STATUTORY RULES OF NORTHERN IRELAND

2011 No. 326

LOCAL GOVERNMENT

Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011

Made - - - - 20th September 2011

Coming into force in accordance with regulation 1

The Department of the Environment makes the following Regulations in exercise of the powers conferred by sections 2(1), 3, 13, 17(3)(c), 18(3), 19(2), 20(3), 22, and 25(1)(b) of the Local Government Finance Act (Northern Ireland) 2011(**1**).

In accordance with section 44(1) of that Act, the Department has consulted councils, such associations representative of councils, such associations representative of officers of councils and such other persons or bodies as appear to the Department to be appropriate.

PART 1

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Government (Capital Finance and Accounting) Regulations (Northern Ireland) 2011 and shall come into operation on 1st April 2012 except as provided for in paragraph (2).

(2) Regulations 7 to 11 shall come into operation from 1st November 2011 for the purposes of determining an affordable borrowing limit as part of the budget setting process for the financial year commencing on 1st April 2012, and for all remaining purposes on 1st April 2012.

(3) In these Regulations, unless the context indicates otherwise, any reference to a Part or section is a reference to a Part or section of the Local Government Finance Act (Northern Ireland) 2011.

(4) In these Regulations—

"CIPFA" means the Chartered Institute of Public Finance and Accountancy; and

"retirement benefits" means benefits payable pursuant to statutory requirements under an arrangement accounted for as a defined benefit pension plan or as other long-term employee benefits (as defined in accordance with proper practices).

(**1**) 2011 c.10

PART 2

ACCOUNTING

Proper practices

2. For the purposes of section 2(3) (accounting practices) the accounting practices contained in the following codes of practice are proper practices—

(a) "Code of Practice on Local Authority Accounting in the United Kingdom" published by CIPFA in 2009(**2**);

(b) "Best Value Accounting Code of Practice" published by CIPFA in 2009(**3**).

Annual budget

3. For the purposes of section 3 (annual budget) the prescribed date for a financial year beginning on or after 1st April 2012 shall be 15th February.

Accounting for capital expenditure

4. Where expenditure of a council—

(a) is expenditure which falls to be capitalised in accordance with proper practices ("capital expenditure"); or

(b) is treated as being capital expenditure by virtue of regulations made, or a direction given, under section 19(2) or (3),

that expenditure need not be charged to the general fund of the council.

Retirement benefits: accounting treatment

5. For a financial year beginning on or after 1st April 2012, a council shall charge to the general fund an amount equal to the retirement benefits payments and contributions to pension funds which are payable for that financial year.

Duty to make revenue provision in respect of capital expenditure

6. During the financial year beginning on 1st April 2012 and every subsequent financial year, a council shall determine for the current financial year an amount of minimum revenue provision which it considers to be prudent and—

(a) shall charge to the general fund that minimum revenue provision for that financial year; and

(b) may charge to the general fund any amount in addition to that minimum revenue provision,

in respect of the financing of capital expenditure incurred by the council in that year or in any financial year prior to that year.

(**2**) ISBN 978 1 84508 217 8
(**3**) ISBN 978 1 84508 211 6

PART 3

BORROWING

Code of practice

7. In complying with their duty under section 13(1) (duty to determine affordable borrowing limit), a council shall have regard to the code of practice entitled the "Prudential Code for Capital Finance in Local Authorities" published by CIPFA, as amended or reissued from time to time(**4**).

PART 4

CREDIT ARRANGEMENTS

Transactions which are not credit arrangements

Liabilities that do not arise from capital expenditure

8.—(1) The liabilities of a council specified in paragraph (2) are liabilities specified for the purposes of section 17(3)(c) (exclusion of certain liabilities from definition of "qualifying liabilities").

(2) The liabilities specified for the purposes of paragraph (1) are liabilities that do not arise from a transaction which results in the council being required, in accordance with proper practices, to recognise a fixed asset in any balance sheet.

