



# Local Government (Scotland) Act 1947

## 1947 CHAPTER 43

### PART XII

#### BORROWING BY LOCAL AUTHORITIES.

*Purposes for which, Restrictions subject to which, and Modes . in which, Money may be Borrowed by Local Authorities and Security for Money so Borrowed.*

#### **258 Purposes for which money may be borrowed.**

- (1) A local authority may borrow such sums as may be required for any of the following purposes, that is to say:—
- (a) for acquiring any land which the authority have power to acquire;
  - (b) for erecting any building which the authority have power to erect;
  - (c) for the execution of any permanent work or the provision of any plant or the doing of any other thing-which the authority have power to execute, provide or do and which involves expenditure of a capital nature or for the payment of any sum of a capital nature;
  - (d) in the case of a local authority being the county council of a county, for the purpose of lending to the town council of any small burgh within the county or the district council of any district within the county any money which the town council or the district council, as the case may be, are authorised to borrow;
  - (e) in the case of the joint county council of the counties of Perth and Kinross, or of the counties of Moray and Nairn, for the purpose of lending to a constituent county council of the joint county council any money which that council are authorised to borrow;
  - (f) for the purpose of lending to any joint board the members of which include persons appointed by the authority any money which the joint board are authorised to borrow;
  - (g) in the case of a local authority being a county council or a town council, for the purpose of lending to any other local authority any money which that other authority are authorised to borrow and which is required for the purpose

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of meeting expenditure incurred by the borrowing authority in connection with a combination of local authorities to which combination both the lending authority and the borrowing authority are parties; and

- (h) for any other purpose for which the authority are authorised under this Act or any other enactment or any statutory order to borrow.

- (2) A local authority may borrow such sums as are necessary for the purpose of providing temporarily for current expenditure of an annual nature (except any such expenditure relating to a public utility undertaking) in connection with any of the functions of the authority, including in the case of a rating authority sums required to meet instalments due in respect of sums requisitioned from that authority by another authority:

Provided that all sums so borrowed shall be repaid before the expiration of the financial year in which such sums have been borrowed.

- (3) A local authority may borrow such sums as are required to meet expenditure (other than expenditure to which either of the preceding subsections relates) which the authority have power to incur in the exercise of any of their functions (excluding functions relating to a public utility undertaking) where by reason of its nature the Minister concerned is satisfied that the expenditure should be met by borrowing and repayment spread over a term of years and gives his consent thereto, and such sums shall be repaid within such period as the Minister concerned may fix.

- (4) A local authority may borrow such sums as are necessary in order to provide working capital or meet any other expenditure (not being expenditure of a capital nature) required for the purposes of any public utility undertaking carried on by the authority :

Provided that—

- (i) the total sums borrowed under this subsection and for the time being outstanding shall not, except with the consent of the Minister concerned, exceed an amount representing one half of the gross revenue of the undertaking for the immediately preceding financial year;
- (ii) any sum borrowed under this subsection to defray expenditure shall be repaid as soon as reasonably practicable and in any case before the expiration of the period within which money borrowed to meet such expenditure is ordinarily repaid in the case of such an undertaking, so however that any sum borrowed under this subsection shall be repaid before the expiration of two years from the date of borrowing, unless the consent of the Minister concerned is obtained to repayment thereof being spread over a longer period, and such consent may be given subject to such conditions as the Minister may determine.

- (5) In this section the expression " public utility undertaking " does not include a water undertaking.

## **259 Restrictions on power to borrow.**

- (1) Notwithstanding any other provision of this Act, a local authority shall not borrow money to meet any expenditure of a capital nature—

- (a) for any of the purposes of any enactment or statutory order relating to the supply of electricity, except with the consent of the Electricity Commissioners;
- (b) for any of the purposes of any enactment or statutory order relating to gas undertakings, tramways or light railways or for the purposes of Part V of the Road Traffic Act, 1930, except with the consent of the Secretary of State; and

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- (c) for any of the purposes of any other enactment or any statutory order which requires the consent of a Minister to borrowing by the authority, except with such consent:

Provided that, in any case where any money may be borrowed for any of the purposes specified in paragraphs (a) and (b) hereof under the provisions of a local Act without such consent as aforesaid, the provisions of this section shall not apply.

- (2) A county council or a town council shall not without the consent of the Minister concerned borrow money to meet any expenditure of a capital nature for any purpose (other than money to the borrowing of which a consent is required under subsection (1) of this section) unless the resolution to borrow has been agreed to by two-thirds of the members of the council present and voting at the meeting at which the resolution is passed; and every enactment or statutory order passed or made before the commencement of this Act authorising a county council or a town council to borrow for any such purpose shall have effect as if the foregoing provisions of this subsection were enacted therein.
- (3) A district council shall not borrow money to meet expenditure of a capital nature except with the consent of the Secretary of State.
- (4) A local authority shall not borrow money for the purposes of any function of the authority where any enactment relating to that function imposes a condition or limitation with respect to such borrowing, except subject to such condition or limitation.
- (5) No money shall be borrowed by a local authority unless the expenditure to meet which the money is being borrowed has been authorised by the authority and a resolution to borrow the money has been passed by the authority.

