D. TRANSFER OF CONTROL OF IMPORTANT MANUFACTURING
UNDERTAKINGS TO NON-RESIDENTS

Part II of the Industry Act 1975 confers upon the Secretary of State for Industry a number of powers in relation to the transfer of control of important manufacturing undertakings to persons not resident in the United Kingdom.

1. General Scope

The general scope of Part II of the Act is delimited by the key concepts of “important manufacturing undertaking” and “change of control.”

The meaning of “important manufacturing undertaking” given by section 11 para. 2 is as follows:

“... an undertaking which, insofar as it is carried on in the United Kingdom, is wholly or mainly engaged in manufacturing industry and appears to the Secretary of State to be of special importance to the United Kingdom or to any substantial part of the United Kingdom.”

Two features of the definition deserve special notice. In the first place, it is not necessary that the operations in the United Kingdom should form the whole, or even a major part, of the undertaking in question. Secondly, the application of the criterion of “special importance” is a matter for the discretionary judgement of the Secretary of State. There are numerous other instances of discretion being conferred in this Part of the Act by the use, in particular, of the phrases “if it appears to the Secretary of State” or “if the Secretary of State is satisfied.” The administrative law of the United Kingdom provides little possibility for the judicial control of the exercise of such discretion.

* For the first part of this article, see 15 C.M.L. Rev. 1978, 9-34.
96. For a fuller account, see Sharpe, The Industry Act 1975, Ch. 4.
97. E.g. s. 13 (1), (2), (3), (4) (a), (b).
According to section 12 para. 1, a "change of control" for the purposes of this part of the Act involves the occurrence of one of a list of "relevant events", which are set out in subsection 2:

"(a) the person carrying on the whole or part of the undertaking ceases to be resident in the United Kingdom;
(b) a person not resident in the United Kingdom acquires the whole or part of the undertaking;
(c) a body corporate resident in the United Kingdom but controlled by a person not so resident acquires the whole or part of the undertaking;
(d) a person not resident in the United Kingdom becomes able to exercise or control the exercise of the first, second or third qualifying percentage of votes in a body corporate carrying on the whole or part of the undertaking or in any other body corporate which is in control of such a body; or
(e) a person resident in the United Kingdom and able to exercise or control the exercise of the first, second or third qualifying percentage of votes in a body corporate carrying on the whole or part of the undertaking or in any other body corporate which is in control of such a body ceases to be resident in the United Kingdom."

There would thus be a change of control where a person carrying on an undertaking, either directly (section 12 para. 2 (a)) or through a company (section 12 para. 2 (e)) ceases to be resident in the United Kingdom; where a non-resident acquires an undertaking, whether from a resident or from another non-resident, and either directly (section 12 para. 2 (b)) or through a local subsidiary (section 12 para. 2 (c)); or where a company carrying on an undertaking or a company controlling such a company (section 12 para. 2 (d)) is taken over by a non-resident.98 Here it should be pointed out that a company is deemed not to be resident in the United Kingdom if it has not been incorporated under United Kingdom law.99 The "qualifying percentages" referred to in the subsection, are, respectively, 30, 40 and 50 per cent. Since the power to issue vesting orders is subject to a time limit,100 it was thought advisable to give the Secretary of State three separate opportunities of intervention, to cover the situation when a 30 per cent non-resident share did not call for the exercise of the power, but some further acquisition might do so.

98. S. 12 (3) provides that (a) control of a body corporate consists of the right to cost 30 per cent or more of the votes at a general meeting; (b) control of a body corporate having control of another body corporate gives control of the latter.
99. S. 18 (2).