



EXPLANATORY NOTES

Infrastructure (Financial Assistance) Act 2012

Chapter 16

£4.00

INFRASTRUCTURE (FINANCIAL ASSISTANCE) ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Infrastructure (Financial Assistance) Act which received Royal Assent on 31 October 2012. They have been prepared by HM Treasury in order to assist the reader of the Act and help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO ACT

3. In July 2012, the Government announced the UK Guarantees scheme to accelerate and bring forward investment in major UK infrastructure projects in response to difficult market conditions. A key problem identified by the UK Government is that persons currently involved in providing infrastructure may find it difficult to obtain private finance. Difficulties in obtaining private finance arise not because of the commercial or economic viability of the individual infrastructure projects but because the capital and banking markets are currently constrained and providers of finance and insurance are taking significantly longer to approve lending to these projects. The Government has agreed in principle to make financial support available to infrastructure projects and this Act authorises expenditure incurred by the Treasury (or a Secretary of State with the consent of the Treasury) in connection with such support.

TERRITORIAL EXTENT AND APPLICATION

4. Section 4 sets out the territorial extent of the Act.
5. The Act extends to England and Wales, Scotland and Northern Ireland.

COMMENTARY

6. Section 1 provides that there may be paid out of money provided by Parliament expenditure incurred by the Treasury or, with the Treasury's consent, the Secretary of State in giving, or in connection with giving, guarantees and other suitable forms of financial assistance to any person in respect of the provision of UK infrastructure.

Section 1 also provides a non-exhaustive list of matters that fall within the definition of “infrastructure”. Section 1 further provides that where expenditure is required under the terms of an agreement for financial assistance and the Treasury is satisfied that arrangements cannot reasonably be made for the expenditure to be paid out of money provided by Parliament, for example because of timing imperatives imposed by the terms of the agreement, then the Treasury may make a payment out of the Consolidated Fund. Where the Treasury makes a payment out of the Consolidated Fund it must lay a report before Parliament specifying the amount that has been paid out of the Consolidated Fund. Section 1 makes it clear that the authorisation under this Act does not apply in relation to financial assistance given under a statutory power. It also makes clear, through the introduction of the concept of “infrastructure expenditure”, that the limit on the maximum amount of expenditure that may be incurred under Section 2, and the reporting requirements in Section 3, do not apply in relation to expenditure incurred in reliance on authorisation other than that conferred by the Act – for example, where it is appropriate to rely on the sole authority of supply legislation (which might be the case where departmental expenditure on financial assistance was no more than £1.5 million a year, or was expected to last for no more than two years).

7. Section 2 provides that the maximum amount of expenditure and actual or contingent liabilities incurred in giving, or in connection with giving, infrastructure assistance, less any sums received by the Treasury or the Secretary of State in connection with infrastructure assistance, must not at any time exceed £50,000 million. The Treasury has an order-making power under subsection (4) to increase the maximum amount of expenditure that the Treasury and Secretary of State may incur in giving, or in connection with giving, infrastructure assistance. There are no limits on the number of occasions when the maximum amount that may be incurred in giving, or in connection with giving, infrastructure assistance may be increased or on the amount by which the maximum amount may be increased on each occasion. Expenditure incurred by the Treasury or the Secretary of State in reliance on any authorisation other than that conferred by Section 1 does not count in the calculation of this maximum amount.
8. Section 3 provides that the Treasury is under a duty to report to the House of Commons at twelve monthly intervals, starting on 31 March 2013. The details required to be included in the reports are listed in subsection (3). Subsection (4) provides that the report must also include arrangements entered into before Royal Assent. The effect of subsection (5) is that a report is not required for a reporting period if there is nothing to report at the end of that period.

COMMENCEMENT DATE

9. The Act came into force on Royal Assent.

HANSARD REFERENCES

10. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction	6 September 2012	Vol. 549 Col. 417
Second reading	17 September 2012	Vol. 550 Col. 676
Committee	16 October 2012	Vol. 551 Col. 81
Third Reading	16 October 2012	Vol. 551 Col. 119
House of Lords		
First Reading	23 October 2012	Vol. 740 Col. 1373
Second Reading	23 October 2012	Vol. 740 Col. 153
Committee	23 October 2012	Vol. 740 Col.
Third Reading	23 October 2012	Vol. 740 Col. 178

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