## **260 Modes of borrowing.**

- (1) Where a local authority are authorised to borrow money under any statutory borrowing power, the authority may, subject to the provisions of this Part of this Act, raise the money by any of the following methods, or by the use, in accordance with the provisions of section eight of the Local Authorities Loans Act, 1945, of any moneys forming part of any capital fund established by the authority or by any other method provided in a local Act, but not otherwise, that is to say—
  - (a) by mortgage, that is to say, by deed containing an assignation by way of security of the funds, rates and revenues of the authority which under the provisions of the immediately succeeding section of this Act are to form the security for loans to the authority; or
  - (b) by overdraft from any bank; or
  - (c) by means of a cash credit account with any bank; or
  - (d) by temporary loan or deposit receipt; or
  - (e) in the case of a county council or town council, by stock:

Provided that—

- (i) the total amount of money borrowed under paragraphs (b), (c) and (d) of this subsection to meet expenditure of a capital nature and for the time being outstanding shall not exceed fifteen per centum of the total amount of moneys borrowed by the authority to meet capital expenditure and for the time being outstanding;

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- (ii) a local authority having power under a local Act to borrow money by any of the methods hereinbefore specified shall exercise that power in accordance with the provisions of this Act and not in accordance with the provisions of the local Act.
- (2) The joint committee of any two or more local authorities, being administering authorities within the meaning of the Local Government Superannuation (Scotland) Act, 1937, and combined for the purposes of that Act, may from the joint superannuation fund lend to any of the constituent authorities any money which that authority are authorised to borrow.

## **261 Security for money borrowed and ranking thereof.**

- (1) Subject to the provisions of this section and notwithstanding anything in any other enactment, all money borrowed under any statutory borrowing power by a county council or a town council on or after the sixteenth day of May nineteen hundred and thirty and by a district council after the commencement of this Act shall be secured upon the whole funds, rates and revenues of the council and not otherwise, and all money borrowed under any enactment or statutory order by a county council or town council before the said sixteenth day of May and by a district council before the commencement of this Act shall be deemed to be so secured, and money so borrowed by whatever method of borrowing in accordance with the enactment or statutory order relating thereto in force at the time of borrowing, whether before or after the commencement of this Act, shall be deemed to have the same charge and security and shall rank *pari passu*.

References in this subsection to sums borrowed by a council shall be deemed to include references to any sum which was borrowed by some other authority and which the council in consequence of a transfer of functions or otherwise are liable to repay to the creditors.

- (2) The interest and dividends for the time being payable in respect of moneys so borrowed by a local authority shall be the first charge on the rates and revenues comprising the security for the said moneys.
- (3) Except as respects money borrowed for common good purposes in pursuance of a statutory borrowing power, the provisions of the preceding subsections of this section shall not apply in the case of money borrowed for the purposes of the common good by the town council of a burgh having a common good, nor shall the security created by the said subsections include the common good of the burgh or the revenues thereof.
- (4) The provisions of subsections (1) and (2) of this section shall not apply in the case of money borrowed by a local authority for the purposes of any trust under any deed of trust or other document, nor shall the security created by the said subsections include the funds held under any such trust.
- (5) Nothing in subsections (1) and (2) of this section or in section seventy-one of, or the Fourth Schedule to, the Housing (Scotland) Act, 1925, shall affect any power of a local authority to sell, feu, lease or otherwise dispose of any lands and heritages belonging to the authority or to sell or realise any funds belonging to the authority or to apply any purchase money or other capital money arising thereby in redemption of any charge thereon to which capital moneys are properly applicable, and such lands and heritages or funds shall in the hands of the purchaser or other person acquiring the same as aforesaid be absolutely freed from any charge created by this section.

*Repayment of Money Borrowed by Local Authorities.*

**262 Period for repayment of borrowed money.**

- (1) Subject to the provisions of this Part of this Act and save as otherwise provided in this Act, every sum borrowed by a local authority shall be repaid within such period not exceeding thirty years from the date of borrowing as the authority determine, or where under any enactment or statutory order relating to the purpose for which the sum is borrowed the consent of a Minister is required to a local authority borrowing, as the authority with the consent of the Minister determine:

Provided that the foregoing provisions of this subsection shall not apply—

- (a) in the case of a sum borrowed under paragraph (c) of subsection (1) of section two hundred and fifty-eight of this Act, and, save as otherwise provided in paragraph (c) of this proviso, any sum so borrowed for the purpose of meeting the cost of any work or plant shall be repaid within such period not exceeding thirty years as the authority determine to be the probable duration and continued utility of the work or plant, and any sum so borrowed for any other purpose shall be repaid within such period not exceeding ten years as the authority determine, or within such longer period as the authority with the consent of the Secretary of State determine;
  - (b) in the case of a sum borrowed under paragraph (d), (e), (f) or (g) of subsection (1) of section two hundred and fifty-eight of this Act for the purpose of lending to any of the councils or authorities or a joint board as therein mentioned in order to meet expenditure of the council, authority or board to which subsection (2), (3) or (4) of that section relates, and any sum so borrowed shall be repaid within one month after the expiration of the period within which the borrowing council, authority or board are required to repay the loan in accordance with the provisions of this Part of this Act;
  - (c) in the case of a sum borrowed for any of the purposes of the enactments specified in the first column of the Sixth Schedule to this Act, and the sum so borrowed shall be repaid within the period specified or referred to in relation thereto in the second column of that Schedule;
  - (d) in the case of a sum borrowed for any of the purposes of a local Act, where that Act provides for a maximum period of repayment other than thirty years.
- (2) Where any sum is borrowed by a local authority for the purpose of meeting expenditure on the construction of new or the extension of or alteration of existing works forming or to form part of a public utility undertaking, it shall be lawful, subject to the consent of the Minister concerned with the undertaking, for any annual provision required to be made by the authority for the repayment of the sum so borrowed to be suspended for such period (not being a period longer than the period during which the expenditure remains unremunerative or the period of five years from the commencement of the financial year next after that in which the expenditure commences to be incurred, whichever is the shorter) and subject to such conditions as the Minister may determine.

