
STATUTORY INSTRUMENTS

1995 No. 849

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Companies) Order 1995

<i>Made</i>	- - - -	<i>21st March 1995</i>
<i>Laid before Parliament</i>		<i>23rd March 1995</i>
<i>Coming into force</i>		
<i>For the purposes mentioned in article 1(2)(b)</i>		<i>1st July 1995</i>
<i>For the purposes of article 4</i>		<i>1st July 1995</i>
<i>For all other purposes</i>		<i>1st April 1995</i>

The Secretary of State for the Environment as respects England, and the Secretary of State for Wales as respects Wales, in exercise of the powers conferred upon them by sections 39(5) to (7), 67(4), 70(1) and (5) and 71(1)(b) of the Local Government and Housing Act 1989(1) and all other powers enabling them in that behalf, hereby make the following Order:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Local Authorities (Companies) Order 1995 and shall come into force as provided in paragraph (2) below.

(2) This Order shall come into force—

- (a) for the purposes of article 4, on 1st July 1995;
- (b) for the purposes of articles 5 to 10 in so far as they relate to companies formed on or before 31st March 1995, on 1st July 1995; and
- (c) for all other purposes on 1st April 1995.

(3) Except where the context otherwise requires, any reference in this Order to a section or Part is to a section or Part of the 1989 Act.

(4) In this Order—

“the 1985 Act” means the Companies Act 1985⁽²⁾;

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

“the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“controlled company” means a company (other than a company within a description set out in the Schedule to this Order) which for the purposes of Part V is under the control of a local authority or is treated as being under the control of each of two or more local authorities;

“director”, except in so far as the context otherwise requires, includes, in relation to a company which is an industrial and provident society, a member of the committee of management of the society and its chief officer;

“relevant authority”, in relation to a regulated company, means any local authority having control of that company or to whose influence the company is subject, or which is, by virtue of section 73 (authorities acting jointly, etc.) treated as having such control or influence;

and any reference to a regulated company is a reference to a company which is for the time being either—

- (a) a controlled company, or
- (b) a company which for the purposes of Part V is, or is treated as, subject to the influence of a local authority (the “relevant authority”) and which—
 - (i) is an unlimited company or a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965⁽³⁾ or under the Industrial and Provident Societies Act (Northern Ireland) 1969⁽⁴⁾; or
 - (ii) satisfies either or both of the first and second conditions set out in paragraphs (5) and (7) below,

but is not within any description set out in the Schedule to this Order.

(5) The first condition mentioned in paragraph (4)(b)(ii) above is that the relevant authority would, if it were a company registered under the 1985 Act, be treated by virtue of section 258 of that Act⁽⁵⁾ as having the right to exercise, or as having, during the relevant period, actually exercised, a dominant influence over the company in question.

(6) For the purposes of paragraph (5) above “the relevant period”, in relation to any duty or any action referred to in Part II of this Order, means the financial year of the relevant authority which ended immediately before the financial year in which, if the company in question were a regulated company, that duty would fall to be fulfilled, or in which that action is performed.

(7) The second condition mentioned in paragraph (4)(b)(ii) above is that if the authority were a company registered under the 1985 Act it would be required, by virtue of section 227 of that Act⁽⁶⁾, or of accounting standards such as would, by virtue of that Act, be applicable in the circumstances, to prepare group accounts in respect of the company in question.

(8) For the purposes of paragraph (7) above, in determining whether a local authority would be required to prepare group accounts it shall be assumed that no exclusion of or exemption from such requirement, other than those referred to in section 229(3)(a) and (c) of the 1985 Act, would be applicable by virtue of that Act.

(2) 1985 c. 6.

(3) 1965 c. 12.

(4) 1969 c. 24. (N.I.).

(5) Section 258 is inserted by section 21(1) of the Companies Act 1989 (c. 40).

(6) Section 227 is inserted by section 5(1) of the Companies Act 1989.

Companies subject to the influence of local authorities

2. In determining for the purposes of this Order whether a company is subject to the influence of a local authority no account shall be taken of any condition specified in any paragraph of subsection (1) or (3) of section 69, in so far as that condition is fulfilled by reference only to another company which is of a description mentioned in the Schedule to this Order, or to a person who is both an employee and either a director, manager, secretary or similar officer of such a company.

