

Status: Point in time view as at 08/09/2000.

Changes to legislation: There are currently no known outstanding effects for the Local Government (Scotland) Act 1975, Cross Heading: Loans fund. (See end of Document for details)

SCHEDULES

SCHEDULE 3

BORROWING AND LENDING BY LOCAL AUTHORITIES AND CERTAIN OTHER BODIES AND CERTAIN OF THEIR FUNDS

Loans fund

12 (1) Subject to the following provisions of this Schedule, a local authority shall, as from ^[F1]1st April 1996], establish a fund (“the loans fund”) which shall be applicable to all money borrowed by the authority and the redemption or repayment thereof and the payment of interest or dividends thereon and shall be part of the general fund of the authority; and the loans fund shall be administered in accordance with paragraphs 13 to 21 below.

^[F2](1A) Sub-paragraph (1) above, so far as it relates to the establishment of a loans fund, does not apply to the councils of Orkney Islands, Shetland Islands and Western Isles, whose loans funds will continue in existence.]

^[F3](2) A loans fund shall not apply to money borrowed for the common good.]

Textual Amendments

- F1** Words in Sch. 3 para. 12(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 100(9)(b) (with s. 128(2)); S.I. 1996/323, art. 4(1)(c)
- F2** Sch. 3 para. 12(1A) inserted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 100(9)(c) (with s. 128(2)); S.I. 1996/323, art. 4(1)(c)
- F3** Sch. 3 para. 12(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 100(9)(d) (with s. 128(2)); S.I. 1996/323, art. 4(1)(c)

13 (1) All capital assets and liabilities which are transferred to a local authority from an authority which ceases to exist on ^[F4]1st April 1996], other than property which is subject to ^[F5]section 17 of the Local Government etc. (Scotland) Act 1994 or which is referred to in section 15(5) or 16 of that Act], shall be paid into or transferred to the loans fund of the local authority.

(2) All investments transferred to the loans fund as from ^[F4]1st April 1996] shall be entered in the accounts of the loans fund at the value shown on the account from which they are transferred.

Textual Amendments

- F4** Words in Sch. 3 para. 13(1)(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 100(9)(b) (with s. 128(2)); S.I. 1996/323, art. 4(1)(c)
- F5** Words in Sch. 3 para. 13(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 100(9)(e) (with s. 128(2)); S.I. 1996/323, art. 4(1)(c)

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- 14 Any statutory borrowing power vested in a local authority on or after [^{F6}1st April 1996] shall be exercisable by them only in the following manner—
- (a) by borrowing in accordance with this Schedule and carrying to the loans fund such sums as are necessary to enable that fund to make to the appropriate borrowing account of the local authority or to a relevant authority the advances which are required for the purpose for which the statutory borrowing power is available; and
 - (b) by making from the loans fund such advances to the appropriate borrowing account of the local authority or to a relevant authority, as the case may be.

Textual Amendments

F6 Words in Sch. 3 para. 14 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 100(9)(b)** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(c)**

- 15 (1) Subject to sub-paragraph (2) below [^{F7}and to sub-paragraph (2) of paragraph 1 above], all sums advanced to a borrowing account of a local authority or to a relevant authority shall be repaid within the fixed period by equal yearly or half-yearly instalments of principal, or, where repayment is on the annuity system, by equal yearly or half-yearly instalments of principal and interest combined; and the authority shall in each year debit the borrowing account or charge to the relevant authority the sums required in that year for the repayment of the advance.
- (2) In any case where—
- (a) a local authority make an advance to any person and the expenditure incurred in making the advance is defrayed by borrowing; and
 - (b) the terms of that advance are such that repayment is to be made otherwise than by equal yearly or half-yearly instalments of principal or of principal and interest combined; and
 - (c) apart from this sub-paragraph, the local authority would have no power, with respect to the expenditure referred to in paragraph (a) above, to vary the sums which would otherwise be debited or charged under sub-paragraph (1) above or to suspend their obligation under that sub-paragraph;
- the local authority may, under sub-paragraph (1) above, debit to the borrowing account from which, or charge to the relevant authority by whom, the expenditure referred to in paragraph (a) above would otherwise fall to be defrayed, sums of different amounts (whether or not including instalments of principal) in respect of different years in order to take account of the terms on which their advance falls to be repaid.
- (3) Subject to paragraph 16 below, the first payment to the loans fund shall be made within twelve months, or where the money is repayable by half-yearly instalments within six months, from the date of the advance.

