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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 123**

**The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016**

**PART 2**

**Borrowing by local authorities**

**Borrowing of money by a local authority**

- 2.**—(1) A local authority may borrow money—
- (a) for financing capital expenditure of the local authority;
  - (b) to give a grant to any person, whether for use by that person or by a third party, towards expenditure which would be capital expenditure of the local authority if incurred by it;
  - (c) for expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure of the local authority if it had an interest in that land or building;
  - (d) for treasury management activities;
  - (e) to lend to other statutory bodies and its common good funds, all as set out in Part 3; and
  - (f) for any other purpose for which the local authority is authorised under any enactment to borrow.
- (2) A local authority may borrow money for a purpose other than those described in paragraph (1), but only—
- (a) with the consent of the Scottish Ministers;
  - (b) for expenditure or lending that the authority has power to incur in the exercise of any of its functions;
  - (c) for expenditure or lending of such a nature that the Scottish Ministers are satisfied should be met by such borrowing; and
  - (d) on such terms and conditions as to repayment as the Scottish Ministers allow.
- (3) A local authority may not borrow otherwise than in sterling, except with the consent of the Scottish Ministers.
- 3.** Two or more local authorities may combine to exercise their powers of borrowing money jointly, and where they do so these Regulations shall apply to the amount each authority receives from the joint loan.
- 4.** When exercising its power to borrow money, a local authority must have regard to generally recognised codes of practice and guidance in relation to capital finance and treasury management.

**Borrowing by way of a credit arrangement**

5.—(1) A local authority may incur debt through borrowing by way of a credit arrangement for financing capital expenditure of the authority.

(2) The amount of external debt to be recognised by a local authority in respect of a credit arrangement is the liability that requires to be recognised as arising from the credit arrangement in accordance with proper accounting practices.

**The authorised limit for external debt**

6.—(1) A local authority must determine before the start of each financial year how much external debt it can afford during that financial year and each of the subsequent two financial years (its “authorised limit” for each of those years).

(2) The authorised limit for each financial year must identify separately the amount of debt from borrowing money and the amount of debt from credit arrangements (its “debt amounts”).

(3) A local authority may—

- (a) vary its authorised limits during a financial year, if it considers it prudent to do so;
- (b) exceed either of the debt amounts during a financial year, if in doing so it does not exceed its authorised limit for that year.

(4) For the purposes of section 56(6) of the 1973 Act<sup>(1)</sup> the determination and any variation of the authorised limits are functions of the local authority with respect to borrowing money (and therefore are functions that may be discharged only by the local authority itself).

(5) In complying with its duty to determine its authorised limits, and in varying its authorised limits, a local authority must have regard to generally recognised codes of practice and guidance in relation to capital finance and treasury management.

(6) The officer with responsibility for administration of the financial affairs of the local authority, in terms of section 95 of the 1973 Act, must report to that authority where—

- (a) a debt amount has been exceeded; or
- (b) there is a likelihood that the authorised limit for a financial year will prove inadequate, in that officer’s opinion.

(7) On receipt of a report required by paragraph (6) the local authority must consider whether to vary its authorised limit and debt amounts.

**Security for money borrowed**

7.—(1) All money borrowed by a local authority (whether before or after the coming into force of these Regulations), together with any interest on the money borrowed, must be secured on all the revenues of the authority and may not be secured in any other way.

(2) For the purposes of paragraph (1), “revenues” does not include revenues of—

- (a) a superannuation fund which the local authority is required to keep by virtue of the Superannuation Act 1972<sup>(2)</sup>;
- (b) a pension fund which the local authority is required to keep by virtue of the Public Service Pensions Act 2013<sup>(3)</sup>;
- (c) a trust fund of which the authority is a trustee;
- (d) a common good fund.

(1) There are amendments to section 56 that are not relevant to these Regulations.

(2) 1972 c.11.

(3) 2013 c.25.

(3) A local authority must not mortgage or charge any of its property as security for money it has borrowed.

(4) All securities for borrowing created by a local authority are to rank equally without any priority.

(5) Any security granted in breach of this regulation is unenforceable.

### **Protection for lenders**

**8.** A person lending money to a local authority is not bound to enquire whether that authority has power to borrow the money and is not prejudiced by the absence of such power.

### **External funds**

**9.—(1)** Borrowing of money by a local authority for the purposes of the following funds is not to be treated as borrowing by the authority for the purposes of these Regulations—

- (a) a superannuation fund which the authority is required to keep by virtue of the Superannuation Act 1972;
- (b) a pension fund which the local authority is required to keep by virtue of the Public Service Pensions Act 2013;
- (c) a trust fund of which the authority is a trustee;
- (d) a common good fund.

(2) Entry into a credit arrangement by a local authority for the purposes of a fund mentioned in paragraph (1) is not to be treated as being entry into a credit arrangement by the authority for the purposes of these Regulations.

(3) The temporary use by a local authority of money forming part of a fund mentioned in paragraph (1), otherwise than for the purposes of the fund, is to be treated as borrowing by the authority for the purposes of these Regulations.