



Export Guarantees and Overseas Investment Act 1978

CHAPTER 18

ARRANGEMENT OF SECTIONS

Guarantees

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ELIZABETH II



Export Guarantees and Overseas Investment Act 1978

1978 CHAPTER 18

An Act to consolidate the Export Guarantees Act 1975, (as amended by section 4 of the International Finance, Trade and Aid Act 1977 and Schedule 1 to that Act), and sections 1 and 2 of the Overseas Investment and Export Guarantees Act 1972. [30th June 1978]

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:—

Guarantees

1.—(1) For the purpose of encouraging trade with other countries, the Secretary of State may, after consultation with the Export Guarantees Advisory Council and with the consent of the Treasury, make arrangements for giving such guarantees to, or for the benefit of, persons carrying on business in the United Kingdom as are mentioned in subsection (2) below.

(2) The guarantees for which arrangements may be made under subsection (1) above are guarantees in connection with the export, manufacture, treatment or distribution of goods, the rendering of services, or any other matter which appears to the Secretary of State conducive to the purpose of encouraging trade with other countries.

(3) A guarantee given under this section may be given on such terms and conditions as to the consideration for the giving of the guarantee and otherwise as may be determined in accordance with the arrangements made for giving that guarantee.

Guarantees
and other
arrangements
in national
interest.

2.—(1) For the purpose of encouraging trade with other countries or for the purpose of rendering economic assistance to countries outside the United Kingdom, the Secretary of State may, with the consent of the Treasury, make arrangements for giving such guarantees to, or for the benefit of, persons carrying on business in the United Kingdom as appear to him to be expedient in the national interest; and subsection (3) of section 1 above shall have effect in relation to a guarantee given under this subsection as it has effect in relation to a guarantee given under that section.

(2) For either of the purposes mentioned in subsection (1) above, the Secretary of State may, with the consent of the Treasury, make arrangements for facilitating, in cases in which it appears to him expedient in the national interest so to do, the payment of sums payable under contracts with persons carrying on business in the United Kingdom.

Loans and
interest
grants.

3.—(1) The Secretary of State may, with the consent of the Treasury, make—

- (a) loans to any persons in connection with their provision of financial facilities in respect of export contracts;
- (b) grants to any persons for the purpose of supplementing any interest receivable or received by them as consideration for their provision of such facilities as aforesaid;

but no loans shall be made under this subsection to persons who are neither resident nor carrying on business in the United Kingdom.

(2) The Secretary of State may, with the consent of the Treasury, make grants to any persons carrying on business or other activities outside the United Kingdom in respect of interest paid or payable by them under export contracts.

(3) Any loan or grant under this section shall be made on such terms and conditions as the Secretary of State may determine.

(4) This section is without prejudice to the powers conferred by section 2(2) above.

Securities.

4.—(1) The Secretary of State may, with the consent of the Treasury, acquire any securities which he has guaranteed in the exercise of his powers under this Act.

(2) Subsection (1) above is without prejudice to the acquisition of any security by the Secretary of State as part of any arrangements made under section 2(2) above or in pursuance of the terms and conditions of any loan made under section 3(1) above.

(3) The Secretary of State may with the consent of the Treasury—

- (a) hold any security acquired by him in pursuance of subsection (1) above or as mentioned in subsection (2) above for such period as he thinks fit and collect any sums falling due, whether by way of principal or interest, in respect thereof ;
- (b) dispose of any such security at such time and in such manner as he thinks fit.

5.—(1) For the purpose of encouraging trade with other countries, the Secretary of State may, with the consent of the Treasury, make arrangements for making payments to persons carrying on business in the United Kingdom who have entered into export contracts, being payments related to such increases in the cost of labour, materials or other matters as may be specified by or under the arrangements. Payments to exporters in respect of cost increases.

(2) Arrangements under this section may contain such terms and conditions as the Secretary of State thinks fit, including provisions requiring payments to be made to the Secretary of State as consideration for his entering into the arrangements.

(3) Subject to subsection (4) below, no arrangements shall be made under this section after 26th March 1979.

(4) The Secretary of State may by order extend the period during which arrangements may be made under this section by not more than one year at a time.

6.—(1) Subject to subsection (3) below, the aggregate of— Limit on commitments.

