
STATUTORY INSTRUMENTS

1994 No. 426

The Airports (Northern Ireland) Order 1994

PART V

TRANSFER OF UNDERTAKING OF NORTHERN IRELAND AIRPORTS LIMITED

Introductory

Interpretation of this Part

50.—(1) In this Part—

“debenture” includes debenture stock;

“the Holding Company” means the Northern Ireland Transport Holding Company established under section 47 of the Transport Act (Northern Ireland) 1967^{F1};

“NIAL” means the subsidiary of the Holding Company incorporated under the name of Northern Ireland Airports Limited;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“statutory accounts” means any accounts (including group accounts) prepared by a company for the purpose of any provision of [^{F2}the Companies Acts (as defined in section 2 of the Companies Act 2006)];

“the successor company” has the meaning assigned to it by Article 51(1);

“the transfer date” has the meaning assigned to it by Article 54(2);

“transferee”, in relation to any transfer of assets and liabilities effected under Article 54, means the body to which they are so transferred;

“transfer scheme” has the meaning assigned to it by Article 54(1).

(2) Subject to Article 54(5), in this Part any reference to the Crown is a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department or the Department of Finance and Personnel; or
- (b) by a company which is itself wholly owned by the Crown.

(4) Any reference in this Part (except Article 52) to assets and liabilities of NIAL—

- (a) is a reference to assets and liabilities to which NIAL is entitled or subject immediately before the transfer date, whether or not capable of being transferred or assigned by NIAL;

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- (b) in relation to assets which consist of property of NIAL, is a reference to property whether situated in Northern Ireland or elsewhere; and
- (c) in relation to assets which consist of other rights and to liabilities of NIAL, is a reference to rights to which NIAL is entitled, or (as the case may be) liabilities to which NIAL is subject, whether under the law of Northern Ireland or under the law of any country or territory outside Northern Ireland.

(5) Paragraph (4) applies to airport assets and airport liabilities of the Holding Company as it applies to assets and liabilities of NIAL, but with the substitution for references to NIAL of references to the Holding Company.

(6) In this Part references to “airport assets” and “airport liabilities” of the Holding Company are references, respectively, to the assets and liabilities of the Holding Company which, either wholly or in part, subsist for the purposes of, or in connection with, or are otherwise attributable to, the functions exercisable by the Holding Company immediately before the transfer date by virtue of section 16 of the Aerodromes Act (Northern Ireland) 1971^{F3}.

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| F1 | 1967 c.37 (NI) |
| F2 | Art. 50(1): words in the definition of "statutory accounts" substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 197(3) (with arts. 6, 11, 12) |
| F3 | 1971 c.16 (NI) |

The successor company

51.—(1) The Department may by order nominate as the successor company for the purposes of this Order a company which—

- (a) is a company limited by shares, within the meaning of the Companies Order; and
- (b) is wholly owned by the Crown;

and references in this Order to “the successor company” are references to the company so nominated.

(2) In the Northern Ireland Assembly Disqualification Act 1975^{F4}, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place in alphabetical order) the following entry—

“Director of the successor company (within the meaning of Part V of the Airports (Northern Ireland) Order 1994), being a director nominated or appointed by a Northern Ireland department or by a person acting on behalf of a Northern Ireland department” .

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| F4 | 1975 c.25 |
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Reorganisation of certain assets and liabilities of NIAL and the Holding Company

The reorganisation scheme

52.—(1) Before such date as the Department may direct, the Holding Company shall make a scheme (referred to in this Article and Article 53 as the “reorganisation scheme”) for—

- (a) the transfer to the Holding Company of the estate of NIAL in specified land;
- (b) the surrender by NIAL of any specified lease; and
- (c) the granting by the Holding Company to NIAL of a lease of specified land on specified terms.

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(2) On the specified day—

- (a) the estate of NIAL in any land specified under paragraph (1)(a) shall, by virtue of this paragraph, vest in the Holding Company; and
- (b) any lease specified under paragraph (1)(b) shall be deemed to have been surrendered by NIAL.

(3) It shall be the duty of the Holding Company and of NIAL before the transfer date to enter into a lease of land specified under paragraph (1)(c) on terms so specified.

(4) The reorganisation scheme may make such supplementary, incidental and consequential provisions as the Holding Company considers appropriate.

(5) In this Article “specified” means specified in the reorganisation scheme.

Functions of the Department in relation to the reorganisation scheme

53.—(1) The reorganisation scheme shall not take effect unless it is approved by the Department; and the Department may modify the reorganisation scheme before approving it.

(2) If—

- (a) the Holding Company fails, before the date specified in the Department's direction under Article 52(1), to submit the reorganisation scheme for the approval of the Department; or
- (b) the Department decides not to approve the reorganisation scheme that has been submitted to the Department by the Holding Company (either with or without modifications),

the Department may itself make the reorganisation scheme.

(3) It shall be the duty of the Holding Company and of NIAL to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with the Holding Company.

