

NBPM



Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Peter Walker MBE MP  
 Secretary of State  
 Department of Energy  
 Thames House South  
 Millbank  
 London SW1P 4QJ

20 December 1984

*Dear Secretary of State*

**NATIONALISED INDUSTRIES LEGISLATION:**  
**CONSULTATION PROPOSALS**

Following my letter to you of 5 December, colleagues were generally content that we should recommence consultations on our nationalised industries legislative proposals. I am informing the House accordingly later today and I am sending the enclosed letter and consultation note to the Nationalised Industries' Chairmen's Group. Some minor changes have been made to the draft note that I previously circulated.

The way is now open for sponsor Ministers to start consultations with their industries and I would be grateful if the Treasury could be kept closely in touch with progress. I understand that Cabinet are likely to be taking initial decisions about the 1985-86 legislative programme in late-February/early March and we will need by then to have at least a preliminary assessment of industries' reactions.

I am copying this letter to the Prime Minister, other E(NI) colleagues, Willie Whitelaw, Nicholas Edwards, John Biffen and Sir Robert Armstrong.

*Yours sincerely*

for PETER REES

*[Approved by the Chief Secretary]*

NATIONALISED INDUSTRIES LEGISLATION

Consultation Proposals

H M Treasury  
20 December 1984

The Government intends to legislate in due course to update various aspects of nationalised industry statutes. This note sets out the background to the proposed changes and indicates what areas might be covered. It has been prepared so that the Government can take account of comments on these proposals received by end-February 1985. There will be subsequent opportunities for nationalised industries to review detailed legislative proposals.

The Treasury is coordinating this consultation on behalf of the various Departments which sponsor nationalised industries. Departments will be discussing the proposals with individual industries. Comments should be sent either to the appropriate Department or to PE2 Division, HM Treasury, Parliament Street, London SW1P 3AG.

The Government has reviewed the existing statutes of nationalised industries and has concluded that they need to be updated. Although the differing nature of industries clearly needs to be recognised, a number of policies are applied consistently to all industries. Present statutes do not reflect this and vary greatly depending in part on when they were enacted. Some statutes are nearly forty years old and have not been kept in line with policies developed by successive Governments.

2. Private sector companies are regulated by a common set of statutory provisions and the Government considers that it would be advantageous if a single Act set out the core framework to be applied to nationalised industries. This would incorporate many provisions from existing statutes and would also reflect developments in the relationship between industries and the Government since statutes were originally enacted. The legislation that would result would provide clear guidelines within which those industries remaining in the public sector would have freedom to operate as successful, commercial businesses. Parliament, industries and the Government would know more clearly where they stand.

3. The proposed legislation would apply to all those industries listed in Annex A. It would set out standard provisions and also insert them appropriately into existing Acts. The powers would generally be permissive, allowing the use made of them to be tailored to the specific circumstances of each industry. In applying the new Act to individual industries, the Government would intend to use its powers only after proper consultation with the boards concerned.

4. It is proposed that the legislation should deal with the following:

- (i) Borrowing and guarantees
- (ii) Accounts, reports, and audit
- (iii) Financial targets
- (iv) Balance sheets
- (v) Terms of appointment of board members

(vi) Formation of companies and privatisation

The background to these proposals is set out below and Annex B describes in detail how the proposals might be implemented. Nearly all the proposals have precedents in existing legislation. There is an outstanding commitment to legislate to establish a more uniform legal basis for Nationalised Industry Consumer Councils operations and the Government is considering whether to extend its proposals to cover this. If so, the Government will consult separately about this.

5. In a number of cases, implementation of the proposed powers in respect of individual industries would involve supplementary legal procedures. The possible alternatives are notices in writing, formal directions, or statutory instruments which may or may not involve a Parliamentary procedure. The proposed method of implementation is shown where appropriate. Powers over industries' reserves, privatisation and financial targets would all be exercised via statutory instruments.

#### **BORROWING AND GUARANTEES**

6. The Government considers that all nationalised industries should have comprehensive powers to borrow with the approval of Ministers either within the UK or overseas. At present, some industries' statutes bar them from certain sources of finance and it is proposed that these restrictions should be removed. It is generally advantageous for industries to borrow from the National Loans Fund but removal of the restrictions would, for example, permit the introduction of market finance into any industry, if this was thought desirable.

7. The Public Accounts Committee (PAC) has recommended<sup>1</sup> that statutory borrowing limits of public bodies should include borrowings by subsidiaries and guarantees made by an industry or its subsidiaries in order to ensure Parliament's overall financial control of public bodies. Although borrowing limits might need to be substantially higher in recognition of the change, this would be no more than a recognition of the realities of the situation of which Parliament should be made fully aware. It is therefore proposed that the coverage

industries' borrowing limits should be adjusted to include borrowing by wholly-owned subsidiaries and all borrowing by third parties which is guaranteed by an industry or its wholly-owned subsidiaries.

8. Occasionally, new forms of raising finance are devised which legally are not defined as "borrowing" although they are closely akin. In order that borrowing limits can properly ensure overall financial control, it is proposed that there should be a mechanism for bringing such liabilities within the scope of borrowing limits. This power would be exercised via statutory instruments.

9. Some industries borrow in overseas currencies which may or may not be covered by the Public Sector Exchange Cover Scheme. In order to be included in an industry's statutory borrowing limit, such loans must be converted into sterling. It is proposed that the principles by which such loans are valued should be legally determined with the presumption that normal accounting principles would generally be followed (eg as set out in SSAP20) unless the Secretary of State specifies otherwise.

10. In order that a comprehensive set of provisions can be drafted, it is proposed also to include standard provisions relating to the issuing of Treasury guarantees, the purposes for which money can be borrowed, the setting of statutory borrowing limits (subject as now to Parliamentary procedure), the powers of the Secretary of State to lend to an industry, and some ancillary provisions.

#### **ACCOUNTS, REPORT AND AUDIT**

11. Individual industries' accounts are produced to a high standard and are often commended both for their content and manner of presentation. It would however assist those outside the industries who use the accounts, including Parliament and Government, if there were greater consistency in presentation and in the accounting principles that are applied. To supplement the overriding requirement that the accounts give a true and fair view, it is proposed to bring the differing statutory requirements governing the accounts into a common form in line with recent legislative precedents. There would be powers for the Secretary of State with the approval of the Treasury

to direct:

- (i) the information to be contained in the accounts,
- (ii) the manner in which the information is to be presented, and
- (iii) the methods and principles by which the accounts are to be prepared.

Given the overriding requirement that all industries' accounts give a true and fair view, the accounting rules and presentation set by the Secretary of State would have to be appropriate to the particular industry.

12. Industries' annual accounts should be audited to the highest standards comparable to those found in the private sector. Auditors should have generally the same rights and duties as those appointed under the Companies Acts. Although present audit provisions are comprehensive, they have certain technical deficiencies compared to analogous Companies Acts requirements (eg there is no statutory access to information) and it is proposed to remedy this.

13. Although what is said in an industry's annual report is essentially a matter for the industry, the Government thinks it right to be able to require that specified topics are included. These topics might include, for example, performance against targets and an industry's response to any MMC study that has been carried out during the year. Annual reports are all laid before Parliament and it is open to Parliament to examine industries on what is said. The reports are an important aspect of accountability and the inclusion of specified topics would strengthen this.

#### **FINANCIAL TARGETS**

14. It is Government policy that financial targets, normally expressed as a specified rate of return on assets, should be set for nationalised industries. These targets provide an incentive for industries to operate efficiently and are a proxy for the financial disciplines

found in the private sector. The targets which are set after consultation with the industry concerned, normally span a 3-5 year period, and are notified to Parliament or subject to a Parliamentary procedure.

15. In the case of nearly half the nationalised industries, it is already possible to give financial targets statutory backing. Because of their central place in the financial framework, the Government considers it right to give all targets this backing. It is proposed that Ministers should set targets for each industry after full consultation with its board and that boards should be required to conduct their affairs with a view to achieving whatever targets are currently in force. The target would thus not be cast in the form of an absolute duty. It is not intended that the proposed legislation should put performance aims or external financing limits (EFLs) onto a statutory basis.

16. Unlike the traditional break-even requirement, targets can be tailored to fit the circumstances of individual industries. The Government is therefore considering repealing existing breakeven duties which in their present statutory form are no longer a satisfactory form of control. If this is done, it would be necessary to place a duty on the Secretary of State to set a financial target in order to ensure that a vacuum is not created.

