1973. No. 45

ELECTRICITY

Electricity (Transfer of Functions and Dissolution) Order (Northern Ireland) 1973

Made . . . . . 23*rd February* 1973

Coming into operation . . . . . 1*st April* 1973

To be laid before the Parliament of the United Kingdom under paragraph 4(5)(*b*) *of the Schedule to the Northern Ireland* (*Temporary Provisions*) *Act* 1972.

The Ministry of Commerce on behalf of the Secretary of State and in exercise of the powers conferred on it by Article 41 of the Electricity Supply (Northern Ireland) Order 1972(**a**) and of every other power enabling it in that behalf hereby makes the following Order:—

Citation

1. This Order may be cited as the Electricity (Transfer of Functions and Dissolution) Order (Northern Ireland) 1973, and shall come into operation on the 1st day of April 1973.

Interpretation

2. In this Order the following expressions have the meanings hereby assigned to them, that is to say:—

"transfer date" means 1st April 1973;

"existing undertakers" means, to the extent to which their functions relate to the supply of electricity—

(*a*) the Corporation of the County Borough of Belfast; and

(*b*) the Londonderry Development Commission;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Ministry under the Order of 1972;

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954(**b**);

"the Authority" means the Northern Ireland Joint Electricity Authority;

"the Board" means the Electricity Board for Northern Ireland;

"the Ministry" means the Ministry of Commerce;

"the Order of 1972" means the Electricity Supply (Northern Ireland) Order 1972;

"the Service" means the Northern Ireland Electricity Service;

"the transferor" means, in relation to any functions transferred, the Authority, the Board or an existing undertaker;

"terms and conditions of employment" includes any restriction under a statutory provision on the termination of the employment of any person;

(a) S.I. 1972, No. 1072 (N.I. 9). (b) 1954. c. 33.

"transferred provision" has the meaning assigned to it by section 1(*g*) of the Interpretation Act (Northern Ireland) 1954;

"tribunal" means a board of referees appointed by the Ministry of Health and Social Services in the following manner:—

(*a*) one member to be selected from time to time from a panel previously nominated by the Service and to serve until the particular issue referred has been decided;

(*b*) one member to be selected from time to time from a panel previously nominated by the Trade Unions and to serve until the particular issue referred has been decided;

(*c*) a chairman to be appointed by the Ministry of Health and Social Services. The appointment may be for a specified period or for the hearing of particular issues;

"undertaking" means an existing undertaker or the Board.

Transfer of functions

3. All the functions exercisable immediately before the transfer date by the Authority and the Board and existing undertakers shall be transferred as from that date to the Service.

Dissolution of the Authority and the Board

4. On the transfer date the Authority and the Board shall be dissolved.

Transfer of assets

5.—(1) Subject to the provisions of this Order all property, whether real or personal (including choses-in-action), which immediately before the transfer date was in connection with the functions transferred to the Service by Article 3 vested in or belonged to or was held in trust for the transferor and all rights, powers and privileges relating to or connected with any such property, shall on the transfer date, without any conveyance or assignment, become and be vested in or the property of or held in trust for (as the case may require) the Service for all the estate, term or interest for which the same immediately before the transfer date was vested in or belonged to or was held in trust for the transferor, but subject to all trusts and equities affecting the same and then subsisting and capable of being performed.

(2) All property transferred by this Article which, immediately before the transfer date, was either standing in the books of any corporation or company or was entered in any register kept in pursuance of any transferred provision in the name of the transferor, shall, upon the request of the Service made at any time after the transfer date, be transferred in such books by such corporation or company or, as the case may be, by the person having charge of such register, into the name of the Service.

(3) After the transfer date, every chose-in-action transferred by paragraph (1) from the transferor to the Service may be sued upon, recovered or enforced by the Service in its own name and it shall not be necessary for the Service to give notice to the person bound by such chose-in-action of the transfer effected by this Article.

