



# Export and Investment Guarantees Act 1991

## 1991 CHAPTER 67

An Act to make new provision as to the functions exercisable by the Secretary of State through the Export Credits Guarantee Department; and make provision as to the delegation of any such functions and the transfer of property, rights and liabilities attributable to the exercise of any such functions. [22nd October 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### POWERS OF ECGD

##### **1 Assistance in connection with exports of goods and services**

- (1) The Secretary of State may make arrangements under this section with a view to facilitating, directly or indirectly, supplies by persons carrying on business in the United Kingdom of goods or services to persons carrying on business outside the United Kingdom.
- (2) The Secretary of State may make arrangements under this section for the purpose of rendering economic assistance to countries outside the United Kingdom.
- (3) The Secretary of State may make arrangements under this section with a view to facilitating—
  - (a) the performance of obligations created or arising, directly or indirectly, in connection with matters as to which he has exercised his powers under this section or section 2 of this Act, or

- (b) the reduction or avoidance of losses arising in connection with any failure to perform such obligations.
- (4) The arrangements that may be made under this section are arrangements for providing financial facilities or assistance for, or for the benefit of, persons carrying on business; and the facilities or assistance may be provided in any form, including guarantees, insurance, grants or loans.

## **2 Insurance in connection with overseas investment**

- (1) The Secretary of State may make arrangements for insuring any person carrying on business in the United Kingdom against risks of losses arising—
- (a) in connection with any investment of resources by the insured in enterprises carried on outside the United Kingdom, or
  - (b) in connection with guarantees given by the insured in respect of any investment of resources by others in such enterprises, being enterprises in which the insured has any interest,
- being losses resulting directly or indirectly from war, expropriation, restrictions on remittances and other similar events.
- (2) The Secretary of State may make arrangements for insuring persons providing such insurance.
- (3) References in subsection (1) above to a person carrying on business in the United Kingdom and to the insured include any company controlled directly or indirectly by him.

## **3 Financial management**

- (1) The Secretary of State may make any arrangements which, in his opinion, are in the interests of the proper financial management of the ECGD portfolio, or any part of it.
- (2) In pursuance of arrangements under this section the Secretary of State may enter into any form of transaction, including—
- (a) lending, and
  - (b) providing and taking out insurance and guarantees.
- (3) The Secretary of State may not, in pursuance of such arrangements, enter into any transaction for the purpose of borrowing money but, subject to that, he is not precluded from entering into any transaction by reason of its involving borrowing.
- (4) In pursuance of such arrangements the Secretary of State may—
- (a) alter any arrangements made under section 1 or 2 of this Act or the old law or make new arrangements in place of arrangements so made, or
  - (b) make further arrangements in connection with arrangements so made.
- (5) Arrangements under this section may be made in anticipation of further rights being acquired or liabilities being incurred by the Secretary of State.
- (6) In this section the “ECGD portfolio” means the rights and liabilities to which the Secretary of State is entitled or subject by virtue of the exercise of his powers under this Act or the old law or in consequence of arrangements made in the exercise of those powers.

- (7) The Secretary of State may certify that any transaction he has entered into or is entering into has been or, as the case may be, is entered into in the exercise of the powers conferred by this section and such a certificate shall be conclusive evidence of the matters stated in it.

#### **4 Provisions supplementary to sections 1 to 3**

- (1) Transactions entered into in pursuance of arrangements made under sections 1 to 3 of this Act may be on such terms and conditions as the Secretary of State considers appropriate.
- (2) The powers of the Secretary of State under those sections are exercisable only with the consent of the Treasury and such consent may be given in relation to particular cases or in relation to such descriptions of cases as may be specified in the consent.
- (3) In those sections—
- (a) “business” includes a profession,
  - (b) “guarantee” includes indemnity,
  - (c) references to persons carrying on business, in relation to things done outside the United Kingdom, include persons carrying on any other activities, and
  - (d) references to things done in or outside the United Kingdom are to things done wholly or partly in or, as the case may be, outside the United Kingdom.
- (4) References in this and those sections to the United Kingdom include the Isle of Man and the Channel Islands.

