



Prime Minister (4)

MS 25/1

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Nigel Lawson MP  
Secretary of State  
Department of Energy  
Thames House South  
Millbank  
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24 January 1983

REVIEW OF DESIRABLE CHANGES IN NATIONALISED INDUSTRY  
FINANCIAL STATUTES

As you will know officials have been reviewing nationalised industry financial legislation and I attach a note which sets out a number of desirable changes. The need for changes arises because some industries' earlier legislation does not reflect current conditions and because there are some general deficiencies. Not all the proposed changes are relevant to every industry.

Officials have reached broad agreement and I hope the flexible approach we are now adopting will overcome any remaining reservations. If there are any remaining problems, or suggestions for addition, I would be grateful to be told as soon as possible.

Once the checklist is agreed, it could be implemented either piecemeal or as a piece of omnibus legislation. I favour piecemeal implementation as and when legislative opportunities arise on individual industries' statutes, since this avoids the need for additional complex and detailed nationalised industry legislation. Moreover piecemeal implementation would make it easier to respond with a degree of flexibility to industries' individual circumstances.

At the next stage, I would intend putting the checklist to NICG for their comments. I would be prepared to accept comments on points of detail from the Chairmen but not, of course, on the substance of the checklist items which are a matter of policy rather than for negotiation.

... I am copying this letter and enclosure to other Members of E(NI) and to the Lord President.

LEON BRITTAN

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CHECKLIST OF DESIRABLE CHANGES IN NATIONALISED INDUSTRY FINANCIAL  
STATUTES

Note by HM Treasury

1. A review of nationalised industry financial statutes has been conducted by officials under the auspices of NIP(WG). The aim has been to establish a checklist of desirable provisions for inclusion in individual nationalised industry statutes whenever it was practicable to do so. Statutes vary considerably from industry to industry, in part dependent on when they were enacted. The checklist takes account of this, as well as of developments in the relationship between Government and the industries and of specific points raised by the PAC.

2. The following are the provisions which it is considered should desirably be included in all nationalised industry statutes. The list, while it represents the current position, should not be regarded as closed to new items which future developments suggest are worth adding.

A - Extension of Coverage of Statutory Borrowing Limits

A(i) Borrowing by subsidiaries

3. Present nationalised industry statutes vary in the extent to which borrowing by subsidiaries is included within an industry's borrowing limit. A subsidiary is defined for this purpose as in Section 154 of the Companies Act 1948 meaning that the parent industry either:

- i) controls the composition of the subsidiary's Board of Directors and has a shareholding; or
- ii) holds more than half in nominal value of the subsidiary's equity share capital.

At present, some industries' borrowing limits include borrowing by wholly-owned subsidiaries; others exclude all borrowing by subsidiaries. Given that subsidiaries are by definition controlled by the parent industry, it is proposed that statutes should be amended to include within an industry's statutory borrowing limit all borrowing

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by subsidiaries. Transactions between the parent industry and its subsidiaries, and between subsidiaries, would be excluded.

4. In order that the provision should not hinder joint ventures or the introduction of private finance, the Secretary of State with the agreement of the Treasury would be able to exclude by Order from this provision any subsidiary that was not wholly-owned.

5. The provision would bear on the parent industry rather than on the Boards of subsidiaries or third parties. In organising its own borrowing, an industry would thus need to take into account borrowing by its relevant subsidiaries.

A(ii) Borrowing guaranteed by a nationalised industry or its subsidiaries

6. Nationalised industries or their subsidiaries (as defined under A(i) above and excluding those treated as not being in the public sector) may at times guarantee loans made by third parties to associated companies or other bodies. In order that statutory borrowing limits should reflect the total potential liabilities arising from borrowing that might fall on the Consolidated Fund, it is proposed that the extent of such guarantees should be totalled and included within the limits. The PAC has endorsed this approach and said that although borrowing limits may need to be increased to accommodate such guarantees, this will be no more than a recognition of the realities of the situation of which Parliament should be made fully aware.

7. The total potential liability arising from the guarantee would be included and, as in paragraph 5 above, the provision would bear on the parent industry.

A(iii) Types of non-standard "borrowing" and valuation of foreign currency borrowing

8. Some nationalised industries have limited access to forms of "borrowing" not included in the present legal definition of borrowing (e.g. acceptance credits). It is proposed that statutes should be amended to allow sponsor Departments in consultation with the

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Treasury to specify by Order what forms of "borrowing" are included in statutory borrowing limits. This flexibility would be desirable to cater for new forms of borrowing that may emerge in the future although it would be made clear to industries that the inclusion of certain non-standard forms of borrowing did not imply that industries would be allowed general access to them. Statutory borrowing limits as well as including items under A(i) and A(ii) above, would include liabilities under acceptances (other than normal trade bills), obligations under finance leases and other indebtedness in the nature of borrowing. (Stock Exchange requirements when defining "indebtedness" in a prospectus are comparable).