Textual Amendments

F7 Words inserted by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2)**, **Sch. 3 para. 36(a)**

- 16 (1) Where a sum is advanced from the loans fund in accordance with paragraph 14 above for any of the following purposes—

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- (a) meeting expenditure on the construction of new, or the extension or alteration of existing, works forming or to form part of an undertaking of revenue-producing character;
- (b) carrying out on land any other operations, being operations of a prescribed kind or operations specified in relation to that land by direction of the Secretary of State;
- (c) acquiring land for the purpose of the construction thereon of new, or the extension or alteration of existing, works forming or to form part of an undertaking of a revenue-producing character, or for the purpose of the carrying out thereon of operations of a kind prescribed by virtue of paragraph (b) above, or operations specified in relation to that land by direction of the Secretary of State;
- (d) acquiring land specified by direction of the Secretary of State;

the authority may, subject to the consent of the Secretary of State, suspend in whole or in part any annual provision required under paragraph 15 above for the repayment from the borrowing account or by the relevant authority of the sum so advanced for such period (not being a period longer than the period during which the expenditure remains unremunerative or the period of five years from the commencement of the year next after that in which the expenditure commences to be incurred, whichever is the shorter) and subject to such conditions as the Secretary of State may determine.

- (2) Where any annual provision required to be made for the repayment of any sum has been suspended under sub-paragraph (1) above, a local authority may borrow for the purpose of payment, during the period of the suspension, of interest on that sum.
 - (3) Where by virtue of paragraph 15 above a local authority are required to debit a sum to the borrowing account or charge a sum to a relevant authority and they suspend, in whole or in part, any annual provision for the repayment of the principal, they may refrain from debiting to that account or charging to the relevant authority an amount equal to the amount of the annual provision so suspended.
 - (4) In this paragraph “prescribed” means prescribed by regulations made by the Secretary of State.
- 17 (1) The authority shall at the time an advance is made under paragraph 14 above determine—
- (a) the period within which the advance is to be repaid to the loans fund, being a period not exceeding the fixed period; and
 - (b) the amount of each of the periodical payments required to repay the advance within the period so determined, and the date on which the first of the said payments is to be made.
- (2) The periodical payments shall be either equal yearly or half-yearly instalments of principal or, where the advance is to be repaid on the annuity system, equal yearly or half-yearly instalments of principal and interest combined, the amount of principal included in each instalment being separately stated.
 - (3) The periodical payments shall so far as practicable be so adjusted as to be expressed in complete pounds.
 - (4) This paragraph shall apply with the necessary modifications in the case of advances from the loans fund to a relevant authority.
- 18 In the event of it appearing at any time from a report by the Controller of Audit or otherwise that the authority specified therein have failed duly to make payment

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of interest or of the appropriate periodical sums required to be set aside for the repayment of advances made from the loans fund as aforesaid, or that the provisions of this Schedule or any regulations made thereunder have otherwise not been duly complied with, the Secretary of State may apply by petition to the Court of Session to have the authority ordained to make such payment and to comply in such other manner with the provisions of this Schedule or such regulations as may be necessary in the circumstances, and the Court are hereby authorised to do therein as shall appear to be just.

- 19 Without prejudice to paragraph 18 above, the Secretary of State may from time to time as he thinks fit cause an investigation to be made into the administration of the loans fund of the authority, who shall bear the expenses of such investigation.
- 20 (1) If at any time any sums due by way of principal or interest on any security created by a local authority remain unpaid for a period of two months after demand in writing, the person entitled thereto, being the holder of such a security to the amount of not less than £1,000, or the persons entitled thereto, being the holders of such securities amounting together to not less than £2,000, may present a petition to the Court of Session for the appointment of a judicial factor, and the Court may, if they think fit, appoint a judicial factor.
- (2) Subject to the directions of the Court, the judicial factor shall have all the powers of the local authority [^{F8}of levying rates, [^{F9}the council tax and the council water charge]], making requisitions on [^{F10}other local authorities] and collecting and recovering sums due to the authority in respect of rates or requisitions and any other sums whatsoever due to the authority and such other powers and duties as the Court think fit, and shall apply all money received by him, after payment of expenses including a proper remuneration for his trouble, as the Court direct for the purposes of this Schedule.
- (3) The judicial factor shall have such access to and use of the books and documents of the local authority as he may require.
- (4) The powers conferred by this paragraph shall be in addition to and not in derogation of any other powers competent to the holder of a security for enforcing payment of the sums due under the security.

Textual Amendments

- F8** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 6, [Sch. 1 Pt. III para. 35\(a\)](#)
- F9** Words in Sch. 3 para. 20(2) substituted (1.4.1993) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), [Sch. 13 para. 44\(b\)](#) (with s. 118(1)(2)(4)); S.I. 1993/575, [art. 2\(c\)](#).
- F10** Words substituted by [Abolition of Domestic Rates Etc. \(Scotland\) Act 1987 \(c. 47, SIF 81:2, 103:2\)](#), s. 6, [Sch. 1 Pt. III para. 35\(b\)](#)

- 21 (1) Notwithstanding anything in this Schedule, the Secretary of State may by regulations make such provision as appears to him necessary or expedient with respect to the operation of the loans fund of a local authority and such regulations may apply generally or in the case of any particular authority or class of authority.
- (2) A statutory instrument containing regulations under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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