Application of the Order

3. No provision in this Order shall be construed as requiring a company to act (or refrain from acting) in breach of any provision made by or under any enactment, or any obligation subsisting on the day on which such provision comes into force.

PART II

REGULATION OF CONTROLLED AND INFLUENCED COMPANIES

Identification of companies

4.—(1) A regulated company shall have mentioned on all relevant documents the fact that it is a company controlled, or, as the case may be, influenced, by a local authority, within the meaning of Part V; and naming the relevant authority or authorities.

(2) In this article “relevant documents” means business letters, notices and other documents of the company, being of any kind mentioned in paragraphs (a) to (d) of section 349(1) of the 1985 Act.

Requirements applicable to regulated companies

5.—(1) A regulated company shall not—

- (a) in respect of the carrying out of any relevant duty, pay to a regulated director remuneration in excess of the maximum amount;
- (b) in respect of expenditure on travelling or subsistence in connection with the carrying out of a relevant duty, pay to a regulated director an allowance, or reimburse expenses, in excess of the maximum amount;
- (c) publish any material which the relevant authority would be prohibited from publishing by section 2 of the Local Government Act 1986(7).

(2) Where a director becomes disqualified for membership of a local authority otherwise than by being employed by a local authority or a controlled company, the company shall make such arrangements as may be necessary for a resolution to be moved for his removal in accordance with section 303 of the 1985 Act.

(3) In this article—

- (a) for the purposes of paragraph (1)(a), the maximum amount is the greatest amount which would for the time being be payable by the relevant authority in respect of a comparable duty performed on behalf of that authority, less any amount paid by that authority in respect of the relevant duty to the regulated director in question;
- (b) for the purposes of paragraph (1)(b), the maximum amount in relation to a director is the maximum amount of travelling or subsistence allowance which would for the time being be payable to that director by the local authority of which he is a member if the relevant

(7) 1986 c. 10. Section 2 is amended by section 27 of the Local Government Act 1988 (c. 9).

duty were an approved duty for the purposes of section 174 of the Local Government Act 1972(8);

- (c) “regulated director” means a director of the company who is also a member of a relevant authority; and
- (d) “relevant duty” means a duty carried out on behalf of the company.

Provision of information to authority’s auditor

6. A regulated company shall provide, and authorise or instruct its auditors to provide—
- (a) to the person who is for the time being the auditor in relation to the accounts of the relevant authority, such information and explanation about the affairs of the company as that person may require for the purposes of the audit of the local authority’s accounts; and
 - (b) to any person authorised by the Audit Commission, such information as that person or the Commission may require for the discharge of any function under Part III of the Local Government Finance Act 1982(9).

Provision of information to members of local authority

7.—(1) Subject to paragraph (2), a regulated company shall provide to a member of a relevant authority such information about the affairs of the company as the member reasonably requires for the proper discharge of his duties.

(2) Nothing in this article shall require a company to provide information in breach of any enactment, or of an obligation owed to any person.

Provision of financial information to authority

8.—(1) A regulated company shall, on the request of any relevant authority, provide to that authority, within such reasonable time as may be specified by the authority, such information about the affairs of the company as that authority may require for the purposes of any order for the time being in force under section 39 (revenue accounts and capital finance) of the 1989 Act.

(2) Information required under paragraph (1) shall be supplied in such form as the relevant authority may reasonably require.

Appointment of auditor

9. A controlled company shall, before it first appoints any person as auditor of the company, obtain the Audit Commission’s consent to the appointment of that person.

PART III

CONTROLLED COMPANIES WHICH ARE NOT ARM'S LENGTH COMPANIES

Public inspection of minutes

10.—(1) A controlled company which is not an arm’s length company shall, until the expiry of the period of four years beginning with the date of the meeting, make available for inspection by any member of the public a copy of the minutes of any general meeting of the company.

(8) 1972 c. 70.

(9) 1982 c. 32; amendments to Part III relevant to this Order are made by the Local Government Act 1988 (c. 51), section 72.