#### **5 Provision of services and information**

- (1) The Secretary of State may provide to any person—
- (a) information relating to credit or investment insurance,
  - (b) services ancillary to the provision by that person of credit or investment insurance, and
  - (c) such other goods or services as may be specified in an order under this section, and may make such charges for doing so as he may determine.
- (2) The power to make an order under this section is exercisable only with the consent of the Treasury.

#### **6 Commitment limits**

- (1) The aggregate amount of the Secretary of State’s commitments at any time under arrangements relating to exports and insurance shall not exceed—
- (a) in the case of commitments in sterling, £35,000 million, and
  - (b) in the case of commitments in foreign currency, 15,000 million special drawing rights.
- (2) In subsection (1) above, “arrangements relating to exports and insurance” means—
- (a) arrangements under section 1 or 2 of this Act, other than arrangements for giving grants or arrangements under section 1(3), and
  - (b) arrangements under the old law, other than arrangements for giving grants.

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- (3) The aggregate amount of the Secretary of State's commitments at any time under section 3 of this Act shall not exceed—
- (a) in the case of commitments in sterling, £15,000 million, and
  - (b) in the case of commitments in foreign currency, 10,000 million special drawing rights.
- (4) The Secretary of State may by order increase or further increase—
- (a) either of the limits in subsection (1) above by a sum specified in the order not exceeding £5,000 million or, as the case may be, 5,000 million special drawing rights,
  - (b) either of the limits in subsection (3) above by a sum specified in the order not exceeding £3,000 million or, as the case may be, 2,000 million special drawing rights,
- but the Secretary of State shall not in respect of any limit exercise the power on more than three occasions.
- (5) For the purposes of this section and section 7 of this Act—
- (a) the commitments of the Secretary of State under any arrangements are his rights and liabilities relating to the arrangements,
  - (b) the amount of any commitments shall be ascertained in accordance with principles determined from time to time by the Secretary of State with the consent of the Treasury,
  - (c) “foreign currency” means any currency other than sterling, including special drawing rights and any other units of account defined by reference to more than one currency,
  - (d) whether any commitments are in sterling or foreign currency is to be determined by reference to the currency in which the amount of the commitments is measured (rather than the currency of payment) but, if the commitments are expressed to be subject to a sterling or foreign currency limit, the commitments are to be taken to be in sterling or, as the case may be, foreign currency, and
  - (e) the equivalent in special drawing rights of the amount of any commitments in foreign currency shall be ascertained at intervals determined from time to time by the Secretary of State with the consent of the Treasury and in accordance with principles so determined.
- (6) A determination under subsection (5)(e) above may provide for leaving out of account for the purposes of the limit in subsection (1)(b) or (3)(b) above any amount by which the limit would otherwise be exceeded to the extent that the amount is attributable to—
- (a) a revaluation of commitments under subsection (5)(e) above, or
  - (b) the fulfillment of an undertaking which, had it been fulfilled when given, would not have caused the limit to be exceeded.
- (7) Any power to make an order under this section is exercisable only with the consent of the Treasury.

## 7 Reports and returns

- (1) The Secretary of State shall prepare an annual report on the discharge of his functions under sections 1 to 5 of this Act.

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- (2) The Secretary of State shall prepare, as soon as practicable after 31st March in each year, a return showing separately the aggregate amounts of the commitments in sterling and in foreign currency on that date for the purposes of the limits in section 6(1) and (3) of this Act.
- (3) Any return under this section may also give such further information as to the amounts of his commitments for the purposes of those limits as the Secretary of State may determine for that return.
- (4) The first return under this section shall be prepared as soon as practicable after 31st March 1991.
- (5) Reports and returns prepared under this section shall be laid before Parliament.

