

1990 No. 720

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Passenger Transport Executives (Capital Finance)  
Order 1990**

<i>Made</i> - . . . . .	<i>23rd March 1990</i>
<i>Laid before Parliament</i>	<i>26th March 1990</i>
<i>Coming into force</i>	<i>1st April 1990</i>

The Secretary of State for Transport in exercise of the powers conferred on him by section 39(5), (6) and (7) of the Local Government and Housing Act 1989(a) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Passenger Transport Executives (Capital Finance) Order 1990 and shall come into force on 1st April 1990.

(2) In this Order,

“the Act” means the Local Government and Housing Act 1989;

“current assets” shall be construed in accordance with paragraph 77 of Schedule 4 to the Companies Act 1985(b);

“Executive” means a Passenger Transport Executive;

“relevant date” in relation to an Executive, means—

(a) in the financial year preceding 1st April 1990, 31st March 1990, and

(b) in any financial year beginning on or after 1st April 1990, 31st March in that financial year;

and in relation to an Executive for a passenger transport area a reference to the relevant Authority is a reference to the Passenger Transport Authority for that area.

**Receipts and liabilities of relevant Authority**

2.—(1) Where an Executive—

(a) receives a sum which, if the Executive were a local authority, would be a capital receipt;

(b) receives consideration to which, if the Executive were a local authority, section 61 of the Act would apply;

(c) incurs additional liabilities; or

(d) reduces its liabilities;

the sum, consideration and liabilities are to be treated for the purposes of the application of Part IV of the Act as if they were received, incurred or reduced, as the case may be, by the relevant Authority; and, where they are to be so treated, the provisions of that Part are to apply as described in articles 3 and 4 below.

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(a) 1989 c.42.

(b) 1985 c.6.

(2) In paragraph (1) above, any reference to a sum or consideration being received by an Executive is a reference only to sums and consideration received otherwise than from the relevant Authority.

(3) For the purposes of paragraph (1) above, an Executive incurs additional liabilities where—

(a) upon calculation, the total of its relevant liabilities on the relevant date in a financial year (“the current financial year”) exceeds an amount equal to—

(i) the total of its relevant liabilities on the relevant date in the immediately preceding financial year,

less

(ii) so much of any amount set aside by the Executive in accordance with articles 3(2)(a)(ii) and 5 below as has been applied to meet expenditure in respect of long-term liabilities, as described in article 5(4) below, in the period beginning immediately after the relevant date in that preceding financial year and ending on the relevant date in the current financial year;

(b) the Executive becomes the lessee of any land and, if the Executive were a local authority, the lease would be a credit arrangement; or

(c) the Executive would be required, if it were a local authority, to secure in accordance with section 51(4) of the Act that there is available to it an amount of credit cover in respect of the variation of a credit arrangement which is a lease of land.

(4) For the purposes of paragraph (1) above, an Executive reduces its liabilities where, upon calculation, the total of its relevant liabilities on the relevant date in a financial year is less than an amount equal to—

(a) the total of its relevant liabilities on the relevant date in the immediately preceding financial year,

less

(b) the amount referred to in paragraph (3)(a)(ii) above.

(5) In paragraph (3) and (4) above and in article 7 below, “relevant liabilities”, in relation to an Executive, means the aggregate of—

(a) the total of the liabilities of the Executive, other than current liabilities, which are shown as at the relevant date in the Executive’s balance sheet; and

(b) the amount, if any, by which the total of current liabilities of the Executive exceeds its current assets excluding any amounts set aside under articles 3(2)(a)(ii) or 5 below.

(6) In this article and in article 5 “lease” and “liabilities” do not include, respectively, any lease under which the lessor is the relevant Authority or any liabilities owed to the relevant Authority or any liabilities owed to the relevant Authority and for this purpose any reserves and deferred capital grants shown in the balance sheet of an Executive are to be treated as liabilities owed to the relevant Authority.

#### **Application of Part IV of the Act: requirement for credit cover**

3.—(1) This paragraph applies where a Passenger Transport Authority—

(a) in accordance with article 2(1)(a), is to be treated as receiving a sum;

(b) in accordance with article 2(1)(b), is to be treated as receiving consideration; or

(c) in accordance with article 2(1)(c), is to be treated as incurring additional liabilities in respect of a financial year.