(2) Nothing in paragraph (1) requires any copy to be made available which includes any matter the disclosure of which would be in breach of any enactment, or of an obligation owed to any person.

(3) Nothing in this article shall require a company to make available for inspection the minutes of any meeting held before the date on which this Order comes into force.

PART IV

MINORITY INTERESTS

Authorised companies

11. There are hereby specified for the purposes of section 71 (control of minority interests) companies, other than regulated companies and companies within any description set out in the Schedule to this Order, in which any person associated with a local authority (within the meaning of section 69(5)) has a right to vote at a general meeting or of which any such person is a director.

PART V

CAPITAL FINANCE

Interpretation

12.—(1) A local authority together with any companies in relation to which that authority is the relevant authority are for the purposes of section 39 and this Part of the Order referred to as members of a local authority group, and any reference in relation to a particular company to the same local authority group is a reference to the local authority group of which that company is a member.

(2) In this Part—

“called-up share capital” has the same meaning as in section 737(1) of the 1985 Act, and “share” has the same meaning as in section 744 of that Act;

“credit transaction” means a lease or a single contract or two or more contracts taken together which, if a local authority became lessees under the lease or entered into the contract or contracts, would constitute a credit arrangement, but does not include—

- (a) any lease granted or assigned to a regulated company under which the lessor is a member of the same local authority group; or
- (b) any contract entered into by a regulated company with a member of the same local authority group.

Receipts, contracts and liabilities of regulated companies

13.—(1) Subject to the following provisions of this article, where a regulated company on or after 1st April 1995—

- (a) receives a sum which, if it were a local authority, would be a capital receipt,
- (b) receives consideration to which, if it were a local authority, section 61 would apply,
- (c) receives a sum by way of grant from a Community institution to which, if it were a local authority, section 63(4) would apply,
- (d) enters into a credit transaction,

- (e) with respect to a credit transaction, agrees to a variation of terms which, if it were a local authority, would be a variation within the meaning of section 51(1),
- (f) incurs additional liabilities within the meaning of article 16, or
- (g) reduces its liabilities within the meaning of article 16,

the sum, consideration, credit transaction, variation, liabilities or reduction in question shall be treated for the purposes of the application of Part IV as having been received, entered into, agreed, incurred or, as the case may be, made by the relevant authority.

(2) Paragraph (1) does not apply to any sum or consideration which, apart from this paragraph, would fall within paragraph (1) if it is received by the company—

- (a) from a person who is a member of the same local authority group;
- (b) in respect of the disposal of assets held for charitable purposes.

(3) Where a company is a regulated company on 1st April 1995 and is no longer a regulated company on 31st March 1996, any sum, consideration, credit transaction, variation, liabilities or reduction in liabilities which is or are treated by virtue of paragraph (1) above as having been received, entered into, agreed, incurred or, as the case may be, made by the relevant authority during the financial year beginning on 1st April 1995 shall cease on 31st March 1996 to be so treated.

(4) Where a company falling within paragraph (3) above becomes a regulated company at any time on or before 31st March 1997, any sum, consideration, credit transaction, variation, liabilities or reduction in liabilities which ceased by virtue of paragraph (3) above to be treated as having been received, entered into, agreed, incurred or, as the case may be, made by the relevant authority shall be so treated as if the company had not ceased to be a regulated company on or before 31st March 1996.

Application of Part IV: requirement for credit cover

14.—(1) Where in relation to things done by or to a regulated company in a financial year (in this article referred to as the “current year”) a relevant authority are treated by virtue of article 13(1) as having—

- (a) received a sum such as mentioned in article 13(1)(a),
- (b) received any consideration such as mentioned in article 13(1)(b),
- (c) received a sum such as mentioned in article 13(1)(c),
- (d) entered into a credit transaction,
- (e) agreed to a variation of the terms of a credit transaction,
- (f) incurred additional liabilities, or
- (g) made a reduction in liabilities,

the provisions of Part IV shall apply to the members of the local authority group to the extent and subject to the modifications referred to in the following provisions of this article and in articles 15 to 18.

