



Number 26 of 1998

TURF DEVELOPMENT ACT, 1998

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Acts Referred to

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Energy (Miscellaneous Provisions) Act, 1995	1995, No. 35
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Organisation of Working Time Act, 1997	1997, No. 20
Redundancy Payments Acts, 1967 to 1991	
Taxes Consolidation Act, 1997	1997, No. 39
Turf Development Act, 1946	1946, No. 10
Turf Development Act, 1953	1953, No. 19
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Number 26 of 1998

TURF DEVELOPMENT ACT, 1998

AN ACT TO PROVIDE FOR THE FORMATION AND REGISTRATION UNDER THE COMPANIES ACTS, 1963 TO 1990, OF A PUBLIC COMPANY TO CARRY ON THE BUSINESS OF BORD NA MÓNA, TO PROVIDE FOR THE DISSOLUTION OF BORD NA MÓNA AND TO PROVIDE FOR RELATED MATTERS. [7th July, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Turf Development Act, 1998. Short title and collective citation.

(2) The Turf Development Acts, 1946 to 1995, and this Act may be cited together as the Turf Development Acts, 1946 to 1998.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“the Act of 1946” means the Turf Development Act, 1946;

“the Act of 1953” means the Turf Development Act, 1953;

“the Act of 1963” means the Companies Act, 1963;

“the Act of 1990” means the Turf Development Act, 1990;

“the Acts” means the Companies Acts, 1963 to 1990;

“approval of the Minister” means the prior approval in writing of the Minister and cognate expressions shall be construed accordingly;

“the Board” means Bord na Móna;

“company” means a company formed and registered under the Acts;

“the Company” means the company formed and registered under the Acts, pursuant to *section 7*;

“consent of the Minister” means the prior consent in writing of the Minister;

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“director” means a director of the Company;

“enactment” includes an instrument made under an enactment;

“functions” includes powers and duties and references to the performance of a function include, as respects a power or a duty, references to the exercise of the power or the carrying out of the duty;

“the Managing Director” means the chief officer of the Company appointed under *section 26*;

“the Minister” means the Minister for Public Enterprise;

“recognised trade unions or staff associations” means trade unions or staff associations recognised by the Company or a subsidiary for the purposes of negotiations that are concerned with the remuneration or conditions of employment, or the working conditions, of members of the staff of the Company or the subsidiary, as the case may be;

“shares” means fully paid-up shares in the share capital of the Company;

“subsidiary”, other than in *Part III* of this Act, means a subsidiary (within the meaning of the Act of 1963) of the Company;

“the subsidiaries” means the companies formed and registered under the Acts pursuant to *section 34* and “subsidiary” in *Part III* of this Act shall be construed accordingly;

“the transfer day”, in relation to each of the subsidiaries, means the day appointed under *section 35* to be the transfer day in relation to that subsidiary;

“the vesting day” means the day appointed under *section 6* to be the vesting day.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other provision is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Provision in relation to orders.

3.—The Minister may by order amend or revoke an order under this Act (including an order under this section).

Repeal.

4.—Section 25 of the Energy (Miscellaneous Provisions) Act, 1995, is hereby repealed.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas and the expenses incurred by the Minister for Finance in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

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Expenses of
Minister and
Minister for
Finance.

PART II

Bord na Móna, public limited company

6.—The Minister shall, as soon as may be after the registration of the Company under the Acts, and after consultation with the Minister for Finance and the Board, by order appoint a day to be the vesting day.

The vesting day.

7.—The Board shall, as soon as may be, subject to the consent of the Minister and the Minister for Finance, cause a public company limited by shares and conforming to the conditions laid down in this Act to be formed and registered under the Acts.

Formation of Bord
na Móna, public
limited company.

8.—(1) The name of the company formed under *section 7* shall be Bord na Móna, public limited company, and the company so formed is referred to in this Act as “the Company”.

Name and capital
formation of
Company.

(2) The authorised share capital of the Company shall be £300,000,000 or such other amount as may be determined by the Minister for Finance after consultation with the Minister.

(3) The Company may, with the consent of the Minister for Finance given after consultation with the Minister, divide the shares into different classes and attach to those classes any rights, privileges or conditions.

9.—(1) The memorandum of association of the Company shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Finance.

Form of
memorandum of
association of
Company.

(2) The principal objects of the Company shall be those comprised in the functions conferred on the Board by the Turf Development Acts, 1946 to 1995.

(3) Nothing in this section shall prevent or restrict the inclusion among the objects of the Company as stated in its memorandum of association of all such objects and powers as are reasonably necessary or proper for or incidental or ancillary to the due attainment of its principal objects and are not inconsistent with this Act.

(4) The Company shall have all those functions that were vested in the Board immediately before the vesting day and are not otherwise conferred on the Company by or under this Act.

(5) Any enactment that, immediately before the vesting day, applied to the Board and whose application to the Company is necessary for the purpose of giving full effect to the conferral of functions by or under this Act on the Company and is not otherwise effected by this Act shall apply on and after that day with any necessary adaptations to the Company as it applied to the Board in so far as such application is necessary as aforesaid.

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Form of articles of association of Company.

10.—The articles of association of the Company shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Finance.

Restriction on alteration of memorandum or articles of association.

11.—Notwithstanding anything contained in the Acts, an alteration in the memorandum of association or articles of association of the Company shall not be valid or effectual unless made with the approval of the Minister given with the consent of the Minister for Finance.

Issue of share to Minister.

12.—(1) The Company shall issue one share to the Minister.