Retirement benefits: exclusion from credit arrangements

9. Liabilities for retirement benefits appropriated to a pension reserve in accordance with proper practices are liabilities specified for the purposes of section 17(3)(c).

Varied transactions

10. For the purposes of Part 1 (financial administration), a council shall be taken to have entered into a credit arrangement where—

(a) on or after 1st April 2012, it enters into a transaction ("the new transaction") which varies a transaction entered into previously, whether before, on or after 1st April 2012 ("the earlier transaction");

(b) the earlier transaction did not result in the council being taken to have entered into a credit arrangement; and

(c) the council 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 2012,

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.

(**4**) The current issue of this code of practice was published in London in 2009. ISBN 978 1 84508 207 9

Calculation of cost of credit arrangements

11. For the purposes of section 18(2) (entry into a credit arrangement or variation to be treated as the borrowing of an amount equal to the cost of the arrangement or variation), the cost of a credit arrangement or variation of a credit arrangement shall be the amount of the liability in respect of that arrangement or variation which is shown, in accordance with proper practices, in the council's accounts.

PART 5

CAPITAL EXPENDITURE

Expenditure to be capital expenditure

12.—(1) For the purposes of Part 1 (financial administration) the following expenditure of a council, incurred on or after 1st April 2012, shall be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 19(1) —

(a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the council acquires or prepares the program for use for a period of at least one year for any purpose relevant to its functions;

(b) the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the council, be capital expenditure;

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

(d) subject to paragraph (2), the acquisition of share capital or loan capital in any body corporate; and

(e) expenditure incurred on works to any land or building in which the council does not have an interest, which would be capital expenditure if the council had an interest in that land or building.

(2) Where the expenditure referred to in paragraph (1)(d) is—

(a) an investment for the purposes of the prudent management of a council's financial affairs in accordance with section 23(b); and

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

it shall not be treated as being capital expenditure by virtue of this regulation.

(3) In paragraph (2)—

"competent authority" means an authority which is responsible for maintaining the official list in an EEA state;

"EEA agreement" means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

"EEA state", in relation to any time, means—

(a) a state which at that time is a member State; or

(b) any other state which at that time is a party to the EEA agreement;

"official list" in relation to the United Kingdom has the meaning given by section 103(1) of the Financial Services and Markets Act 2000(**5**), and in relation to any other EEA State means the equivalent list maintained by the competent authority of that State.

Expenditure not to be capital expenditure

13. Expenditure incurred by a council on the giving of loans, grants or other financial assistance—

(a) to an officer of the council pursuant to the terms and conditions of his employment; or

(b) in connection with the appointment of a person as an officer of the council, to that person,

insofar as, apart from this regulation, it would be capital expenditure, shall be treated for the purposes of Part 1 as not being capital expenditure.

PART 6

CAPITAL RECEIPTS

Sums to be treated as capital receipts

Repayment of loan, etc. to a council

14.—(1) For the purposes of Part 1 (financial administration), the sums referred to in paragraph (2), paid on or after 1st April 2012, shall be treated as capital receipts.

(2) The sums referred to for the purposes of paragraph (1) are sums paid to a council as repayment of any loan, grant or other financial assistance given by the council for such a purpose that, if the giving of that financial assistance had been expenditure incurred at the time of the repayment, it would have constituted capital expenditure.

Loan capital

15.—(1) Subject to paragraph (2), for the purposes of Part 1, a sum received by a council on or after 1st April 2012 in respect of the redemption on maturity of a bond held by it which, apart from this regulation, would not be a capital receipt, shall be treated as a capital receipt.

(2) Paragraph (1) applies only if at the time of redemption expenditure on the acquisition of the bond would be treated as capital expenditure.

Sums not to be treated as capital receipts

Capital receipts not exceeding £5,000

16.—(1) A sum received by a council which, apart from this regulation, would be a capital receipt by virtue of section 20(1) shall not be treated for the purposes of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the council in respect of the disposal of an interest in a capital asset, for which the sum is paid, does not exceed £5,000.

