
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to the powers of local authorities to borrow money, to incur debt through borrowing by way of credit arrangements and to maintain loans funds. They are made under the Local Government etc. (Scotland) Act 1994 (“the principal Act”). They will replace much of the provision in relation to local authority borrowing that is contained in Schedule 3 to the Local Government (Scotland) Act 1975 (“the 1975 Act”).

Part 1 contains general provisions concerning the citation, commencement and interpretation of the Regulations.

Part 2 (regulations 2 to 9) makes provision about local authority borrowing. Regulation 2 sets out purposes for which a local authority may borrow money. Borrowing for other purposes requires the consent of the Scottish Ministers, as does any borrowing that is not in sterling. Regulation 3 enables local authorities to borrow jointly and sets out how these Regulations apply to such borrowing. Regulation 5 enables borrowing through credit arrangements, as defined by regulation 1(3), and provides for calculation of the amount of external debt that a local authority needs to recognise in respect of borrowing through such arrangements.

When a local authority exercises the power to borrow, regulation 4 requires it to have regard to generally recognised codes of practice and to guidance, such as the CIPFA Prudential Code and CIPFA Treasury Management Code. Compliance with the CIPFA Prudential Code would mean a local authority had to set an authorised limit for its external debt; regulation 6 makes this a requirement and provides for the determination and variation of the authorised limit. Transitional provision is made by regulation 17 for the introduction of this requirement.

Regulation 7 requires that all money borrowed, and interest on it, must be secured over all the revenues of the local authority, and can only be secured in that way. All securities must have equal ranking, which is a continuation of requirements under the 1975 Act. Existing protection for lenders under the 1975 Act is continued by regulation 8.

Regulation 9 provides that borrowing by a local authority for the purposes of the funds specified in that regulation is not to be classed as borrowing by that authority for the purposes of these Regulations.

Part 3 (regulations 10 and 11) enables a local authority to borrow to lend to other local authorities, specified other bodies and any common good fund of that authority.

Part 4 deals with loans funds. All local authorities that did not already have a loans fund were required to establish one by paragraph 12 of Schedule 3 to the 1975 Act. Regulation 12 requires that these funds are maintained, though they will operate more flexibly than as provided for by the 1975 Act, and sets out how they are to be administered. Regulations 13 and 14 provide for advances from loans funds and their repayment.

Part 5 (regulations 15 to 17) makes consequential amendments to other legislation, revokes some instruments that are no longer required and makes supplemental provision in relation to regulation 6. In particular, regulation 15 makes consequential changes to the 1975 Act and the Tay Road Bridge Order Confirmation Act 1991. Some other provisions of Schedule 3 to the 1975 Act will be repealed separately, by commencement of provisions of the principal Act that provide for their repeal.

Regulation 15 also amends provision in paragraphs 22 and 25 of Schedule 3 to the 1975 Act about use of money in certain funds that is not immediately needed for fund purposes. There is no longer a requirement to recognise the internal borrowing of these funds by advancing them to the loans

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fund. Instead these funds can be used for any purpose that may be funded by borrowing, as set out in regulation 2, which includes financing capital expenditure and treasury management. Paragraph 22 of that Schedule continues to allow these funds to be invested externally.