or in the last foregoing section to the gross amount of any payment shall be construed as a reference to the amount of that payment before any deduction is made therefrom in respect of income tax.
- (5) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for the reference to the Central Authority of a reference to the North of Scotland Board.

## **29 Re-opening of transactions resulting in dissipation of assets.**

- (1) This section shall apply in any case where on or after the tenth day of January, nineteen hundred and forty-seven, any body to whom this Part of this Act applies, being a company, have—
  - (a) made any payment to any person without consideration or for an inadequate consideration;
  - (b) sold or disposed of any of its property or rights without consideration or for an inadequate consideration;
  - (c) acquired any property or rights for an excessive consideration ;

---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (d) entered into or varied any agreement so as to require an excessive consideration to be paid or given by the body; or
- (e) entered into any other transaction of such an onerous nature as to cause a loss to or impose a liability on the body substantially exceeding any benefit accruing to the body;

and the payment, sale, disposal, acquisition, agreement or variation thereof, or other transaction was not reasonably necessary for the purposes of the body or was made with an unreasonable lack of prudence on the part of the body:

Provided that this section shall not apply:

- (i) to any payment or other transaction to which section twenty-six of this Act applies;
  - (ii) to any payment or other transaction made or entered into for any charitable purpose;
  - (iii) to any payment or other transaction made or entered into in connection with, the determination of any question, dispute or matter falling to be determined under any provision of this Part of this Act or any regulations made thereunder; or
  - (iv) to any payment or other transaction to which the previous consent of the Electricity Commissioners was given for the purposes of any enactment other than this section, or which has been approved in writing by the Minister, either generally or specially, and whether before or after the date of the payment or other transaction.
- (2) The Central Authority may, at any time before the expiration of a period of twelve months beginning with the vesting date, make an application to the arbitration tribunal in respect of any transaction to which in the opinion of the Authority this section applies, and all parties to the transaction, and all persons who were directors of the body at the date when the transaction was entered into shall, unless the tribunal otherwise directs, be made parties to the application.
- (3) Where the arbitration tribunal is satisfied that the transaction in respect of which an application is made is a transaction to which this section applies, then, unless it is shown by any of the parties to the application that the transaction was in the ordinary course of business and was in no way connected with any provision made by this Act or with any anticipation of the making of any such provision, the tribunal shall determine the extent of the net loss or liability caused to or imposed on the body by the transaction, and shall make such orders against all or any of the parties to the application (other than the Central Authority) as it thinks just, having regard to the extent to which they were respectively responsible for the transaction or benefited from it, for the payment by them to the Central Authority of sums sufficient to enable the net loss or liability, or such part thereof as the tribunal thinks just, to be made good or met.
- (4) Where any Electricity Board have disclaimed an agreement or lease by a notice under this Part of this Act, being an agreement or lease entered into or varied on or after the said tenth day of January, nineteen hundred and forty-seven, the Central Authority may make an application to the arbitration tribunal under this section in respect of any loss or liability caused to or imposed on the body before the vesting date and, in the case of a lease, any loss or liability caused to or imposed on the Board between the vesting date and the disclaimer of the lease, in consequence of the onerous nature of the agreement or lease.



---

*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

---

- (5) Where any application is made to the arbitration tribunal under this section in respect of any transaction, or a reference is made to that tribunal with respect to any notice given under this Part of this Act disclaiming an agreement or lease, the tribunal shall have exclusive jurisdiction—
  - (a) to determine claims arising in respect of the transaction or under the lease or agreement; and
  - (b) if the notice disclaiming any such agreement is confirmed by the tribunal, to determine any claims arising with respect to the agreement under the Law Reform (Frustrated Contracts) Act, 1943.
- (6) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect with the substitution for the references to the Central Authority of references to the North of Scotland Board.
- (7) In the case of a composite company, the company, and not the directors, shall be made parties to applications under this section.

### **30 Provisions as to foreign investments.**

- (1) It shall not be lawful for any body to whom this Part of this Act applies other than a composite company to acquire any foreign investments.
- (2) Every such body shall, within such period as may be prescribed, supply to the Minister and the Central Authority particulars in the prescribed form of all foreign investments of the body, and shall dispose of those investments in such manner and within such period as may be prescribed.
- (3) If any such body contravene or fail to comply with the provisions of this section or any regulation made thereunder, all persons who were directors of the body at the time when the contravention or failure occurred shall, subject to the next following subsection, be liable to make good any loss suffered by the Central Authority in consequence of the contravention or failure.
- (4) Any claim under this section by the Central Authority against the directors of any such body shall be made before the expiration of a period of twelve months beginning with the vesting date and shall be determined by arbitration under this Act, and all persons who were directors of the body at the time when the alleged contravention or failure occurred shall, unless the arbitration tribunal otherwise directs, be made parties to the proceedings, and, if the arbitration tribunal decides the claim in favour of the Central Authority, it shall make such orders against all or any of the said directors in respect of their liability under this section as it thinks just, having regard to all the circumstances.
- (5) In this section the expression " foreign investments " means any assets the transfer of which is governed otherwise than by the law of any part of Great Britain.
- (6) If it appears to the Minister to be necessary or expedient, for the purpose of securing the disposal of foreign investments of any body under this section, to postpone the vesting date in relation to that body, he may direct that the vesting date for the purposes of this Act shall, in relation to that body, be such date, later than the date which would otherwise be appointed or fixed, as may be specified in the direction.
- (7) This section shall, in relation to any body whose property, rights, liabilities and obligations vest by virtue of this Act in the North of Scotland Board, have effect

*Status: This is the original version (as it was originally enacted). This  
item of legislation is currently only available in its original format.*

---

with the substitution for the references to the Minister and the Central Authority of  
references to the Secretary of State and the North of Scotland Board respectively.