#### **BALANCE SHEETS**

17. Nationalised industry balance sheets are very different from those of private sector companies. When they were set up, most of the industries were given debt liabilities equal to their net assets, in the expectation that debt interest would adequately reflect the cost of capital employed. However, with time, the real value of this debt has been progressively eroded. There have also been substantial repayments and rising internal financing ratios. Overall, debt financing is now, on average, around 20 per cent of real capital employed, and interest payments amount to only 2 per cent per annum of capital employed. In the private sector, the impact of inflation in reducing the real cost of conventional debt has led to higher earnings and dividends on equity capital. A number of nationalised industries are approaching or have reached a debtfree position and



in the absence of an equivalent<sup>1</sup> to equity capital in their balance sheets have little or no external liabilities.

18. As the cost of capital has progressively disappeared from the accounts of some industries, their apparent profits have increased. More importantly, funds, which in the private sector would have gone into higher dividend payments to maintain or increase the worth of shareholders' capital have been entirely ploughed back into the business. The overall effect is to relax financial disciplines.

19. The PAC has considered<sup>2</sup> the position of industries which generate surpluses. It concluded that 'there should not be a strong presumption that surpluses in excess of interest commitments should all be retained by an industry'. It thought that 'an industry should not be allowed to amass reserves to such an extent that there is a danger of blunting the edge of the discipline that should operate on future investment decisions'.

20. Separately, the PAC has concluded<sup>3</sup> that the creation and maintenance of a suitable capital structure has an important role in promoting financial discipline. It recommended that the creation of liabilities to pay to the Exchequer out of surpluses 'a pre-determined sum related to the target set could be seen as equivalent to servicing the publicly-owned "equity" in the industries; and payments required in this way should be less of a disincentive to the management than claw-back arrangements.' The Government agrees with this.

21. The Government considers therefore that powers should be taken which would allow industries' balance sheets to be restructured. The powers, the exercise of which would require a Statutory Instrument to be laid before Parliament, would allow all or part of reserves to be capitalised as debt and public dividend capital. Restructuring would only be carried out after consultation with the industry affected and would be required to have due regard to the interests of creditors. The intention would be to create balance sheets that properly reflected a medium term view of industries' commercial circumstances and prospects taking account of financial targets.

22. Additionally, the Government intends to take powers which would

allow the introduction of new public dividend capital into industries in appropriate circumstances and is considering allowing lending on indexed-terms to the industries from the National Loans Fund.

23. In order that all matters relating to balance sheets can be brought together, the Government is considering consolidating existing powers over reserves which allow the Secretary of State to direct allocation and reallocations and permit control, if necessary, over the application of reserves within an industry.

#### TERMS OF APPOINTMENT OF BOARD MEMBERS

24. The Government has been considering terms of appointment of nationalised industry board members and thinks that there would be some advantage in more flexible provisions than currently operate. At present, some provisions are set out in primary legislation, others in regulations, and some in the individual instruments of appointment that are agreed with members before appointment.

25. It is proposed that in future all newly appointed or reappointed members should hold and vacate office in accordance with the instrument that appointed them and in accordance with any regulations currently in force. All such instruments would, as now, provide for a member's office to be declared vacant in certain specified circumstances (eg ill-health). General requirements of this sort might be laid down in regulations. Additionally, if the circumstances of a particular appointment made it appropriate, instruments might allow appointments to be terminated on due notice. (The Secretary of State would expect to consult a Board's Chairman before exercising such a power in respect of a board member and, where appropriate, the non-executive members before its exercise in respect of a Chairman. The Secretary of State would also expect to consult the Chairman before including such a provision in a member's instrument of appointment.) Instruments would provide for compensation to be paid if appointments are terminated, or if agreed notice is not given of the Secretary of State's intention not to reappoint at the end of a member's term of office, or if the Secretary of State thinks that there are circumstances which make it right to do so. As is generally the case now, industries would only be permitted to pay such remuneration to board members as had

been agreed by the Secretary of State.

26. The Government thinks that arrangements on the above lines would advantageously allow instruments of appointment to be negotiated that are more analogous to those found in the private sector. The exact terms and conditions applying to individual board members would of course be a matter for agreement at the time of the appointment although the Government would hope to agree some general principles with the Nationalised Industries Chairmen's Group covering for example periods of appointment and compensation provisions.

#### FORMATION OF COMPANIES AND PRIVATISATION

27. The Government considers as a general principle that activities of state-owned businesses should be transferred to the private sector where this makes commercial and practical sense. This enables market influences to operate to the benefit of the activities themselves, customers, employees, and the economy as a whole. For a number of industries, enabling legislation already exists that allows privatisation to take place. It is intended to extend this and apply general enabling legislation to all industries which would allow private capital to be introduced and activities and assets sold. However, complete privatisation of a whole corporation would continue to require primary legislation.

28. All industries would be given power to set up subsidiaries under the Companies Acts and transfer property, rights and liabilities to them. This would enable industries to carry out their activities through Companies Acts companies where this seems sensible and to structure their operations in accordance with normal commercial practice. This restructuring may or may not be a prelude to privatisation.

29. Powers, involving a Parliamentary procedure, would also be taken allowing Ministers to require that assets and activities are privatised in accordance with their instructions.

30. As a corollary to the above powers, Ministers would be able by order to require industries to discontinue specified activities and

direct them not to extend their interests. This power is already found in some existing statutes. It is proposed that its exercise should require a Parliamentary procedure.

31. Further details of how the above powers might be drafted are set out in Annex B.

### References

1. PAC's 8th Report 1977-78 Session and 1st Report 1979-80 Session.
2. PAC's 20th Report 1979-80.
3. PAC's 15th Report 1980-81 Session.

INDUSTRIES TO BE COVERED BY PROPOSED LEGISLATION

British Airports Authority  
Civil Aviation Authority  
National Coal Board  
Electricity Council  
Central Electricity Generating Board  
Area Electricity Boards  
North of Scotland Hydro-Electric Board  
South of Scotland Electricity Board  
British Gas Corporation  
British National Oil Corporation  
Post Office  
British Shipbuilders  
British Steel Corporation  
British Railways Board  
British Waterways Board  
Scottish Transport Group  
London Regional Transport  
Regional Water Authorities  
Welsh Water Authority

(National Bus Company omitted on presumption that bus legislation will be enacted in 1984-85 Session.)

So far as the land drainage and fisheries functions of regional water authorities are concerned, where the Minister of Agriculture, Fisheries and Food currently has powers in certain areas, either singly or jointly with the Secretary of State, he would continue to exercise such of these as would remain in force under the proposed legislation.

## DETAILS OF PROPOSED PROVISIONS

## 1. BORROWING AND GUARANTEES

(i) An industry may

(a) carry out temporary borrowing in sterling from the Secretary of State and with the consent of the Secretary of State and the approval of the Treasury in sterling or a currency other than sterling from a person other than the Secretary of State, such sums as may be required for itself, for any of its wholly-owned subsidiaries or for lending to any of its wholly owned subsidiaries.

(b) carry out borrowing other than by temporary loan in sterling from the Secretary of State and with the consent of the Secretary of State and the approval of the Treasury in sterling or a currency other than sterling from a person other than the Secretary of State such sums as may be required by the industry or any of its wholly-owned subsidiaries for any or all of the following purposes:

- provision of money for meeting any expenses incurred by the industry or the subsidiary in connection with any works the cost of which is chargeable to capital account
- provision of working capital required by it or the subsidiary
- subscription for or acquisition of securities of an incorporated company or other body corporate, promotion of the formation of an incorporated company or participation in the promotion of such a company or acquisition of an undertaking or part of an undertaking
- repayment of any money borrowed by it or the subsidiary, redemption of stock or other security and repayment of any sums issued by the Treasury in fulfilment of a guarantee

by the Treasury

- for lending money to or meeting a guarantee given for the benefit of any person for the purpose of an undertaking carried on by him or, where that person is a body corporate, an undertaking carried on by a subsidiary of that body corporate
- paying off any part of any commencing capital debt or, as the case may be, assumed capital debt of the industry or any other liability transferred to the industry.
- lending money to a subsidiary of the industry otherwise than by way of temporary loan
- for any other purpose for which capital moneys are properly applicable.

(ii) An industry may borrow from any of its wholly-owned subsidiaries without the consent or approval of the Secretary of State.