(4) Where property is held or used by the Corporation of the County Borough of Belfast or the Londonderry Development Commission partly in their capacity as existing undertakers and partly in other capacities, the Service and the Corporation or the Commission as the case may be, may agree that on such terms as may be specified in the agreement the property shall be transferred or shall not be transferred to the Service by virtue of this Article.

(5) Where property is transferred pursuant to paragraph (4) the Service and the Corporation or the Commission as the case may be, may agree that on such terms as may be specified in the agreement, the Service may grant to the Corporation or the Commission any such interest in, or right over or attaching to, or right in respect of the user of, the property as may be agreed; and where any such property is not so transferred, the Corporation or the Commission and the Service may agree as aforesaid that any such interest or right should be granted to the Service.

Transfer of liabilities

6.—(1) Every debt and other liability whether liquidated or unliquidated (including stock and mortgage debts and the loan charges of existing undertakers) which immediately before the transfer date was owing and unpaid or had been or was deemed to have been incurred and was undischarged by the transferor shall, on the transfer date, become the debt or liability of the Service and shall be paid or discharged by and may be recovered from or enforced against the Service accordingly.

(2) The dissolution of the Authority and the Board and the transfer of functions of other existing undertakers shall not invalidate or affect any cheque or paying order that was issued by the transferor and had not been presented for payment before the transfer date or any authority given by the transferor for the payment of the amount of such cheque or paying order, and the Service shall make arrangements for the payment of the amount of every such cheque or paying order upon due presentation after the transfer date.

Charges, tariffs, etc.

7. Any method of charge, tariff or agreement for the supply of electricity by the Board or existing undertakers in force immediately before the transfer date shall continue in force for the purposes of this Order until it is terminated or replaced by another method of charge, tariff or agreement fixed or made under the Order of **1972.**

Transfer of officers

8.—(1) Subject to paragraph (2) any officer who immediately before the transfer date was wholly or mainly in the employment of the Authority, the Board or any existing undertaker shall be transferred as from that date to the employment of the Service.

(2) If at any time after 1st November 1972 and prior to the transfer date an officer of one undertaking transfers to another undertaking that transfer shall be deemed to have taken place on the transfer date.

(3) Paragraph (1) shall not apply to any officer who immediately before the transfer date has exercised an option to retire immediately.

Protection of interests of transferred officers

9. The following provisions shall apply in relation to any person transferred by virtue of Article 8—

(*a*) so long as he continues in the employment of the Service by virtue of the transfer and until he is served with a statement in writing of his new terms and conditions of employment, he shall enjoy terms and conditions of employment (including conditions as to superannuation benefits) not less favourable than those he enjoyed immediately before 17th November 1971; and

(*b*) the said new terms and conditions shall be such that—

(i) so long as he is engaged in duties reasonably comparable to those in which he was engaged before the transfer date, the scale of his remuneration, and

(ii) the other terms and conditions of his employment,

shall taken as a whole be not less favourable than those he enjoyed immediately before 17th November 1971;

(*c*) where the terms and conditions of his employment (including conditions as to superannuation benefits) are on or after 17th November 1971 varied in any respect, the variation shall be included among the terms and conditions on which he becomes employed by the Service; and sub-paragraphs (*a*) and (*b*) shall have effect in relation to him as if the variation had been included in the terms and conditions of his employment immediately before 17th November 1971;

(*d*) where at any time after the transfer date the Service consider it necessary in the interests of their more efficient organisation or administration to require an officer or servant who has entered their employment pursuant to Article 8 to work at a place other than that at which he worked before the transfer date the Service shall reimburse that officer or servant for any removal expenses and increase in travelling expenses which he may incur to such extent and for such period as may be reasonable in the circumstances.

Modification and adaptation of enactments

10.—(1) There shall be made in every local and private Act and public general Act of a local character such modifications and adaptations as may be required to bring it into conformity with the provisions of this Order.

(2) For the purpose of section 23(3) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965(c) Article 8 shall be deemed to be an offer of renewal of employment to any person transferred by virtue of that Article and section 32 of that Act shall not operate so as to terminate a contract under which any person so transferred is employed by a transferor.