- (a) the sterling liabilities at any time of the Secretary of State in respect of guarantees given under this Act ;
- (b) the amount of the principal moneys in sterling for the time being due to the Secretary of State under any arrangements made under section 2(2) above or outstanding in respect of loans made under section 3(1) above ;
- (c) the sums paid in sterling for the acquisition—
 - (i) of securities acquired under section 4(1) above and for the time being held by the Secretary of State, or
 - (ii) of currency for acquiring such securities ; and
- (d) the sterling liabilities at any time of the Secretary of State in respect of arrangements made under section 5 above ;

shall not exceed £25,000 million.

(2) Subject to subsection (4) below and to sections 7 and 8 below, the aggregate—

- (a) of the foreign currency liabilities at any time of the Secretary of State in respect of guarantees given under this Act; and
- (b) of the amount of the principal moneys in foreign currencies for the time being due to the Secretary of State under any arrangements made under section 2(2) above or for the time being outstanding in respect of loans made under section 3(1) above;

shall not exceed 10,000 million special drawing rights.

(3) The Secretary of State may, on not more than three occasions, by order made with the consent of the Treasury increase or further increase the limit applicable under subsection (1) above by a sum specified in the order, being a sum not exceeding £5,000 million.

(4) The Secretary of State may, on not more than three occasions, by order made with the consent of the Treasury increase or further increase the limit applicable under subsection (2) above by a sum specified in the order, being a sum not exceeding 5,000 million special drawing rights.

Application
of limit on
commitments
to foreign
currency
transactions.

7.—(1) This section applies—

- (a) to guarantees given under this Act under which the Secretary of State incurs foreign currency liabilities, other than guarantees of an amount in special drawing rights; and
- (b) to facilities arranged under section 2(2) above and loans made under section 3(1) above, under which amounts of principal moneys in foreign currencies, other than amounts in special drawing rights, are due to the Secretary of State or outstanding.

(2) In the case of a guarantee to which this section applies the amount to be taken into account under section 6(2)(a) above at any time shall be calculated by reference to the equivalent in force at that time under subsection (4) below in special drawing rights of the amount of the foreign currency liability of the Secretary of State under the guarantee.

(3) In the case of a facility or loan to which this section applies the amount to be taken into account under section 6(2)(b) above at any time shall be calculated by reference to the equivalent in force at that time under subsection (4) below in special drawing rights of the amount in the foreign currency due to the Secretary of State by virtue of the facility or outstanding in respect of the loan.

(4) The equivalent in special drawing rights of an amount of a foreign currency liability or of an amount of principal moneys due or outstanding in a foreign currency shall be determined by the Secretary of State—

(a) on or by reference to the day on which—

- (i) the guarantee is given ;
- (ii) money is paid by the Secretary of State in fulfilment of the facility ; or
- (iii) money is paid by him in fulfilment of the loan ;

as the case may be ; and

(b) by reference to the last day of each quarter at the end of which—

- (i) the guarantee remains in force ;
- (ii) any of the principal moneys paid in fulfilment of the facility are due to the Secretary of State ; or
- (iii) any of the principal moneys are outstanding in respect of the loan ;

as the case may be ;

and shall be so determined having regard to what appears to him to be the appropriate rate of exchange.

(5) A determination made under subsection (4)(a) above shall take effect as from the day on or by reference to which it is made and (unless it ceases to be required at an earlier date) shall remain in force until the end of the quarter in which the guarantee is given or, as the case may be, the money is paid.

(6) In relation to any quarter, a determination made by reference to the last day of the quarter under subsection (4)(b) above is referred to in this Act as a “quarterly revaluation” and shall take effect as from the end of that quarter and (unless it ceases to be required at an earlier date) shall remain in force throughout the next succeeding quarter.

8.—(1) The aggregate of the liabilities and amounts referred to in subsection (2) of section 6 above may exceed the limit for the time being in force under that subsection if the excess is attributable and attributable only to a quarterly revaluation of any of those liabilities and amounts which took effect as from the end of a previous quarter.

Circumstances in which limit on commitments under section 6(2) may be exceeded.