(iii) Industries to ensure that none of their wholly-owned subsidiaries borrow otherwise than from the industry or from another wholly-owned subsidiary except with the consent of the Secretary of State with the approval of Treasury.

(iv) Industries to have no power to borrow other than in accordance with their borrowing powers.

(v) The Secretary of State may give directions restricting or preventing an industry from lending to any or all of its wholly or partly-owned subsidiaries subject to such exceptions as he may specify. An industry shall not, and shall ensure that its wholly owned subsidiaries do not, guarantee third party borrowing except with the Secretary of State's consent and the Treasury's approval. The Secretary of State to have the power to order by statutory instrument that reference to guarantees be treated as extended to other types of indemnity.

(vi) A person lending money to the Corporation shall not be concerned to inquire whether the borrowing of the money is legal or regular.

(vii) The aggregate amount outstanding in respect of

(a) borrowing by the industry

(b) borrowing by the industry's wholly-owned subsidiaries

(c) borrowing by a third party (including partly owned subsidiaries) in respect of which the industry or one or more of its wholly owned subsidiaries is a guarantor

(d) sums issued by the Treasury in fulfilment of guarantees

(e) PDC issued to an industry or S18 BSC advances

(f) any public indebtedness transferred to or assumed by the industry

for each individual industry shall not exceed £X or such greater sum not exceeding £Y as the Secretary of State may from time to time specify by order (Statutory Instrument affirmative procedure).

(viii) Where a company ceases to be a wholly-owned subsidiary of an industry the Secretary of State may reduce the borrowing limit by order (Statutory Instrument negative procedure).

(ix) The Secretary of State with the approval of the Treasury may specify by order other transactions which shall be regarded as borrowing for the purpose of the borrowing limit and how the amount which is deemed to be borrowed shall be calculated (Statutory Instrument).

(x) The Secretary of State may, with the approval of the Treasury, lend to an industry any sums which it has power to borrow.

(xi) The Secretary of State may direct that any loans shall be repaid to him at such times and by such methods as he may, with the approval



of the Treasury, from time to time direct. Premature repayment would be possible on an agreed basis or, if loan agreements allow, the Secretary of State may, after having due regard to the interests of creditors, issue with the approval of the Treasury a direction requiring premature repayment of the whole or part of a loan which was originally made by the Secretary of State for a particular period.

(xii) The Secretary of State may, with the approval of the Treasury, direct how loans other than in sterling shall be valued in sterling for the purposes of the borrowing limit. In the absence of such a specification, normal accounting principles would apply.

(xiii) Borrowing between wholly-owned subsidiaries and between such subsidiaries and the industry shall not count towards the borrowing limit.

## 2. ACCOUNTS, REPORTS, AND AUDIT

(i) Duty on the industry to keep proper accounts and records; to prepare in respect of each accounting period a statement or statements of accounts or, where the industry has subsidiaries, consolidated accounts and/or such other form of group accounts as specified in a direction by the Secretary of State with the Treasury's approval giving a true and fair view of the state of affairs and profit and loss of the industry including all its subsidiaries with such exclusions which may be shown separately as the Secretary of State may, with the approval of the Treasury direct.

(ii) Subject to the overriding true and fair view, every statement of accounts prepared by the industry in accordance with (i) to comply with any direction given by the Secretary of State, with the approval of the Treasury, in relation to the information to be contained in the statements of accounts, the manner in which the information is to be presented, and the methods, accounting rules and principles according to which the statement is prepared. An industry may be required to present same information in different ways.

(iii) Power for the Secretary of State after consultation with the industry and approval of the Treasury from time to time to direct that the accounting period shall begin and/or end on such dates as specified in the direction.

(iv) All statements and accounts kept and prepared by the industry under this enactment to be audited at the end of the accounting year by auditors appointed by the Secretary of State after consultation with the industry. Secretary of State, with the approval of the Treasury, may direct an industry to exercise its power over the appointment of the auditors of any of its wholly-owned subsidiaries in a particular manner, either as to a particular person to be appointed or class of persons.

(v) Auditors appointed under (iv) above to be as appropriately recognised under section 161 of the Companies Act 1948.

(vi) Auditors appointed under (iv) above to have right of access at all times to the books and accounts and vouchers of the industry and every subsidiary whose affairs are to be dealt with in the statutory accounts and be entitled to require from the officers of the industry and any such subsidiary such information and explanation as are necessary for the performance of the duties of the auditors.

(vii) Duty on the subsidiary if incorporated in GB or Northern Ireland, and its auditors, of the industry to give to the auditors of the industry such information and explanation as those auditors may reasonably require for the purpose of their duties as auditors of the industry. Corresponding duty on the industry if required by its auditors to do so, to obtain such information and explanation as aforesaid.

(viii) As soon as accounts kept and statements prepared have been audited, an industry to send Secretary of State a copy of the statements; copies of the statements of accounts for those subsidiaries as the industry with the approval of the Secretary of State and consent of the Treasury, may determine; copies of the statements of accounts of each subsidiary of the industry which the Secretary of State, with the consent of the Treasury, may specify by notice in writing; and a copy of any report made by the auditors on the statements or accounts of the Corporation. Secretary of State to lay copies of all statements and any report by the auditors on the statements or accounts before each House of Parliament.

(ix) Duty on the industry to make to the Secretary of State, as soon as possible after the end of each accounting year, a report on the exercise and performance of its functions during that year and on its policy and programme (including activities of subsidiaries where material).

(x) Report made in (ix) above to include such information as the Secretary of State may specify in a direction; and the terms of any direction given by the Secretary of State during the year unless publication of any such direction thought by the Secretary of State

to be against the national interest.

(xi) Secretary of State to lay a copy of each annual report received by him in pursuance of (ix) before each House of Parliament.

(xii) The industry to keep at its principal offices copies of accounts kept and statements prepared under these provisions, together with the report of the auditors and annual report, to be available for inspection by the public during business hours, and to supply or make arrangements for the supply of copies to the public on demand, on payment of a reasonable charge if required.

(xiii) These provisions are without prejudice to any duty of the industry under any other enactment to provide information to the Secretary of State.

### 3. FINANCIAL TARGETS

(i) Duty on the Secretary of State with the approval of the Treasury and after consultation with the industry to lay down by order financial targets for the industry (Statutory Instrument). Such targets may be for different periods and relate to different assets and activities of the industry and may be varied or revoked. They may relate to the industry and its wholly-owned subsidiaries as a whole, or such part or parts as may be specified.

(ii) The industry shall conduct its affairs with a view to achieving any financial targets currently in force.

Note Present breakeven duties might be repealed.

#### 4. BALANCE SHEETS

(i) The Secretary of State, with the approval of the Treasury, may issue public dividend capital to an industry. An industry may with the agreement of the Secretary of State and shall if the Secretary of State with the approval of the Treasury requires them to do so, make payments to the Secretary of State in reduction of the public dividend capital of the industry. The industry may propose payment of a dividend which the Secretary of State with the Treasury's approval may accept; or the Secretary of State may after consultation with the industry and with the agreement of the Treasury direct from time to time the rate at which any public dividend capital held by the industry shall be remunerated.

(ii) The Secretary of State may after consultation with the industry and with the approval of the Treasury order that all or part of the reserves of an industry should be capitalised (ie converted into debt and/or public dividend capital) (Statutory Instrument negative procedure.) The principal of the debt shall be paid off, and interest on the loan shall be paid, in accordance with such arrangements as shall be from time to time determined by the Secretary of State with the approval of the Treasury. The repayment and remuneration of the public dividend capital would rank pari passu with any public dividend capital issued by the Secretary of State. As part of any general restructuring of a board's liabilities, the Secretary of State may with the approval of the Treasury direct that an industry should apply all or a specified part of a payment of public dividend capital in reduction of specified debts of the industry.

(iii) The Secretary of State may from time to time after consultation with the industry and with the approval of the Treasury direct the industry itself or require the industry to cause its wholly owned subsidiaries:

(a) to allocate to reserve generally or to reserve for a particular purpose either sums of such amount or description as he may specify.

(b) to reallocate for a specified purpose the whole or any part of any amount previously allocated to reserve for some other purpose.

(c) to apply amounts allocated to reserve for a specific purpose or in a specified manner.

(iv) Any allocations or re-allocations under (iii) may either be required to happen at a specific time or during the course of a specified period.