**263 Repayment of borrowed money.**

- (1) Subject to the provisions of this Part of this Act, all sums borrowed by a local authority under any statutory borrowing power shall be repaid by equal yearly or half-yearly instalments of principal, or where repayment is on the annuity system, by equal yearly

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or half-yearly instalments of principal and interest combined, or by means of a sinking fund, or partly by one of those methods and partly by another or others of them:

Provided that in the case of a county council or a town council having a loans fund under this Part of this Act or under a local Act, the council shall in each financial year pay into the loans fund the sums required in that year for the repayment of money borrowed for the various purposes of the council in accordance with the provisions of the rules relating to the loans fund.

- (2) Subject to the provisions of subsection (2) of the immediately preceding section, the payment of the first instalment or the first payment to the sinking fund or the first payment to the loans fund shall be made within twelve months, -or where the money is repayable by half-yearly instalments or payments within six months, from the date of borrowing.

#### **264 Returns to Secretary of State as to outstanding loans.**

- (1) Every local authority shall cause to be transmitted to the Secretary of State within three months after the expiration of each financial year and also at any other time within one month after being requested so to do by the Secretary of State a return showing the amount of moneys borrowed by the authority and outstanding and the provision made by the authority for the repayment thereof.
- (2) The return shall show such particulars and shall be in such form as the Secretary of State may prescribe, shall be certified by the treasurer or other officer whose duty it is to keep the accounts of the authority and shall if so required by the Secretary of State be verified by a statutory declaration made by that officer.
- (3) The return to be transmitted within three months after the expiration of the financial year shall be made up as at the expiration of that year, and any other return as at such other date as the Secretary of State may require.
- (4) The duplicate abstract of accounts of a local authority which is required by section two hundred and three of this Act to be sent to the Secretary of State by the auditor of the accounts of the authority shall, if the Secretary of State so directs, be deemed to be a return made by the authority under this section as at the expiration of the financial year to which the accounts relate.
- (5) If it appears to the Secretary of State from any return made under this section or otherwise that a local authority—
- (a) have failed to pay any instalment or annual payment required to be made; or
  - (b) have failed to appropriate to the discharge of any loan any sum required to be so appropriated; or
  - (c) have failed to set apart any sum required for a sinking fund; or
  - (d) have applied any portion of a sinking fund to a purpose other than an authorised purpose;

the Secretary of State may by order direct that such sum as is specified in the order, not exceeding the amount in respect of which default has been made, shall be paid or applied in the manner and by the date set out in the order, and the authority shall notify the Secretary of State as soon as the order has been complied with.

- (6) If a local authority with respect to whom an order has been made under the immediately preceding subsection fail to comply with any requirement thereof within the time specified in the order or if a return required to be made under this section is

not made in accordance with the provisions of this section, the Secretary of State may apply by petition to the Court of Session who are hereby authorised to do therein as to the Court appears to be just.

- (7) The provisions of this section shall be in substitution for and not in addition to any requirement under any other enactment or statutory order to make a return as to the provision made by a local authority for the repayment of borrowed money.

## **265 Sinking fund for repayment of borrowed money.**

- (1) If a local authority determine to repay by means of a sinking fund any sum borrowed by them, the sinking fund shall be formed and maintained either—
- (a) by payment to the fund throughout the period fixed for the repayment of the sum borrowed of such equal annual sums as will be sufficient to pay off within that period the sum for the repayment of which the fund is formed; or
  - (b) by payment to the fund throughout the fixed period of such equal annual sums as with accumulations at a rate not exceeding the rate prescribed by the Secretary of State or such other rate as he may in any particular case approve will be sufficient to repay within that period the sum for the repayment of which the fund is formed.

In this Part of this Act a sinking fund formed under paragraph (a) of this subsection is referred to as a "non-accumulating sinking fund," and a sinking fund formed under paragraph (b) thereof as an "accumulating sinking fund."

- (2) Every sum paid to a sinking fund shall, unless applied in repayment of the sum for the repayment of which the sinking fund is formed or in such other manner as may be authorised by this Act or any other enactment, be immediately invested in trustee securities and the authority may from time to time vary and transpose the investments.
- (3) The interest received in any year from the investment of the sums paid into the sinking fund shall form part of the revenue for that year of the local authority, but in the case of an accumulating sinking fund the contribution to be made by the authority to the sinking fund shall in that year be increased by a sum equal to the interest which would have accrued to the sinking fund during that year if interest had been accumulated therein at the rate per centum per annum on which the annual payments to the sinking fund are based.
- (4) A local authority may at any time apply the whole or any part of a sinking fund in or towards the discharge of the sum for the repayment of which the sinking fund was formed:

Provided that in the case of an accumulating sinking fund the authority shall continue to pay into the fund each year and accumulate during the remainder of the fixed period a sum equal to the interest which would have been produced by such sinking fund or part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

- (5) Any surplus of a sinking fund remaining after the discharge of the whole of the sum for the repayment of which it was formed shall be applied with the sanction of the Secretary of State in the repayment of debt or otherwise for any other purpose for which capital money may properly be applied.
- (6) This section shall apply to a sinking fund established by a local authority under any other enactment or any statutory order for the repayment of money borrowed by them

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in like manner as it applies to a sinking fund established under this Part of this Act according as the sinking fund is a non-accumulating or an accumulating sinking fund.