(2) If the conditions specified in subsection (3) below are satisfied, the Secretary of State may at any time so exercise any of his powers under section 1, 2 or 3(1)(a) above in favour of a

person that, as a result of the exercise of that power, the aggregate of the liabilities and amounts referred to in subsection (2) of section 6 above—

- (a) exceeds the limit in force at that time under that subsection ; or
 - (b) in a case where that limit has already been exceeded as permitted by subsection (1) above or by virtue of the prior application of this subsection, further exceeds that limit.
- (3) The conditions referred to in subsection (2) above are:—
- (a) that the Secretary of State has previously undertaken to exercise that power in favour of that person ; and
 - (b) that, if the Secretary of State had exercised that power at the time of his undertaking, the aggregate of those liabilities and amounts would not have exceeded the limit in force under section 6(2) above at that time.

Returns.

9.—(1) The Secretary of State shall publish after the end of each quarter returns giving, for that quarter, the information required by this section.

(2) Returns under this section for any quarter shall show separately—

- (a) the aggregate amount of the guarantees given in that quarter under section 1 above under which the Secretary of State incurred sterling liabilities ;
- (b) the aggregate amount of the guarantees given in that quarter under section 1 above under which the Secretary of State incurred foreign currency liabilities ;
- (c) the aggregate amount of the guarantees given in that quarter under section 2(1) above under which the Secretary of State incurred sterling liabilities ;
- (d) the aggregate amount of the guarantees given in that quarter under section 2(1) above under which the Secretary of State incurred foreign currency liabilities ; and
- (e) the aggregate amount of the sterling liabilities of the Secretary of State incurred by him in that quarter in respect of arrangements made under section 5 above.

(3) An amount required to be shown in a return under this section by virtue of paragraph (b) or paragraph (d) of subsection (2) above shall be expressed in special drawing rights.

(4) Returns under this section shall also show the aggregate amount which is to be taken into account under subsection (1) and under subsection (2) of section 6 above and the amount

which is to be taken into account under each paragraph of those subsections, further separating, in the case of paragraph (a), those guarantees given under section 1 and those given under section 2(1) and, in the case of paragraph (b), arrangements under section 2(2) and loans under section 3(1) above.

(5) References in subsection (4) above to amounts to be taken into account under subsection (1) or (2) of section 6 above are references to the amounts to be taken into account at the end of the quarter to which the return in question relates having regard, in the case of subsection (2), to any quarterly revaluations taking effect as from the end of that quarter.

10. Where a company is controlled by any person, then— Controlled companies.
(a) for the purposes of the provisions of this Act relating to guarantees—

(i) any contract entered into by the Secretary of State with that person shall, in so far as it provides for the Secretary of State to make payments to that person in respect of any loss of that company or in respect of any deficit on an account relating both to activities of that company and to activities of that person, be deemed a contract to indemnify that person against loss and a guarantee within the meaning of this Act ;

(ii) any guarantee given by the Secretary of State to or for the benefit of that company shall be deemed to be given for the benefit also of that person ; and

(b) for the purposes of section 2(2) above, any arrangements made by the Secretary of State for facilitating the payment of sums payable under a contract with that company shall be deemed to be arrangements for facilitating the payment of sums payable under a contract with that person.

Overseas Investment

11.—(1) The Secretary of State may with the consent of the Treasury make such arrangements as are provided for by this section for the purpose of insuring investment overseas against the risk of war, expropriation, restrictions on remittances and such other risks as appear to the Secretary of State not to be commercial risks. Arrangements for meeting non-commercial risks.

(2) The Secretary of State may under the arrangements enter into agreements with persons carrying on business in the United Kingdom or with companies controlled by such persons, under

which the Secretary of State undertakes to indemnify the other party to the agreement against any loss of a description specified in the agreement which arises in connection with an investment of resources by that party, or by a company controlled by that party, in an enterprise carried on wholly or partly in a country other than the United Kingdom.

(3) Any such arrangements may include provision for an agreement in pursuance of the arrangements to contain such terms as the Secretary of State considers appropriate in the circumstances of the case.

(4) The aggregate of the liabilities at any time of the Secretary of State under this section shall not exceed the limit specified in subsection (5) below.

(5) The said limit shall be £250 million, but the Secretary of State may, on not more than two occasions, by order made with the consent of the Treasury, increase or further increase that limit by a sum specified in the order, being a sum not exceeding £250 million.

(6) The Secretary of State shall publish quarterly a return showing the aggregate amount of the liabilities assumed by him under this section since the date of the last previous return under this subsection.

(7) As soon as may be after 31st March in each year the Secretary of State shall prepare a report on the discharge of his functions under this section and shall lay the report before Parliament.

Supplementary

The Export Credits Guarantee Department and the Export Guarantees Advisory Council.