## PART II

### TRANSFER OR DELEGATION OF ECGD FUNCTIONS

#### 8 Scheme of transfer

- (1) The Secretary of State may make a scheme or schemes for the transfer to any person or persons of such property, rights and liabilities as are specified in or determined in accordance with the scheme, being property, rights or liabilities—
  - (a) to which the Secretary of State (or, in the case of copyright, Her Majesty) is entitled or subject immediately before the day on which the scheme providing for the transfer comes into force, and
  - (b) which then subsisted for the purposes of or in connection with or are otherwise attributable (wholly or partly) to the exercise of functions under Part I of this Act or the old law.
- (2) Without prejudice to the generality of subsection (1)(b) above, any property, rights or liabilities shall be taken to fall within that subsection if the Secretary of State issues a certificate to that effect.
- (3) A scheme under this section may apply—
  - (a) to property wherever situated, and
  - (b) to property, rights and liabilities whether or not otherwise capable of being transferred or assigned by the Secretary of State or, as the case may be, Her Majesty.
- (4) A scheme under this section shall come into force on such day as may be specified in, or determined in accordance with, the scheme; and on that day the property, rights and liabilities to which the scheme applies shall be transferred and vest in accordance with the scheme.
- (5) A scheme under this section may contain such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (6) The Schedule to this Act (scheme of transfer: supplementary provisions) shall have effect.

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- (7) References below in this Act to a transferee are to any person to whom anything is transferred by virtue of a scheme under this section.

## **9 Transferred staff**

- (1) No scheme under section 8 of this Act shall provide for the transfer of any rights or liabilities relating to a person's employment, but the Transfer of Undertakings (Protection of Employment) Regulations 1981 shall apply to the transfer of property, rights or liabilities by virtue of such a scheme whether or not the transfer would, apart from this subsection, be a relevant transfer for the purposes of those regulations.
- (2) Where, by reason of the operation of those regulations in relation to a transfer of property, rights or liabilities by virtue of such a scheme, a person ceases to be employed in the civil service of the State and becomes employed by a transferee—
- (a) he shall not, on so ceasing, be treated for the purposes of any scheme under section 1 of the Superannuation Act 1972 as having retired on redundancy, and
  - (b) his ceasing to be employed in that service shall not be regarded as an occasion of redundancy for the purposes of the agreed redundancy procedures applicable to persons employed in that service.

## **10 Vehicle companies**

- (1) In this section “vehicle company” means a company formed or acquired for the purpose of—
- (a) becoming a transferee, or
  - (b) holding shares in a company formed or acquired for that purpose.
- (2) Subject to subsections (3) and (4) below, the Secretary of State may—
- (a) subscribe for or otherwise acquire shares in or securities of a vehicle company, or acquire rights to subscribe for such shares or securities,
  - (b) by a direction given to a company formed or acquired for the purpose of becoming a transferee require it, in consequence of the transfer by virtue of a scheme under section 8 of this Act of property, rights or liabilities, to issue to him, or to such other person as may be specified in the direction, such shares or securities as may be so specified,
  - (c) from time to time by a direction given to a vehicle company require it to issue to him, or to such other person as may be specified in the direction, such shares or securities as may be so specified, or
  - (d) make loans to a vehicle company on such terms and conditions as he may determine.
- (3) A direction under subsection (2)(b) or (c) above may require any shares to which it relates to be issued as fully or partly paid up.
- (4) The Secretary of State shall not—
- (a) subscribe for or otherwise acquire shares in or securities of a vehicle company, or acquire rights to subscribe for such shares or securities, unless all the relevant shares are to be held by or on behalf of the Crown, or
  - (b) at any time give a direction or make a loan to a vehicle company unless all the relevant shares are then held by or on behalf of the Crown.
- (5) For the purposes of subsection (4) above—

- (a) shares are held by or on behalf of the Crown where the Crown or any person acting on behalf of the Crown has a legal interest in them; and
  - (b) “relevant shares”, in relation to a vehicle company, means the issued shares of that company or, if it is a subsidiary of another vehicle company, the issued shares of that other company.
- (6) A scheme under section 8 of this Act may, as between any vehicle companies or as between a vehicle company and the Secretary of State, confer or impose rights and liabilities in connection with any of the matters as to which the Secretary of State may exercise his powers under this Act.
- (7) The Secretary of State shall not exercise any of the powers conferred by the preceding provisions of this section or dispose of any shares in or securities of a vehicle company without the consent of the Treasury.

