

1990 No. 719

LOCAL GOVERNMENT, ENGLAND AND WALES

The Public Airport Companies (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 Public Airport Companies (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;

“constituent council” shall be construed in accordance with section 16(2) of the Airports Act 1986(b);

“controlling authority” in relation to a public airport company has the same meaning as in section 16(2) of the Airports Act 1986;

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

“public airport company” has the same meaning as in section 16(1) of the Airports Act 1986;

“the relevant date”, in relation to a public airport company or any subsidiary of such a company, means—

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

(b) in any subsequent financial year if the company’s or subsidiary’s balance sheet is prepared as at a date in that year, that date, or if there is more than one such date the latest such date; and

(c) in any other case, the last day of the financial year in question;

unless the public airport company or subsidiary, as the case may be, ceases to be a public airport company or subsidiary of such a company in which event it means the day preceding the date of cessor; and

“subsidiary” has the meaning given by section 736 of the Companies Act 1985.

(3) In the case of a public airport company listed in column 1 of the Schedule to this Order a reference in this Order to the controlling authority shall have effect, except

(a) 1989 c.42.

(b) 1986 c.31.

(c) 1985 c.6.

where the reference is to a constituent council of the controlling authority, as if it were a reference to the constituent council named in relation to that company in column 2 of that Schedule.

Liabilities of controlling authority

- 2.—(1) Where a public airport company or any subsidiary of such a company—
- (a) incurs additional liabilities; or
 - (b) reduces its liabilities;

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

(2) For the purposes of paragraph (1) above, a public airport company or any subsidiary of such a company incurs additional liabilities where, upon calculation, the total of its relevant liabilities on the relevant date in a financial year exceeds an amount equal to the total of its relevant liabilities on the relevant date in the immediately preceding financial year.

(3) For the purposes of paragraph (1) above, a public airport company or any subsidiary of such a company 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 the total of its relevant liabilities on the relevant date in the immediately preceding financial year.

(4) In paragraphs (2) and (3) above, “relevant liabilities”, in relation to a public airport company or any subsidiary of such a company, means the aggregate of—

- (a) the total of the liabilities of the company or subsidiary, other than current liabilities, which are shown in the company’s or subsidiary’s balance sheet or if there is no balance sheet as at any date in the financial year in question, the total of which is estimated by the controlling authority; and
- (b) the amount, if any, by which the total of the current liabilities of the company or subsidiary exceeds the total of its current assets;

and the issued share capital and stock of a company or subsidiary are to be treated as a liability owed to the person who holds such issued capital or stock.

(5) In this article “liabilities” do not include any liability owed to the controlling authority or to a constituent council of the controlling authority nor any liabilities owed to or by a public airport company by or to any subsidiary of that company.

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

3.—(1) This paragraph applies where a controlling authority, in accordance with article 2(1)(a) above, 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 that authority an amount of credit cover equal to the amount of additional liabilities calculated under article 2(2) above.

(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 controlling authority is set aside from the usable part of the authority’s capital receipts or from a revenue account of that 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 controlling authority, any credit approval issued or transferred to that 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 during which the public airport company or subsidiary concerned incurs additional liabilities on the relevant date as described in article 2(2) above.

(5) Any reduction in accordance with paragraph (3)(b) above of a credit approval which is a supplementary credit approval shall not exceed such amount of expenditure as the authority is satisfied has been incurred during the relevant financial year by the public airport company or its subsidiary, as the case may be, for a purpose and during the period specified in that supplementary credit approval.

(6) Any reduction in accordance with paragraph (3)(b) above of a credit approval which is a supplementary credit approval 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 a controlling 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 a controlling 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 controlling authority, in accordance with article 2(1)(b), 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, that authority were entitled to an amount of additional credit allowance equal to the total of the reduction in liabilities for the public airport company and its subsidiaries concerned.

(2) In paragraph (1) above, the reference to a reduction in liabilities for a public airport company or any subsidiary of such a company is a reference to an amount equal to the amount of the reduction in liabilities calculated under article 2(3) 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 controlling authority, any basic credit approval issued or transferred to that authority is treated as increased; and
- (b) a sum which, in accordance with a determination of that 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 last day of the financial year in which the public airport company or subsidiary concerned reduced its liabilities on the relevant date as described in article 2(3) above.

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

- (a) the controlling 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 that authority equal to the amount ceasing to be set aside (and, by virtue of this sub-paragraph, the amount taken into account under section 62(1)(d) may, accordingly, be a negative amount).

