



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:

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- (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

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- 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.