(2) A sum received by a council which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 14, shall not be treated for the purposes of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the council as repayment of a loan, grant or other financial assistance, for which the sum is paid, does not exceed £5,000.

(**5**) 2000 c.8

Operating and finance leases

17. A sum received by a council—

(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 the general fund,

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

Use of capital receipts

18. Capital receipts may only be used for one or more of the following purposes—

(a) to meet capital expenditure;

(b) to repay the principal of any amount borrowed;

(c) to pay a premium charged in relation to any amount borrowed;

(d) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to the general fund;

(e) to make all or part of a payment to a person, where the obligation to make that payment arises on the disposal of an asset, as a result of an agreement made at the time of the acquisition of that asset, or in relation to such an agreement.

PART 7

SUPPLEMENTARY

Guidance

19. In carrying out its functions under Part 1 (financial administration), a council shall have regard to the code of practice contained in the document entitled "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes" published by CIPFA, as amended or reissued from time to time(**6**).

Revocations

20. The Local Government (Annual Budget) Regulations (Northern Ireland) 1973(**7**) and the Local Government (Annual Budget) (Amendment) Regulations (Northern Ireland) 1973(**8**) are revoked.

(**6**) The current issue of this code of practice was published in London in 2009. ISBN 978 1 84508 205 5
(**7**) S.R & O (NI) 1973 No.130
(**8**) S.R. & O (NI) 1973 No.289

Sealed with the Official Seal of the Department of the Environment on 20th September 2011

(L.S.)

Elizabeth Loughran
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provisions for capital finance and accounts under the Local Government Finance Act (Northern Ireland) 2011 ("the 2011 Act").

Regulation 2 identifies, for the purposes of the definition of "proper practices" referred to in section 2 of the 2011 Act, certain documents that contain accounting practices.

Regulation 3 prescribes the date before which district councils must consider and approve the estimates of the income and expenditure submitted to them and fix for the next financial year the amount estimated to be raised by means of rates made by that council.

Regulation 4 provides that capital expenditure need not be charged to the general fund of a council.

Regulation 5 requires a council to charge to their general fund for a financial year an amount equal to retirement benefits payments and contributions to pension funds payable for that year.

Regulation 6 requires a council to determine and charge to their general fund a minimum revenue provision in respect of the financing of capital expenditure for that current financial year. A council may also charge an additional amount for the current year or any previous year.

Regulation 7 requires councils to have regard to the "Prudential Code for Capital Finance in Local Authorities" when determining how much it can afford to borrow under section 13 of the 2011 Act.

Regulations 8 and 9 make provision excluding certain liabilities from the definition of "qualifying liabilities", under section 17 of the 2011 Act, so that certain transactions are not credit arrangements.

Regulation 10 makes provision for varied transactions to be credit arrangements and **regulation 11** sets out how the cost of credit arrangements are to be calculated.

Regulations 12 and 13 provide for expenditure which is, and which is not, to be treated as capital expenditure for the purposes of Part 1 of the 2011 Act.

Regulations 14 to 17 provide for certain sums received by a council to be treated, or not to be treated, as capital receipts.

Regulation 18 provides that capital receipts may only be used for specified purposes.

Regulation 19 requires that a council, in carrying out its capital finance functions, must have regard to the code of practice in "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes".

Regulation 20 revokes the Local Government (Annual Budget) Regulations (Northern Ireland) 1973 and the Local Government (Annual Budget) (Amendment) Regulations (Northern Ireland) 1973.

Copies of the following documents referred to in these Regulations may be obtained from the Chartered Institute of Public Finance and Accountancy, 3 Robert Street, London WC2N 6RL (www.cipfa.org.uk):

(a) The "Prudential Code of Capital Finance in Local Authorities";

(b) The "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes";

(c) "Best Value Accounting Code of Practice";

(d) "Code of Practice on Local Authority Accounting in the United Kingdom".