(2) Where paragraph (1) above applies, Part IV of the Act shall apply as if, but only as if, there were required to be available to the Authority an amount of credit cover equal to—

(a) where sub-paragraph (a) or (b) paragraph (1) above applies—

(i) 50 per cent. of the amount net of any corporation tax payable in respect of it which, if the sum or consideration had been received by the Authority, would have been, respectively, the amount of the capital receipt for the purposes of section 59 of the Act or the amount of the notional capital receipt for the purposes of section 61(4) of the Act,

less

- (ii) such amount set aside by the Executive as they have decided should be added in the financial year to the amounts set aside by them to meet expenditure in respect of long-term liabilities, as described in article 5(4) below, which are not liabilities owed to the relevant Authority; and
- (b) where sub-paragraph (c) of paragraph (1) above applies, the aggregate of—
  - (i) if the Executive concerned incurs additional liabilities as described in article 2(3)(a), the amount of the additional liabilities calculated under that sub-paragraph;
  - (ii) if that Executive incurs additional liabilities as described in article 2(3)(b), the initial cost of any such lease as is referred to in that sub-paragraph; and
  - (iii) if that Executive incurs additional liabilities as described in article 2(3)(c), the amount of the credit cover referred to in that sub-paragraph.
- (3) Each of the following amounts constitutes for the purposes of this article an amount of credit cover—
  - (a) an amount which, in accordance with a determination of the Authority referring to the sum, consideration or additional liabilities, as the case may be, is set aside from the usable part of the Authority's capital receipts or from a revenue account of the Authority for the financial year in question as provision to meet credit liabilities (being an amount over and above what they are required so to set aside by virtue of any other provision of Part IV of the Act); or
  - (b) an amount by which, in accordance with a determination of the Authority, any credit approval issued or transferred to the Authority for the financial year in question, to the extent that they have not made a determination with respect to it under section 56(1) of the Act, is treated as reduced.
- (4) Any amount falling to be set aside in accordance with paragraph (3)(a) above shall be set aside, and any reduction in accordance with paragraph (3)(b) above of a credit approval which is a basic credit approval shall be treated as taking place, on the last day of the financial year of the Authority during which the Executive concerned—
  - (a) receives a sum or consideration such as is referred to in article 2 (i);
  - (b) incurs additional liabilities on the relevant date as described in article 2(3)(a);
  - (c) becomes the lessee under a lease such as is referred to in article 2(3)(b); or
  - (d) would, if it were a local authority, be required to secure an amount of credit cover such as is referred to in article 2(3)(c).
- (5) A credit approval which is a supplementary credit approval shall not be treated as reduced in accordance with paragraph (3)(b) above by any amount greater than that which the relevant Authority is satisfied is the amount of expenditure incurred by the Executive concerned in the financial year described in paragraph (4) above for the purpose and during the period specified in that credit approval.
- (6) Any reduction in accordance with paragraph (3)(b) above of a credit approval to which paragraph (5) above applies shall be treated as taking place on the earlier of either the last day of the period specified in the approval or the last day of the financial year described in paragraph (4) above.
- (7) In a case to which paragraph (4) above applies, a determination by an Authority under paragraph (3) above shall not be made later than 30th September in the financial year following that in which, in accordance with paragraph (4) above, an amount is to be set aside or a basic credit approval is to be treated as reduced.
- (8) In a case to which paragraph (6) above applies, a determination by an Authority under paragraph (3) above shall not be made later than 31st May in the financial year following that in which in accordance with paragraph (6) above the supplementary credit approval is to be treated as reduced.

#### **Application of Part IV of the Act: additional credit allowance**

4.—(1) Where a Passenger Transport Authority, in accordance with article 2(1)(d), is to be treated as reducing its liabilities in respect of a financial year, Part IV of the Act shall apply as if, but only as if, the Authority were entitled to an amount of additional credit allowance equal to the reduction in liabilities for the Executive concerned.

(2) In paragraph (1) above, the reference to a reduction in liabilities for an Executive is a reference to the amount equal to the amount of the reduction of liabilities calculated under article 2(4) above.

(3) Each of the following amounts constitutes for this purpose an amount of additional credit allowance—

(a) an amount by which, in accordance with a determination of the Authority, any basic credit approval issued or transferred to the Authority is treated as increased; and

(b) a sum which, in accordance with a determination of the Authority, is to cease to be set aside as provision for credit liabilities.

(4) Any increase of a basic credit approval, in accordance with paragraph (3)(a) above, shall be treated as taking place, and any amount which is to cease to be set aside, in accordance with paragraph (3)(b) above, shall cease to be set aside, on the relevant date in the financial year in which the Executive concerned reduced its liabilities.

(5) If an amount ceases to be set aside in accordance with paragraph (3)(b) above,

(a) the Authority's credit ceiling shall at that time be increased by an amount equal to the amount ceasing to be set aside, and

(b) an amount shall at that time be deducted from the amount taken into account under section 62(1)(d) of the Act for the Authority equal to the amount ceasing to be set aside (and, by virtue of this subparagraph, the amount taken into account under section 62(1)(d) may, accordingly, be a negative amount).