(v) The Secretary of State shall pay any sum he receives under these proposed powers into the Consolidated Fund.

(vi) The Secretary of State when exercising his powers set out above to have due regard to the interests of creditors of both the Corporation and its wholly-owned subsidiaries.

## 5. TERMS OF APPOINTMENT OF BOARD MEMBERS

In respect of new appointments and reappointments:

(i) Each member of the Board of each industry shall be appointed by the Secretary of State and shall hold and vacate office in accordance with the terms of his instrument of appointment and any regulations currently in force; on ceasing to be a member, he shall be eligible for reappointment.

(ii) The terms of appointment of a member may set out grounds for declaring an office vacant; and may provide for the removal of a member from office (without assigning cause) on notice from the Secretary of State of such length as may be specified in the instrument of appointment subject to compensation from the Board in accordance with paragraph (iii) below.

(iii) Where a person ceases to be a member of the Corporation in circumstances in which, by the terms of the instrument appointing him, compensation for loss of office or for insufficient notice of intention not to reappoint is payable or if it appears to the Secretary of State that there are special circumstances which make it reasonable to pay compensation, then the industry shall be directed by the Secretary of State with the approval of the Treasury to pay the member compensation in accordance with the terms set out in the instrument of appointment.

(iv) A member may resign his office by giving to the Secretary of State such notice as is specified in the instrument of appointment or such shorter notice as the Secretary of State may accept.

(v) Each industry shall pay to their Board members only such remuneration as may be determined by the Secretary of State with the consent of the Treasury.



## 6. FORMATION OF COMPANIES AND PRIVATISATION

(i) Industries to have the power to set up wholly owned subsidiaries under the Companies Act and with the consent of the Secretary of State and subject to any modification or conditions imposed by him be able by scheme to transfer shares, property, rights and liabilities to them or between one such subsidiary and another. Industries to be able to increase the capital of such subsidiaries. Scheme-making powers specified in legislation to be capable of subsequent amendment by order (Statutory Instrument negative procedure).

(ii) With the consent of the Secretary of State and the approval of the Treasury, an industry may provide for an employee share scheme to be established for any subsidiary established under the Companies Act and for shares to be transferred into such schemes without consideration.

(iii) Industries required to obtain, and secure that their wholly owned subsidiaries obtain, the consent of the Secretary of State and the approval of the Treasury before disposing of equity in wholly or partly-owned subsidiaries. The Secretary of State may require all or part of any consideration arising on disposal to be paid by the industry into the Consolidated Fund.

(iv) The Secretary of State may after consulting the industry and carrying out such other consultations as he thinks fit, order an industry in such manner as he specifies, to use its powers to set up wholly owned subsidiaries and to require shares, property, rights and liabilities to be transferred to them or between them (Statutory Instrument negative procedure). Power for the Secretary of State, with the approval of the Treasury, to order an industry to, or to cause its wholly owned subsidiaries to, dispose in such a manner, on such terms, at such a time, and for such purposes, as he specifies, of all or part of the equity of wholly owned subsidiaries, all or part of the equity held in partly owned subsidiaries, or such shares, property, rights, and obligations as is specified (Statutory Instrument negative procedure). The Secretary of State may require all or part of any consideration arising on disposal to be paid by the industry into the Consolidated Fund. He may by order transfer

to himself or to such persons as he or the Treasury specifies all or part of the share capital of a wholly owned subsidiary, all or part of the equity held in partly owned subsidiaries, or specified shares, property, rights and obligations, and, in consideration of this, pay out of money provided by Parliament such sums as he specifies (Statutory Instrument negative procedure). Power for the Secretary of State with the approval of the Treasury to sell or otherwise dispose of such shares, property, rights, or obligations and to pay any receipts into the Consolidated Fund.

(v) Power for the Secretary of State, after consultation with the industry to order an industry to discontinue any activity either wholly or to a specified extent; not to extend any activity or not to extend it beyond specified limits; and to exercise its control over any wholly owned subsidiary so as to cause the subsidiary to discontinue any activity either wholly or to a specified extent; not to extend any activity or not to extend it beyond specified limits. (Statutory instrument negative procedure).

(vi) An industry to require, or to cause its wholly owned subsidiaries to require, the consent of the Secretary of State before acquiring an interest in the capital of any company in which the industry or its wholly owned subsidiaries do not already hold an interest or to extend any interest presently held.

(vii) Power for the Secretary of State in order to facilitate the exercise of the powers set out above to be able by order to provide that the Acts applicable to any industry shall have effect with such modification as may be specified (Statutory Instrument negative procedure).

(viii) The Secretary of State when exercising his powers set out above to have due regard to the interests of creditors of both the Corporation and its wholly owned subsidiaries.

NAT IND. Policy Pt 9



Minister for Housing and Construction

Department of the Environment  
2 Marsham Street London SW1P 3EB  
Telephone 01-212 7601

CCNO

Ref: J/PSO/18727/84

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18 December 1984

Dear Chief Secretary,

NATIONALISED INDUSTRY LEGISLATION: CONSULTATION PROPOSALS

Thank you for sending to Patrick Jenkin a copy of your letter of 5<sup>th</sup> December with the consultation note on nationalised industry legislation.

I have reservations about the reference in paragraph 4 of the paper to a "more uniform legal basis for nationalised industry consumer councils' operations". In the last 12 months, we have instituted new arrangements for water authorities, under Section 5 of the Water Act, 1983. These arrangements reflect the water authorities' regulatory responsibilities, as well as their service functions. May I reserve judgement until the supplementary consultation note is available in draft form?

Two points arise on paragraphs 24-26 ("Terms of appointment of Board members"). First, when Patrick appointed 13 Chief Officers to full time membership of the 9 regional water authorities in October 1983, he did so on the basis that their terms and conditions of appointment would be no worse than would have applied had they not been appointed. That constitutes a precedent which is well-known in the industry, and when I am asked if we expect to follow it in future, I reply that we do. We have had Treasury agreement to giving this assurance in the past.

Secondly, I think it is impracticable for a Secretary of State to consult "the non-executive members" of a Board before terminating the appointment of the Chairman. There may be a dozen of them. Some will be closer to the Chairman than to the Secretary of State. It is a sensitive situation. I suggest that we might say:

"The Secretary of State would expect to consult a Board's Chairman before exercising a power of termination in respect of a Board member and also before including such a provision in a member's instrument of appointment" (omitting the intervening words).

I am interested to see (paragraph 15) that it is not intended to put External Financing Limits (EFLs) onto a statutory basis. I believe that if we are to enforce a negative EFL, it is necessary to have a statutory power in reserve. Section 29 (2)(b) of the Water Act 1973 provides such a power, and I am considering the need to use it in the case of Thames Water Authority to ensure that it complies with its negative EFL in 1985/86.

I am copying this letter to the Prime Minister, to other members of E(NI), the Lord President, the Lord Privy Seal, the Secretary of State for Wales and Sir Robert Armstrong.

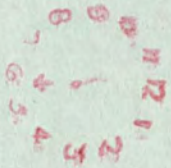
*Yours sincerely,*

*N. K. G.*

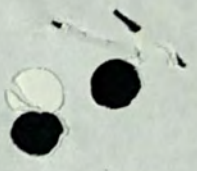
*AP* IAN GOW

*(Approved by the Minister  
and signed in his absence)*

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PT9 Policy



118 DEC 1924





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AT 14/12  
CCNO  
SCOTTISH OFFICE  
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Peter Rees QC MP  
Chief Secretary to the Treasury  
HM Treasury  
Parliament St  
LONDON  
SW1P 3AG

14<sup>th</sup> December 1984

Dear Peter,

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

Thank you for sending me a copy of your letter of 5 December to Peter Walker. I am content with the draft consultation note attached to your letter and agree that we should embark on the consultation process without delay.

Once the document has gone to NICG and the individual industries I intend to send copies to the Electricity Consultative Councils in Scotland which have expressed a positive interest in the content of the proposed legislation. Otherwise I am content with the mechanics of consultation you have outlined.

I am sending copies of this letter to the Prime Minister, other E(NI) colleagues, the Lord President, Lord Privy Seal, the Secretary of State for Wales and Sir Robert Armstrong.