(2) Subject to paragraph (4), with respect to each regulated company in the local authority group Part IV shall apply subject to the modification that there is required to be available to the relevant authority in the financial year following the current year an amount of credit cover which is equal to the aggregate of—

- (a) the amount which, if the company were a local authority, other than an authority to whom paragraph (3) below applies, the company would have been required to set aside as provision for credit liabilities in accordance with section 59 or section 61(4) with respect to sums or consideration falling within paragraph (1)(a) or (b) above;
- (b) an amount equal to the total receipts by the company of sums falling within paragraph (1)(c) above;

- (c) the amount which, if the company were a local authority, would be the initial cost of any credit transaction entered into by the company; and
 - (d) the amount of credit cover which, if the company were a local authority, would be required to be available to it in accordance with section 51(4) with respect to any variation of the terms of a credit transaction;
 - (e) where in the current year the company incurs additional liabilities within the meaning of article 16, the amount of the excess referred to in article 16(3).
- (3) This paragraph applies to a local authority who, at the beginning of the current year, had a credit ceiling of nil or a negative amount, and who have no money outstanding by way of borrowing other than short-term borrowing (within the meaning of section 45(6)) or borrowing which was undertaken under section 5 of the City of London (Various Powers) Act 1924⁽¹⁰⁾.
- (4) For the purposes of paragraph (2), an amount of credit cover shall only be required by virtue of sub-paragraphs (c), (d) and (e) where the aggregate of the amounts referred to in those sub-paragraphs exceeds £10,000.
- (5) For the purposes of this article either of the following amounts, or both in any combination, constitutes an amount of credit cover—
- (a) an amount which the authority determine to set aside from the usable part of the authority’s capital receipts or from a revenue account as provision to meet credit liabilities (being an amount over and above amounts required to be set aside by virtue of any other provision of Part IV); or
 - (b) an amount by which the authority determine to treat as reduced the balance of a credit approval.
- (6) In paragraph (5)(b)—
- (a) the reference to a credit approval is a reference to a basic credit approval or a supplementary credit approval issued or transferred to the authority and having effect for the financial year following the current year;
 - (b) the balance of a credit approval is that part of the approval with respect to which a determination has not been made under section 56(1).
- (7) A determination by a local authority under paragraph (5) shall take effect at the time it is made, and shall be made not later than six months after the end of the financial year following the current year.

Application of Part IV: increase in the basic credit approval

15.—(1) Where in a financial year (in this article referred to as the “current year”) a regulated company reduces its liabilities within the meaning of article 16, Part IV shall apply subject to the modification that the relevant authority may treat a relevant credit approval as increased by the amount relating to that company of the excess referred to in article 16(4).

(2) In paragraph (1), the reference to a relevant credit approval is a reference to a basic credit approval issued or transferred to the authority and having effect for the financial year following the current year.

(3) A basic credit approval may be treated as increased under paragraph (1) notwithstanding that a determination has been made under section 56(1) with respect to the whole or any part of the amount of the approval, and, where the amount of a basic credit approval is nil, the amount of the increase shall be treated as the amount of the approval.

⁽¹⁰⁾ 1924 c.xxxvii. Section 5 was repealed by section 40(1) of the City of London (Various Powers) Act 1960 (c.xxxvi).

Liabilities of regulated companies

16.—(1) Any reference in this article to the relevant liabilities of a regulated company is a reference to the total of the company's liabilities less its current assets (and the total so calculated may, accordingly, be a negative amount); and for this purpose, subject to paragraph (7)—

- (a) “current assets” shall be construed in accordance with section 262(1) of the 1985 Act, but do not include—
 - (i) land in which the company has any interest, or
 - (ii) any liability owed to the company by a member of the same local authority group unless the liability was incurred before the date on which the company became a regulated company (“the relevant date”);
- (b) where the company's current assets in a financial year are reduced by any payments made by the company under—
 - (i) any credit transaction treated as having been entered into by the relevant authority by virtue of article 13(1)(d) above, or
 - (ii) any variation of the terms of a credit transaction treated as having been agreed by the relevant authority by virtue of article 13(1)(e) above,they shall be treated as if those payments had not been made;
- (c) “liabilities” do not include—
 - (i) any liability under a credit transaction entered into by the company after the relevant date,
 - (ii) any liabilities under an agreement entered into by the company after the relevant date to a variation of the terms of a credit transaction entered into before the relevant date, or
 - (iii) any liability which is owed by the company to a person who is a member of the same local authority group, unless the liability was incurred before the relevant date; and
- (d) subject to paragraph (2), the sum of the called-up share capital of a regulated company with respect to shares held by persons who are not members of the same local authority group, and any premium paid to the company for such shares, is to be treated as a liability of the company.

