STATUTORY INSTRUMENTS

1993 No. 1252

The Financial Provisions (Northern Ireland) Order 1993

PART II

GOVERNMENT TRADING FUNDS

Establishment of trading funds

3.—(1) If it appears to any department—

(a) that any operations of that department are suitable to be financed by means of a fund established under this Part (a "trading fund") and, in particular, to be so managed that the revenue of the fund would consist principally of receipts in respect of goods or services provided in the course of the operations in question, and

(b) that the financing of the operations in question by means of a trading fund would be in the interests of the improved efficiency and effectiveness of the management of those operations,

that department may by order establish a trading fund for the operations in question as from a day appointed by the order.

(2) Where a department proposes to make an order in respect of any operations (not being operations then financed by means of a trading fund) and considers that—

(a) the operations in question consist substantially in the provision of goods or services in the United Kingdom otherwise than to departments, and

(b) an opportunity to make representations to it should be given,

the department shall take such steps as appear to it to be appropriate to give such an opportunity to such persons as appear to it to be appropriate.

(3) An order establishing a trading fund shall designate either—

(a) the Consolidated Fund, or

(b) the responsible department,

as the source of issues to the fund by way of loan (referred to in this Part as the "authorised lender").

(4) The Department of Finance and Personnel may make issues out of the Consolidated Fund for the purpose of making loans under paragraph (3)(*a*) and may borrow money for the purpose of making any such issues.

(5) Issues to the fund by way of loan by the responsible department shall be made out of money appropriated by Measure, and the right to repayment of such issues ranks as an asset of the Consolidated Fund.

(6) An order establishing a trading fund for operations carried on by a person appointed in pursuance of any statutory provision may provide—

(a) for the fund to be under the control and management of that person instead of the responsible department and, accordingly,

(b) for this Part to have effect as if—

(i) the reference to the responsible department in Article 7(1) and the first reference to it in Article 8(1), and

(ii) such other references in this Part to the responsible department as may be specified in the order, where they are references to that department in the exercise of its function of controlling or managing the fund,

were references to that person.

(7) In this Part—

"the funded operations", in relation to a trading fund, means the operations for which the fund is established,

"liabilities", in relation to a trading fund, does not include liabilities in respect of any amount issued to the fund under Article 6,

"department" means a department of the Government of Northern Ireland,

"order", except in Article 6(7), means an order under this Article,

"originating debt", in relation to a trading fund, means any amount remaining after any repayment or reduction of the amount which, by virtue of Article 4(4) and (5), is the originating debt of the fund,

"responsible department", in relation to a trading fund, means the department by which the fund is established, and

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954(**1**).

(8) References in this Part to the provision of services include—

(a) the provision of any authority required for carrying on any activity or exercising any right, and

(b) the performance of any other functions in connection with the regulation of any activity or right.

(9) References in this Part to a department include departments acting jointly, but an order may not designate more than one department as the authorised lender.

(10) References in this Part to the Crown are references to the Crown in right of Her Majesty's Government in Northern Ireland.

Assets and liabilities of funds

4.—(1) Where any department proposes to make an order establishing a trading fund for any operations or to vary an order by extending the funded operations—

(a) it shall determine what Crown assets and liabilities are properly attributable to the operations for which the fund is to be established or, as the case may be, the additional operations and are suitable to be appropriated to the fund, and

(b) the order shall provide for the assets and liabilities so determined to be appropriated as assets and liabilities of the fund.

(2) The responsible department may from time to time, in the case of any trading fund,—

(a) determine what additional Crown assets and liabilities are properly attributable to the funded operations and suitable to be appropriated to the fund, and

(**1**) 1954 c. 33 (N.I.)

(b) provide by order for the assets and liabilities in question to be appropriated as assets and liabilities of the fund.

(3) The values or amounts of assets and liabilities which are the subject of provision under paragraph (1) or (2) shall be determined by the responsible department in accordance with directions given by the Department of Finance and Personnel.