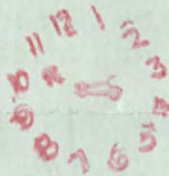
Yours ever,

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The Rt Hon Peter Rees QC MP  
Chief Secretary  
HM Treasury  
Parliament Street  
LONDON SW1P 3AG

13 December 1984

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

Thank you for your letter of 5 December and for letting me see the consultation document on the proposed Nationalised Industries Legislation.

I have to say that, in spite of the changes you have made since the earlier proposals, I do not expect the fears of the Chairmen of the Energy Nationalised Industries, as they have been expressed to me, to be much allayed by the consultative document. However, the document fairly reflects the terms of the E(NI) conclusion and I agree that it should form the basis of the further consultation you are now proposing.

You discussed how we might organise the consultation. If you are satisfied, from your contacts with the NICG, that the Chairmen will not feel affronted and be unnecessarily provoked by making the document as freely available as you describe, then I accept that the risks of leaks are such as to justify that course. I agree also that sponsor departments should have their own consultations with individual industries.

I am copying this letter to Prime Minister, other E(NI) colleagues, Willie Whitelaw, Nicholas Edwards, John Biffen and Sir Robert Armstrong.

PETER WALKER



Nat Ind: Policy Pt. 9.



NB:PM  
AT 4/12

CCWO

PRIVY COUNCIL OFFICE

WHITEHALL, LONDON SW1A 2AT

11 December 1984

Dear Peter,

NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS

I have seen a copy of your letter to Peter Walker of 5 December in which you asked for colleagues' views on your proposals for consultation.

I am in general entirely happy with what you propose, and I am glad to see that you are intending to end the consultation period by the end of February, which will I hope give ample time for the preparation of instructions and the drafting of the Bill ready for introduction at the beginning of the 1985/86 Session if Cabinet so approve. In that context, I hope that the proposal for a possible supplementary consultation note on nationalised industries consumer councils will not be allowed to run to a much later timetable.

I have only one small point of detail on the consultation document itself. The preamble says that there "will be subsequent opportunities for nationalised industries to review the detail of proposed legislation". This sounds as though you are intending to show the nationalised industries the legislation in draft. Whilst this is an admirable aim, I have some doubts whether it can realistically be fitted into the timescale which you have set yourself. I would therefore like to suggest that the words "proposed legislation" are deleted and replaced by "the proposals". If you do find yourself in a position to show them draft legislation, so much the better. However, by not giving a commitment at this stage it may be that you will be able to satisfy them by showing them preparatory papers or even the instructions to Counsel.

I am sending copies of this letter to the Prime Minister, members of E(NI), the Lord President, the Secretary of State for Wales and Sir Robert Armstrong.

Yours  
John Biffen

JOHN BIFFEN

The Rt Hon Peter Rees QC MP  
Chief Secretary to the Treasury

Nat. Ind. PT9

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Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Peter Walker MBE MP  
Secretary of State for Energy  
Thames House South  
Millbank  
London SW1P 3EB

5 December 1984

Dear Secretary of State

**NATIONALISED INDUSTRIES LEGISLATION: CONSULTATION PROPOSALS**

E(NI) 6th meeting agreed not to proceed this Session with a Nationalised Industries Bill but to carry out further consultations with the industries. Officials in sponsoring Departments and the Treasury have considered how best to do this and have prepared the attached consultation note.

The consultation note, which is based on E(NI)(84) 14, sets out our intentions and explains why we think legislative changes are necessary. It takes into account wherever possible Chairmen's concerns over our earlier proposals. In particular:

- (i) it adopts a more flexible and simplified approach to the appointment and dismissal of board members. It places emphasis on the instruments of appointment agreed individually with Board members and the Secretary of State;
- (ii) it makes explicit that the statutory power being taken over financial targets is not intended to cover performance aims or EFLs;
- (iii) it spells out how powers might be exercised (e.g. by direction or by statutory instrument);
- (iv) it drops a general power to clawback industries' reserves and rests instead on the balance sheet restructuring proposals.

It also refers to the possibility that a Bill might include some long-promised legislation on nationalised industry consumer councils (NICCs). I understand that the Department of Trade and Industry would welcome this although a final decision awaits more detailed consideration.

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Once I know that you and other colleagues are content, I intend to see Mr Dent, the NICG Chairman, to let him know our intentions prior to sending the document to the NICG formally. Sponsor Departments can then open up consultations with individual industries and the Treasury will be happy to take part in these. I do not think that we can keep this process of consultation secret and I intend to inform Parliament via a low-key Written Answer and place a copy of the document in the Library. I do not think that we need deliberately stimulate comments but copies of the document will be made available on request to organisations who wish to see it.

If a Bill is to be got ready by the beginning of the 1985-86 Session, we need to have all comments on points of principle by end-February, although I shall want to review progress as the consultation proceeds. I would like to start this process as soon as possible and I would be grateful if you and colleagues would let me know by 12 December if you are content.

I am sending copies of this letter and enclosure to the Prime Minister, other E(NI) colleagues, the Lord President, the Lord Privy Seal, the Secretary of State for Wales and Sir Robert Armstrong.

*Yours sincerely*

*[Signature]*  
for PETER REES

*[Approved by the Secretary of State]*

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NATIONALISED INDUSTRIES LEGISLATION

Consultation Proposals

H M Treasury  
3 December 1984

The Government intends to legislate in due course to update various aspects of nationalised industry statutes. This note sets out the background to the proposed changes and indicates what areas might be covered. It has been prepared so that the Government can take account of comments on these proposals received by end-February 1985. There will be subsequent opportunities for nationalised industries to review the detail of proposed legislation.

The Treasury is coordinating this consultation on behalf of the various Departments which sponsor nationalised industries. Departments will be discussing the proposals with individual industries. Comments should be sent either to the appropriate Department or to PE2 Division, HM Treasury, Parliament Street, London SW1P 3AG.

The Government has reviewed the existing statutes of nationalised industries and has concluded that they need to be updated. Although the differing nature of industries clearly needs to be recognised, a number of policies are applied consistently to all industries. Present statutes do not reflect this and vary greatly depending in part on when they were enacted. Some statutes are nearly forty years old and have not been kept in line with policies developed by successive Governments.

2. Private sector companies are regulated by a common set of statutory provisions and the Government considers that it would be advantageous if a single Act set out the core framework to be applied to nationalised industries. This would incorporate many provisions from existing statutes and would also reflect developments in the relationship between industries and the Government since statutes were originally enacted. The legislation that would result would provide clear guidelines within which those industries remaining in the public sector would have freedom to operate as successful, commercial businesses. Parliament, industries and the Government would know more clearly where they stand.

3. The proposed legislation would apply to all those industries listed in Annex A. It would set out standard provisions and also insert them appropriately into existing Acts. The powers would generally be permissive, allowing the use made of them to be tailored to the specific circumstances of each industry. In applying the new Act to individual industries, the Government would intend to use its powers only after proper consultation with the boards concerned.

4. It is proposed that the legislation should deal with the following:

- (i) Borrowing and guarantees
- (ii) Accounts, reports, and audit
- (iii) Financial targets
- (iv) Balance sheets
- (v) Terms of appointment of board members



(vi) Formation of companies and privatisation

The background to these proposals is set out below and Annex B describes in detail how the proposals might be implemented. Nearly all the proposals have precedents in existing legislation. There is an outstanding commitment to legislate to establish a more uniform legal basis for Nationalised Industry Consumer Councils operations and the Government is considering whether to extend its proposals to cover this. If so, a supplementary consultation note will be issued.

5. In a number of cases, implementation of the proposed powers in respect of individual industries would involve supplementary legal procedures. The possible alternatives are notices in writing, formal directions, or statutory instruments which may or may not involve a Parliamentary procedure. The proposed method of implementation is shown where appropriate. Powers over industries' reserves, privatisation and financial targets would all be exercised via statutory instruments.

#### **BORROWING AND GUARANTEES**

6. The Government considers that all nationalised industries should have comprehensive powers to borrow with the approval of Ministers either within the UK or overseas. At present, some industries' statutes bar them from certain sources of finance and it is proposed that these restrictions should be removed. It is generally advantageous for industries to borrow from the National Loans Fund but removal of the restrictions would, for example, permit the introduction of market finance into any industry, if this was thought desirable.