## **266 Adjustment of sinking fund.**

- (1) If at any time it appears to a local authority that the amount in a sinking fund, together with the sums which will be payable thereto in accordance with the provisions of this Part of this Act and, in the case of an accumulating sinking fund, with the accumulations thereon, will not be sufficient to repay within the fixed period the sum for the repayment of which the sinking fund is formed, the authority shall either temporarily or throughout the fixed period make such increased annual payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose, and if it appears to the Secretary of State on a report by the auditor of the accounts of the authority or otherwise that any such increase is necessary, the authority shall increase the payments to such extent as the Secretary of State may direct.
- (2) If the local authority desire to accelerate the repayment of any sum borrowed by them, they may increase the amounts payable to the sinking fund.
- (3) If the amount in any such sinking fund together with the sums which will be payable thereto in accordance with the provisions of this Part of this Act and, in the case of an accumulating sinking fund, with the accumulations thereon will in the opinion of the local authority be more than sufficient to repay within the fixed period the sum for the repayment of which the sinking fund is formed, the authority may with the consent of the Secretary of State reduce the payments to the sinking fund either temporarily or throughout the fixed period to such amounts as will be sufficient to repay within the fixed period the sum for the repayment of which the sinking fund is formed.
- (4) If at any time the amount in a sinking fund together with the accumulations thereon in the case of an accumulating sinking fund will in the opinion of the local authority be sufficient to repay the sum for the repayment of which the sinking fund is formed within the fixed period, the authority may, subject to obtaining the consent of the Secretary of State, suspend the annual payments to the sinking fund for such period as the authority with the like consent may determine.
- (5) This section shall apply to a sinking fund established by a local authority under any other enactment or any statutory order for the repayment of money borrowed by them in like manner as it applies to a sinking fund established under this Part of this Act.

### *Provisions as to Mortgages.*

## **267 Forms of mortgage, transfer, renewal and discharge thereof.**

- (1) A mortgage created under this Part of this Act, a transfer thereof, a minute of renewal thereof and a discharge thereof shall each be in the appropriate form set out in the Seventh Schedule to this Act or in a form substantially to the like effect:

Provided that—

- (i) nothing in this subsection or in the said Schedule shall require that a mortgage shall be transferred only by transfer endorsed on the mortgage;
- (ii) a form of a mortgage, a transfer thereof, a minute of renewal thereof or a discharge thereof prescribed in a local Act may be used in substitution for the appropriate form set out in the Seventh Schedule to this Act, so however that



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if the form of mortgage so prescribed does not contain an assignation by way of security of the funds, rates and revenues of the local authority as provided in the form set out in the said Schedule, it shall be modified to contain such an assignation;

(iii) in the case of a loan made by the Public Works Loan Commissioners the mortgage shall be in such form as may be prescribed under the Public Works Loans Acts, 1875 to 1882.

- (2) A mortgage shall be held to be validly executed on behalf of a local authority having a common seal if it is sealed with the common seal of the authority and subscribed on behalf of the authority by one member of the authority, and by the clerk without the necessity of witnesses, and a minute of renewal of a mortgage shall be held to be validly executed on behalf of a local authority, whether having a common seal or not, if it is signed on behalf of the authority by the clerk without the necessity of witnesses, so however, that nothing in this subsection shall affect the provisions of any local Act with respect to the manner in which a mortgage or a minute of renewal thereof may be executed.
- (3) Notwithstanding anything in this section, the Secretary of State may from time to time by regulations make modifications in any of the forms set out in the Seventh Schedule to this Act or prescribe other forms if it appears to him necessary or desirable to do so, and such regulations may apply generally or to any particular local authority or class of local authority.

## **268 Register of mortgages.**

- (1) The clerk of a local authority or such other officer as the authority may designate for the purpose (in this section referred to as "the registrar") shall keep at the office of the authority a register of mortgages created by the authority under this Part of this Act.
- (2) Before a mortgage is delivered to the mortgagee, the registrar shall enter or cause to be entered in the register of mortgages the following particulars, that is to say:—
- (a) the name and address of the mortgagee;
  - (b) the principal sum due under the mortgage;
  - (c) the number and date of the mortgage;
  - (d) the term or date of repayment; and
  - (e) the rate of interest payable;

and a certificate of registration shall be endorsed on the mortgage and signed by or on behalf of the registrar. Where the treasurer of the authority is not the registrar, there shall also be endorsed on the mortgage a receipt by the treasurer for the principal sum paid by the mortgagee.

- (3) On production to the registrar of the mortgage and—
- (a) in the case of a transfer of the mortgage, of a duly executed transfer thereof;
  - (b) in the case of a transmission of the mortgage by the death of the person entitled thereto, of confirmation in favour of the executors of the deceased, or probate of the will or letters of administration of the estate of the deceased duly resealed;
  - (c) in the case of a transmission of a mortgage otherwise than as aforesaid, of satisfactory evidence of the transmission;

the registrar shall make or cause to be made an entry in the register of mortgages of the date of the transfer or transmission and of the name and address of the person becoming entitled thereunder to the mortgage. .

