
STATUTORY INSTRUMENTS

1995 No. 849

The Local Authorities (Companies) Order 1995

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(1).

(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.

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

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 Section 5 was repealed by section 40(1) of the [City of London \(Various Powers\) Act 1960 \(c.xxxvi\)](#).

- (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.

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(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⁽²⁾ 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.

(2) 1950 c. 27.