



# Electricity Act 1947

## 1947 CHAPTER 54

### PART IV

#### MISCELLANEOUS AND GENERAL.

##### *Non-statutory undertakings.*

#### **48 Acquisition of non-statutory undertakings.**

- (1) This section applies to any person, not being a body to whom Part II of this Act applies, who at the passing of this Act is engaged in supplying electricity to the general public and who, at any time after the nineteenth day of November, nineteen hundred and forty-five, has incurred or incurs, in respect of works approved by the Minister for the purposes of this section (whether before or after the execution of the works) expenditure properly chargeable to capital account; and in this section any such person is referred to as "the undertakers," and his business, so far as it consists of the supply of electricity to the general public, is referred to as "the electricity undertaking."
- (2) The undertakers may, at any time before the expiration of the period of twelve months beginning with the date of the passing of this Act, serve on the Central Authority a notice requiring that the electricity undertaking shall be transferred under this section, and thereupon the following provisions of this section shall have effect.
- (3) On such date, not being later than six months after the service of the notice, as may be agreed between the undertakers and the Central Authority or, in default of agreement, determined by the Minister (which date is hereafter in this section referred to as "the date of transfer"), all property of the undertakers which was, immediately before the date of transfer, wholly or mainly used for the purposes of the electricity undertaking shall, by virtue of this Act, vest in the Area Board whose area comprised the whole or the main part of the area of supply of the undertakers, and shall vest free of any mortgage or other incumbrance.
- (4) For the purpose of transferring to the said Area Board agreements to which the undertakers were a party immediately before the date of transfer and which they entered into for the purposes of the electricity undertaking, so far as those agreements

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remain to be performed after the date of transfer, every such agreement, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned by the undertakers shall, unless its terms or subject matter make it impossible, have effect, as from the date of transfer, subject to the like modifications (with the substitution of references to the date of transfer for references to the vesting date) as agreements of bodies to whom Part II of this Act applies which are transferred to the Area Board under that Part.

- (5) The provisions of Part II of this Act relating to the disclaimer of agreements and leases shall apply to any agreements or leases which are transferred to the said Area Board under this section in like manner as they apply to agreements and leases of bodies to whom that Part applies, subject to the modification that for references to the vesting date there shall be substituted references to the date of transfer.
- (6) Subject to the provisions of this section, there shall be paid by the Central Authority to the undertakers, by way of compensation for the transfer of the electricity undertaking, such amount as the undertaking might have been expected to realise if—
- (a) it had been sold as a going concern on the date of transfer in the open market by a willing seller to a willing buyer;
  - (b) the effect of the sale had been to transfer to the buyer the property, rights, liabilities and obligations which are transferred or granted to the Area Board by or under this section, except any property or rights, which are transferred or granted on terms agreed or determined in accordance with regulations made under this section; and
  - (c) this Act had not been passed.
- (7) Any question arising under this section as to—
- (a) whether a particular person is a person to whom this section applies;
  - (b) what property of the undertakers vests in the Area Board under subsection (3) of this section;
  - (c) what agreements of the undertakers are to have effect in accordance with subsection (4) of this section;
  - (d) what compensation is to be paid under subsection (6) of this section;

shall, in default of agreement between the undertakers and the Central Authority, be determined by arbitration under this Act, and the provisions of Part II of this Act relating to the arbitration tribunal shall apply for the purpose of determining questions under this section and any questions which, under regulations made under this section, are to be determined by arbitration under this Act, as they apply for the purpose of determining questions under the provisions of Part II of this Act or any regulations made thereunder.

- (8) Subsections (2) and (4) of section fifteen of this Act shall apply to the undertakers in like manner as they apply to a local authority subject to the modifications that for references to property held or used by the local authority in their capacity as authorised undertakers there shall be substituted references to property held or used by the undertakers for the purposes of the electricity undertaking, for references to other capacities of the local authority there shall be substituted references to other purposes of the company and for references to the Minister of Health there shall be substituted references to the Minister and for references to the vesting date there shall be substituted references to the date of transfer, and any question whether any property is or was (for the purposes of -the said subsection (2) as so applied) held or used partly for the purposes of the electricity undertaking and partly for other purposes shall, in default of agreement, be determined by arbitration under this Act.

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- (9) Regulations may make provision, in a case where property vested in an Area Board under this section was, immediately before the date of transfer, subject to a mortgage or other incumbrance, for the payment to the mortgagee or incumbrancer of the compensation or any part of the compensation payable in respect of that property, or may make other provision for the protection of mortgagees and incumbrancers of any such property.
- (10) Where at the date of transfer any legal proceedings or any application to any authority under any enactment are pending by or against the undertakers in connection with any property, rights, liabilities or obligations which are vested in or transferred to an Area Board under this section, the Board, if the circumstances so require, may be added as a party to the proceedings or application or may be substituted for the undertakers as a party to the proceedings or application.
- (11) Nothing in this section shall operate to transfer any cash or investments of the undertakers to an Area Board, and nothing in this section shall affect—
- (a) any right, liability or obligation with respect to the borrowing of money by the undertakers or to the raising of money by the undertakers by the issue of securities ;
  - (b) any right, liability or obligation (if the undertakers are a company) under any agreement for the rendering by any person of services to the undertakers as a director (other than a managing director or a director whose functions are substantially those of an employee);
  - (c) any right to, or liability to pay, any debt which became due before, or was in respect of a consideration wholly executed before, the date of transfer; or
  - (d) any right to, or liability to pay, any damages which accrued before the date of transfer.
- (12) Regulations may require any person who is or may be a person to whom this section applies to produce such books of account, records and documents, to supply copies of and extracts from such books, records and documents, and to furnish such other information as may reasonably be required—
- (a) by the Minister for the purpose of ascertaining whether or not this section applies to that person, or for other purposes arising out of the provisions of this section; or
  - (b) by any Electricity Board for the purpose of facilitating the taking over of the electricity undertaking of that person by them on the date of transfer;
- and to provide facilities for the examination of any such books, records and documents, and the taking of copies thereof and extracts therefrom, and facilities for the verification of other information furnished under the regulations; and such regulations may make provision as to the manner, time and place in or on which any requirement under the regulations is to be complied with, and shall provide for the payment to any such person of expenses reasonably incurred by him in complying with any requirements made by or under the regulations.
- (13) For the purposes of this section, a person shall, when supplying electricity to any other person, be deemed to be supplying electricity to the general public unless the electricity is supplied for the purposes of a trade or business and the relationship between the person giving the supply and the person supplied is that of a holding company and a subsidiary company, or vice versa, or either of the said persons is, in some other way, able to exercise a substantial measure of control over the carrying on of the trade or business of the other person, and any question as to whether a supply of electricity to

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any person is a supply to the general public shall, in default of agreement between the undertakers and the Central Authority, be determined by arbitration under this Act.

- (14) The foregoing provisions of this section shall, in their application to any undertakers whose area of supply is wholly or mainly comprised in the North of Scotland District, have effect with the substitution for references to the Minister of references to the Secretary of State, and for references to the Central Authority or to an Area Board of references to the North of Scotland Board.