(2) Where any shares in a regulated company are transferred by the relevant authority to a person who is not a member of the same local authority group, the liabilities of the company on and at any time after the date on which the shares are transferred shall not include the amount which is on that date the called-up share capital of the company with respect to those shares.

(3) A regulated company incurs additional liabilities where in any financial year (in this article referred to as “year two”) its relevant liabilities exceed its relevant liabilities in the financial year immediately preceding year two (in this article referred to as “year one”).

(4) A regulated company reduces its liabilities where its relevant liabilities in year one exceed its relevant liabilities in year two.

(5) The liabilities of a regulated company in a financial year shall be the aggregate of the amounts for liabilities—

- (a) shown in the company's balance sheet prepared as at a date in that year, or, if there is more than one such balance sheet, in the last such balance sheet to have been prepared, or, if there is no such balance sheet,
- (b) determined by the relevant authority as at the end of that year, or, if earlier, as at the date immediately before the date on which the company ceases to be a regulated company of that authority.

(6) Where year two is the financial year in which by virtue of the coming into force of this Part or otherwise the company becomes a regulated company, the aggregate of the amounts determined by the relevant authority in accordance with paragraph (7) shall be treated for the purposes of paragraphs (3) and (4) as the company's relevant liabilities in year one.

(7) The relevant authority shall determine the amounts which would have been the company's relevant liabilities as at the date immediately before it became a regulated company; and for this purpose—

- (a) the provisions in paragraph (1)(c) and (d) shall not apply, and
- (b) the company's liabilities shall include the sum of the company's total called-up share capital and any premium paid to the company for such shares.

(8) Where two companies are members of the same local authority group, and the relevant liabilities of the companies in a particular financial year fall to be calculated as at different dates, if as a result of a transaction or a group of transactions between those companies—

- (a) the relevant liabilities in that year of one company would, apart from this paragraph, be reduced,
- (b) the relevant liabilities in that year of the other company would, if the relevant liabilities of the two companies fell to be calculated as at the same date, be increased, and
- (c) the relevant liabilities in that year of the other company are not increased or are increased by an amount which is less than the amount of the reduction referred to in sub-paragraph (a),

no account shall be taken of the amount of that reduction in calculating the relevant liabilities in that year of the company mentioned in sub-paragraph (a).

Dealings between members of a local authority group

17.—(1) This paragraph applies where a local authority—

- (a) become the lessees under a lease of any property, and the lessor under the lease and the authority are members of the same local authority group; or
- (b) enter into a contract for the supply of any property, and the other party to the contract and the authority are members of the same local authority group; and
- (c) in either case, the property in question was acquired by the company after it became a regulated company.

(2) Where paragraph (1) applies, the lease or the contract in question shall not be treated as a credit arrangement for the purposes of Part IV, and any variation of such a lease or contract shall not be treated as the variation of such an arrangement for those purposes.

(3) Where a local authority receive from a regulated company a sum which, apart from this paragraph, would be a capital receipt for the purposes of Part IV, the sum shall not be treated as a capital receipt for those purposes if the authority and the company are members of the same local authority group.

(4) Where a local authority receive from a regulated company any consideration which, apart from this paragraph, would fall within section 61(1), section 61 shall not apply to the consideration if the authority and the company are members of the same local authority group.

Provisions where there are two or more relevant authorities

18.—(1) Paragraphs (2) and (3) apply where a regulated company ("a relevant company") is treated as being under the control, or subject to the influence of, each of two or more local authorities.

(2) Where under any provision in this Part anything done by or to a regulated company is treated as done by or to the relevant authority in relation to that company, that thing shall be treated as having been done by or to each of the relevant authorities to the extent of their involvement in the relevant company.

