
WELSH STATUTORY INSTRUMENTS

2004 No. 1010 (W.107)

LOCAL GOVERNMENT, WALES

The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2004

Made - - - - *31st March 2004*
Coming into force - - *1st April 2004*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 3(5) to (7), 7(2)(b) and (3)(c), 8(3), 9(3), 10, 11, 15(1)(b), 16(2), 19, 21(1), (2) and (5), 23(2), 24, 123(2) and 124 of, and paragraph 4 of Schedule 1 to, the Local Government Act 2003⁽¹⁾ hereby makes the following Regulations:

Name, commencement, application and interpretation

1.—(1) These Regulations are called the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply only in relation to local authorities in Wales.

(3) In these Regulations any reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, the Local Government Act 2003 unless otherwise stated.

(4) In these Regulations —

“the 2003 Regulations” means the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003⁽²⁾.

Amendments to the 2003 Regulations

2.—(1) The 2003 Regulations are amended as follows.

(2) In paragraph (4) of Regulation 1 after the definition of “the 1997 Regulations” insert:

““charter trustee” means a body constituted in accordance with section 246 of the Local Government Act 1972⁽³⁾;

“CIPFA” means the body —

(a) constituted by Royal Charter on 6th January 1959 and originally named “the Institute of Municipal Treasurers and Accountants”;

(1) 2003 c. 26.

(2) S.I. 2003/3239 (W.319).

(3) 1972 c. 70.

- (b) whose name was changed to “The Chartered Institute of Public Finance and Accountancy” by Royal Charter on 24th October 1973; and
 - (c) registered with the Charity Commissioners of England and Wales (number 231060);
- “community council” means a community council or a town council in accordance with section 27 of the Local Government Act 1972;”.
- (3) In Regulation 2 after the word “amended” insert “or reissued”.
 - (4) In Regulation 3:
 - (a) in paragraph (1) substitute “paragraphs (2) and (3)” for “paragraph (2)”; and
 - (b) at the end insert:
 - “(3) Paragraph (1) applies to liabilities that are credit arrangements entered into after 31st March 2004.
 - (4) Paragraph (1) does not apply where liabilities are credit arrangements in accordance with section 48 of the Local Government and Housing Act 1989(4) entered into before 1st April 2004 which are not funded by capital receipts or credit arrangements under section 50(3) of that Act until such arrangements cease or are varied in any way.”.
 - (5) After Regulation 5 insert:

“Varied Transactions

5A. For the purposes of Chapter 1 of Part 1 (Capital finance etc), a local authority shall be taken to have entered into a credit arrangement where —

- (a) on or after 1st April 2004, it enters into a transaction (“the new transaction”) which varies a transaction entered into previously, whether before, on or after 1st April 2004 (“the earlier transaction”);
- (b) the earlier transaction did not result in the local authority being taken to have entered into a credit arrangement; and
- (c) the local authority would, if it had entered into the earlier transaction as varied by the new transaction on —
 - (i) the date on which the earlier transaction was entered into; or
 - (ii) if later, 1st April 2004,
 be taken to have entered into a credit arrangement, and the date on which it is taken to have entered into the credit arrangement by virtue of this regulation is the date on which it enters into the new transaction”.
- (6) In Regulation 6 at the end insert:
 - “(3) Where the financial assistance referred to in paragraphs (1)(a) and (b) is a loan, grant or other financial assistance given by a community council or charter trustees, any sums paid to the local authority as repayment of that loan, grant or other financial assistance shall not be treated as capital receipts.
 - (4) In paragraphs (1) and (2) “local authority” includes a community council and charter trustees.”.
- (7) In Regulation 9 at the end insert:
 - “(6) In paragraphs (1) and (3) “local authority” includes community councils and charter trustees.”.
- (8) After Regulation 9 insert:

“Operating and finance leases

9A.—(1) A sum received by a local authority —

- (a) under any arrangement which is treated, in accordance with proper practices, as an operating lease or a finance lease;
- (b) which, apart from this Regulation would be a capital receipt; and
- (c) which, in accordance with proper practices, is to be credited to a revenue account,

shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt.

(2) In paragraph (1) “local authority” includes a community council and charter trustees.”.