(4) Where an order establishing a trading fund provides for any assets and liabilities to be appropriated as assets and liabilities of the fund—

(a) the amount by which the values of those assets exceed the amounts of those liabilities, less

(b) any amount treated by virtue of the order as public dividend capital,

is originating debt of the fund and is to be treated as having been issued to the fund under Article 6 on the day appointed by the order.

(5) Where, in the case of a trading fund established under a previous order, an order provides for any additional assets and liabilities to be appropriated as assets and liabilities of the fund—

(a) the amount by which the values of those additional assets exceed the amounts of those additional liabilities, less

(b) any amount treated by virtue of the order as public dividend capital,

is to be added to the originating debt of the fund and is to be treated as having been issued to the fund under Article 6 on the day appointed by the order.

(6) The responsible department may from time to time by order provide, in the case of any trading fund, for any assets and liabilities to cease to be assets and liabilities of the fund; but the power conferred by this paragraph is not exercisable where Article 9 applies.

(7) Where the responsible department exercises the power conferred by paragraph (6), it may, in the case of any originating debt or public dividend capital which it may determine to be properly attributable to the assets and liabilities in question—

(a) out of money appropriated by Measure, repay the whole or part of the debt or make a payment into the Consolidated Fund in reduction or extinguishment of the capital, and

(b) by order provide for the reduction or extinguishment of any debt or capital remaining after the application of sub-paragraph (*a*).

(8) An order providing for any assets and liabilities to be appropriated as, or to cease to be, assets and liabilities of a trading fund may describe the assets and liabilities in general terms.

Public dividend capital

5.—(1) An order providing for any assets and liabilities to be appropriated as assets and liabilities of a trading fund may provide for any part of the amount by which the values of the assets exceed the amounts of the liabilities to be treated as public dividend capital of the fund.

(2) Where the responsible department—

(a) repays out of a trading fund before the due date any amount outstanding in respect of the principal of any sums issued to the fund by the authorised lender by way of loan, or

(b) pays any amount standing in the reserves of a trading fund into the Consolidated Fund,

it may issue out of money appropriated by Measure a corresponding amount to the fund as public dividend capital.

(3) Where any sum is issued to a trading fund under Article 6, the responsible department may pay out of the fund into the Consolidated Fund a corresponding sum in reduction or extinguishment of any public dividend capital.

(4) Public dividend capital ranks as an asset of the Consolidated Fund.

(5) For any financial year in which a trading fund has public dividend capital, there shall be paid out of the fund into the Consolidated Fund such sums (if any) by way of return on that capital and its reserves as the responsible department may determine having regard to any balance in the fund at the end of that year and the amount of the balance which appears to be in the nature of distributable profit.

Borrowing by funds

6.—(1) No amount shall be paid into a trading fund by way of loan except in accordance with this Article.

(2) Subject to paragraph (6), the authorised lender may issue by way of loan to a trading fund sums required for the funded operations.

(3) Sums issued under this Article shall be repaid out of the fund on such terms, and interest on them shall be paid at such variable or fixed rates and at such times, as the Department of Finance and Personnel may determine.

(4) In the case of any trading fund where the authorised lender is a department, repayment of any amount outstanding in respect of the principal of any sum issued under this Article (other than repayment before the due date) may be made to the department instead of into the Consolidated Fund and applied by the department as money appropriated by Measure.

(5) The order establishing a trading fund shall specify the maximum amount that may be issued under this Article and the aggregate of amounts issued under this Article in respect of the fund (other than originating debt) shall not exceed that amount, or that amount as varied by a subsequent order.

(6) The sum of the maxima in force in respect of all trading funds at any time shall not exceed £50 million.

(7) The Department of Finance and Personnel may by order increase or further increase the limit in paragraph (6) by any amount, not exceeding £25 million, specified in the order but not so as to make the limit exceed £100 million.

(8) No order under paragraph (7) shall be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.

Payments into, and out of, a trading fund

7.—(1) There shall be paid into a trading fund all receipts in respect of the funded operations and there shall be paid out of the fund all expenditure incurred by the responsible department in respect of those operations, except expenditure in respect of liabilities not appropriated to the fund.