(2) The Minister may exercise in respect of his or her share all the rights and powers of a holder of such a share and, where a right or power is exercisable by attorney, exercise it by his or her attorney.

(3) The cost of such share shall be advanced to the Minister out of the Central Fund or the growing produce thereof.

Issue of shares to subscribers to memorandum of association of Company.

13.—(1) The Company shall issue one share to each of the subscribers to the memorandum of association of the Company.

(2) The cost of such shares shall be advanced to the subscribers out of the Central Fund or the growing produce thereof.

Obligation of certain shareholders to hold shares in trust.

14.—(1) A member of the Company to whom a share is issued under *section 13* or transferred under *section 16(2)* shall hold that share in trust for the Minister for Finance and shall accordingly be bound to pay all dividends and other money which he or she receives in respect of the share to the Minister for Finance for the benefit of the Exchequer and to transfer the share, as and when required by the Minister for Finance, to him or her or a person nominated in that behalf by him or her.

(2) Save when required pursuant to *subsection (1)*, such member as aforesaid shall not transfer or alienate his or her share.

(3) Upon the death of a member of the Company referred to in *subsection (1)*, the share held by such member shall, without the necessity for a transfer, vest in the Minister for Finance.

Issue of shares to Minister for Finance.

15.—(1) As soon as may be after the vesting day, the Company shall issue to the Minister for Finance shares whose nominal value is such that, when it is added to the nominal value of the shares issued under *sections 12* and *13*, the total nominal value of issued shares is equal to the value of the net assets of the Company on the vesting day as determined by the Minister with the concurrence of the Minister for Finance.

(2) As soon as may be after the making of a payment by the Minister for Finance under *section 21*, the Company shall issue to the Minister for Finance shares equal in nominal value to the amount of the payment.

Exercise of powers by Minister for Finance in respect of shares.

16.—(1) Subject to the provisions of this Act, the Minister for Finance may, in respect of shares held by him or her, exercise all the rights of a holder of such shares and, where such a right or power is exercisable by attorney, exercise it by his or her attorney and, subject to *subsection (3)*, may dispose of shares held by him or her.

(2) The Minister for Finance may, from time to time as occasion requires for the purposes of compliance with so much of the Acts as requires that there shall always be a minimum number of members of a company, transfer without payment therefor to any person one of his or her shares. Pt.II S.16

(3) The Minister for Finance shall not, unless authorised by Dáil Éireann by resolution to do so, reduce his or her holding of shares to less than a majority of the issued shares.

17.—All amounts representing dividends or other money received by the Minister for Finance in respect of shares held by him or her shall be paid into or disposed of for the benefit of the Exchequer in such manner as he or she may direct. Payment of dividends, etc., into Exchequer.

18.—(1) The number of directors shall not exceed 12. Directors.

(2) Subject to *subsection (3)*, the directors (other than the Managing Director) shall be appointed and may be removed from office by the Minister with the consent of the Minister for Finance.

(3) The members of the Board shall, on the vesting day, become and be directors and shall hold office as directors for the remainder of the terms for which they were appointed to be members of the Board.

(4) A person who holds the office of director shall be eligible for re-appointment to that office.

(5) Subject to *subsections (2), (3) and (6)*, the directors (other than the Managing Director) shall hold office for such period not exceeding 5 years as may be determined by the Minister with the consent of the Minister for Finance at the time of their appointment.

(6) Four of the directors shall be persons appointed under the Worker Participation (State Enterprises) Acts, 1977 to 1993, who are willing to accept office.

(7) A director may at any time resign his or her office as a director by letter addressed and given or sent to the Minister and the resignation shall take effect on and from the date (which shall be the date of, or a date later than the date of, the letter) specified in the letter for that purpose.

(8) Subsections (3) and (4) of section 9 and section 10 of the Act of 1946 shall, during the period when a person holds office as a director by virtue of *subsection (3)*, apply in relation to that person as if the references to the Board were references to the Company and the references to a member of the Board or to members of the Board were references to a director or, as the case may be, to directors and with any other necessary adaptations, and *subsections (1) and (2) of section 19* and *subsections (2) and (5)* shall have effect accordingly.

19.—(1) Subject to *subsection (2)*, the chairperson of the Company shall be appointed from among the directors by the Minister with the consent of the Minister for Finance and may, subject to *section 18(8)*, be removed from office by the Minister with the like consent and shall hold office as such chairperson for such period not exceeding 5 years as may be determined by the Minister with the consent of the Minister for Finance at the time of his or her appointment. Chairperson of Company.

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(2) The person who, immediately before the vesting day, is the Chairman of the Board shall, on that day, become and be the chairperson of the Company and shall hold office as such chairperson for the remainder of the term for which he or she had been appointed to be the Chairman of the Board.

(3) A person who holds the office of chairperson of the Company shall be eligible for re-appointment to that office.

(4) A person who ceases to hold the office of chairperson of the Company may, if the Minister, with the consent of the Minister for Finance, so determines, continue to hold the office of director and he or she shall be eligible for re-appointment as a director.

Terms and conditions of office of chairperson and other directors.

20.—The remuneration (including allowances for expenses) of the chairperson of the Company and the other directors and the other terms and conditions upon and subject to which they hold their respective offices shall be determined by the Minister with the consent of the Minister for Finance.

Payment by Minister for Finance to Company.

21.—(1) The Minister for Finance may pay to the Company, in one or more amounts, a sum not exceeding £10,000,000.