- (4) Any change of name or address on the part of a person entitled to a mortgage shall forthwith be notified to the local authority, and the registrar shall on, being satisfied of the change alter the register of mortgages or cause the same to be altered accordingly.
- (5) On the renewal of a mortgage the registrar shall enter or cause to be entered in the register the following particulars of the renewal, that is to say:—
  - (a) the date as from which the mortgage is renewed;
  - (b) the term or date of repayment of the principal sum under the renewal; and
  - (c) the rate of interest for the period of the renewal.
- (6) On the discharge of a mortgage the registrar shall forthwith make or cause to be made in the register an entry relating to the discharge and the date thereof.
- (7) The Secretary of State may make regulations for enabling entries relating to mortgages or to transfers or transmissions of mortgages contained in any register of mortgages kept by or on behalf of a local authority under any enactment in force at the commencement of this Act to be transferred to the register of mortgages kept under this section, and for applying to the mortgages to which the entries relate the provisions of this section subject to any necessary modifications in place of the corresponding provisions of that enactment, and for terminating the obligation of the authority or of any officer of the authority to make entries in the register of mortgages kept under that enactment.
- (8) Any person who satisfies the local authority or the registrar that- he has an interest to inspect the register of mortgages shall be entitled to inspect the register so far as he has an interest to do so:

Provided that this subsection shall not apply in the case of a local authority if the authority are not required by any provision of a local Act relating to a register of mortgages kept by the authority under that Act to allow inspection of that register.

*Provisions as to Stock.*

**269 Creation of redeemable stock by county council or town council.**

- (1) A county council or a town council may from time to time in accordance with any regulations made under the next but one succeeding section by resolution create redeemable -stock for the purpose of raising money which the council are authorised to borrow under any statutory borrowing power," and such stock may be issued from time to time for such amount within the limit of the borrowing power at such price and to bear such half-yearly or other dividends as the council by resolution direct:

Provided that—

- (a) the town council of a small burgh shall not so create stock except with consent of the Secretary of State, and such consent may be given subject to such conditions as may be specified in an order made by the Secretary of State; and
- (b) except with the consent of the Secretary of State, stock shall not be issued at a price lower than ninety-five per centum.

- (2) The resolution of a county council or town council for the first creation of a class of redeemable stock shall provide—
- (a) that such stock shall be redeemable at the option of the council at par, that is to say, at the rate of one hundred pounds sterling for every nominal amount of one hundred pounds stock issued, after such period as may be specified in the resolution;
  - (b) that the stock shall be redeemed by the council at par at the expiration of a period to be fixed by the resolution, not exceeding sixty years from the first creation of that class of redeemable stock;
- or shall indicate the procedure by which either of the matters aforesaid shall be determined.
- (3) A county council or a town council may under this section create and issue stock of a different class from any stock previously issued by the council under this Part of this Act or any other enactment or any enactment repealed by this Act and on different terms and conditions, including the rate of dividend payable and the period after which the same shall become redeemable.

**270 Creation of redeemable stock by authority other than local authority having power to raise money by rate or requisition.**

- (1) Any statutory authority, commissioners or trustees (not being a local authority) having power to levy a rate within the meaning of this section or to issue a requisition for payment of money to be raised out of such a rate may from time to time in accordance with any regulations made under the immediately succeeding section by resolution create redeemable stock for the purpose of raising money which the authority, commissioners or trustees are authorised to borrow under any enactment or statutory order, and such stock may be issued from time to time for such amount within the limits of the borrowing power at such price and to bear such half-yearly or other dividends as the authority, commissioners or trustees by resolution direct:

Provided that—

- (a) the consent of the Secretary of State shall be obtained to the creation of such stock, and such consent may be given subject to such conditions as may be specified in an order made by the Secretary of State; and
  - (b) except with the consent of the Secretary of State, stock shall not be issued at a price lower than ninety-five per centum.
- (2) The resolution of any such authority, commissioners or trustees for the creation of a class of redeemable stock shall provide—
- (a) that the stock shall be redeemable at their option at par after such period as may be specified in the resolution;
  - (b) that the stock shall be redeemed by the authority, commissioners or trustees at par at the expiration of a period to be fixed by the resolution, not exceeding sixty years from the first creation of that class of redeemable stock;
- or shall indicate the procedure by which either of the matters aforesaid shall be determined.
- (3) Any such authority, commissioners or trustees may under this section create and issue stock of a different class from any other stock previously issued by them under this Part of this Act or any other enactment or any enactment repealed by this Act and on

different terms and conditions, including the rate of dividend payable and the period after which the same shall be redeemable.

- (4) For the purposes of this section the expression " rate " includes not only a rate as defined in section three hundred and seventy-nine of this Act but also water rates or rents, gas or electricity rates or rents and charges for the supply of water, gas or electricity or the .hire of meters or fittings connected therewith.

## **271 Stock regulations.**

- (1) The Secretary of State may make regulations with respect to the creation and issue of stock under this Part of this Act by a county council or a town council or by any such authority, commissioners or trustees as are mentioned in the immediately preceding section, the redemption and extinction of such stock, the payment of dividends thereon, the manner in which such stock may be transferred and dealt with and generally for the purpose of regulating any matter relating to such stock (including without prejudice to the said generality the investment of money raised by stock and not for the time being required), and such regulations may provide—
- (a) with a view to the consolidation of debt, for extending or varying the period of repayment of sums borrowed by a council; and
  - (b) for the application of the enactments relating to stamp duties and to cheques.
- (2) Regulations made under this section may apply to and in the case of any such authority, commissioners or trustees as aforesaid so far as respects stock issued under this Part of this Act, subject to such modifications and adaptations as may be prescribed, any of the provisions of sections two hundred and seventy-two to two hundred and seventy-four and sections two hundred and seventy-eight to two hundred and ninety-one of this Act, so however that any such application shall not be contrary to the express provisions of any enactment relating to the authority, commissioners or trustees.
- (3) Regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made.