(9) After paragraph (2)(c) of Regulation 18 insert: “or;

(d) to pay a premium charged in relation to any amount borrowed.

(2A) Paragraphs (1)(a), (2)(a), (b) and (d) apply to community councils and charter trustees.”.

(10) In Regulation 19 after the word “amended” insert “or reissued.”.

(11) In Regulation 20 —

(a) in paragraph (1) at the end insert:

“(d) subject to paragraph (5) the acquisition of share capital or loan capital in any body corporate;

(e) the repayment of any grant or other financial assistance given to the local authority for the purposes of expenditure which is capital expenditure;

(f) expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building.”;

(b) at the end insert:

“(4) Where expenditure in accordance with paragraph (1)(b) is a loan, grant or other financial assistance given by a community council or charter trustees to any person, it shall not be treated as capital expenditure by virtue of this regulation.

(5) In paragraph (1)(d) loan capital shall not be treated by a local authority as capital expenditure where:

(a) it is an investment for the purposes of the prudent management of a local authority’s financial affairs in accordance with section 12(b); and

(b) the investment is admitted to an official list maintained by a competent authority in an EEA State.

(6) In paragraph (5) —

“competent authority” means an authority which is responsible for maintaining the official list in an EEA State;

“EEA State” has the meaning given by Schedule 3 to the Financial Services and Markets Act 2000(5);

“official list” in relation to the United Kingdom has the meaning given by section 103(1) of the Financial Services and Markets Act 2000, and in relation to any other EEA State means the equivalent list maintained by the competent authority of that State.”.

(7) In paragraphs (1)(a), (d), (e) and (f) “local authority” includes a community council and charter trustees.”.

(12) In Regulation 21 —

- (a) the existing wording shall be numbered (1); and
- (b) at the end the following shall be inserted:

“(2) During the financial year beginning on 1st April 2004 and every subsequent financial year, a community council or charter trustees may charge to a revenue account any amount in respect of the financing of capital expenditure incurred by the community council or the charter trustees, as the case may be, in that year.”.

(13) In Regulation 22 —

- (a) in paragraph (1) substitute “paragraphs (4) and (5)” for “paragraph (4)”; and
- (b) at the end insert:

“(5) An additional amount of minimum revenue provision for the current financial year (“the additional amount”) shall be calculated by the local authority where —

- (a) a credit approval, within the meaning of regulation 136 of the 1997 Regulations (Use of certain credit approvals), was issued to the local authority before 1st April 2004; and
- (b) the amortisation period specified in the credit approval in paragraph (a) expires during or after the current financial year,

and the additional amount of minimum revenue provision shall be the total amount determined by the local authority under regulation 136(2) of the 1997 Regulations for the current financial year, as if those Regulations were still in force for the purposes of this regulation.”

(14) In paragraph (2) of Regulation 24 delete the words “town and”.

(15) In Regulations 25 —

- (a) the existing wording shall be numbered (1); and
- (b) in paragraphs (a) and (b) insert “or reissued” after “amended” on each occasion where that word is used; and
- (c) at the end the following shall be inserted:

“(2) Paragraph (1) in application to a community council shall only apply to a community council which in accordance with Regulation 6 of the Account and Audit Regulations 1996(6) is required to prepare a statement of accounts”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(7)

31st March 2004

D. Elis-Thomas
The Presiding Officer of the National Assembly

(6) S.I. 1996/590.

(7) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part I of the Local Government Act 2003 (“the 2003 Act”) allows the National Assembly for Wales to make provision for a new system of local government capital finance to replace the scheme which existed under Part IV of the Local Government and Housing Act 1989. The National Assembly for Wales used the powers under the 2003 Act to make the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”) which introduced a new system of local government capital finance. These Regulations are made under largely the same powers and make amendments to the 2003 Regulations.

Regulation 2 makes amendments to various regulations in the 2003 Regulations. Regulation 2(2) inserts into Regulation 1 (Name, commencement, application and interpretation) of the 2003 Regulations a definition of “charter trustees” and a definition of “CIPFA” (the Chartered Institute of Public Finance and Accountancy) to put the identity of that organisation beyond doubt. A definition of “community council” is also inserted into Regulation 1 to make it clear that town councils in Wales are included in the term “community council”. Regulation 2 (Code of practice) of the 2003 Regulations is amended by Regulation 2(3) to make it clear that references to the Prudential Code for Capital Finance in Local Authorities issued by CIPFA may include a reissued version as well as a version that may be amended from time to time.