## **11 Reinsurance**

- (1) The Secretary of State may make arrangements with any transferee under which the transferee insures the Secretary of State against risks of losses arising in consequence of arrangements made, before the day on which any scheme under section 8 of this Act comes into force, under Part I of this Act or the old law.
- (2) The Secretary of State shall from time to time determine, in relation to such classes of risk determined by him as might be insured by him under section 1 of this Act, whether it is expedient in the national interest for him to exercise his powers under that section to make arrangements for reinsuring persons providing insurance for risks of that class.
- (3) This section is without prejudice to any power of the Secretary of State under Part I of this Act.

## **12 Delegation of assistance function**

- (1) The Secretary of State may make arrangements for any of the functions to which this section applies to be exercised on his behalf by any transferee or any other person, instead of through the Export Credits Guarantee Department, on such terms and conditions as he may determine.
- (2) This section applies to the power of the Secretary of State to make arrangements under section 1 of this Act and to any functions of his under arrangements so made, or arrangements under the old law, including, so far as relating to any such arrangements, arrangements made by virtue of section 3(4) of this Act.
- (3) This section does not affect any requirement for the consent of the Treasury.

## PART III

### GENERAL

#### **13 The Export Credits Guarantee Department and the Export Guarantees Advisory Council**

- (1) All the functions of the Secretary of State under Part I of this Act, except the power to make orders under section 5 or 6 of this Act, shall be exercised and performed through the Export Credits Guarantee Department, which shall continue to be a Department of the Secretary of State.
- (2) There shall continue to be an Export Guarantees Advisory Council.
- (3) The function of the Council shall be to give advice to the Secretary of State, at his request, in respect of any matter relating to the exercise of his functions under this Act.
- (4) In exercising his duty under section 11(2) of this Act, the Secretary of State shall consult the Export Guarantees Advisory Council.

#### **14 Expenses**

- (1) Any sums required by the Secretary of State for making payments or for defraying his administrative expenses under this Act shall be paid out of money provided by Parliament and any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.
- (2) If any sum required by the Secretary of State for fulfilling his liabilities under this Act is not paid out of money provided by Parliament, it shall be charged on and paid out of the Consolidated Fund.

#### **15 Short title, interpretation, commencement, etc**

- (1) This Act may be cited as the Export and Investment Guarantees Act 1991.
- (2) In this Act “the old law” means the Export Guarantees and Overseas Investment Act 1978 and any earlier enactment from which any provision of that Act was derived.
- (3) Any power to make an order under section 5 or 6 of this Act shall be exercisable by statutory instrument and no such order shall be made unless a draft of it has been laid before and approved by resolution of the House of Commons.
- (4) The Export Guarantees and Overseas Investment Act 1978 is repealed.
- (5) Subsection (4) above does not affect any power exercisable by the Secretary of State in respect of arrangements made under the old law.
- (6) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.



## SCHEDULE

Section 8.

### SCHEME OF TRANSFER: SUPPLEMENTARY PROVISIONS

#### *Certificate of vesting*

- 1 A certificate by the Secretary of State that anything specified in the certificate has vested on any day in any person by virtue of a scheme under section 8 of this Act shall be conclusive evidence for all purposes of that fact.

#### *Construction of agreements etc.*

- 2 (1) This paragraph applies to any agreement made, transaction effected or other thing (not contained in an enactment) which—
- (a) has been made, effected or done by, to or in relation to the Secretary of State,
  - (b) relates to any property, right or liability transferred from the Secretary of State in accordance with the scheme, and
  - (c) is in force or effective immediately before the day on which the scheme comes into force.
- (2) The agreement, transaction or other thing shall have effect on and after that day as if made, effected or done by, to or in relation to the transferee.
- (3) Accordingly, references to the Secretary of State which relate to or affect any property, right or liability of the Secretary of State vesting by virtue of the scheme in the transferee and which are contained—
- (a) in any agreement (whether or not in writing), deed, bond or instrument,
  - (b) in any process or other document issued, prepared or employed for the purpose of any proceeding before a court or other tribunal or authority, or
  - (c) in any other document whatever (other than an enactment) relating to or affecting any property, right or liability of the Secretary of State which vests by virtue of the scheme in the transferee,
- shall be taken on and after that day to refer to the transferee.