Incidental, consequential and supplemental matters

11. The following provisions of this Article shall apply in relation to the functions transferred by this Order—

(1) Anything (including any legal or parliamentary proceedings) commenced before the transfer date by or on behalf of the transferor, may so far as it relates to any functions transferred, be carried on or completed by or under the authority of the Service.

(2) Where agreements have been entered into by the Corporation of the County Borough of Belfast or the Londonderry Development Commission partly in their capacity as existing undertakers and partly in other capacities, including agreements which relate to the employment of officers by the Corporation or the Commission, partly for the purposes of their electricity undertaking and partly for other purposes and when any such agreement remains to be performed, in whole or in part, after the transfer date, that agreement shall, subject to paragraph (3) have effect, as from the transfer date, as if there were substituted therefor separate agreements—

(c) 1965. c. 19 (N.I.).

(*a*) securing for the Service the benefits that would, but for the Order of 1972, have been secured for the Corporation or the Commission in their capacity as existing undertakers under the original agreement, either directly or in accordance with arrangements made by the Corporation or the Commission for making benefits under the agreement available to their electricity undertaking, and imposing on the Service the liabilities and obligations, so far as properly attributable to those benefits, that would have been imposed on the Corporation or the Commission by the original agreement; and

(*b*) securing for the Corporation or the Commission all other benefits that would have accrued to them under the original agreement and imposing on them the liabilities and obligations, so far as properly attributable to those benefits, that would have been imposed on them by the original agreement.

(3) The Corporation or the Commission and the Service may, with respect to any agreement to which paragraph (2) applies, on such terms as may be specified agree either temporarily or permanently that all rights, liabilities and obligations thereunder shall vest in the Service by virtue of this Order, or that none of them shall so vest; and those terms may include provision that the Service or the Corporation or the Commission, as the case may be, in whom the said rights, liabilities and obligations are to vest, shall make available to the other of them any such benefits in relation to the agreement as are mentioned in sub-paragraphs (*a*) and (*b*) of paragraph (2).

(4) Any investigation, legal proceedings or remedy under any enactment or otherwise in respect of any right or liability transferred to the Service may be instituted, continued or enforced by or against the Service under the powers and provision (if any) applicable thereto immediately before the transfer date.

(5) In the construction of and for the purposes of any transferred provision, judgment, decree, order or warrant of any court, or in any award, deed, contract or other document whatsoever passed or made before the transfer date, any reference to, or anything which is to be construed as a reference to the transferor shall, so far as it relates to functions transferred by virtue of this Order, be construed as a reference to the Service.

(6) In any deed, contract, agreement in writing or document, which has reference to functions transferred by virtue of this Order, there shall be substituted for any reference (however worded, expressed or implied) to any officer or servant of the transferor, as respects anything falling to be done on or after the transfer date by such officer or servant, a reference to such person as the Service may appoint, or in default of appointment, to the officer or servant of the Service who corresponds as nearly as may be to the first officer or servant.

(7) Any question as to whether a person is transferred to the employment of the Service under Article 8 or whether the terms and conditions of employment of a transferred employee are less favourable or taken as a whole less favourable as provided in Article 9 or the duties of a transferred employee are reasonably comparable to those mentioned in Article 9 shall be reported by the Service or by such person to the Ministry of Health and Social Services and if a dispute so reported is not otherwise disposed of that Ministry may refer it for determination by a tribunal appointed to determine the matter so referred.

(8) Any dispute, difference or question between the Service and the transferor or the Service and an officer of the transferor other than that referred to in paragraph (7) regarding their rights, duties or liabilities arising under this Order shall be determined by the Ministry.

(9) Every byelaw, lawfully made or deemed to have been made by existing undertakers and in force immediately before the transfer date, shall after the transfer date and so far as it is not inconsistent with the Order of 1972 or this Order continue in force and have effect as a byelaw, made on the transfer date by the Service for the residue then unexpired of the period and in respect of the area for and in respect of which the same was actually made or was deemed to have been made by the transferor, and accordingly every such byelaw may be continued, varied or revoked, and penalties and fortfeitures arising thereunder before or after the transfer date may be recovered and enforced, by the Service in the like manner and as fully as the same could have been continued, varied, revoked, recovered or enforced by the transferor if this Order had not been made.