7. The Public Accounts Committee (PAC) has recommended<sup>1</sup> that statutory borrowing limits of public bodies should include borrowings by subsidiaries and guarantees made by an industry or its subsidiaries in order to ensure Parliament's overall financial control of public bodies. Although borrowing limits might need to be substantially higher in recognition of the change, this would be no more than a recognition of the realities of the situation of which Parliament should be made fully aware. It is therefore proposed that the coverage

of industries' borrowing limits should be adjusted to include borrowing by wholly-owned subsidiaries and all borrowing by third parties which is guaranteed by an industry or its wholly-owned subsidiaries.

8. Occasionally, new forms of raising finance are devised which legally are not defined as "borrowing" although they are closely akin. In order that borrowing limits can properly ensure overall financial control, it is proposed that there should be a mechanism for bringing such liabilities within the scope of borrowing limits. This power would be exercised via statutory instruments.

9. Some industries borrow in overseas currencies which may or may not be covered by the Public Sector Exchange Cover Scheme. In order to be included in an industry's statutory borrowing limit, such loans must be converted into sterling. It is proposed that the principles by which such loans are valued should be legally determined with the presumption that normal accounting principles would generally be followed (eg as set out in SSAP20) unless the Secretary of State specifies otherwise.

10. In order that a comprehensive set of provisions can be drafted, it is proposed also to include standard provisions relating to the issuing of Treasury guarantees, the purposes for which money can be borrowed, the setting of statutory borrowing limits (subject as now to Parliamentary procedure), the powers of the Secretary of State to lend to an industry, and some ancillary provisions.

#### **ACCOUNTS, REPORT AND AUDIT**

11. Individual industries' accounts are produced to a high standard and are often commended both for their content and manner of presentation. It would however assist those outside the industries who use the accounts, including Parliament and Government, if there were greater consistency in presentation and in the accounting principles that are applied. To supplement the overriding requirement that the accounts give a true and fair view, it is proposed to bring the differing statutory requirements governing the accounts into a common form in line with recent legislative precedents. There would be powers for the Secretary of State with the approval of the Treasury

to direct:

- (i) the information to be contained in the accounts,
- (ii) the manner in which the information is to be presented, and
- (iii) the methods and principles by which the accounts are to be prepared.

Given the overriding requirement that all industries' accounts give a true and fair view, the accounting rules and presentation set by the Secretary of State would have to be appropriate to the particular industry.

12. Industries' annual accounts should be audited to the highest standards comparable to those found in the private sector. Auditors should have generally the same rights and duties as those appointed under the Companies Act. Although present audit provisions are comprehensive, they have certain technical deficiencies compared to analogous Companies Acts requirements (eg there is no statutory access to information) and it is proposed to remedy this.

13. Although what is said in an industry's annual report is essentially a matter for the industry, the Government thinks it right to be able to require that specified topics are included. These topics might include, for example, performance against targets and an industry's response to any MMC study that has been carried out during the year. Annual reports are all laid before Parliament and it is open to Parliament to examine industries on what is said. The reports are an important aspect of accountability and the inclusion of specified topics would strengthen this.

#### **FINANCIAL TARGETS**

14. It is Government policy that financial targets, normally expressed as a specified rate of return on assets, should be set for nationalised industries. These targets provide an incentive for industries to operate efficiently and are a proxy for the financial disciplines

found in the private sector. The targets which are set after consultation with the industry concerned, normally span a 3-5 year period, and are notified to Parliament or subject to a Parliamentary procedure.

15. In the case of nearly half the nationalised industries, it is already possible to give financial targets statutory backing. Because of their central place in the financial framework, the Government considers it right to give all targets this backing. It is proposed that Ministers should set targets for each industry after full consultation with its board and that boards should be required to conduct their affairs with a view to achieving whatever targets are currently in force. The target would thus not be cast in the form of an absolute duty. It is not intended that performance aims or external financing limits (EFLs) should be put onto a statutory basis.

16. Unlike the traditional break-even requirement, targets can be tailored to fit the circumstances of individual industries. The Government proposes to repeal existing breakeven duties which in their present statutory form are no longer a satisfactory form of control. If this is done, it would be necessary to place a duty on the Secretary of State to set a financial target in order to ensure that a vacuum is not created.

#### **BALANCE SHEETS**

17. Nationalised industry balance sheets are very different from those of private sector companies. When they were set up, most of the industries were given debt liabilities equal to their net assets, in the expectation that debt interest would adequately reflect the cost of capital employed. However, with time, the value of this debt has been progressively eroded. There have also been substantial repayments and rising internal financing ratios. Overall, debt financing is now, on average, around 20 per cent of real capital employed, and interest payments amount to only 2 per cent per annum of capital employed. By contrast, in the private sector, the impact of inflation in reducing the real cost of conventional debt has led to higher earnings and dividends on equity capital. A number of nationalised industries are approaching or have reached a debtfree

position and in the absence of an equivalent to equity capital in their balance sheets have little or no external liabilities.

18. As the cost of capital has progressively disappeared from the accounts of some industries, their apparent profits have increased. More importantly, funds, which in the private sector would have gone into higher dividend payments to maintain or increase the real value of shareholders' capital have been entirely ploughed back into the business. The overall effect is to relax financial disciplines.

19. The PAC has considered<sup>2</sup> the position of industries which generate surpluses. It concluded that 'there should not be a strong presumption that surpluses in excess of interest commitments should all be retained by an industry'. It thought that 'an industry should not be allowed to amass reserves to such an extent that there is a danger of blunting the edge of the discipline that should operate on future investment decisions'.

20. Separately, the PAC has concluded<sup>3</sup> that the creation and maintenance of a suitable capital structure has an important role in promoting financial discipline. It recommended that the creation of liabilities to pay to the Exchequer out of surpluses 'a pre-determined sum related to the target set could be seen as equivalent to servicing the publicly-owned "equity" in the industries; and payments required in this way should be less of a disincentive to the management than claw-back arrangements.' The Government agrees with this.

21. The Government considers therefore that powers should be taken which would allow industries' balance sheets to be restructured. The powers, the exercise of which would require a Statutory Instrument to be laid before Parliament, would allow all or part of reserves to be capitalised as debt and public dividend capital. Restructuring would only be carried out after consultation with the industry affected and would be required to have due regard to the interests of creditors. The intention would be to create balance sheets that properly reflected a medium term view of industries' commercial circumstances and prospects taking account of financial targets.

22. Additionally, the Government intends to take powers which would

allow the introduction of new public dividend capital into industries in appropriate circumstances and is considering allowing lending on indexed-terms to the industries from the National Loans Fund.

23. In order that all matters relating to balance sheets can be brought together, the Government is considering consolidating existing powers over reserves which allow the Secretary of State to direct allocation and reallocations and permit control, if necessary, over the application of reserves within an industry.

#### TERMS OF APPOINTMENT OF BOARD MEMBERS

24. The Government has been considering terms of appointment of nationalised industry board members and thinks that there would be some advantage in more flexible provisions than currently operate. At present, some provisions are set out in primary legislation, others in regulations, and some in the individual instruments of appointment that are agreed with members before appointment.

25. It is proposed that in future all newly appointed or reappointed members should hold and vacate office in accordance with the instrument that appointed them and in accordance with any regulations currently in force. All such instruments would, as now, provide for a member's office to be declared vacant in certain specified circumstances (eg ill-health). General requirements of this sort might be laid down in regulations. Additionally, if the circumstances of a particular appointment made it appropriate, instruments might allow appointments to be terminated on due notice. (The Secretary of State would expect to consult a Board's chairman before exercising such a power in respect of a board member and the non-executive members before its exercise in respect of a Chairman. The Secretary of State would also expect to consult the Chairman before including such a provision in a member's Instrument of appointment.) Instruments would provide for compensation to be paid if appointments are terminated, [or if agreed notice is not given of the Secretary of State's intention not to reappoint at the end of a member's term of office,] or if the Secretary of State thinks that there are circumstances which make it right to do so. As is generally the case now, industries would only be permitted to pay such remuneration to board members as had been agreed by the

Secretary of State.

26. The Government thinks that arrangements on the above lines would advantageously allow instruments of appointment to be negotiated that are more analogous to those found in the private sector. The exact terms and conditions applying to individual board members would of course be a matter for agreement at the time of the appointment although the Government would hope to agree some general principles with the Nationalised Industries Chairmen's Group covering for example periods of appointment and compensation provisions.