(2) Without prejudice to paragraph (1), there shall be paid out of the trading fund into the Consolidated Fund such sums as may be appropriate as representing accruing liabilities of the Department of Finance and Personnel in respect of pensions (including increases of pensions), gratuities and other similar benefits for persons who have been employed in the funded operations and in respect of the administrative expenses attributable to those liabilities and their discharge; and—

(a) where the Department of Finance and Personnel is the responsible department for the fund, it shall be for the Department of Finance and Personnel to determine the sums payable under this paragraph, the amount of any payment and the time at which it is to be made; and

(b) in other cases it shall be for the responsible department to determine the sums so payable in agreement with the Department of Finance and Personnel, subject to any directions given by the Department of Finance and Personnel as to the amount of any payment or the time at which it is to be made.

(3) The statutory provisions relating to public receipts, expenditure and accounting shall have effect subject to the foregoing provisions of this Article, except as may be directed by the Department

of Finance and Personnel from time to time; and if any question arises whether any particular sums are required by those provisions to be paid into, or out of, the trading fund, that question shall be determined by the Department of Finance and Personnel.

(4) Nothing in this Article affects the powers conferred in relation to fees and charges by the Fees &c. (Northern Ireland) Order 1988(**2**).

Management and accounting

8.—(1) A trading fund established under this Part shall be under the control and management of the responsible department; and in the discharge of its functions in relation to the fund it shall be the duty of that department—

(a) to manage the funded operations so that the revenue of the fund—

(i) consists principally of receipts in respect of goods or services provided in the course of the funded operations, and

(ii) is not less than sufficient, taking one year with another, to meet outgoings which are properly chargeable to revenue account; and

(b) to achieve such further financial objectives as the Department of Finance and Personnel may from time to time, by minute laid before the Assembly, indicate as having been determined by the responsible department to be desirable of achievement.

(2) The responsible department may establish and maintain general, capital and other reserves in the accounts of the trading fund.

(3) If at any time it appears to the responsible department that any amount standing in the reserves of the trading fund is surplus to any foreseeable requirements of the funded operations, it may pay that amount out of the fund and into the Consolidated Fund.

(4) If, in the case of a trading fund not having public dividend capital, the revenues of the fund for a financial year exceed the total sums properly chargeable to revenue account for that year, the responsible department may—

(a) apply the excess for such purposes of the funded operations as it may determine, or

(b) pay the whole or part of the excess into the Consolidated Fund.

(5) Any money in the fund which appears to the responsible department not to be immediately required for the funded operations may be invested by the department in such manner as it may determine.

(6) The Department of Finance and Personnel shall appoint an accounting officer for the fund, with responsibility for keeping its accounts and proper records in relation thereto, and preparing and signing a statement of the accounts in respect of each financial year; and—

(a) the annual statement of accounts shall comply with any directions given by the Department of Finance and Personnel as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared and contain such additional information as the Department of Finance and Personnel may require to be provided for the information of the Assembly; and

(b) the statement in respect of each financial year shall, on or before 30th November next following the end of that year, be transmitted to the Comptroller and Auditor General for Northern Ireland, who shall examine and certify the statement and lay copies thereof, together with his report thereon, before the Assembly.

(**2**) 1988 NI 8

(7) The accounting officer shall send to the responsible department in respect of each financial year—

(a) the annual statement of accounts, and

(b) a report in such form and containing such information as to the performance of the funded operations as the Department of Finance and Personnel may require,

and the responsible department shall publish any report received by it under this paragraph, together with the annual statement of accounts (unless the Department of Finance and Personnel otherwise directs), in such manner as the Department of Finance and Personnel may require.

(8) Where any statutory provision (other than this Part) requires, in whatever terms, a report to be prepared for any period as to the funded operations and sent to any person, or laid before the Assembly, or both or so sent or laid by any time or times, an order may provide for that requirement to be treated as satisfied by preparing the report for the financial year and sending it to that person, or laying it before the Assembly, or both or, as the case may be, so sending or laying it by the time or times specified in the order.

(9) As respects any financial year during the whole of which any operations of a department are funded operations of a trading fund, section 22 of the Exchequer and Audit Act (Northern Ireland) 1921(**3**) (preparation and examination of accounts of trading, etc., accounts) shall not apply to those operations; but otherwise paragraph (6) is without prejudice to anything in that Act or the Exchequer and Financial Provisions Act (Northern Ireland) 1950(**4**).

