

LOCAL GOVERNMENT IN SCOTLAND ACT 2003

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 7 – Finance

Section 35 – Capital expenditure limits

96. This section places local authorities under a duty to manage their own capital expenditure. *Subsection (2)* provides that in so doing local authorities should comply with any regulations issued by the Scottish Ministers. *Subsection (3)* describes what such regulations might cover, such as requirements to determine, review, report on and publish information about capital expenditure. *Subsection (4)* ensures that local authorities are obliged to comply with any relevant codes of practice referred to in the regulations.

Section 36 – Imposition of capital expenditure limits

97. This section provides that the Scottish Ministers may by order determine maximum limits on how much local authorities (and, by direction, a particular local authority) can allocate to capital expenditure in a specified period. Such orders or directions can be used to specify different limits for different kinds of capital expenditure.
98. *Subsection (4)* provides that as soon as practicable after making any order or direction under this section the Scottish Ministers must make a report to the Scottish Parliament on why they issued such an order (or direction) and the predicted effect of any such order (or direction).

Section 37 – Capital grants

99. *Section 37* provides that the Scottish Ministers may also make grants to local authorities for use as capital expenditure and that in doing so, they may attach conditions to the grants (including conditions on repayment of such grants).

Section 38 – Scottish Ministers’ power to pay off loans made by local authorities

100. *Section 38* provides that the Scottish Ministers may make payments direct to the Public Works Loans Board or any other person to reduce or extinguish a loan previously made to a local authority for the purposes of capital expenditure.
101. *Subsection (2)* provides that after making any such payment under this section the Scottish Ministers must lay a report before the Scottish Parliament outlining their reasons for doing so.

Section 39 – Provisions supplementary to section 35 to 38

102. This section provides a definition of capital expenditure, which includes a reference to the definition of “proper accounting practice” in section 12. It provides that the new arrangements in sections 35 to 38 apply to those bodies within the audit remit of the

*These notes relate to the Local Government in Scotland Act
2003 (asp 1) which received Royal Assent on 11 February 2003*

Accounts Commission (as specified by section 106 (1)(b) of the 1973 Act). The Scottish Ministers may also apply sections 35 to 38 by order to any other persons they think fit, if it is on the grounds that such persons have functions similar to those of local authorities.

103. *Subsections (5) and (6)* provide that regulations and orders under sections 35 or 39, shall be made after consultation and subject to Parliamentary approval. *Section 40 – Power of local authorities to invest money*

Section 40 Power of local authorities to invest money

104. This section provides that local authorities may invest money in accordance with regulations made by the Scottish Ministers. Such regulations will specify the nature and scope of investment by local authorities; for example, by specifying the type of investment that both can and cannot be made by local authorities and specifying any relevant code of practice or other document that should be followed in relation to such investment. These regulations are expected to disapply such investment from previous statutory ties such as to the [Trustee Investments Act 1961 \(c.62\)](#).

Section 41 – Establishment of further local authority funds other than general fund: setting of council tax

105. [Section 41](#) amends section 93 of the 1973 Act to enable the Scottish Ministers to define financial liabilities and provisions that local authorities can identify in reserves, separate from their General Fund accounts. It also amends section 93 of the [Local Government Finance Act 1992 \(c.14\)](#) to allow the Scottish Ministers to require that these liabilities and provisions are ignored by local authorities in setting their annual council tax levels.