(2) An amount paid to the Company under *subsection (1)* shall be applied by the Company solely in the payment of debts transferred to the Company under *section 52* and shall be so applied as soon as may be.

Borrowing by Company and subsidiaries.

22.—(1)(a) Subject to the consent of the Minister and the Minister for Finance, the Company or a subsidiary may, whether on the security of its assets or otherwise, borrow money (including money in a currency other than the currency of the State).

(b) Subject to *subsection (2)*, the aggregate at any time of borrowings under *paragraph (a)* (other than borrowings from the Company or a subsidiary) shall not exceed £100 million.

(2) The Company or a subsidiary may borrow money temporarily (including money in a currency other than the currency of the State) but the aggregate at any time of such borrowings (other than borrowings from the Company or a subsidiary) shall not exceed such amount as may be specified by the Minister with the consent of the Minister for Finance.

(3) For the purposes of this section moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated according to the rate of exchange at the time of such borrowing for that currency and the currency of the State.

Guaranteeing by Minister for Finance of borrowing.

23.—(1) The Minister for Finance may, after consultation with the Minister, guarantee, in such form and manner and on such terms and conditions as he or she thinks fit, the due repayment by the Company or a subsidiary of the principal of any money (including money in a currency other than the currency of the State) borrowed by the Company or the subsidiary or the due payment of instalments or other amounts of money owed by the Company or a subsidiary under a

contract entered into by the Company or the subsidiary or the payment of interest on any such money, instalment or amount or both the repayment of principal or payment of such instalments or amounts, as the case may be, and the payment of the interest, and any such guarantee may include a guarantee of payment of commission and incidental expenses arising in connection with such borrowings or such contract.

(2) The Minister for Finance shall not so exercise the powers conferred on him or her by this section that the amount or the aggregate amount of principal which he or she may at any one time be liable to repay on foot of any guarantee or guarantees under this section for the time being in force, together with the amount of principal (if any) which the Minister for Finance has previously paid on foot of any guarantee under this section and which has not been repaid by the Company or a subsidiary exceeds £100 million.

(3) In calculating the amount of borrowings or instalments or other money guaranteed by the Minister for Finance under this section for the purposes of *subsection (2)*, the equivalent in the currency of the State of borrowings or instalments or other money in a foreign currency shall be calculated at the rate of exchange at the time of the giving of the guarantee for that currency and the currency of the State.

(4) Where a guarantee under this section is or has been given, the Company shall, if the Minister for Finance so requires give to him or her such security (including, in particular, debentures) as may be specified in the requirement for the purpose of securing to the Minister for Finance the repayment of any money which he or she may be liable to pay or has paid under the guarantee.

(5) The Minister for Finance shall, as soon as may be after the expiration of every financial year, lay before each House of the Oireachtas a statement setting out with respect to each guarantee under this section given during that year or given at any time before, and in force at, the commencement of that year—

(a) particulars of the guarantee,

(b) in case any payment has been made by him or her under the guarantee before the end of that year, the amount of the payment and the amount (if any) repaid to him or her on foot of the payment,

(c) the amount of money covered by the guarantee which was outstanding at the end of that year.

(6) All moneys from time to time required by the Minister for Finance to meet sums which may become payable by him or her under this section shall be advanced out of the Central Fund or the growing produce thereof.

(7) Money paid by the Minister for Finance under a guarantee under this section shall be repaid to him or her (with interest thereon at such rate or rates as the Minister for Finance appoints) by the Company or by the subsidiary concerned within such period from the date of payment by the Minister for Finance as may be specified by him or her after consultation with the Company or the subsidiary, as may be appropriate.

(8) Where the whole or any part of the money required by *subsection (7)* to be repaid to the Minister for Finance has not been repaid

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in accordance with that subsection, the amount so remaining outstanding shall be repaid to the Central Fund out of moneys provided by the Oireachtas.

(9) Notwithstanding the provision of money under *subsection (8)* to repay an amount to the Central Fund, the Company or, as may be appropriate, the subsidiary concerned shall remain liable to the Minister for Finance in respect of that amount and that amount (with interest thereon at such rate or rates as the Minister for Finance appoints) shall be repaid to the Minister for Finance by the Company or, as may be appropriate, the subsidiary at such times and in such instalments as he or she appoints and, in default of repayment as aforesaid and without prejudice to any other method of recovery, shall be recoverable by him or her from the Company or, as may be appropriate, the subsidiary as a simple contract debt in any court of competent jurisdiction.

(10) Moneys paid by the Company or a subsidiary under *subsection (7)* or *(9)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance thinks fit.

(11) In relation to a guarantee under this section in respect of money borrowed in a currency other than the currency of the State—

(a) the reference to the amount of money in *subsection (5)(c)* shall be taken as referring to the equivalent in the currency of the State of the actual amount of money, such equivalent being calculated according to the rate of exchange for the time being for that currency and the currency of the State,

(b) each of the references to money in *subsections (7) to (9)* shall be taken as referring to the cost in the currency of the State of the actual money.

Accounts and audits.

24.—(1) Without prejudice to the requirements of the Acts in relation to balance sheets and accounts, the Company shall keep, in such form as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of all money received or expended by it, including a profit and loss account, an account showing the derivation of the funds of the Company and the purposes to which they are applied (referred to in *subsection (2)* as “the cash flow statement”) and a balance sheet and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may from time to time direct.

(2) Accounts kept in pursuance of this section by the Company shall be submitted annually by it to an auditor for audit and, immediately after the audit, a copy of the profit and loss account, the cash flow statement, the balance sheet and such other (if any) of the accounts as the Minister may direct and a copy of the auditor’s report on the accounts shall be presented by the Company to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Auditor of Company.