## **272 Borrowing power to be exercisable for actual sum raisable by stock.**

A county council or town council creating and issuing stock under this Part of this Act shall be deemed to have exercised their statutory borrowing power to the extent represented by the produce of the stock so issued according to the price of issue, or where securities are paid off or redeemed under the immediately succeeding section by the amount of the securities so paid off or redeemed.

## **273 Conversion of securities of county council or town council into stock.**

- (1) Where any security created by a county council or town council under any statutory borrowing power is at the time outstanding or payable and the council have power with the consent of the holder of the security or otherwise to pay off the amount thereby secured or represented or to redeem the same, they may pay off or redeem the security accordingly with money raised by stock or they may with consent of the holder thereof issue stock in substitution for the security.
- (2) The county council or town council may in every such case make such reasonable payment as they think fit to the holder of any security for his consent or for compensating him otherwise for the payment-off or redemption of or substitution for

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*Status: This is the original version (as it was originally enacted).*

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his security, and any such payment may be either in money or stock or partly in one and partly in the other.

- (3) The county council or town council may, subject to and in accordance with the provisions of this Act, create and issue stock to such amount as may be requisite for the purposes of this section, and that stock shall be deemed to be created and issued and any money raised thereby shall be deemed to be raised by virtue of the statutory borrowing power under which the security was granted or created, and any money so raised shall be applied in paying off or redeeming the security.
- (4) Where the holder of the security is one of the persons described in section seven of the Lands Clauses Consolidation (Scotland) Act, 1845, and thereby enabled to sell land thereunder, that person may consent to the payment-off or redemption of or substitution for the money secured or represented by that security or may accept money for giving that consent as if he were the absolute owner of the security, and that person is hereby indemnified for so consenting and his receipt shall be a good discharge for the same.
- (5) Money received by the holder of any security as authorised by this Act and stock issued to him in substitution for any security shall be subject to the same trusts, powers, testamentary and other dispositions, provisions and incumbrances to which the money secured or represented by the security was subject immediately before the payment-off, redemption or substitution, and any deed or other instrument or any testamentary or other disposition shall take effect with reference to the whole or part of the money or stock received or substituted, as the case may be, as though such money and stock were the security mentioned in the deed or other instrument or testamentary or other disposition.

#### **274 Revocation of resolution to create stock.**

Notwithstanding anything in this Part of this Act, a county council or a town council may revoke at any time in whole or in part any resolution for the creation of stock passed by the council under this Part of this Act if and as far as such resolution has not been acted on by the issue of stock thereunder:

Provided that any such revocation by the town council of a small burgh shall not have effect unless the Secretary of State consents thereto.

#### *Loans Fund.*

#### **275 Establishment of loans fund by county council or town council.**

- (1) Subject to the provisions of this Part of this Act, a county council or a town council may, as from the commencement of a financial year on passing a resolution to that effect, establish under this Act a fund to be called the "loans fund," which shall be applicable to all money borrowed or to be borrowed by the council and the redemption or repayment thereof and the payment of interest or dividends thereon.
- (2) A loans fund established under this section shall be administered by the council in accordance with the rules set out in the Eighth Schedule to this Act.
- (3) Any loans fund of a county council or town council established under or in pursuance of the provisions of a local Act shall, if the council pass a resolution to that effect and as from the date specified in the resolution, be deemed to be a loans fund established

under this section, and the rules set out in the Eighth Schedule to this Act shall apply to the said loans fund in substitution for the provisions of the local Act (including any rules, regulations or scheme therein contained or made thereunder) subject to such modifications and adaptations as may be prescribed by regulations made by the Secretary of State with respect to the transition of the said loans fund from the provisions of the local Act to the provisions of this Act, and any such regulations may apply generally or in the case of any particular council.

- (4) A loans fund established under this section by the town council of a burgh shall not apply to money borrowed or to be borrowed for the common good of the burgh except, money borrowed or to be borrowed for common good purposes in pursuance of a statutory borrowing power.

*General Provisions as to Borrowing.*

**276 Loans to joint boards.**

- (1) The powers of the Public Works Loan Commissioners to make loans to a local authority shall include power to make loans to a joint board for any purpose for which the board have power to borrow money.
- (2) The provisions of this Part of this Act shall, subject to necessary modifications, apply to and in relation to a joint board having power to borrow money as they apply to and in relation to a local authority.

**277 Power to re-borrow.**

- (1) A local authority may without the consent of any Minister borrow for the purpose of replacing money previously borrowed by the authority which is intended to be repaid forthwith:

Provided that a local authority shall not have power to borrow under this section—

- (a) for the purpose of making any payment to a sinking fund or for paying any instalment or making any annual payment which has or may become due in respect of borrowed money; or
- (b) for the purpose of replacing "any money previously borrowed which has been repaid—
- (i) by instalments or annual payments; or
- (ii) by means of a sinking fund; or
- (iii) out of money derived from the sale of land; or
- (iv) out of any capital money properly applicable to the purpose of repayment other than money borrowed for that purpose.
- (2) Any money borrowed under this section shall for the purposes of repayment be deemed to form part of the original loan and shall be repaid within that portion of the fixed period which remains unexpired, and the provisions which are for the time being applicable to the original loan shall apply to the money borrowed under this section:

Provided that the Minister concerned may, upon application made to him by the local authority for that purpose, extend the period for repayment of the money borrowed under this section so as to expire on such date as he thinks fit, not being later than the expiration of the maximum period which might have been permitted for the repayment of the original loan.