(3) Where under any provision in this Part any requirement is imposed, or any entitlement is conferred, on the relevant authority in relation to a regulated company, that requirement or entitlement shall be treated as having been imposed or conferred on each of the relevant authorities to the extent of their involvement in the relevant company.

(4) For the purposes of this article, the extent of an authority's involvement in a relevant company shall be determined by agreement with the other relevant authorities in relation to that company or, in default of agreement, by a person nominated jointly by all such authorities or, where no such nomination can be agreed, by a person appointed by the Secretary of State.

(5) Section 31 of the Arbitration Act 1950(11) shall have effect for the purposes of the determination of any question by a person nominated or appointed under paragraph (4) as if the determination were an arbitration under any other Act within the meaning of that section.

Authorised by the Secretary of State to sign in that behalf

20th March 1995

David Curry
Minister of State,
Department of the Environment

21st March 1995

John Redwood
Secretary of State for Wales

SCHEDULE

Articles 1(2) and 11

COMPANIES NOT SUBJECT TO THE ORDER

1. A public transport company within the meaning of section 72 of the Transport Act 1985⁽¹²⁾.
2. A public airport company within the meaning of Part II of the Airports Act 1986⁽¹³⁾.
3. A company which is under the control or subject to the influence of a Passenger Transport Executive.
4. A company which by virtue of section 73 of the 1989 Act is treated as under the control or subject to the influence of two or more authorities, where each of those authorities is a Passenger Transport Executive.
5. A company which, in relation to a company (“the holding company”) within any description in paragraphs 1 to 4, would, if the holding company were a local authority within the meaning of Part V, be under the control of that authority.

EXPLANATORY NOTE

(This note is not part of the Order)

Part V of the Local Government and Housing Act 1989 provides for the regulation of companies in which local authorities have interests.

This Order, which (except in respect of article 4 and with certain savings) applies in England and Wales from 1st April 1995, contains requirements applicable to companies subject to the influence or control of local authorities within the meaning of Part V of the 1989 Act (“regulated companies”) other than the companies which satisfy the conditions described in the Schedule.

Part I of the Order contains definitions and savings.

Article 4 (which comes into force on 1 July 1995) requires regulated companies to mention on their documents the fact that they are controlled or, as the case may be, influenced by a local authority.

Article 5—

- (a) restricts the remuneration and allowances of certain directors who are also councillors;
- (b) requires steps to be taken to enable the removal of directors who are disqualified for election for office as a councillor, and
- (c) places regulated companies under the same restrictions as apply to local authorities as to the publication of party political material.

Articles 6 to 8 require the provision of certain information by regulated companies to the local authorities concerned, their auditors and members.

Article 9 requires a controlled company to obtain the consent of the Audit Commission before a person is first appointed as its auditor.

⁽¹²⁾ 1985 c. 67.

⁽¹³⁾ 1986 c. 31.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 10 confers on members of the public rights of inspection of minutes of the general meetings of controlled companies, other than arm's length companies.

Article 11 specifies as authorised companies for the purposes of section 71 (minority interests) any company other than a regulated company or company described in the Schedule in which any person associated with a local authority may exercise voting rights or to which any such person is appointed as a director.

Part V of the Order applies the provisions of Part IV of the 1989 Act (revenue accounts and capital finance of local authorities), subject to modifications, to a regulated company and the local authority by whom the company is controlled or, as the case may be, influenced.

Articles 13 and 14 make provision for treating things done by or to a regulated company as if they were done by or to the local authority concerned, and in respect of such things (other than a reduction made in the company's liabilities) require the authority to have available an amount of credit cover.

Where a regulated company reduces its liabilities, article 15 allows the local authority concerned to treat as increased a basic credit approval having effect for the financial year following the reduction.

Article 16 makes provision for determining a regulated company's liabilities.

Article 17 makes provision in relation to dealings between the regulated companies of a local authority and between the authority and any of those companies.

Article 18 makes provision for cases where a regulated company is treated as being under the control, or subject to the influence of, each of two or more local authorities.