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## STATUTORY INSTRUMENTS

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# 1994 No. 426

## The Airports (Northern Ireland) Order 1994

### PART V

#### TRANSFER OF UNDERTAKING OF NORTHERN IRELAND AIRPORTS LIMITED

##### *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 [F1section 831(4)(d) of the Companies Act 2006]; but for the purpose of determining under [F2that 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 [F3section 831(4)(c) of that Act] as if it were unrealised profits of the company.

**F1** 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)

**F2** 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)

**F3** 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

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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 [F4 section 390 of the Companies Act 2006].

**F4** 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 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

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- (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.

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