25.—A person shall not be appointed to be the auditor of the Company without the approval of the Minister.

Managing Director.

26.—(1) The chief officer of the Company shall be a director and shall be known, and is referred to in this Act, as “the Managing Director”.

(2) The person who, immediately before the vesting day, is the managing director of the Board shall, on that day, become and be the Managing Director and shall hold office as Managing Director for the remainder of the term for which he or she had been appointed to be the managing director of the Board.

(3) Subject to *subsection (2)*, the Managing Director shall be appointed and may be removed from office by the directors.

(4) The principal functions of the Managing Director shall be—

- (a) to carry on, manage and control generally the business of the Company, and
- (b) to advise the directors in relation to the performance of the functions of the Company,

subject to the lawful directions of the directors.

(5) The Managing Director shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the directors with the consent of the Minister and the Minister for Finance.

(6) A person who holds the office of Managing Director shall be eligible for re-appointment to that office.

(7) Subsections (3) and (4) of section 9 and sections 10 and 15 (3) of the Act of 1946 shall, during the period when the person who holds the office of Managing Director holds it by virtue of *subsection (2)*, apply in relation to that person as if the references to the Board were references to the Company and the references to a member of the Board, members of the Board and officers were references to the Managing Director and with any other necessary adaptations, and *subsections (2) and (3)* shall have effect accordingly.

27.—Without prejudice to the requirements of *sections 26(7) and 51* the Company, in determining the remuneration or allowances for expenses to be paid to members of its staff or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant or to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the Company shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the Company with the consent of the Minister for Finance.

Regard to be had to certain matters in determining remuneration of staff.

28.—(1) The Company may, with the consent of the Minister and the concurrence of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of whole-time directors.

Superannuation of whole-time directors.

(2) A scheme under *subsection (1)* shall provide for—

- (a) the appointment by the Company of trustees of the scheme,
- (b) the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, including different times and conditions in respect of different classes of persons,

- (c) the establishment of a fund administered by the trustees of the scheme from which the superannuation benefits payable under the scheme shall be paid and the vesting of the fund in the trustees of the scheme,
- (d) the payment of contributions to the fund by the Company and by the directors to whom the scheme applies,
- (e) the payment by the Company of the expenses of the management and administration of the scheme (including the fund),
- (f) the management of the fund (including the investment of assets of the fund), and the administration of the fund by the trustees of the scheme,
- (g) the auditing of the accounts of the fund, and
- (h) the procedure for the settlement of any disputes between the trustees of the scheme and persons to whom the scheme applies or persons who apply for membership of the scheme.

(3) The Company may, with the consent of the Minister and the concurrence of the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection, but a scheme amending a scheme under this section shall be such that provisions giving effect to *subsections (1) and (2)* continue to be contained in one or more of the schemes under this section and a scheme under this section shall not be revoked unless such provisions as aforesaid continue to be in force after the revocation.

(4) No superannuation benefit shall be granted by the Company on the resignation, retirement or death of a director otherwise than in accordance with a scheme or schemes under this section.

(5) A scheme under this section shall be carried out in accordance with its terms.

(6) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) A scheme under this section may make different provisions for different whole-time directors.

(8) Where a scheme under this section contains provisions for the granting of superannuation benefits to or in respect of a person who holds the office of Managing Director by virtue of *section 26(2)*—

- (a) the terms and conditions of the grant shall be not less favourable to him or her than the terms and conditions upon and subject to which, immediately before the commencement of the provisions, superannuation benefits were to be granted to him or her under a scheme or schemes under section 5 (which section shall be deemed always to have authorised the making of more than one scheme) or 6 of the Act of 1953 or under both of those sections (“the former schemes”), and

(b) any superannuation benefit granted to the person under a scheme under this section shall be in lieu of the corresponding benefits to be granted to him or her under the former schemes and the latter benefits shall not be granted to him or her. Pt.II S.28

(9)(a) Section 5 of the Act of 1953 is hereby repealed as on and from the vesting day.

(b) Notwithstanding *paragraph (a)*, any scheme under the said section 5 that is in force immediately before the vesting day shall, on and after that day, continue in force, continue to apply to a person to whom it applied immediately before that day and be carried out in accordance with its terms, and may be amended or revoked, as if made under this section, but if effect is not given to the requirements of *subsection (2)*, whether by one or more than one such scheme, it or they, as appropriate, shall, unless revoked, be amended under *subsection (3)*, as soon as may be after the vesting day, so as to give effect to those requirements.

(10) In this section “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

29.—(1) Section 6 (which provides for superannuation schemes for employees of the Board) of the Act of 1953 is hereby amended as on and from the vesting day by— Superannuation of staff of Company and subsidiaries.

(a) the substitution of “Company” for “Board” in each place where it occurs (other than subsections (1) and (5)) and the substitution of “Company or, if the scheme relates to persons in the employment of a subsidiary, the subsidiary” for “Board” in subsection (5),

(b) the insertion of the following subsection after subsection (1):

“(1A) (a) The Company may prepare and submit to the Minister a scheme or schemes for the payment, subject to such conditions and limitations as may be prescribed in the scheme or schemes, of pensions, gratuities and other allowances on retirement or death to or in respect of such persons in the employment of the subsidiaries, as the Company may determine and the scheme or schemes may make different provision in respect of different classes of such persons.

