
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

PART XIII

USE OF AMOUNTS SET ASIDE TO MEET CREDIT LIABILITIES

Interpretation

154.—(1) In this Part—

“amount set aside” means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities;

“Health Authority” means an authority established by order under section 8 of the National Health Authorities Act 1977 (Health Authorities)(1);

“relevant date” shall be construed in accordance with section 64(4);

“relevant expenditure”, in relation to the transfer of an amount set aside, means the expenditure which is to be met by the amount transferred; and

“Special Health Authority” means a body established by order under section 11 of the National Health Authorities Act 1977 (Special Health Authorities)(2).

(2) For the purposes of this Part, a local authority are a relevant authority if—

- (a) on the relevant date for any financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount; and
- (b) they have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.

Use of amounts set aside in respect of certain capital receipts

155. An amount set aside in respect of a capital receipt to which regulation 71 applies may be applied by a relevant authority under section 64(2)(a) to meet any expenditure for capital purposes which is incurred by the authority for the purposes of or in connection with—

- (a) the Central Criminal Court;
- (b) the police, probation or magistrates' court services; or
- (c) any functions of the authority conferred under section 2 of the Civil Defence Act 1948(3).

(1) 1977 c. 49 Section 8 was substituted by section 1(1) of the Health Authorities Act 1995 (c. 17). Health Authorities were established in England by the Health Authorities (England) Establishment Order 1996 (S.I. 1996/624), and in Wales by the Health Authorities (Wales) Establishment Order 1996 (S.I. 1996/146).

(2) Section 11 was amended by section 2(1) of, and paragraphs 1 and 2 of Part I of Schedule 1 to, the Health Authorities Act 1995.

(3) 1948 c. 5.

Use of amounts set aside—expenditure for capital purposes

156.—(1) In this regulation, “excluded expenditure” means expenditure for capital purposes on the making of a grant, an advance or other financial assistance which—

- (a) is to a housing association (within the meaning given to that expression in section 1 of the Housing Associations Act 1985⁽⁴⁾); and
- (b) is towards expenditure for which the housing association receive or have received a grant under section 18 of the Housing Act 1996⁽⁵⁾, section 50 of the Housing Act 1988⁽⁶⁾, section 41(1) of the Housing Associations Act 1985⁽⁷⁾ or section 29(1) of the Housing Act 1974⁽⁸⁾.

(2) An amount set aside, other than an amount set aside in respect of a capital receipt to which regulation 71 applies, may be applied by a relevant authority under section 64(2)(a) to meet any expenditure for capital purposes other than excluded expenditure.

Use of amounts set aside—revenue expenditure

157.—(1) Subject to the condition specified in paragraph (3), where paragraph (2) applies to a local authority, an amount set aside may be applied by the authority under section 64(2)(a) to meet any expenditure which, in accordance with section 41, is to be charged to a revenue account of the authority.

(2) This paragraph applies to a local authority if, on the relevant date for any financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount and if—

- (a) any debt of the authority to the Public Works Loan Commissioners was reduced or extinguished by a commuted payment (within the meaning which that expression has in section 157) paid by the Secretary of State to the Commissioners in the financial year beginning on 1st April 1992; or
- (b) the Secretary of State paid a commuted payment to the authority in that financial year.

(3) In applying an amount set aside as mentioned in paragraph (1), a local authority shall ensure that the total amount so applied in any financial year does not exceed the amount of the authority’s commutation adjustment for that year determined in accordance with Part II of Schedule 2 to these Regulations.

Transfer of amounts set aside

158. Subject to the condition specified in regulation 159, an amount set aside may be transferred by a relevant authority under section 64(2)(b) in any of the following cases to a body specified for the case in question—

- (a) in the case of a relevant authority which is one of the councils specified in section 39 (1) (a) to (e) (application of Part IV of the Act) ⁽⁹⁾, to a Health Authority or a Special Health Authority acting within the relevant authority’s area;
- (b) in the case of a relevant authority which is a county council, a district council, a county borough council or the Council of the Isles of Scilly, to the police authority whose police

(4) 1985 c. 69.

(5) 1996 c. 52.

(6) 1988 c. 50.

(7) Section 41 was repealed by Section 140(2) of, and Schedule 18 to, the Housing Act 1988.

(8) 1974 c. 44. Section 29 was repealed by Section 3 of, and Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71).

(9) Section 39 was amended by paragraph 88 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19). There are other amendments not relevant to this regulation.

area as listed in Schedule 1 to the Police Act 1996⁽¹⁰⁾ includes the relevant authority's area;

- (c) in the case of a relevant authority which is a non-metropolitan district council, to the county council for the district;
- (d) in the case of a relevant authority which is a metropolitan district council, to the fire and civil defence authority established by Part IV of the Local Government Act 1985⁽¹¹⁾ of which the relevant authority is a constituent council;
- (e) in the case of a relevant authority which is a London borough council or the Common Council of the City of London, to the London Fire and Civil Defence Authority established by Part IV of the Local Government Act 1985;
- (f) in the case of a relevant authority which is a county council, county borough council or non-metropolitan district council, to a combined fire authority constituted by a combination scheme under the Fire Services Act 1947⁽¹²⁾ ("a combined fire authority") of which the relevant authority is a constituent council;
- (g) in the case of a relevant authority which is a combined fire authority, to a constituent council of the relevant authority;
- (h) in the case of a relevant authority which is a London borough council or the Common Council of the City of London or a metropolitan district council, to an authority established by order under section 10(1) of the Local Government Act 1985 ("a waste disposal authority") of which the relevant authority is a constituent council; and
- (i) in the case of a relevant authority which is a waste disposal authority, to a constituent council of the relevant authority.

Conditions specified in relation to the transfer of amounts set aside

159.—(1) In transferring an amount set aside to a body mentioned in regulation 158 ("the transferee"), and in respect of any amount so transferred, a relevant authority shall comply with the conditions specified in paragraphs (2) and (3).

(2) A relevant authority shall not, in any financial year ("the current year"), transfer an amount set aside unless they are satisfied that the relevant expenditure—

- (a) is expenditure for capital purposes;
- (b) in the case of an amount set aside in respect of a capital receipt to which regulation 71 applies, is for the purposes of or in connection with any of the matters mentioned in regulation 155;
- (c) is not excluded expenditure within the meaning given to that expression in regulation 156;
- (d) has been, or is to be, incurred in the current year or in the financial year immediately preceding or immediately following the current year; and
- (e) is in connection with the exercise by the transferee of functions which are substantially for the benefit of the whole or any part of the relevant authority's area.

(3) In relation to any transfer of an amount set aside—

- (a) where, at the time of the transfer, the relevant expenditure has not been incurred, the amount transferred by the relevant authority shall not exceed 50 per cent. of the transferee's estimate of that expenditure; and

⁽¹⁰⁾ 1996 c. 16.

⁽¹¹⁾ 1985 c. 51.

⁽¹²⁾ 1947 c. 41.

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(b) subject to paragraph (4), where, at the time of the transfer, the relevant expenditure has already been incurred, the amount transferred by the relevant authority shall not exceed 50 per cent. of the amount of that expenditure.

(4) For the purposes of paragraph (3) (b), in determining the amount of the relevant expenditure incurred, the relevant authority shall disregard any expenditure for which an amount set aside has already been transferred in reliance upon an estimate provided by the transferee.