#### **FORMATION OF COMPANIES AND PRIVATISATION**

27. The Government considers as a general principle that activities of state-owned businesses should be transferred to the private sector where this makes commercial and practical sense. This enables market influences to operate to the benefit of the activities themselves, customers, employees, and the economy as a whole. For a number of industries, enabling legislation already exists that allows privatisation to take place. It is intended to extend this and apply general enabling legislation to all industries which would allow private capital to be introduced and activities and assets sold. However, complete privatisation of a whole corporation would continue to require primary legislation.

28. All industries would be given power to set up subsidiaries under the Companies Acts and transfer property, rights and liabilities to them. This would enable industries to carry out their activities through Companies Acts companies where this seems sensible and to structure their operations in accordance with normal commercial practice. This restructuring may or may not be a prelude to privatisation.

29. Powers, involving a Parliamentary procedure, would also be taken allowing Ministers to require that assets and activities are privatised in accordance with their instructions.

30. As a corollary to the above powers, Ministers would be able by order to require industries to discontinue specified activities and

direct them not to extend their interests. This power is already found in some existing statutes. It is proposed that its exercise should require a Parliamentary procedure.

31. Further details of how the above powers might be drafted are set out in Annex B.

#### References

1. PAC's 8th Report 1977-78 Session and 1st Report 1979-80 Session.
2. PAC's 20th Report 1979-80.
3. PAC's 15th Report 1980-81 Session.



ANNEX A

INDUSTRIES TO BE COVERED BY PROPOSED LEGISLATION

British Airports Authority  
Civil Aviation Authority  
National Coal Board  
Electricity Council  
Central Electricity Generating Board  
Area Electricity Boards  
North of Scotland Hydro-Electric Board  
South of Scotland Electricity Board  
British Gas Corporation  
British National Oil Corporation  
Post Office  
British Shipbuilders  
British Steel Corporation  
British Railways Board  
British Waterways Board  
Scottish Transport Group  
London Regional Transport  
Regional Water Authorities  
Welsh Water Authority

(National Bus Company omitted on presumption that bus legislation will be enacted in 1984-85 Session.)

DETAILS OF PROPOSED PROVISIONS

1. BORROWING AND GUARANTEES

(i) An industry may

(a) carry out temporary borrowing in sterling from the Secretary of State and with the consent of the Secretary of State and the approval of the Treasury in sterling or a currency other than sterling from a person other than the Secretary of State, such sums as may be required for itself, for any of its wholly-owned subsidiaries or for lending to any of its wholly owned subsidiaries.

(b) carry out borrowing other than by temporary loan in sterling from the Secretary of State and with the consent of the Secretary of State and the approval of the Treasury in sterling or a currency other than sterling from a person other than the Secretary of State such sums as may be required by the industry or any of its wholly-owned subsidiaries for any or all of the following purposes:

- provision of money for meeting any expenses incurred by the industry or the subsidiary in connection with any works the cost of which is chargeable to capital account
- provision of working capital required by it or the subsidiary
- subscription for or acquisition of securities of an incorporated company or other body corporate, promotion of the formation of an incorporated company or participation in the promotion of such a company or acquisition of an undertaking or part of an undertaking
- repayment of any money borrowed by it or the subsidiary, redemption of stock or other security and repayment of any sums issued by the Treasury in fulfilment of a guarantee

by the Treasury

- for lending money to or meeting a guarantee given for the benefit of any person for the purpose of an undertaking carried on by him or, where that person is a body corporate, an undertaking carried on by a subsidiary of that body corporate
- paying off any part of any commencing capital debt or, as the case may be, assumed capital debt of the industry or any other liability transferred to the industry.
- lending money to a subsidiary of the industry otherwise than by way of temporary loan
- for any other purpose for which capital moneys are properly applicable.

(ii) An industry may borrow from any of its wholly-owned subsidiaries without the consent or approval of the Secretary of State.

(iii) Industries to ensure that none of their wholly-owned subsidiaries borrow otherwise than from the industry or from another wholly-owned subsidiary except with the consent of the Secretary of State with the approval of Treasury.

(iv) Industries to have no power to borrow other than in accordance with their borrowing powers.

(v) The Secretary of State may give directions restricting or preventing an industry from lending to any or all of its wholly or partly-owned subsidiaries subject to such exceptions as he may specify. An industry shall not, and shall ensure that its wholly owned subsidiaries do not, guarantee third party borrowing except with the Secretary of State's consent and the Treasury's approval. The Secretary of State to have the power to order by statutory instrument that reference to guarantees be treated as extended to other types of indemnity.

(vi) A person lending money to the Corporation shall not be concerned to inquire whether the borrowing of the money is legal or regular.

(vii) The aggregate amount outstanding in respect of

(a) borrowing by the industry

(b) borrowing by the industry's wholly-owned subsidiaries

(c) borrowing by a third party (including partly owned subsidiaries) in respect of which the industry or one or more of its wholly owned subsidiaries is a guarantor

(d) sums issued by the Treasury in fulfilment of guarantees

(e) PDC issued to an industry or S18 BSC advances

(f) any public indebtedness transferred to or assumed by the industry

for each individual industry shall not exceed £X or such greater sum not exceeding £Y as the Secretary of State may from time to time specify by order (Statutory Instrument affirmative procedure).

(viii) Where a company ceases to be a wholly-owned subsidiary of an industry the Secretary of State may reduce the borrowing limit by order (Statutory Instrument negative procedure).

(ix) The Secretary of State with the approval of the Treasury may specify by order other transactions which shall be regarded as borrowing for the purpose of the borrowing limit and how the amount which is deemed to be borrowed shall be calculated (Statutory Instrument).

(x) The Secretary of State may, with the approval of the Treasury, lend to an industry any sums which it has power to borrow.

(xi) The Secretary of State may direct that any loans shall be repaid to him at such times and by such methods as he may, with the approval

of the Treasury, from time to time direct. Premature repayment would be possible on an agreed basis or, if loan agreements allow, the Secretary of State may, after having due regard to the interests of creditors, issue with the approval of the Treasury a direction requiring premature repayment of the whole or part of a loan which was originally made by the Secretary of State for a particular period.

(xii) The Secretary of State may, with the approval of the Treasury, direct how loans other than in sterling shall be valued in sterling for the purposes of the borrowing limit. In the absence of such a specification, normal accounting principles would apply.

(xiii) Borrowing between wholly-owned subsidiaries and between such subsidiaries and the industry shall not count towards the borrowing limit.

## 2. ACCOUNTS, REPORTS, AND AUDIT

(i) Duty on the industry to keep proper accounts and records; to prepare in respect of each accounting period a statement or statements of accounts or, where the industry has subsidiaries, consolidated accounts and/or such other form of group accounts as specified in a direction by the Secretary of State with the Treasury's approval giving a true and fair view of the state of affairs and profit and loss of the industry including all its subsidiaries with such exclusions which may be shown separately as the Secretary of State may, with the approval of the Treasury direct.

(ii) Subject to the overriding true and fair view, every statement of accounts prepared by the industry in accordance with (i) to comply with any direction given by the Secretary of State, with the approval of the Treasury, in relation to the information to be contained in the statements of accounts, the manner in which the information is to be presented, and the methods, accounting rules and principles according to which the statement is prepared. An industry may be required to present same information in different ways.

(iii) Power for the Secretary of State after consultation with the industry and approval of the Treasury from time to time to direct that the accounting period shall begin and/or end on such dates as specified in the direction.

(iv) All statements and accounts kept and prepared by the industry under this enactment to be audited at the end of the accounting year by auditors appointed by the Secretary of State after consultation with the industry. Secretary of State, with the approval of the Treasury, may direct an industry to exercise its power over the appointment of the auditors of any of its wholly-owned subsidiaries in a particular manner, either as to a particular person to be appointed or class of persons.

(v) Auditors appointed under (iv) above to be a member either of one or more bodies of accountants established in the United Kingdom and recognised for the purposes of section 161 of the Companies Act 1948 by the Secretary of State.

(vi) Auditors appointed under (iv) above to have right of access at all times to the books and accounts and vouchers of the industry and every subsidiary whose affairs are to be dealt with in the statutory accounts and be entitled to require from the officers of the industry and any such subsidiary such information and explanation as are necessary for the performance of the duties of the auditors.

(vii) Duty on the subsidiary if incorporated in GB or Northern Ireland, and its auditors, of the industry to give to the auditors of the industry such information and explanation as those auditors may reasonably require for the purpose of their duties as auditors of the industry. Corresponding duty on the industry if required by its auditors to do so, to obtain such information and explanation as aforesaid.

