

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)
(ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2024

2024 No. 602

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Minister Simon Hoare, Parliamentary Under Secretary of State for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Suzanne Clarke, Deputy Director for Local Government Financial Stewardship, at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Matt Hemsley at the Department for Levelling Up, Housing and Communities
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la.financialcontrolframework@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 These Regulations make amendments to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) (“the 2003 Regulations”). The technical amendments define the investments that shall not be treated as capital expenditure within local authority accounts.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

- 5.1 Under the *Local Authorities (Capital Finance and Accounting) (England) Regulations 2003* (the “Regulations”) specific provision is made to exclude certain low risk share capital investments from being classed as capital expenditure. Such investments are used by local authorities for cash management daily, and it is important the investments can be freely used.

- 5.2 Most of these funds originate overseas, in the European Economic Area (EEA). The types of funds are Money Market Funds (“MMFs”) and Undertakings for the Collective Investment in Transferable Securities (“UCITS”). The definitions of these funds in the Regulations have historically needed to refer to EU law and, as the UK exited the EU, amendments have been necessary to ensure the Regulations reflect changes in the wider regulatory and legislative framework. The Regulations were last amended, with respect to these funds, in 2019 to update references to the temporary regime put in place by HM Treasury following EU exit (the “temporary marketing permissions regime” or “TMPR”).
- 5.3 HM Treasury is now implementing a new regulatory framework, introduced by the Financial Services Act 2021, replacing the post-exit transition arrangements, and the references in the Regulations need to be changed once more. The objective is not to change policy, but to ensure that local authorities are not adversely affected. Without updating the references, certain investments may become capital and subject to statutory restrictions.
- 5.4 In making the changes to refer to the new regulatory framework, the government is also extending the existing provisions that exempts EEA pooled investment funds, to reflect that the TMPR was extended by the Financial Services Act 2021 to 31st December 2025.

What was the previous policy, how is this different?

- 5.5 There is no substantive change to the previous policy.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Part 1 of the Local Government Act 2003 sets the legal framework within which local government may undertake capital expenditure and central Government may regulate that activity. Regulation 25 of the 2003 Regulations provides for expenditure which is, and which is not, to be treated as capital expenditure for the purposes of Chapter 1 of Part 1 of the 2003 Act. Since 2004, regulation 25 has excluded local authority investments in money market funds from treatment as capital expenditure in local authority accounts. Regulation 30K of the 2003 Regulations provides for specific accounting treatment for fair value gains and losses of local authority investments in pooled investment funds. Provision is made in relation to certain collective investment schemes known as “UCITS”.
- 6.2 The Financial Services Act 2021 introduced a new regime for the marketing and sale of UCITS and extended the TMPR. Amendments are needed to the 2023 Regulations because of these changes.
- 6.3 The Local Audit and Accountability Act 2014 and the Accounts and Audit Regulations 2015 make provision about the audit of local authority accounts. Until the auditor has certified the accounts, audit adjustments – such as the treatment of receipts and expenditure as revenue or capital – are often made to reflect the latest guidance and legislation (known as audit adjustments). The statutory deadline for certifying the 2023-24 accounts is 30th September 2024, so that changes made to the 2003 Regulations after 1st April 2024 but before 30th September 2024 may be taken into account in relation to the 2023-24 accounts without being retrospective.

Why was this approach taken to change the law?

- 6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 We have sought the views of a number of sector stakeholders with specialist expertise and engaged with the Chartered Institute of Public Finance and Accounting (CIPFA), throughout the process of drafting these technical changes to ensure that the instrument meets the intended purpose of consistently defining relevant investments as revenue expenditure.

8. Applicable Guidance

- 8.1 No formal guidance will be issued by DLUHC on implementing these Regulations. The purpose of the instrument is to ensure that legislation remains consistent with the existing policy.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because this statutory instrument only affects local authorities, and there is no substantive change to policy.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the changes are specific to local authority accounting practices. The statutory instrument does not apply to activities that are undertaken by small businesses.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector. The purpose of the instrument is to ensure that legislation remains consistent with the existing policy.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The instrument does not include a statutory review clause. DLUHC undertakes continual monitoring of the local government sector's practices with respect to investing and financial management. Any risks or issues will be identified as part of this.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).