(10) Every resolution passed or deemed to have been passed, order made or deemed to have been made or notice served or deemed to have been served by the transferor before the transfer date, the operation, effect or term of which had not ceased or expired before that date, shall, after the transfer date and so far as it is not inconsistent with the Order of 1972 or this Order continue in force and have effect as if it were a resolution passed, order made, or notice served by the Service on the date on which the same was actually or was deemed to have been passed, made or served, as the case may be, by the Service and as if the functions of the transferor were, on the said day, performable by the Service.

(11) All books and other documents directed or authorised by or under any transferred provision to be kept by the transferor and which, immediately before the transfer date, would be receivable in evidence shall, notwithstanding the dissolution or transfer of functions of the transferor, be admitted in evidence after the transfer date as fully as if this Order had not been made.

(12) Whenever an extract from or certificate of the contents of any book or other document directed or authorised by or under any transferred provision to be kept by the transferor would, if verified in a particular manner by a particular officer of the transferor, have been admissible immediately before the transfer date as evidence of such contents, an extract from or certificate of the contents of such book or document shall, if verified in such particular manner by the officer of the Service corresponding to such particular officer, be admitted, after the transfer date, as evidence of such contents to the same extent as such first-mentioned extract or certificate would have been so admitted if this Order had not been made.

(13) All charges for electricity supplies, standing charges, rent or other charges which immediately before the transfer date were due and payable to the transferor shall on or after that date be due and payable to and may be collected and recovered by or on behalf of the Service in like manner as they could have been collected or recovered by or on behalf of the transferor if the transfer had not taken place.

(14) All such charges as are mentioned in paragraph (13) which immediately before the transfer date were accruing due to the transferor shall on or after that date accrue and be deemed always to have accrued due to the Service, and when any such charge becomes due and payable it shall be due and payable to, and may be collected and recovered by or on behalf of the Service in like manner as it could have been collected or recovered by or on behalf of the transferor if the transfer had not taken place.

(15) The accounts of all receipts and payments of the transferor and of their respective officers up to the transfer date shall, as soon as conveniently may be after that date, be audited, and disallowances, surcharges, charges and penalties in relation to such accounts, receipts and payments shall be made, recovered and enforced in like manner as nearly as may be as if this Order had not been made.

(16) Every officer of the transferor whose duty it is to make up any accounts of or to account for any portion of the receipts and payments of the transferor and also every member of the transferor shall, until the audit of the accounts of such receipts and payments up to the transfer date is complete, be deemed for the purposes of such audit to continue in office and be bound to perform the same duties and render the same account and be subject to the same liabilities as if this Order had not been made.

Sealed with the Official Seal of the Ministry of Commerce for Northern Ireland this 23rd day of February 1973.

(L.S.) *Kenneth Darwin,*
Assistant Secretary.

EXPLANATORY NOTE

(This note is not part of the Order, but is intended to indicate its general purport.)

This Order provides for:—

1. The transfer on 1st April 1973 (the transfer date) to the Northern Ireland Electricity Service of all the functions of the Northern Ireland Joint Electricity Authority, the Electricity Board for Northern Ireland and the Electricity Departments of Belfast Corporation and Londonderry Development Commission together with the assets and liabilities held in connection with these functions.

2. The dissolution on the transfer date of the Electricity Board for Northern Ireland and the Northern Ireland Joint Electricity Authority.

3. The continuance in force of any method of charge or tariff for the supply of electricity fixed before the transfer date until terminated or replaced by another method of charge or tariff.

4. The transfer to the Service on the transfer date of officers wholly or mainly employed by the undertakings whose functions are transferred by this Order; and for the protection of the employment interests of these officers.

5. Incidental, consequential and supplemental matters in relation to the functions transferred by this Order.