

EXECUTIVE NOTE

THE LOCAL GOVERNMENT INVESTMENTS (SCOTLAND) REGULATIONS 2010 (SSI 2010/DRAFT)

These Regulations are made in exercise of the powers conferred by section 40 and 58(5) of the Local Government in Scotland Act 2003. The instrument is subject to affirmative resolution procedure.

Section 40 of the 2003 Act provides a local authority with the power to invest money in accordance with regulations made under section 40. These are the first regulations made under section 40.

Section 40 sets out that Scottish Ministers may make regulations -

1. Specifying (by reference or otherwise) the investments or kinds of investments which a local authority may, or may not, make;
2. Providing that any code or other document providing guidance or advice will regulate the investments a local authority may, or may not, make;
3. Provide for the amendment, disapplication or repeal of any enactment relating to the subject matter of the regulations
4. Impose requirements as to the obtaining by a local authority of a consent to its doing of anything in pursuance of the power to invest money conferred on it by section 40.

Policy Objectives of the regulations

The policy objectives in relation to the investment of money by local authorities is to provide greater autonomy for local authorities in their investment activities within a new regulatory framework. Existing legislative arrangements specify the types of investments that may be made. This approach is not flexible and requires regular update to ensure new types of investment are added to the schedules. This does not provide the flexibility local authorities require today. As an illustration local authorities have raised doubts as to whether the Debt Management Account Facility (DMADF), created by the UK Treasury to provide a flexible and secure investment facility for public bodies is within vires. The proposed approach is to allow each local authority to determine the types of investment it will permit, within an investment strategy, with this being approved by the local authority. Regulation 2 requires a local authority to obtain consent from Scottish Ministers in respect of its investments. A general consent will be issued as a Finance Circular, but there will be conditions attached to the consent, which will be the legislative framework.

The consent will include the requirements that a local authority:

- prepares an Annual Investment Strategy (Strategy) before the start of the financial year
- sets out in its Strategy the types of investment that it will permit in the financial year. These will be known as ‘permitted investments’.
- drafts its Strategy in a way that identifies the different types of treasury risk that its permitted types of investment are exposed to – credit or security risk (of default), liquidity risk (risks associated with committing funds to longer term investments) and market risk (effect of market prices on investment value). The Strategy should describe the controls in place for limiting those risks.
- produces an Annual Investment Report after the financial year end.

The consent conditions will be updated or amended to reflect changing conditions.

The Annual Investment Strategy must be approved by the local authority (full council or board). Under the Local Government (Scotland) Act 1973, a local authority is permitted to delegate functions. Regulation 5 adds the Annual Investment Strategy to those functions that may not be discharged by delegation.

The consent conditions also require a local authority to have regard to two existing published Codes of Practice as they relate to treasury management and capital finance. Both of these codes are published by the Chartered Institute of Public Finance and Accountancy (CIPFA)

Regulation 4 disapplies the Trustee Investments Act 1961 to the extent that it applies to local authority investments. This ensures that only section 40 of the 2003 Act will apply to local authority investments and ensure there is no conflicting legislation as it relates to the investment of money.

Local authorities may, by statute, establish any of the following funds – capital fund, renewal and repair fund and insurance fund. In addition, Orkney and Shetland may establish harbour funds. Regulations 6, 7 and 8 amend the existing legislation, which requires such funds, pending the application of those funds, to be invested in ‘trustee securities’, to require the investment of these funds to be in accordance with section 40 of the 2003 Act

Consultation

The following bodies have been consulted during the preparation of the instrument, and the proposed consent requirements, and their comments taken into account:

- Convention of Scottish Local Authorities (COSLA)
- Audit Scotland
- Scottish local authorities, including the police and fire authorities
- CIPFA
- The CIPFA Treasury Management Forum, which includes representatives from Scottish local authorities
- Treasury Management companies including Butlers, Sterling, Sector and Arlingclose.
- Local Authority Scotland Accounts Advisory Committee (LASAAC)

Financial impact

The instrument will not have any financial impact on the Scottish Government nor on business. For local authorities, the increased flexibility afforded by the regulations will support local authorities in making more effective investment decisions.

Scottish Government
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