Regulation 2(4) amends Regulation 3 (Liabilities that do not arise from capital expenditure) of the 2003 Regulations so that liabilities that do not arise from capital expenditure, as set out in Regulation 3 of the 2003 Regulations, are those credit arrangements entered into after 31st March 2004 (in accordance with the Local Government Act 2003). Those entered into before 1st April 2004 under section 48 of the Local Government and Housing Act 1989 but not resourced by capital receipts or by direct revenue financing in accordance with section 50(3)(a) of the Local Government and Housing Act 1989 will continue to be credit arrangements until ceased or varied.

Regulation 2(5) inserts into the 2003 Regulations a new Regulation 5A (Varied transactions) which clarifies that when a lease transaction is varied and that variation requires a fixed asset to be recognised on a local authority’s balance sheet, in accordance with Regulation 5 of the 2003 Regulations, that lease transaction becomes a qualifying credit arrangement.

Regulation 2(6) amends Regulation 6 (Repayment of loan etc to a local authority) of the 2003 Regulations by insertion of a new paragraph (3) so that repayments in accordance with sub-paragraphs (1)(a) and (b) are not treated as capital receipts if received by a community council or charter trustees in respect of a loan, grant or other financial assistance made by them.

Regulation 2(7) amends Regulation 9 (Capital receipts not exceeding £10,000) by applying paragraphs (1) and (3) to community councils and charter trustees.

Regulation 2(8) inserts a new regulation 9B (Operating and finance leases) into the 2003 Regulations. This new Regulation provides that where a local authority (which terms includes community councils and charter trustees) leases an asset to a third party, whether by finance or operating lease, the amounts received by the local authority as part of the arrangement shall not be treated as a capital receipt if proper practice requires that they should be credited to a revenue account.

Regulation 2(9) amends Regulation 18 (Use of capital receipts) of the 2003 Regulations by the insertion of an additional purpose for which a capital receipt may be used. The additional purpose inserted as sub-paragraph (d) of paragraph (2) is the paying of a premium in relation to any amount

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borrowed. Regulation 18 is also extended in its application to community councils and charter trustees.

Regulation 2(10) amends Regulation 19 of the 2003 Regulations in the same way that Regulation 2(3) amends Regulation 2 of the 2003 Regulations.

Regulation 2(11) amends Regulation 20 (Expenditure to be capital expenditure) of the 2003 Regulations by extending the categories of expenditure of a local authority which must be treated as being capital expenditure in so far as it is not capital expenditure by virtue of section 16(1) of the Local Government Act 2003. Regulation 2(11) also excludes investments (for the purposes of prudent financial management in accordance with section 12(b) of the Local Government Act 2003 which are in an official list maintained by a competent State of the European Economic Area) from being treated as capital expenditure by further amending Regulation 20.

Regulation 2(11) also specifies that where a loan, grant or other financial assistance is given by a community council or charter trustees it shall not be treated as capital expenditure.

Regulation 2(12) amends Regulation 21 (Duty to make Minimum Revenue Provision) of the 2003 Regulations by the insertion of a new paragraph (2). The effect of this amendment is that from 1st April 2004 a community council or charter trustees may charge to a revenue account any amount in respect of the financing of capital expenditure in a financial year to which such an amount relates.

Regulation 2(13) amends Regulation 22 of the 2003 Regulations to provide for the calculation of an additional amount of minimum revenue provision in specified circumstances. This amendment allows amortisation to continue in the specified circumstances as if section 136(2) of the Local Authorities (Capital Finance) Regulations 1997 still applied.

Regulation 2(15) amends Regulation 25 (Proper Practices) of the 2003 Regulations in the same way that Regulation 2(3) amends Regulation 2 of the 2003 Regulations and also requires community councils in Wales which, are required to prepare a statement of accounts in accordance with the Audit and Account Regulations 1996, to comply with Regulations 25.