9. Foreign currency borrowing can either be valued in sterling for the purposes of inclusion within borrowing limits at the rate which prevailed when the loan was first drawn down (e.g. as in British Airways legislation); or at current rates of exchange; or at rates set by the Secretary of State with the approval of the Treasury. Unless statutes define otherwise, current exchange rates have to be used except for loans covered by the public sector exchange cover scheme which are included at the guaranteed exchange rate set at the date when the money was borrowed.

10. For most industries foreign currency loans should be value at the current exchange rate, or guaranteed exchange rate if it is subject to the public sector exchange cover scheme, for that is the best prevailing estimate of the cost of repaying the loan. However, exceptional cases (such as British Airways) may arise in which foreign currency debt is so large a proportion of the total borrowing limit that exchange rate fluctuations might lead to inadvertent breaches. For such cases it may be necessary to use the draw-down rates for valuation. In order to provide sufficient flexibility to cover all cases it is proposed that the general statutory provision should allow the valuation method to be defined by the Secretary of State with the approval of the Treasury.

B - Extension of Powers to Raise Finance

11. It is proposed that industries' borrowing powers should be extended to permit sterling borrowing in the UK from persons other

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than the Secretary of State, with the consent of the Secretary of State and the approval of the Treasury. As such it would permit the introduction of private finance into all industries.

12. This provision would be in part a reversion to practices prevailing some years ago, although the intention would be to allow borrowing only under closely defined conditions. Discussions in NEDC have developed criteria under which private finance might desirably be introduced and there is a need to ensure that any acceptable schemes that do arise are not blocked by legislation. There are several industries that have at present narrowly defined borrowing powers which exclude borrowing in the UK from persons other than the Secretary of State. These include the National Coal Board, the British Airports Authority and British Rail. There are other industries whose borrowing powers exclude some, but not all, forms of direct market finance (for example the British Gas Corporation and the Electricity Council may only raise such finance in the form of stock issues in their own names). The formula adopted would be based on that included in the British Telecommunications Act 1981 and give the maximum possible statutory flexibility while allowing the Government to retain control.

C - Powers to Clawback Surplus Funds

13. This provision would allow the Secretary of State by Order to require additional payments to the Exchequer where an industry has generated a surplus in excess of existing requirements and has repaid all its existing debt. It is only applicable to those industries which are likely to generate surpluses in the foreseeable future.

14. This provision reflects the Government's declared policy in response to the PAC's Twentieth Report for 1979-80, which expressed concern about the possible build-up by nationalised industries of realisable reserves not needed for investment, and advocated a system of payments to the Exchequer as an additional cash return on the public shareholding in the industry. The Treasury Minute replying to this Report (Cmnd 8125) explained that surpluses may arise in 3 possible circumstances. The first was where an industry was generating

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a net cash surplus for purely temporary reasons - in which case these surplus funds would simply be placed elsewhere in the public sector so as to keep down the net financing requirement of the public sector as a whole. The second and third cases arose where an industry generated a surplus not just temporarily but over a period of years. Where such an industry still had debt to pay (the second case) this surplus would be used to repay debt, against the background of a negative external financing limit. But where an industry has repaid all its debt, or is contractually unable to speed up its repayment of such debt as does remain, the Government has acknowledged the case for additional payments to the Exchequer. In some cases, powers to require such additional payments already exist.

D - Power to Set Financial Targets

15. All statutes should permit the Secretary of State, with the approval of the Treasury, to determine such financial objectives as he considers reasonable in any given period; and should require the industry to conduct its affairs with a view to achieving these financial objectives.

16. Several industries' statutes already contain this power, and it is proposed to extend this to remaining industries. Although it is preferable for financial targets to be established on the basis of voluntary agreement between Government and the industry, there may be circumstances in which the Government finds it necessary to impose a target for policy reasons, and to compel an industry's compliance with it. It should be made clear in statutes that the setting of any statutory financial target takes primacy over any existing statutory break-even duty.

E - Control over Content and Form of Report & Accounts

17. It is proposed that all statutes should contain power to direct the matters to be covered in industries' annual reports and statements of accounts. Such powers, together with existing provisions that allow the form of accounts to be specified would permit the

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Secretary of State, after consultation with the industry and with the consent of the Treasury, to specify the information to be contained in the annual report and statement of accounts; the manner in which the information is presented; and the methods and principles according to which the accounts are prepared.

18. Although it is not the intention that Secretaries of State should prescribe in detail what industries' Reports and Accounts should contain, there is however certain minimum information (e.g. key statistics, performance against targets and aims, items from Corporate Plan) which industries should be required to incorporate. The more recent nationalised industry legislation is satisfactory so far as powers over the form of accounts are concerned but, in most cases, the Government cannot direct what information should appear in accompanying reports. It is not intended that this provision should be onerous and disruptive; it would be an enabling measure allowing the subsequent issue of directions only as and when necessary.

F - Powers over the Creation and Disposal of Subsidiaries

19. This provision would permit the Secretary of State to direct an industry to establish a wholly-owned subsidiary and to transfer assets to it. It would also allow directions to be given requiring the disposal of all or part of such subsidiaries. In concert these powers could be used to require that existing subsidiaries are put in a suitable state for privatisation and to require an industry to put into a subsidiary activities or assets which it itself at present carries out with a view to subsequent disposal or the introduction of private finance.