(b) The Company may prepare and submit to the Minister a scheme or schemes for the payment, subject to such conditions and limitations as may be prescribed in the scheme or schemes, of pensions, gratuities and other allowances on retirement or death to or in respect of such persons, in the employment of such subsidiaries (other than the subsidiaries), if any, as the Company may determine and the scheme or schemes may make different provision in respect of different classes of such persons.”,

- (c) in subsection (2), the insertion after “A scheme under” of “subsection (1) or (1A) of”,
- (d) in subsection (3), the insertion after “A scheme” of “under subsection (1) or (1A) of this section”,
- (e) the substitution of the following subsection for subsection (6):

“(6) The Company may prepare and submit to the Minister a scheme amending or revoking a scheme under this section (including a scheme under this subsection), but a scheme amending a scheme under this section shall be such that provisions giving effect to requirements corresponding to the requirements of subsections (1), (1A), (2) and (3) of this section continue to be contained in one or more of the schemes under this section and a scheme under this section shall not be revoked unless such provisions as aforesaid continue to be in force after the revocation”,

- (f) the insertion after subsection (8) of the following subsections:

“(9) Without prejudice to the powers of investment conferred otherwise by law on the trustees of a superannuation fund established pursuant to subsection (2), those trustees may, with the consent of the Minister and the concurrence of the Minister for Finance, invest such moneys of the fund as they think appropriate in loans to such enterprises as they consider appropriate.

(10) In this section ‘Company’, ‘subsidiary’, ‘subsidiaries’ and ‘the subsidiaries’ have the meanings assigned to them by the *Turf Development Act, 1998.*”.

(2) Notwithstanding *subsection (1)(e)*, a scheme prepared by the Board under subsection (6) of the said section 6 that is in force immediately before the vesting day shall, on and after that day, continue in force and continue to apply to the persons to whom it applied immediately before that day and may be amended or revoked, as if prepared by the Company under subsection (6) (inserted by this section) of the said section 6.

Membership of either House of Oireachtas or European Parliament.

30.—(1) Where a director or a director of a subsidiary is—

- (a) nominated as a member of Seanad Éireann, or
- (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
- (c) regarded pursuant to section 19 of the European Parliament Elections Act, 1997, as having been elected to such Parliament to fill a vacancy,

he or she shall thereupon cease to be such a director.

(2) Where a person employed by the Company or a subsidiary is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded pursuant to the said section 19, as having been elected to such Parliament to fill a vacancy, Pt.II S.30

he or she shall thereupon stand seconded from employment by the Company or the subsidiary and shall not be paid by, or be entitled to receive from, the Company or the subsidiary any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified for becoming a director or a director of a subsidiary or for employment in any capacity by the Company or a subsidiary.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting the reckoning of a period therein mentioned as service with the Company or a subsidiary for the purpose of any superannuation benefits (within the meaning of *section 28(10)*).

31.—(1) Where at a meeting of the directors or the directors of a subsidiary either of the following matters arises, namely—

Disclosure by directors and members of staff of Company and subsidiaries of certain interests.

(a) an arrangement to which the Company or a subsidiary is a party or a proposed such arrangement,

(b) a contract or other agreement with the Company or a subsidiary or a proposed such contract or other agreement,

then, any director, or any directors of the first-mentioned subsidiary present at the meeting who otherwise than in his or her capacity as such a director is in any way, whether directly or indirectly, interested in the matter—

(i) shall at the meeting disclose to the Company or the first-mentioned subsidiary the fact of such interest and the nature thereof,

(ii) shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,

(iii) shall take no part in any deliberations of the directors or the directors of the first-named subsidiary relating to the matter, and

(iv) shall not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the directors or the directors of a subsidiary a question arises as to whether or not a course of conduct, if pursued by a director or, as the case may be, a director of the subsidiary, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may be determined by

the chairperson of the meeting whose decision shall be final and, where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a director or a director of a subsidiary has contravened *subsection (1)*, he or she may, if he or she thinks fit, and with the consent of the Minister for Finance, remove that director from office and, in case a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified from being a director or a director of a subsidiary.

(5) Section 194 of the Act of 1963 shall not apply to a director or a director of a subsidiary.

(6) A member of the staff of the Company or a subsidiary who otherwise than in his or her capacity as such a member is in any way, whether directly or indirectly, interested in a matter specified in *subsection (1)* shall—

(a) disclose to the Company or, as the case may be, the subsidiary the fact of such interest and the nature thereof, and

(b) take no part in the negotiation of any contract or other agreement concerned or in any deliberations relating to the matter.

(7) A person who fails to comply with this section shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,200 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 2 years or both.

(8) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the Company.

Prohibition on unauthorised disclosure of information.

32.—(1) A person shall not disclose confidential information obtained by him or her in his or her capacity as, or while performing duties as, a director or director of a subsidiary or member of the staff of, or an adviser or consultant to, the Company or a subsidiary unless he or she is duly authorised or required by law to do so.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £1,200 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding £10,000 or imprisonment for a term not exceeding 2 years or both.

(3) In this section—

“confidential” means that which is expressed by the Company or the subsidiary concerned, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the Company or, as appropriate, by the subsidiary concerned or by a person authorised in that behalf by the Company or, as appropriate, the subsidiary concerned. Pt.II S.32

33.—(1) Not later than 6 months after the end of each accounting year of the Company, the Company shall submit a report in writing to the Minister of its activities and of those of any subsidiaries during that year and, not later than 3 months after such submission, the Minister shall cause copies of the report to be laid before each House of the Oireachtas. Annual report and furnishing of information to Minister.