Operations ceasing to be funded

9.—(1) This Article applies where any operations for which a trading fund is established are to cease to be funded operations (whether the operations ceasing to be funded represent the whole or part of the funded operations or are to cease altogether or be funded operations of another fund or, while continuing to be operations of a department, be financed by other means).

(2) Where the operations ceasing to be funded represent only part of the funded operations, the responsible department shall by order provide for such assets and liabilities of the fund as it may determine to be properly attributable to the operations ceasing to be funded to cease to be assets and liabilities of the fund.

(3) In the following provisions of this Article, "debt" means any amount outstanding in respect of the principal of or interest on sums issued under Article 6 and "originating debt" includes any amount outstanding in respect of interest on such debt; and, where the operations ceasing to be funded represent only part of the funded operations—

(a) references to assets and liabilities are to the assets and liabilities ceasing to be assets and liabilities of the fund by virtue of an order under paragraph (2),

(b) references to debt, originating debt or public dividend capital are to so much of any debt, originating debt or public dividend capital as the responsible department may determine to be attributable to the operations ceasing to be funded.

(4) If, in a case where the operations ceasing to be funded are to cease altogether, the values of the assets of the fund exceed the amounts of the liabilities of the fund, the excess shall be applied in accordance with paragraph (6).

(5) If in any other case—

(a) it appears to the responsible department that any amount standing in the reserves of the fund is surplus to any foreseeable requirements of the funded operations, or

(**3**) 1921 c. 2 (N.I.)
(**4**) 1950 c. 3 (N.I.)

(b) the revenues of the fund for the last financial year exceed the total sums properly chargeable to revenue account for that year,

the amount or excess shall be applied in accordance with paragraph (6).

(6) The amount or excess in question shall be applied towards the following objects (applying sub-paragraph (*a*) before sub-paragraph (*b*))—

(a) the repayment of debt, and

(b) payment into the Consolidated Fund in reduction or extinguishment of any public dividend capital,

and if, where the operations ceasing to be funded represent the whole of the funded operations, any balance remains after the amount or excess has been so applied, the responsible department shall pay the balance into the Consolidated Fund.

(7) The responsible department may out of money appropriated by Measure repay any debt remaining after the application of paragraph (6) or make a payment into the Consolidated Fund in reduction or extinguishment of any public dividend capital so remaining.

(8) Where the operations ceasing to be funded represent only part of the funded operations, the responsible department may by order reduce or extinguish any originating debt, or public dividend capital, remaining after the application of the preceding paragraphs.

Orders under Article 3

10.—(1) An order under Article 3 shall not alter the authorised lender in relation to any trading fund.

(2) No order establishing a trading fund, or extending or restricting the funded operations, shall be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(3) An order under Article 3, if made without a draft having been approved by a resolution of the Assembly, shall be subject to negative resolution.

(4) Where a department has taken steps in pursuance of Article 3(2) to give an opportunity for representations to be made about a proposed order, it shall, before laying, in accordance with paragraph (2), a draft order giving effect to the proposal, lay a report before the Assembly about the representations received and the department's conclusions.

Powers exercisable only with concurrence of Department of Finance and Personnel

11. The following powers under this Part are exercisable by a department (other than the Department of Finance and Personnel) only with the concurrence of the Department of Finance and Personnel, namely—

(a) the power to make an order under Article 3,

(b) the power to make a determination under Article 4(1)(*a*), (2)(*a*) or (7), Article 5(5), Article 8(1)(*b*) or (5) or Article 9(2) or (3)(*b*),

(c) the power to issue sums to a trading fund under Article 5(2),

(d) the power to pay sums out of a trading fund into the Consolidated Fund under Article 5(3), 8(3) or 8(4)(*b*),

(e) the power to repay an amount to the responsible department under Article 6(4),

(f) the power to establish and maintain reserves under Article 8(2),

(g) the power to apply excess revenues of a trading fund for purposes of the funded operations under Article 8(4)(*a*).