12.—(1) All the powers and duties of the Secretary of State under this Act, except the power to make orders under sections 5(4), 6(3), 6(4) and 11(5) above, shall be exercised and performed through the Export Credits Guarantee Department, which shall continue to be a Department of the Secretary of State.

(2) The functions of the Export Guarantees Advisory Council shall continue to be exercisable by that Council, and the Secretary of State shall continue the Council accordingly.

Orders.

13. Any order under this Act shall be contained in a statutory instrument, and no such order shall be made unless a draft of it has been laid before and approved by a resolution of the House of Commons.

14.—(1) Subject to subsection (2) below—

- (a) all expenses incurred by the Secretary of State under this Act shall be defrayed out of money provided by Parliament ; Expenses and receipts.
- (b) all sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

(2) If—

- (a) any amount required for fulfilling any guarantee given under this Act, or
- (b) any sum required by the Secretary of State for fulfilling his liabilities under an agreement under section 11 above,

is not paid out of money provided by Parliament, it shall be charged on and paid out of the Consolidated Fund.

15.—(1) In this Act—

Interpretation.

- “ business ” includes a profession ;
- “ export contracts ” means contracts in respect of which guarantees have been or can be given under section 1 or 2 (1) above ;
- “ foreign currency ” means any currency other than sterling, including special drawing rights ;
- “ foreign currency liabilities ” means liabilities which are measured in a foreign currency, whether or not they are to be discharged in a foreign currency ;
- “ guarantee ” includes any contract to indemnify, whether wholly or in part, against loss of any description and shall be construed in accordance with section 10(a)(i) above ;
- “ quarter ” means a quarter ending with 31st March, 30th June, 30th September or 31st December in any year ;
- “ quarterly revaluation ” has the meaning assigned to it by section 7(6) above ;
- “ securities ” includes bonds, stock, shares, bills and promissory notes ;
- “ sterling liabilities ” means liabilities which are measured in sterling, whether or not they are to be discharged in sterling ;
- “ trade with other countries ” includes any transaction involving a consideration in money or money’s worth accruing from a person carrying on business or other activities outside the United Kingdom to a person carrying on business in the United Kingdom.

(2) For the purposes of the definitions of “ foreign currency liabilities ” and “ sterling liabilities ” in subsection (1) above,

in cases where liabilities are measured in sterling but are expressed to be subject to a limit in a foreign currency, the liabilities are to be taken to be measured in foreign currency, and in cases where liabilities are measured in foreign currency but are expressed to be subject to a limit in sterling, the liabilities are to be taken to be measured in sterling.

(3) References in this Act to amounts of principal moneys in sterling or in foreign currencies are to be taken as references to amounts which are measured, whether or not they are payable, in sterling or in foreign currencies, as the case may be.

(4) References in this Act to a company controlled by a person are references to a company so controlled directly or indirectly, and include cases where the person having control is also a company.

(5) Except in section 3(1) above, any reference in this Act to the United Kingdom includes a reference to the Isle of Man and the Channel Islands.

(6) In section 3 above references to the provision of financial facilities include references to the provision of such facilities before the date of the passing of this Act; and grants may be made under that section in respect of interest for periods before that date.

(7) Except where the context otherwise requires, any reference in this Act to any provision of this Act shall be construed as including a reference to any corresponding enactment previously in force; and references to anything done by the Secretary of State shall accordingly be construed as including references to anything done under a corresponding enactment by the Board of Trade.

16.—(1) This Act may be cited as the Export Guarantees and Overseas Investment Act 1978.

(2) The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) The Export Guarantees (Extension of Period) (No. 2) Order 1978 is hereby revoked.

(4) This Act shall come into force at the expiration of the period of one month beginning with the day on which it is passed.

(5) It is hereby declared that this Act extends to Northern Ireland.

Short title,
repeals,
revocation,
commence-
ment and
extent.

S.I. 1978/322.

SCHEDULE

Section 16.

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
1972 c. 40.	Overseas Investment and Export Guarantees Act 1972.	Sections 1 and 2.
1975 c. 38.	Export Guarantees Act 1975.	The whole Act.
1977 c. 6.	International Finance, Trade and Aid Act 1977.	Section 4. Schedule 1.

c. 18 *Export Guarantees and Overseas Investment
Act 1978*

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE

40p net

ISBN 0 10 541878 1

(37837)