(2) A report under this section shall include information in relation to such matters (if any), and be in such form (if any), as the Minister may direct after consultation with the Company and with the consent of the Minister for Finance.

(3) The Company shall, if so required by the Minister, furnish to him or her such information as he or she may require in respect of any balance sheet or other account or any report of the Company or any subsidiaries or in relation to the policy and operations (other than day-to-day operations) of the Company or any subsidiaries.

PART III

Subsidiaries

34.—(1) For the purpose of enabling its principal activities to be carried on by subsidiaries of the Company, the Company shall, with the consent of the Minister and the Minister for Finance, cause such number of companies as it considers appropriate to be formed and registered under the Acts. Formation and registration of subsidiaries.

(2) The subsidiaries shall be limited by shares and conform to the conditions laid down in the Acts.

(3) Each of the subsidiaries shall be exempt from the requirement of section 6(1)(b) of the Act of 1963 to include the word “limited” or the word “teoranta” as the last word of its name.

35.—The Minister shall, as soon as practicable after the vesting day, and after consultation with the Minister for Finance and the Company, by order appoint, in respect of each subsidiary, a day to be the transfer day. Transfer day.

36.—The objects of the subsidiaries, as stated in their memoranda of association, shall be such that, as soon as practicable after the transfer day, the principal activities, at least, of the Company are carried on by the subsidiaries. Principal objects of subsidiaries.

37.—(1) There may be included among the objects of each of the subsidiaries such other functions of the Company as may be approved by the Company with the consent of the Minister and the Minister for Finance. Additional objects of subsidiaries.

(2) Nothing in this section shall prevent or restrict the inclusion among the objects of any of the subsidiaries, as stated in its memorandum of association, of all such objects and powers as are proper

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for or incidental or ancillary to the due attainment of its principal objects.

(3) Section 5 of the Act of 1990 shall apply to each of the subsidiaries as if the references to the Board were references to each of the subsidiaries.

(4) Where any function of the Company is a function of a subsidiary, every provision of any enactment relating, or applied by this Act, to the Company shall, in respect of that function and subject to the provisions of this Act, apply to the subsidiary as it applies to the Company with any necessary modifications.

(5) A subsidiary shall perform its functions in compliance with such directions as the Company may give to it in writing from time to time.

Form of memoranda of association of subsidiaries.

38.—The memorandum of association of each of the subsidiaries shall be in such form consistent with this Act as may be approved of by the Company with the consent of the Minister and the Minister for Finance.

Form of articles of association of subsidiaries.

39.—The articles of association of each of the subsidiaries shall be in such form consistent with this Act as may be approved of by the Company with the consent of the Minister and the Minister for Finance.

Restriction on alteration of memoranda or articles of association of subsidiaries.

40.—Notwithstanding anything contained in the Acts, an alteration in the memorandum of association or articles of association of a subsidiary shall not be valid or effectual unless it is made with the consent of the Minister and the Minister for Finance.

Capital formation of subsidiaries.

41.—(1) Subject to the provisions of this section, the whole of the issued share capital of each subsidiary shall be held by the Company or by nominees of the Company.

(2) One share in the share capital of each subsidiary shall be allotted to each of the subscribers to the memorandum of association of that subsidiary.

(3) The cost of the shares referred to in *subsection (2)* shall be advanced to the subscribers by the Company.

(4) A person who holds a share in a subsidiary as a nominee of the Company or as a subscriber to the memorandum of association of the subsidiary or by virtue of *subsection (5)* shall hold the share in trust for the Company and shall accordingly be bound to pay all dividends and other moneys which he or she receives in respect of the share to the Company and to transfer, as and when required by the Company, the share to the Company or a person nominated in that behalf by the Company.

(5) The Company may, from time to time as occasion requires for the purpose of compliance with so much of the Acts as requires that there shall always be a minimum number of members of a company, transfer without payment therefor to any person one of its shares in the subsidiary.

(6) Shares in a subsidiary may not be issued or transferred to a person other than the Company or a person who holds them in trust for the Company without the consent of the Minister and the Minister for Finance, and the number of shares held by the Company in a subsidiary shall not be so reduced by such an issue or transfer (unless such reduction is authorised by Dáil Éireann by resolution) that the number of such shares held by the Company is less than a majority of the issued shares in the subsidiary. Pt.III S.41

42.—(1) The chairperson of a subsidiary shall be appointed by the Company from among the directors of the subsidiary with the consent of the Minister and, subject to *subsection (3)*, shall hold office as such chairperson for such period not exceeding 4 years as may be determined by the Company with the consent of the Minister at the time of his or her appointment. Chairpersons of subsidiaries.

(2) A person who holds the office of chairperson of a subsidiary shall be eligible for re-appointment to that office.

(3) The chairperson of a subsidiary may be removed from office by the Company with the consent of the Minister.

43.—(1) The number of directors of a subsidiary shall be— Directors of subsidiaries.

(a) in case the number of shares in the subsidiary held by or in trust for the Company is 100 per cent of the issued shares in the subsidiary, not more than 6, and

(b) in any other case, such number as may be determined by the Company with the consent of the Minister.

(2) The directors of a subsidiary shall be appointed and may be removed from office by the Company with the consent of the Minister.

(3) A person who holds the office of director of a subsidiary shall be eligible for re-appointment to that office.

(4) Subject to *subsection (2)*, the directors of a subsidiary shall hold office for such period not exceeding 4 years as may be determined by the Company with the consent of the Minister at the time of their appointment.