20. Some recent legislation (e.g. Transport Acts 1981 & 1982) includes comparable powers. Inclusion in legislation would carry no connotations of how and when such powers might be used but would ensure that opportunities which might arise are not blocked.

21. It is also proposed that industries be required to obtain the Secretary of State's consent before disposing of any subsidiary or a substantial interest in it. This would be a precautionary provision

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to ensure that Ministers can influence such disposals as and when they arise. A general power would be sought leaving the specifying of detail to administrative direction, with a de minimis provision to exclude insignificant activities. It would be important to make clear that any consent requirement did not mean that the Secretary of State necessarily took responsibility for the terms on which a disposal was carried out.

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Plus 3/3

The Rt Hon Leon Brittan QC MP  
Chief Secretary to the Treasury  
HM Treasury  
Parliament Street  
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3 March 1983

Dear Len

Thank you for your letter of 24 January enclosing a checklist of desirable changes in nationalised industry financial statutes. I am content with your proposals for piecemeal reform, although I would hope that this would not in any way prejudice our search for more fundamental changes in the structure and relationships with Government of the nationalised undertakings which are so clearly required.

I am copying this letter to the members of E(NI), the Lord President and Sir Robert Armstrong.

Yours  
David

DAVID HOWELL

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SCOTTISH OFFICE

WHITEHALL, LONDON SW1A 2AU

The Rt Hon Leon Brittan QC MP  
Chief Secretary to the Treasury  
Treasury Chambers  
Parliament Street  
LONDON  
SW1P 3AG

23 February 1983

Dear hon,

REVIEW OF DESIRABLE CHANGES IN NATIONALISED INDUSTRIES  
FINANCIAL STATUTES

Thank you for sending me a copy of your letter of 24 January to Nigel Lawson. I have also seen Patrick Jenkin's and Arthur Cockfield's letters of 3 and 4 February respectively.

I am generally content with the proposals and I would agree with the suggestion that they should be circulated to the NICG. I am inclined, however, to favour implementation in an omnibus Bill rather than by piecemeal legislation, for the reasons set out in Arthur Cockfield's letter. Whilst recognising the flexibility which piecemeal legislation would provide, I cannot see any realistic prospects for including the appropriate legislation within any Scottish legislative programme in the foreseeable future.

In the event that colleagues agree to adopt a piecemeal approach, I would hope that neither Nigel Lawson nor David Howell would see any difficulty in including suitable Scottish provisions in the legislation for the corresponding industries in England and Wales.

I am copying this letter to the recipients of yours.

Yours sincerely,

George

Lab Ind Phy MS



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*From the Secretary of State*

The Rt Hon Leon Brittan QC MP  
 Chief Secretary to the Treasury  
 Treasury Chambers  
 Parliament Street  
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Prime Minister (2)

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*[Handwritten signature]*

4 February 1983

*Dear Lem,*

REVIEW OF DESIRABLE CHANGES IN NATIONALISED INDUSTRIES FINANCIAL STATUTES

Thank you for sending me a copy of your letter of 24 January to Nigel Lawson.

I am broadly content with your proposals.

I see, however, considerable attraction in an omnibus Bill rather than piecemeal legislation. An omnibus Bill should be much more economical of time, to the benefit both of Whitehall and of the Parliamentary timetable. It should also be a much quicker method of making changes, since if we have to rely on separate Bills it may take some years to find the time for some industries. Moreover piecemeal legislation may well partially defeat the object of the exercise, namely achieving a measure of consistency between industries, since it increases the risk of having to accept amendments affecting some industries but not others.

I therefore favour a single piece of legislation on the lines of the Statutory Corporations (Financial Provisions) Acts of 1974 and 1975.

On a point of detail, I understand that, under present legislation, some nationalised industries (including British Airways and British Airports Authority) are unlikely to



*From the Secretary of State*

be able to take advantage of the Treasury's new scheme for temporary borrowing from the National Loans Fund. You may therefore like to include provision for regularising the position here in the present package of measures.

I am copying this letter to the recipients of yours.

A handwritten signature in ink, appearing to read 'Cockfield', with a long, sweeping underline that extends to the right.

LORD COCKFIELD

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Secretary of State for Industry

3 February 1983

The Rt Hon Leon Brittan QC MP  
Chief Secretary  
HM Treasury  
Parliament Street  
London SW1

Dear Leon,

PROPOSED CHANGES IN FINANCIAL PROVISIONS OF NI STATUTES

Thank you for your letter of 24 January and the enclosed paper.

2 I am content that we establish this checklist in principle, although, like you, I should certainly not favour implementation by an omnibus Bill.

3 There are some proposals which cause difficulty in relation to the industries this Department sponsors. Detailed comments on these were conveyed at official level in January and I will not therefore repeat them here. I support your proposal to consult the NICG.

4 Copies of this go to members of E(NI) and to the Lord President.

Your  
Patel



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