Transfer of certain assets and liabilities of NIAL and the Holding Company

The transfer scheme

54.—(1) Before such date as the Department may direct, the Holding Company shall make a scheme (the “transfer scheme”) for the transfer to the successor company or the Department of—

- (a) specified airport assets and airport liabilities of the Holding Company; and
- (b) specified assets and liabilities of NIAL.

(2) On such day as the Department may by order appoint (the “transfer date”)—

- (a) such specified assets and liabilities as are allocated under the transfer scheme to the successor company shall, by virtue of this paragraph, become assets and liabilities of that company; and
- (b) such specified assets and liabilities as are allocated under that scheme to the Department shall, by virtue of this paragraph, become assets and liabilities of the Department.

(3) The provisions of Schedule 7 shall apply in relation to any transfer effected under paragraph (2); and that paragraph shall have effect subject to the provisions of that Schedule.

(4) The transfer scheme may—

- (a) specify the assets and liabilities to be transferred to a particular body by describing or identifying them in such manner; and

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(b) make such supplementary, incidental and consequential provisions, as the Holding Company considers appropriate.

(5) The provisions of the transfer scheme shall bind the Crown, including the Crown in right of Her Majesty's Government in the United Kingdom, to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(6) In this Article “specified” means specified in the transfer scheme.

Functions of the Department in relation to the transfer scheme

55.—(1) The transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify the transfer scheme before approving it.

(2) If—

- (a) the Holding Company fails, before the date specified in the Department's direction under Article 54(1), to submit the transfer scheme for the approval of the Department; or
- (b) the Department decides not to approve the transfer scheme that has been submitted to the Department by the Holding Company (either with or without modifications),

the Department may itself make the transfer scheme.

(3) It shall be the duty of the Holding Company and of NIAL to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with the Holding Company.

Powers of Department and the Holding Company after transfer

56.—(1) The Department shall have power to hold, manage and dispose of any assets transferred to it under Article 54 and to discharge any liabilities so transferred.

(2) The power of the Department under paragraph (1) to dispose of any assets transferred to it under Article 54 includes power to dispose of those assets to a body corporate formed by the Department for the purpose of exercising on behalf of the Department its functions under paragraph (1).

(3) The repeal by this Order of section 16 of the Aerodromes Act (Northern Ireland) 1971^{F5} shall come into operation on the transfer date, but, notwithstanding that repeal, the Holding Company shall on and after that date have power—

- (a) to hold, manage and dispose of any airport assets of the Holding Company which are not transferred under Article 54 and to discharge any airport liabilities of the Holding Company which are not so transferred; and
- (b) to acquire, hold, manage and dispose of any assets of NIAL which are not transferred under Article 54 and to discharge any liabilities of NIAL which are not so transferred.

F5 1971 c.15 (NI)

Ownership of the successor company

Initial Government holding in the successor company

57.—(1) As a consequence of the vesting in the successor company of any assets and liabilities under Article 54, the company shall issue such securities of the company as the Department may direct to the Department or the Department of Finance and Personnel.

(2) The Department shall not give a direction under paragraph (1) at a time when the successor company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued at such time or times and on such terms as the Department may direct.

(4) Shares in the successor company which are issued under this Article—

(a) shall be of such nominal value as the Department may direct; and

(b) shall be issued as fully paid and treated for the purposes of the Companies Order as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Department shall not dispose of any securities issued under this Article without the consent of the Department of Finance and Personnel.

^{F6}(6) For the purposes of [^{F7}the Companies Acts (as defined in section 2 of the Companies Act 2006)], [^{F8}the Company Directors Disqualification (Northern Ireland) Order 2002] and the Insolvency (Northern Ireland) Order 1989^{F9} the Crown is not to be treated as a shadow director of the successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

F6 By Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 197(4)** (with arts. 6, 11, 12) it is provided that in art. 57(6) for "the Companies Order" substitute (6.4.2008) "the Companies Acts (as defined in section 2 of the Companies Act 2006)"

F7 Words in art. 57(6) substituted (1.10.2007) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 86** (with saving in art. 12)

F8 2002 NI 4

F9 1989 NI 19

Government investment in securities of the successor company

58.—(1) The Department or the Department of Finance and Personnel may at any time acquire—

(a) securities of the successor company; or

(b) rights to subscribe for any such securities.

(2) The Department shall not dispose of any securities or rights acquired under this Article without the consent of the Department of Finance and Personnel.

Exercise of functions through nominees

59.—(1) The Department or the Department of Finance and Personnel may, for the purposes of Article 57, 58 or 65, appoint any person to act as the nominee, or one of the nominees, of the Department or the Department of Finance and Personnel; and—

(a) securities of the successor company may be issued under Article 57 or 65 to any nominee of the Department or the Department of Finance and Personnel appointed for the purposes of that Article; and

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- (b) any such nominee appointed for the purposes of Article 58 may acquire securities or rights under that Article,

in accordance with directions given by the Department or by the Department of Finance and Personnel.