(6) A determination by an Authority under paragraph (3) above shall not be made later than 30th September in the financial year following that in which, in accordance with paragraph (4) above, a basic credit approval is to be treated as increased or an amount ceases to be set aside.

(7) Any amount which ceases to be set aside in accordance with paragraph (3)(b) above may be applied by the Authority, according as it determines, for one or more of the purposes described in section 60(2) of the Act and, subject to paragraph (10) below, may be so applied in the financial year referred to in paragraph (4) above or in any later financial year.

(8) An amount which is applied as provision to meet credit liabilities as described in paragraph (7) above may be used as an amount of credit cover for the purposes of section 50 of the Act or article 3 above in accordance with a determination of the Authority referring to the credit arrangement, sum, consideration or additional liabilities, as the case may be.

(9) Where any amount is applied as described in paragraph (7) above, the amount taken into account under section 62(1)(d) of the Act for the Authority shall at that time be increased by an amount equal to the amount so applied.

(10) A determination by an Authority under paragraph (7) above as to the manner in which any amount is to be applied shall not be made later than 30th September in the financial year following that in which, in accordance with the determination, the amount is to be applied.

#### **Amounts to be set aside**

5.—(1) In addition to any amounts set aside under article 3(2)(a)(ii) above, an Executive shall set aside in each financial year such amount in respect of liabilities as described in article 2(6) above as the Executive shall decide not being less than 4 per cent of the total of the liabilities shown in the balance sheet of the Executive as at the relevant date in the preceding financial year.

(2) Amounts to be set aside under paragraph (1) above may be taken from—

(a) any provision made by the Executive for depreciation, or

(b) any other income of the Executive except income which, in the hands of a local authority, would be capital receipts.

(3) Any amounts set aside by an Executive by virtue of paragraph (1) above or of article 3(2)(a)(ii) above may be applied only to meet expenditure in respect of long-term liabilities and, until they are so applied, any such amounts shall be held in approved investments.

(4) In this article and in articles 2(3)(a)(ii) and 3(2)(a)(ii) above "expenditure in respect of long-term liabilities" means any expenditure incurred by an Executive to discharge a liability which is shown in the last balance sheet of the Executive prepared before the expenditure was incurred, other than—

- (a) a current liability, or
- (b) a liability in respect of interest.

#### **Dealings between the relevant Authority and an Executive**

6.—(1) Where a Passenger Transport Authority becomes the lessee under a lease in respect of which the lessor is the Executive in relation to which it is the relevant Authority, or enters into a contract the other party to which is that Executive, the lease or contract, and any variation of such a lease or contract, shall not be treated as a credit arrangement or the variation of such an arrangement for the purposes of Part IV of the Act.

(2) Where the relevant Authority receives from an Executive a sum, or any consideration which is not in money or is paid otherwise than to the Authority,—

- (a) the sum shall not be treated as a capital receipt for the purposes of Part IV of the Act; and
- (b) section 61 of the Act shall not apply to the consideration.

#### **Control of liabilities**

7. If, in relation to an Executive, the relevant Authority specifies in relation to a financial year an amount above which the Executive may not increase its relevant liabilities, as described in article 2(5) above, the Executive shall so manage its affair that it does not increase its relevant liabilities so as to exceed the specified amount.

Signed by authority of the  
Secretary of State for Transport

23rd March 1990

*Michael Portillo*  
Minister of State,  
Department of Transport

## EXPLANATORY NOTE

*(This note does not form part of the Order)*

Part IV of the Local Government and Housing Act 1989 establishes a framework of capital finance controls for local authorities in relation to the financial years starting on or after 1st April 1990. Section 39 enables these controls to be extended and adapted so as to take account of the capital finance transactions of bodies under local authority control. Among these bodies are the Passenger Transport Executives each of which is responsible under the Transport Act 1968 (c.73) to the Passenger Transport Authority ("PTA") for its area.

This Order, which comes into force on 1st April 1990, sets out the effects for PTAs of the capital financing transactions of their Executives.

Article 2 describes which transactions affect the PTAs and how these effects are to be measured. Article 3 sets out the effect for a PTA of receipts and benefits from the disposal by an Executive of capital assets and of increases in the course of a financial year in the liabilities of the Executive (other than those owed to the PTA). Article 4 sets out the effect for the PTA of decreases in the course of a financial year of such liabilities.

Article 5 requires the Executives to make provision for the repayment of their long-term liabilities other than those to the Authority. This provision can be either applied for the repayment of debts or held in such approved investments, as may be specified for local authorities.

Article 6 excludes certain transactions between a PTA and its Executive from the capital finance provisions of Part IV of the Act.

Article 7 allows the Authority to fix a limit on the increases which the Executive may make in its capital liabilities not owed to the Authority.

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