(5) Two of the directors of a subsidiary shall be persons appointed to be directors under the Worker Participation (State Enterprises) Acts, 1977 to 1993, who are willing to accept office, and a person who is appointed to be a director of a subsidiary under this subsection shall hold office as such director for such period as may be determined by the Company with the approval of the Minister at the time of the appointment.

(6) A director of a subsidiary who is also a director shall, if he or she ceases to be a director, thereupon cease to be a director of the subsidiary.

44.—The remuneration (if any) of the chairperson and other directors of a subsidiary and the other terms and conditions upon and subject to which they hold their respective offices shall be determined by the Company with the consent of the Minister at the time of their appointment. Terms and conditions of office of chairpersons and directors of subsidiaries.

Pt.III
Auditors of
subsidiaries.

45.—A person shall not be appointed to be the auditor of a subsidiary without the consent of the Minister.

Staff of subsidiaries.

46.—(1) Subject to *subsection (3)*, each subsidiary shall appoint such, and such number of, persons to be members of its staff as it may determine.

(2) The remuneration and the other terms and conditions of employment of the staff of each subsidiary shall be such as the Company may determine.

(3) Every person who, immediately before the transfer day in relation to a subsidiary, is a member of the staff of the Company and who is designated by the Company for employment by the subsidiary shall, on the transfer day, or with effect from such later day as the Company may, as occasion requires, appoint in that behalf, become and be a member of the staff of that subsidiary.

(4) Save in accordance with an agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (3)* shall not, while in the service of a subsidiary, be made subject to conditions of service (including conditions relating to tenure of employment and remuneration) that are less favourable to the person than those to which he or she was subject immediately before the transfer day.

(5) Until such time as the scales of pay and conditions of service of the members of the staff of a subsidiary to whom *subsection (3)* applies are varied by the subsidiary following consultation and after agreement with recognised trade unions, the scales of pay by reference to which they were remunerated and the conditions of service, restrictions, requirements and obligations to which they were subject immediately before the transfer day shall continue to apply to them.

(6) In relation to persons transferred to a subsidiary under *subsection (3)*, previous service as a member of the staff of the Company shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, and the Unfair Dismissals Acts, 1977 to 1993.

(7) A member of the staff of a subsidiary shall be deemed, for the purposes of the Worker Participation (State Enterprises) Acts, 1977 to 1993, to be an employee of the Company.

Transfer of
property to
subsidiaries.

47.—(1) So much of the property (including choses-in-action) that, immediately before the transfer day in relation to a subsidiary, was held or enjoyed by the Company as may be determined by the Company and the subsidiary shall, on such day or days during the period of one year beginning on that transfer day as may be determined by the Company and the subsidiary, stand vested in the subsidiary without any further conveyance, transfer or assignment for all the estate, term or interest for which, immediately before that day, it was vested in the Company but subject to all trusts and equities affecting the property and capable of being performed.

(2) The Company may, on its own initiative, and shall on the application of a subsidiary, issue a certificate in respect of specified property stating, as may be appropriate, that the property—

(a) vested in a particular subsidiary on a particular day under this section, or

(b) did not vest in any of the subsidiaries under this section,

and the certificate shall be sufficient evidence unless the contrary is proved of the facts so stated. Pt.III S.47

(3) Every chose-in-action transferred by *subsection (1)* to a subsidiary may, after the transfer day in relation to the subsidiary, be sued on and recovered or enforced by the subsidiary in its own name and it shall not be necessary for the subsidiary or the Company to give notice to a person bound by the chose-in-action of the transfer effected by that subsection.

48.—The Company may by licence from time to time authorise the use by any of the subsidiaries of any land held by the Company on such terms as the Company may determine. Use of land of Company by subsidiaries.

49.—(1) All rights and liabilities of the Company arising by virtue of any contract or commitment (express or implied) entered into by it before the transfer day in relation to a function conferred by virtue of this Act on a subsidiary (other than a liability in respect of any legal proceedings to which the Company is a party that are pending in any court or tribunal immediately before that transfer day) shall on that day stand transferred to the subsidiary. Transfer of rights and liabilities to subsidiaries.

(2) The Company may on its own initiative and shall on the application of a subsidiary issue a certificate in respect of a specified contract or commitment certifying, as it thinks proper, that the rights and liabilities of the Company thereunder were transferred by virtue of *subsection (1)* to a particular subsidiary on the transfer day in relation to the subsidiary or were not so transferred to any of the subsidiaries and the certificate shall be sufficient evidence of the facts so certified unless the contrary is proved.

(3) Every right and liability transferred by virtue of *subsection (1)* to a subsidiary may, on and after the transfer day, be sued on, recovered or enforced by or against the subsidiary in its own name and it shall not be necessary for the subsidiary or the Company to give notice to the person whose right or liability is transferred by this section of such transfer.

(4) Every licence, exemption, right or privilege granted to or enjoyed by the Company and in force immediately before the transfer day in relation to a subsidiary shall, on and after that day, be exercisable, while it continues in force, by the subsidiary in so far as it relates to a function conferred on the subsidiary by virtue of this Act or is incidental to or connected with such a function.

50.—Any enactment applying to the Company (including this Act) shall, with such adaptations as are necessary to enable it to have full effect in relation to a subsidiary in which, by virtue of this Act, functions of the Company are vested, apply to the subsidiary. Adaptation of enactments.

PART IV

Miscellaneous

51.—(1) Every person who, on the day immediately before the vesting day, is a member of the staff of the Board shall, on the vesting day, be transferred to and become a member of the staff of the Company. Transfer of staff of Board to Company.