(2) Any person holding any securities or rights as a nominee of the Department or the Department of Finance and Personnel under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department or the Department of Finance and Personnel may direct.

Finances of the successor company

Statutory reserves

60.—(1) If the Department so directs at any time before the successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction shall be carried by the successor company to a reserve (“the statutory reserve”).

(2) The sum specified under paragraph (1) shall not exceed the aggregate of—

- (a) the accumulated realised profits of NIAL; and
- (b) any accumulated realised profits arising (after compliance with any direction under Article 65(2)) by virtue of the extinguishment of liabilities of the successor company by an order under Article 65(1).

(3) The statutory reserve may only be applied by the successor company in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(4) Notwithstanding paragraph (3), the statutory reserve shall not count as an undistributable reserve of the successor company for the purposes of [F10 section 831(4)(d) of the Companies Act 2006]; but for the purpose of determining under [F11 that section] whether the successor company may make a distribution at any time any amount for the time being standing to the credit of the statutory reserve shall be treated for the purposes of [F12 section 831(4)(c) of that Act] as if it were unrealised profits of the company.

F10 Words in art. 60(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 197(5)(a)** (with arts. 6, 11, 12)

F11 Words in art. 60(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 197(5)(b)** (with arts. 6, 11, 12)

F12 Words in art. 60(4) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 197(5)(c)** (with arts. 6, 11, 12)

Statutory accounts

61.—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of the successor company.

(2) The vesting in the successor company under Article 54 of assets and liabilities of NIAL shall be taken to have been effected immediately after the end of the last complete financial year of NIAL to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which NIAL was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the successor company shall be taken to have been the value or amount assigned

to the asset or liability for the purposes of the corresponding statement of accounts prepared by NIAL in respect of the last complete financial year of NIAL to end on or before the transfer date.

(4) The amount to be included in respect of any item shall be determined as if anything done by NIAL (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the successor company as representing the company's accumulated realised profits shall be determined as if any profits realised and retained by NIAL had been realised and retained by the successor company.

(6) Paragraphs (2) to (5) apply in relation to airport assets and airport liabilities of the Holding Company as they apply in relation to assets and liabilities of NIAL but with the substitution for references to NIAL of references to the Holding Company.

(7) In this Article “financial year” has the meaning assigned to it by [F13 section 390 of the Companies Act 2006].

F13 Words in art. 61(7) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 197(6) (with arts. 6, 11, 12)

Temporary restrictions on borrowings, etc.

62.—(1) If articles of association of the successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law or any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of the successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article “the group” means the successor company and all of its subsidiaries taken together.

Government lending to the successor company

63.—(1) Subject to Article 66, the Department may make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to the successor company at any time before it ceases to be wholly owned by the Crown.

(2) Subject to Article 65, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.

Government guarantees for loans made to the successor company

64.—(1) Subject to Article 66, the Department may guarantee, in such manner and on such terms as the Department may think fit, the repayment of the principal of, the payment of interest on, and

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the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by the successor company at any time before it ceases to be wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the successor company shall make to the Department, at such times and in such manner as the Department may direct,—

- (a) payments of such amounts as the Department may direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may direct.

Conversion or discharge of certain loans or advances, etc.

65.—(1) The Department may by order extinguish all or any of the liabilities of the successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to the successor company; and the successor company shall, as a consequence of the making of the order, issue such securities as may be specified or described in the direction to the Department or to the Department of Finance and Personnel.

(3) For the purposes of the statutory accounts of the successor company, the value at the time of its issue of any such security shall be taken—

- (a) in the case of a share, to have been equal to its nominal value; and
- (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) The Department shall not—

- (a) make an order under paragraph (1) extinguishing the liability of the successor company; or
- (b) give a direction under paragraph (2) for the issue of securities,

at a time when the successor company has ceased to be wholly owned by the Crown.

(5) Except as may be agreed between the Department and the successor company, where that company is directed under this Article to issue debentures—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
- (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(6) For the purposes of paragraph (5) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(7) Paragraphs (3) to (5) of Article 57 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(8) In this Article “relevant loan” means—

- (a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests in the successor company under Article 54;
- (b) any loan made to that company by the Department under Article 63; and
- (c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

Financial limits on borrowings, etc.

66. The aggregate of any amounts outstanding by way of principal in respect of—

- (a) sums issued under Article 64 in fulfilment of guarantees given in respect of loans made to such companies; and
- (b) relevant loans within the meaning of Article 65,

shall not exceed £10 million.

Miscellaneous

Exercise of certain functions of Department under this Part

67. The Department shall not, except with the consent of the Department of Finance and Personnel, exercise any power under any of the following provisions of this Part, namely—

- (a) Article 51(1);
- (b) Articles 52 to 55;
- (c) Article 57(1) to (4);
- (d) Article 58(1);
- (e) Article 59;
- (f) Article 60(1);
- (g) Article 63(1) and (2);
- (h) Article 64(1);
- (i) Article 65.

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