**278 Protection to lenders.**

A person lending money to a local authority on any form of security or taking or holding any such security shall not be bound to inquire whether the borrowing of the money is or was legal or regular or whether the money raised was properly applied and shall not be prejudiced by any illegality or irregularity in the matters aforesaid or by the misapplication or non-application of any such money.

**279 Balance of unexpended borrowed money.**

The balance of any money borrowed by a local authority and not required for the purposes for which the money was borrowed may, with consent of the Secretary of State, be applied to any Other purpose for which capital money may be applied by the authority:

Provided that—

- (i) nothing in this section shall require the consent of the Secretary of State to be obtained in the case of a county council or town council having a loans fund or shall dispense with the necessity of the consent of the Public Works Loan Commissioners in any case in which such consent is required under section nine of the Public Works Loans Act, 1881;
- (ii) where money borrowed for any of the purposes of any enactment or statutory order relating to the supply of electricity is proposed to be applied for any other of the said purposes, the provisions of this section shall apply with the substitution of the consent of the Electricity Commissioners for that of the Secretary of State.

*General Provisions as to Securities.*

**280 Security to be moveable estate and notice of trusts.**

- (1) Every security created by a local authority shall be moveable or personal estate and shall on the death of the holder thereof be transmissible as such.
- (2) No notice of any trust, express, implied or constructive, in respect of any security created by a local authority shall be entered in any register kept by the authority or be receivable by the authority, so however that a holder may be described as a trustee or as possessing an official character.

**281 Transmission of security on death.**

- (1) The interest in a security created by a local authority of a holder dying shall be transferable by his executors or administrators notwithstanding any specific bequest thereof. i,
- (2) A local authority shall not be required to allow any executors or administrators to transfer any security created by the authority until the confirmation of the executors or until the probate" of the will or the letters of administration of the estate of the deceased, duly resealed, shall have been left with the authority for registration.

**282 Evidence on transfer of security.**

- (1) A local authority before allowing any transfer of a security created by the authority may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to make the transfer.
- (2) That evidence shall be a statutory declaration of one or more competent persons or evidence of such other nature as the local authority may require.

**283 Transmission of security otherwise than by transfer or on death.**

- (1) If the interest in any security created by a local authority has been transmitted by any lawful means other than a transfer thereof or than the death of the holder thereof, that transmission shall be authenticated by a statutory declaration of one or more competent persons or in such other manner as the authority may require.
- (2) The name of the person entitled under the transmission shall be entered in the appropriate register.
- (3) Until the transmission has been so authenticated the local authority shall not be affected thereby, nor shall any person claiming by virtue thereof be entitled to receive any interest or dividend on the security.
- (4) In this section the expression " transmission " includes any case of apparent transmission in consequence of the change of name of the holder although the actual ownership of the security may remain unaltered.

**284 Title to security and rectification of register.**

- (1) A local authority shall be entitled to treat as exclusively entitled to a security created by the authority in relation to which entries had been duly made in the appropriate register the person appearing by the latest of those entries to be entitled thereto.
- (2) If the name of any person is without sufficient cause entered in or omitted from the register or default is made or unnecessary delay takes place in making any entry required to be made in the register, the sheriff may on application by the person aggrieved or by the local authority make an order for the rectification of the register.
- (3) In any proceedings under this section the sheriff may decide any question relating to the title of any party thereto to have his name entered in or omitted from the register and generally any question which it may be necessary or expedient to decide for the purposes of the rectification of the register.
- (4) An appeal shall lie to the Court of Session against any decision of the sheriff on any question relating to the title of any party to any security the nominal value of which exceeds fifty pounds, but save as aforesaid the decision of the sheriff shall be final.

**285 Security deed to be delivered to local authority on discharge.**

Subject to the provisions of the immediately succeeding section, a local authority shall, on the repayment or discharge of any security created by the authority, obtain delivery of the document creating the security, or failing such delivery such indemnity as the authority may require.



## **286 Unclaimed security.**

- (1) If at the date on which a security created by a local authority is repayable or redeemable the authority, by reason of the holder of the security not being forthcoming or by reason of any doubt as to the ownership of the security or for any other reason which prevents the authority from getting a proper discharge, are unable to redeem, extinguish and cancel such security, the authority shall as soon as may be consign in bank by placing on deposit receipt with an incorporated or joint stock bank in name of the authority for behoof of the holder of the security as designed in the appropriate register of the authority a sum equal to the nominal value of the security which cannot be repaid or redeemed by reason as aforesaid, such sum to be dealt with as provided in this section, and thereupon such security shall be deemed to have been extinguished.
- (2) Any sum consigned by a local authority as aforesaid shall, unless uplifted for the purpose of satisfying any claim in respect of the security represented by the same, be kept consigned for a period of ten years, after which time the authority may appropriate the said sum and any accumulations of interest thereon for such purpose as the Secretary of State may approve, without prejudice nevertheless to the right of any person to the total sum so appropriated, but without any interest thereon after the date of appropriation.