(2) Save in accordance with an agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the Company, be made subject to conditions of service (including conditions relating to terms of employment and remuneration) that are less favourable to the person than those to which he or she was subject immediately before the vesting day.

(3) Until such time as the scales of pay and conditions of service of the members of the staff of the Company to whom *subsection (1)* applies are varied by the Company following consultation and after agreement with recognised trade unions, the scales of pay by reference to which they were remunerated and the conditions of service, restrictions, requirements and obligations to which they were subject immediately before the vesting day shall continue to apply to them.

(4) In relation to persons transferred to the Company under *subsection (1)*, previous service as a member of the staff of the Board shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Organisation of Working Time Act, 1997, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, and the Unfair Dismissals Acts, 1977 to 1993.

Transfer of assets and liabilities of Board to Company.

52.—(1) The following shall be transferred to the Company on the vesting day:

- (a) all property (including choses-in-action) and rights held or enjoyed immediately before that day by the Board, and
- (b) all the liabilities of the Board,

and, accordingly, without any further conveyance, transfer or assignment—

- (i) the said property, shall, on the vesting day, vest in the Company for all the estate, term or interest for which, immediately before that day, it was vested in the Board, but subject to all trusts and equities affecting the property and capable of being performed,
- (ii) the said rights shall, as on and from the vesting day, be enjoyed by the Company, and
- (iii) the said liabilities shall, as on and from the vesting day, be the liabilities of the Company.

(2) All moneys, stocks, shares and securities transferred to the Company by this section which, on the vesting day, are standing in the name of the Board shall, upon the request of the Company, be transferred into its name.

(3) Every right and liability transferred by *subsection (1)* to the Company may, on or after the vesting day, be sued on, recovered or enforced by or against the Company in its own name and it shall not be necessary for the Company to give notice to a person whose right or liability is transferred by that subsection of the transfer.

- 53.**—The Company and, with the consent of the Company, a subsidiary may perform any of its functions through or by any member of its staff duly authorised in that behalf by the Company or the subsidiary. Pt.IV
Performance of functions of Company and subsidiaries by members of staff.
- 54.**—(1) Every bond, guarantee or other security, or licence, exemption or permission, of a continuing nature made or given by or on behalf of the Board to any person or given by any person to and accepted by or on behalf of the Board and every contract or agreement in writing made between the Board and any other person and in force but not fully executed and completed immediately before the vesting day shall continue in force on and after that day and shall be construed and have effect as if the name of the Company were substituted therein for that of the Board, and shall be enforceable by or against the Company. Preservation of certain continuing contracts and adaptation of references to Board in certain documents.
- (2) References to the Board contained immediately before the vesting day in the memorandum of association or articles of association of any company shall, on and after the vesting day, be construed as references to the Company.
- 55.**—Where, immediately before the vesting day, any legal proceedings are pending in any court or tribunal and the Board is a party to the proceedings, the name of the Company shall be substituted in the proceedings for that of the Board and the proceedings shall not abate by reason of such substitution. Pending legal proceedings to which Board is a party.
- 56.**—The Company and each subsidiary shall ensure that its activities are so conducted as to afford appropriate protection for the environment and the archaeological heritage. Protection of environment and archaeological heritage.
- 57.**—Upon the vesting day, Bord na Móna shall become and be dissolved. Dissolution of Bord na Móna.
- 58.**—(1) Subject to *subsection (2)*, and the other provisions of this Act, the Turf Development Acts, 1946 to 1995, shall apply on and after the vesting day with the modification that references in those Acts to the Board shall be construed as references to the Company and with any other necessary modifications. Application of Turf Development Acts, 1946 to 1995.
- (2) *Subsection (1)* does not apply to—
- (a) Part II (other than section 15) or IV of, or the Schedule to, the Act of 1946,
 - (b) section 6 of the Act of 1953,
 - (c) section 1, 2, 3 or 11 of the Turf Development Act, 1957, or
 - (d) section 3, 10 or 11 of the Act of 1990.
- (3) In the application, pursuant to *subsection (1)*, of section 15 of the Act of 1946 the references to officers and servants, officers and servants of the Board and an officer or servant of the Board shall be construed as not including the Managing Director.

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(4) References in any enactment (other than the Turf Development Acts, 1946 to 1995) to the Board shall, on and after the vesting day, be construed as references to the Company.

Application of
Worker
Participation (State
Enterprises) Acts,
1977 to 1993.

59.—The Worker Participation (State Enterprises) Acts, 1977 to 1993, shall apply to the Company as if it were a designated body (within the meaning of those Acts).

Application of
certain provisions of
Tax Acts.

60.—(1) The Board and the Company shall be deemed, for the purposes of section 312 of the Taxes Consolidation Act, 1997, to be under the control of the same person.

(2) The trade carried on by the Board before the vesting day and the trade carried on by the Company or a subsidiary on or after that day shall be deemed for the purposes of section 400 of the Taxes Consolidation Act, 1997, to have belonged and to belong to the Minister for Finance and the Minister for Finance shall be deemed for those purposes to be a body corporate.

(3) The Board, the Company and the subsidiaries shall be deemed, for the purposes of Chapter 5 of Part 12, section 456 and Chapter 1 of Part 20 of the Taxes Consolidation Act, 1997, to be members of the same group.

Restriction of Land
Act, 1965.

61.—Section 12 of the Land Act, 1965, shall not apply to land or an interest in land vested in the Company or a subsidiary.