(viii) As soon as accounts kept and statements prepared have been audited, an industry to send Secretary of State a copy of the statements; copies of the statements of accounts for those subsidiaries as the industry with the approval of the Secretary of State and consent of the Treasury, may determine; copies of the statements of accounts of each subsidiary of the industry which the Secretary of State, with the consent of the Treasury, may specify by notice in writing; and a copy of any report made by the auditors on the statements or accounts of the Corporation. Secretary of State to lay copies of all statements and any report by the auditors on the statements or accounts before each House of Parliament.

(ix) Duty on the industry to make to the Secretary of State, as soon as possible after the end of each accounting year, a report on the exercise and performance of its functions during that year and on its policy and programme (including activities of subsidiaries where material).

(x) Report made in (ix) above to include such information as the Secretary of State may specify in a direction; and the terms of any direction given by the Secretary of State during the year unless publication of any such direction thought by the Secretary of State

to be against the national interest.

(xi) Secretary of State to lay a copy of each annual report received by him in pursuance of (ix) before each House of Parliament.

(xii) The industry to keep at its principal offices copies of accounts kept and statements prepared under these provisions, together with the report of the auditors and annual report, to be available for inspection by the public during business hours, and to supply or make arrangements for the supply of copies to the public on demand, on payment of a reasonable charge if required.

(xiii) These provisions are without prejudice to any duty of the industry under any other enactment to provide information to the Secretary of State.



### 3. FINANCIAL TARGETS

(i) Duty on the Secretary of State with the approval of the Treasury and after consultation with the industry to lay down by order financial targets for the industry (Statutory Instrument). Such targets may be for different periods and relate to different assets and activities of the industry and may be varied or revoked. They may relate to the industry and its wholly-owned subsidiaries as a whole, or such part or parts as may be specified.

(ii) The industry shall conduct its affairs with a view to achieving any financial targets currently in force.

Note Present breakeven duties will be repealed.

#### 4. BALANCE SHEETS

(i) The Secretary of State, with the approval of the Treasury, may issue public dividend capital to an industry. An industry may with the agreement of the Secretary of State and shall if the Secretary of State with the approval of the Treasury requires them to do so, make payments to the Secretary of State in reduction of the public dividend capital of the industry. The industry may propose payment of a dividend which the Secretary of State with the Treasury's approval may accept; or the Secretary of State may after consultation with the industry and with the agreement of the Treasury direct from time to time the rate at which any public dividend capital held by the industry shall be remunerated.

(ii) The Secretary of State may after consultation with the industry and with the approval of the Treasury order that all or part of the reserves of an industry should be capitalised (ie converted into debt and/or public dividend capital) (Statutory Instrument negative procedure.) The principal of the debt shall be paid off, and interest on the loan shall be paid, in accordance with such arrangements as shall be from time to time determined by the Secretary of State with the approval of the Treasury. The repayment and remuneration of the public dividend capital would rank pari passu with any public dividend capital issued by the Secretary of State. As part of any general restructuring of a board's liabilities, the Secretary of State may with the approval of the Treasury direct that an industry should apply all or a specified part of a payment of public dividend capital in reduction of specified debts of the industry.

(iii) The Secretary of State may from time to time after consultation with the industry and with the approval of the Treasury direct the industry itself or require the industry to cause its wholly owned subsidiaries:

(a) to allocate to reserve generally or to reserve for a particular purpose either sums of such amount or description as he may specify.

(b) to reallocate for a specified purpose the whole or any part of any amount previously allocated to reserve for some other purpose.

(c) to apply amounts allocated to reserve for a specific purpose or in a specified manner.

(iv) Any allocations or re-allocations under (iii) may either be required to happen at a specific time or during the course of a specified period.

(v) The Secretary of State shall pay any sum he receives under these proposed powers into the Consolidated Fund.

(vi) The Secretary of State when exercising his powers set out above to have due regard to the interests of creditors of both the Corporation and its wholly-owned subsidiaries.

## 5. TERMS OF APPOINTMENT OF BOARD MEMBERS

In respect of new appointments and reappointments:

(i) Each member of the Board of each industry shall be appointed by the Secretary of State and shall hold and vacate office in accordance with the terms of his instrument of appointment and any regulations currently in force; on ceasing to be a member, he shall be eligible for reappointment.

(ii) The terms of appointment of a member may set out grounds for declaring an office vacant; and may provide for the removal of a member from office (without assigning cause) on notice from the Secretary of State of such length as may be specified in the instrument of appointment subject to compensation from the Board in accordance with paragraph (iii) below.

(iii) Where a person ceases to be a member of the Corporation in circumstances in which, by the terms of the instrument appointing him, compensation for loss of office or for insufficient notice of intention not to reappoint is payable or if it appears to the Secretary of State that there are special circumstances which make it reasonable to pay compensation, then the industry shall be directed by the Secretary of State with the approval of the Treasury to pay the member compensation in accordance with the terms set out in the instrument of appointment.

(iv) A member may resign his office by giving to the Secretary of State such notice as is specified in the instrument of appointment or such shorter notice as the Secretary of State may accept.

(v) Each industry shall pay to their Board members only such remuneration as may be determined by the Secretary of State with the consent of the Treasury.

## 6. FORMATION OF COMPANIES AND PRIVATISATION

(i) Industries to have the power to set up wholly owned subsidiaries under the Companies Act and with the consent of the Secretary of State and subject to any modification or conditions imposed by him be able by scheme to transfer shares, property, rights and liabilities to them or between one such subsidiary and another. Industries to be able to increase the capital of such subsidiaries. Scheme-making powers specified in legislation to be capable of subsequent amendment by order (Statutory Instrument negative procedure).

(ii) With the consent of the Secretary of State and the approval of the Treasury, an industry may provide for an employee share scheme to be established for any subsidiary established under the Companies Act and for shares to be transferred into such schemes without consideration.

(iii) Industries required to obtain, and secure that their wholly owned subsidiaries obtain, the consent of the Secretary of State and the approval of the Treasury before disposing of equity in wholly or partly-owned subsidiaries. The Secretary of State may require all or part of any consideration arising on disposal to be paid by the industry into the Consolidated Fund.

(iv) The Secretary of State may after consulting the industry and carrying out such other consultations as he thinks fit, order an industry in such manner as he specifies, to use its powers to set up wholly owned subsidiaries and to require shares, property, rights and liabilities to be transferred to them or between them (Statutory Instrument negative procedure). Power for the Secretary of State, with the approval of the Treasury, to order an industry to, or to cause its wholly owned subsidiaries to, dispose in such a manner, on such terms, at such a time, and for such purposes, as he specifies, of all or part of the equity of wholly owned subsidiaries, all or part of the equity held in partly owned subsidiaries, or such shares, property, rights, and obligations as is specified (Statutory Instrument negative procedure). The Secretary of State may require all or part of any consideration arising on disposal to be paid by the industry into the Consolidated Fund. He may by order transfer

to himself or to such persons as he or the Treasury specifies all or part of the share capital of a wholly owned subsidiary, all or part of the equity held in partly owned subsidiaries, or specified shares, property, rights and obligations, and, in consideration of this, pay out of money provided by Parliament such sums as he specifies (Statutory Instrument negative procedure). Power for the Secretary of State with the approval of the Treasury to sell or otherwise dispose of such shares, property, rights, or obligations and to pay any receipts into the Consolidated Fund.

(v) Power for the Secretary of State, after consultation with the industry to order an industry to discontinue any activity either wholly or to a specified extent; not to extend any activity or not to extend it beyond specified limits; and to exercise its control over any wholly owned subsidiary so as to cause the subsidiary to discontinue any activity either wholly or to a specified extent; not to extend any activity or not to extend it beyond specified limits. (Statutory instrument negative procedure).

(vi) An industry to require, or to cause its wholly owned subsidiaries to require, the consent of the Secretary of State before acquiring an interest in the capital of any company in which the industry or its wholly owned subsidiaries do not already hold an interest or to extend any interest presently held.

(vii) Power for the Secretary of State in order to facilitate the exercise of the powers set out above to be able by order to provide that the Acts applicable to any industry shall have effect with such modification as may be specified (Statutory Instrument negative procedure).

(viii) The Secretary of State when exercising his powers set out above to have due regard to the interests of creditors of both the Corporation and its wholly owned subsidiaries.