## **287 Appointment of judicial factor in case of non-payment.**

- (1) If at any time any principal money borrowed by a local authority by any form of security or any interest or dividend thereon is due and payable by the authority and is not paid within two months after a demand for payment thereof is made in writing to the authority, the person entitled thereto being the holder for the time being of a security by the authority to the amount of not less than one thousand pounds, or the persons entitled thereto being the holders for the time being of securities by the authority amounting together to not less than two thousand pounds, may present a petition to the Court of Session for the appointment of a judicial factor, and the Court may, if they think fit, appoint a judicial factor.
- (2) Subject to the directions of the Court, the judicial factor shall have all the powers competent to the local authority or any officer of the authority in connection with levying rates, making requisitions on rating authorities and collecting and recovering sums due to the authority in respect of rates or requisitions and any other sums whatsoever due to the authority and such other powers and duties as the Court think fit, and shall apply all money so collected and received by him, after payment of expenses and costs including a proper remuneration for his trouble, as the Court direct for the purposes of this Part of this Act.
- (3) The judicial factor shall have such access to and use of the books and documents of the local authority as he may require.
- (4) The powers of this section shall be in addition to and not in derogation of any other powers competent to the holder of a security for enforcing payment of the sums due under the security.

## **288 Interest and dividends on security in case of death, and &c.**

- (1) A local authority shall not be required to pay any executors or administrators any interest or dividend on a security created by the authority until the confirmation of

the executors or until probate of the will or the letters of administration, duly resealed, shall have been left with the authority for registration.

- (2) A local authority before paying any interest or dividend on a security created by the authority may, if the circumstances of the case appear to them to make it expedient, require evidence of the title of any person claiming a right to receive the interest or dividend, and that evidence shall be a statutory declaration of one or more competent persons or of such other nature as the authority may require.

### **289 Interest and dividends on security held jointly.**

- (1) Where two or more persons are registered as joint holders of any security created by a local authority any one of those persons may give an effectual receipt for any interest or dividend payable in respect thereof unless notice in writing to the contrary has been given to the authority by any other of those persons.
- (2) Where any security created by a local authority is standing in the name of a pupil or minor or person of unsound mind jointly with any person not under legal disability, a letter authorising the payment of interest or dividends on the security shall be sufficient authority to the local authority if given under the hand of the person not under disability attested by one or more witnesses, but the authority before acting on the letter may, if they think fit, require proof to their satisfaction of the alleged pupillarity, minority or unsoundness of mind by a statutory declaration of one or more competent persons.

### **290 Warrants for interest and dividends by post.**

- (1) Except where the holder of a security created by a local authority otherwise directs in writing, the warrants for interest or dividends in respect of his security shall be sent to him by post to the address given by him to the authority if such address is within the United Kingdom, the Channel Islands or the Isle of Man.
- (2) The posting by a local authority of a letter containing a warrant addressed to a holder or his nominee at any such address given by him shall, as respects the liability of the authority, be equivalent to the delivery of the warrant to the holder himself.
- (3) Every warrant so sent by post shall be deemed a cheque and the local authority shall in relation thereto be deemed a banker within the Bills of Exchange Act, 1882.

### **291 Unclaimed interest and dividends.**

- (1) If at any time any interest or dividend on a security created by a local authority is unclaimed at the time for payment thereof, the interest or dividend shall nevertheless on demand at any subsequent time be paid to the person showing his right thereto, but without interest thereon in the meantime and subject to deduction of the expenses incurred by the authority in the publication of any notice under the immediately succeeding subsection.
- (2) Where any interest or dividend remains unclaimed for five years from the time for payment thereof, the local authority shall cause notice thereof to be sent by post in a registered letter addressed to the holder of the security named in the appropriate register at the address therein appearing and shall also publish a notice in a newspaper circulating in the area of the authority that such interest or dividend remains unclaimed and similarly at the expiration of the next succeeding period of five years.

- (3) Nothing in this section shall prevent an unclaimed security being deemed to be extinguished under the provisions of section two hundred and eighty-six of this Act.

*General.*

**292 Period of repayment in case of money borrowed by county council or town council for housing employees.**

For the purposes of the provisions of this Part of this Act relating to the period of repayment of borrowed money, the provision of dwelling-houses by a county council or a town council for persons in the employment of or paid by the council shall be deemed to be a purpose of the Housing (Scotland) Acts, 1925 to 1946.

**293 Application of Part XII of Act to local housing bonds.**

- (1) Regulations made under the Fourth Schedule to the Housing (Scotland) Act, 1925, may apply to local bonds, with or without modifications, any of the provisions of this Part of this Act relating to securities created by local authorities.
- (2) Subject to the preceding subsection and save as otherwise provided, nothing in this Part of this Act shall apply to or affect the power of a county council or town council to issue local bonds under the said Act of 1925 or any local bond issued under that Act or under any enactment repealed by that Act.

**294 Application of Part XII of Act to securities created under local Acts.**

Save as otherwise expressly provided, the provisions of this Part of this Act in their application to money borrowed by a local authority under a local Act in force at the commencement of this Act shall be subject to the provisions of such local Act so far as inconsistent with the provisions hereof.

**295 Saving for common good.**

Nothing in this Part of this Act, except the provisions relating to the making of returns to the Secretary of State, shall apply to or affect the power of the town council of a burgh having a common good to borrow on the security of the common good or any loan secured thereon except in the case of money borrowed for common good purposes in pursuance of a statutory borrowing power.

**296 Saving for Local Authorities Loans Act, 1945, and &c.**

Nothing in this Part of this Act shall authorise the exercise of any power of borrowing money or the making of any issue of capital otherwise than in compliance with the provisions of the Local Authorities Loans Act, 1945, of any Defence Regulations within the meaning of the Supplies and Services (Transitional Powers) Act, 1945, for the time being having effect by virtue of that Act and of any orders for the time being in force made by the Treasury under section one of the Borrowing (Control and Guarantees) Act, 1946.