

*Draft Regulations laid before the Scottish Parliament under section 165(5) of the Local Government etc. (Scotland) Act 1994 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2021 No.**

**LOCAL GOVERNMENT**

**The Local Authority (Capital Finance and Accounting)  
(Scotland) (Coronavirus) Amendment Regulations 2021**

Made - - - - 2021  
Coming into force in accordance with regulation 1(2)  
and (3)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 165 of the Local Government etc. (Scotland) Act 1994<sup>(1)</sup>, section 105(1) of the Local Government (Scotland) Act 1973<sup>(2)</sup> and all other powers enabling them to do so.

In accordance with section 165(5) of the 1994 Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with section 105(2) of the 1973 Act, the Scottish Ministers have consulted with such associations of local authorities as appear to them to be concerned.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2021.

(2) Part 1 comes into force on the day after the day on which these Regulations are made.

(3) Part 2 comes into force on 1 April 2022.

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(1) 1994 c.39. Section 165 was amended by schedule 24 of the Environment Act 1995 (c.25) and section 122(3) of the Transport (Scotland) Act 2019 (asp 17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury consent was removed by section 55 of that Act.

(2) 1973 c.65. Section 105 is amended by section 10(2) of the Rating and Valuation (Amendment) (Scotland) Act 1984 (c.31). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.

## PART 1

### Provision relating to local authority borrowing and accounts

#### **Amendment of the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016**

2. The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016<sup>(3)</sup> are amended in accordance with regulations 3 and 4.

3. After regulation 14 (duty to make a statutory repayment of loans fund advances) insert—

#### **“Deferral of statutory repayments in 2020-21 or 2021-22**

**14A.**—(1) A local authority may reduce the amount of any of the statutory repayments it is due to make to the loans fund (whether that amount was determined under these Regulations or prior to them), but—

- (a) if it reduces any repayment under the power in this paragraph in the financial year 2020-21, it may not reduce any repayments under the power in the financial year 2021-22,
- (b) it may not reduce any of those repayments to an amount less than zero, and
- (c) in determining the amount that is available for reduction, any increase resulting from a variation of the amount of that statutory repayment by the local authority after 31 March 2020 must be ignored.

(2) For the purposes of section 56(6) of the 1973 Act the decision enabled by paragraph (1) is a function of the local authority with respect to borrowing money (and therefore is a function that may be discharged only by the local authority itself).

(3) Where a local authority reduces the amount of any statutory repayment in accordance with paragraph (1), it must also determine the repayments that are to be made to repay it within whichever is the shorter of—

- (a) the remainder of the period relevant to that loans fund advance as already determined by the local authority, or
- (b) 20 years from the end of the financial year in which the reduction is made.

(4) In determining the amounts of the repayments required by paragraph (3) the local authority must consider what amounts are prudent.

(5) Nothing in this regulation restricts the power of a local authority to vary the period or amount of a repayment as permitted by regulation 14(2).”

4. Regulation 17 (supplemental provisions) is revoked.

#### **Amendment of the Local Authority Accounts (Scotland) Regulations 2014**

5.—(1) The Local Authority Accounts (Scotland) Regulations 2014<sup>(4)</sup> are amended as follows.

(2) For regulation 10(1)(b) (date for approval of audited annual accounts) substitute—

“(b) aim to approve those accounts for signature as described in this regulation no later than—

- (i) 31 October 2021 in respect of the accounts for the financial year 2020-2021, and

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<sup>(3)</sup> S.S.I. 2016/123.

<sup>(4)</sup> S.S.I. 2014/200.

(ii) 30 September in each subsequent year, in respect of the accounts for the immediately preceding financial year.”

(3) In regulation 11(3) (publication of the audited annual accounts) after “published no later than” insert “15 November 2021, and in subsequent years no later than”.

## PART 2

### Further provision relating to local authority borrowing

#### **Amendment of the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016**

6.—(1) The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 are amended as follows.

(2) After paragraph (2) of regulation 13 (loans fund advances) insert—

“(3) Except for an advance to which regulation 14 applies, a local authority must repay a loans fund advance in accordance with proper accounting practices.”

(3) For regulation 14 (duty to make a statutory repayment of loans fund advances), substitute—

“14.—(1) This regulation applies to any loans fund advance made prior to 1 April 2022.

(2) A local authority may, if it considers it prudent to do so, vary—

- (a) the period over which the advance is to be repaid to the loans fund,
- (b) the amount of any of the statutory repayments it is due to make to the loans fund in each financial year in that period, or
- (c) both (a) and (b).

(3) Paragraph (2)—

- (a) applies whether the period or amount referred to in that paragraph was determined under these Regulations or prior to them, but
- (b) does not apply to any borrowing for which the consent of the Scottish Ministers was required, whether under regulation 2(2) or otherwise, to the extent that the Scottish Ministers have determined the period and the amount of repayment.”

(4) Regulation 14A(5) (deferral of statutory repayments in 2020-21 or 2021-22) is revoked.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 (S.S.I. 2016/123, “the 2016 Regulations”) and the Local Authority Accounts (Scotland) Regulations 2014 (S.S.I. 2014/200, “the 2014 Regulations”).

Regulation 3 amends the 2016 Regulations to enable a local authority to defer repayment of borrowing in either, but not both, the 2020-21 financial year or the 2021-22 financial year. If the local authority has taken a decision since 31 March 2020 to vary an existing repayment by increasing it, the increase that has been made by that variation is not available for deferral.

A decision to defer repayment must be taken by the local authority itself, and be accompanied by the setting of a new repayment plan for the borrowing in respect of which it has deferred the repayment. Limits are set on the ability of a local authority to defer repayment, so that it must be repaid within a period no longer than 20 years following the financial year in which the deferral occurs. However, the local authority may use its powers under regulation 14(2) of the 2016 Regulations subsequently to vary the repayment period, where it considers a variation to be prudent.

Regulation 4 revokes supplemental provision in the 2016 Regulations, which served a transitional purpose and is now spent.

Regulation 5 amends dates set by the 2014 Regulations which prescribe when local authorities must approve and publish audited accounts. The amended dates are later than would otherwise apply in relation to accounts for the 2020-21 financial year.

The amendments made by regulation 6 provide that from 1 April 2022 the requirement for local authorities to set repayment periods and amounts will be replaced for loans fund advances that are made on or after that date. The new arrangements will require a local authority to repay new loans fund advances in accordance with proper accounting practices. Paragraph (3) continues existing arrangements for the repayment of any loans fund advances that are made prior to 1 April 2022, allowing the local authority to continue to vary any such advance, where the local authority considers it prudent to do so.

Paragraph (4) of regulation 6 revokes the ability to defer repayment of borrowing that is introduced by regulation 3, since from 1 April 2022 its purpose will be spent.