(6) Any amount which ceases to be set aside in accordance with paragraph (3)(b) above may be applied by the controlling 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, an amount may be so applied in the financial year referred to in paragraph (4) above or in any later financial year.

(7) An amount which is applied as provision to meet credit liabilities as described in paragraph (6) 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 controlling authority referring to the credit arrangement or additional liabilities, as the case may be.

(8) Where any amount is applied as described in paragraph (6) above, the amount taken into account under section 62(1)(d) of the Act for the controlling authority shall at that time be increased by an amount equal to the amount so applied.

(9) A determination by a controlling authority under paragraph (3) above shall be made not 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.

(10) A determination by a controlling authority under paragraph (6) 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, an amount is to be applied.

Changes in the capitalisation or capital structure of a public airport company or subsidiary

5.—(1) Where a public airport company or any subsidiary of such a company—

- (a) reduces its share capital under section 135 of the Companies Act 1985;
- (b) purchases its own shares from any person other than the controlling authority or a constituent council of the controlling authority; or
- (c) redeems its own redeemable shares which are owned by a person other than the controlling authority or a constituent council of the controlling authority;

the controlling authority shall be entitled to an amount of additional credit allowance.

(2) The amount of additional credit allowance shall be equal to—

- (a) where paragraph (1)(a) above applies, the amount of the payment in respect of the reduction by the company or subsidiary to its members;
- (b) where paragraph (1)(b) above applies, the value of any consideration in respect of the purchase given by the company or subsidiary; and
- (c) where paragraph (1)(c) above applies, the amount of the payment in respect of the redemption made by the company or subsidiary.

(3) Paragraphs (3) to (10) of article 4 above shall apply for the purposes of this article as they apply for the purposes of article 4, subject to the substitution of a reference to the financial year in which the payment is made or, as the case may be, the consideration is given by the public airport company or subsidiary for the reference in paragraph (4) to the financial year in which the public airport company or subsidiary in question reduced its liabilities on the relevant date as described in article 2(3).

(4) In this article the amount of additional credit allowance shall not include the amount of any payment paid or payable or the value of any consideration given or to be given to any of the following—

- (a) the controlling authority or a constituent council of the controlling authority of the relevant public airport company;
- (b) any subsidiary of that company; or
- (c) the public airport company which is the holding company of the relevant subsidiary.

Signed by authority of the Secretary of State for Transport

23rd March 1990

Michael Portillo
Minister of State, Department of Transport

SCHEDULE

Article 1(3)

(1) <i>Public Airport Company</i>	(2) <i>Constituent Council</i>
Birmingham International Airport plc	Birmingham City Council
Bournemouth Hurn Airport plc	Bournemouth Borough Council
Cardiff-Wales Airport Limited	West Glamorgan County Council
East Midlands International Airport plc	Derbyshire County Council
Leeds Bradford Airport Limited	Leeds City Council
Liverpool Airport plc	Knowsley Borough Council
Manchester Airport plc	Manchester City Council
Newcastle International Airport Limited	North Tyneside Borough Council
Norwich Airport Limited	Norwich City Council
Teesside International Airport Limited	Cleveland County Council

EXPLANATORY NOTE

(This note is not 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 public airport companies which, under the Airports Act 1986, were established under the control of those local authorities which own their issued share capital and subsidiaries of such companies.

This Order, which comes into force on 1st April 1990, sets out the effects of the capital financing transactions of such a company and its subsidiaries for the local authority which is the "controlling authority".

Article 2 describes the relevant changes in the liabilities of a public airport company or its subsidiaries as between one financial year and another which are to be treated as having an effect upon the controlling authority. It determines how these effects are to be measured. Article 3 sets out the effect for a controlling authority of increases in liabilities of a public airport company or its subsidiaries (other than those owed between those companies and their local authority shareholders) occurring between the last balance sheets drawn up for those companies in successive financial years (or 31st March if no balance sheet is available). Article 4 sets out the effect for a controlling authority of decreases in such liabilities occurring over the same period. Article 5 sets out the effect for a controlling authority where a public airport company or a subsidiary of such a company reduces its share capital or purchases or redeems its own shares held by persons other than its local authority shareholders.

The Schedule specifies which local authority is to be treated as the controlling authority in cases where public airport companies are controlled jointly by more than one local authority.

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