POLICY NOTE

THE LOCAL AUTHORITY (CAPITAL FINANCE AND ACCOUNTING) (SCOTLAND) (CORONAVIRUS) AMENDMENT REGULATIONS 2021

SSI 2021/119

The above Regulations, if approved by the Scottish Parliament, will be made in exercise of the powers conferred by section 165 of the Local Government etc. (Scotland) Act 1994 and section 105(1) of the Local Government (Scotland) Act 1973.

The Regulations are subject to affirmative procedure.

Purpose of the Regulations

1. To make a time limited amendment to The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016, to allow a local authority to reduce the statutory repayment of loans fund advances that would have been due to be repaid in either the financial year 2020-21 or 2021-22, but not both. The reduced amounts must be repaid in future financial years.

2. To delay deadlines for completion of audit of local authority accounts for the 2020-21 financial year.

3. To provide that, longer term, the way local authorities determine repayment provision is to be based more fully on proper accounting practice.

Policy Objectives

Local authorities have played a crucial role in supporting local communities throughout the COVID-19 pandemic. Additional funding has been provided to address the financial impact on councils of the pandemic, due to additional costs incurred and income lost from sales, fees and charges.

There remain unmet funding pressures for local authorities both in the short term, for the immediate mobilisation effort, and in the medium term, as they move into the recovery phase. In the absence of further additional funding, other financial flexibilities for local authorities are considered necessary.

The Scottish Government worked jointly with the Convention of Scottish Local Authorities (COSLA) to identify a package of financial flexibilities for local authorities to address the funding pressures.

Part 4 of the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016, places a duty on a local authority to make statutory repayments of loans fund advances. A loans fund advance recognises the amount of capital expenditure that a local authority has determined should be met from borrowing.

One of the financial flexibilities agreed with COSLA is to allow a local authority to reduce the statutory repayments of loans fund advances that would have been due to be repaid in either the financial year 2020-21 or 2021-22, but not both. The reduction in repayments reduces the expenditure of a local authority in the short term, thus creating additional financial capacity to meet unmet funding pressures.

The Regulations provide a local authority with the power to reduce the statutory repayments of loans fund advances in either the financial year 2020-21 or 2021-22, but not both. If statutory repayments are reduced the Regulations require planning for the repayment of that amount in future financial years.

The Regulations also include a provision to replace the existing repayment provisions with a new provision which is repayments in accordance with proper accounting practices. Proper accounting practices are defined in The Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 as those practices set out in section 12 of the Local Government in Scotland Act 2003 (the 2003 Act).

Section 12 of the 2003 Act makes it a duty of a local authority to observe proper accounting practices, while section 99 of the Local Government (Scotland) 1973 Act places a duty on auditors to satisfy themselves that proper accounting practices have been observed.

Within the 2003 Act, references to proper accounting practices are deemed to be:

(a) those which the local authority is required to observe by virtue of any enactment
(b) those which have been specified in guidance issued by Scottish Ministers
(c) those which, whether by reference to any generally recognised, published code or otherwise, are regarded as proper accounting practices to be observed in the preparation and publication of accounts of local authorities.

When a conflict arises between the above practices, (a) has precedence over (b), which has precedence over (c). Where no enactments or guidance have been issued on a topic, the CIPFA/LASAAC Code of Practice on Local Authority Accounting in the United Kingdom (the Code) is accepted as proper accounting practice.

The Code requires local authority assets to be depreciated over their useful life. The 2016 Regulations require a local authority to make statutory repayments of loans fund advances. This creates a conflict as to observe both the Code and the 2016 Regulations results in a double charge to local authority Annual Accounts. To address this conflict only the statutory repayments are charged to the Annual Accounts, with depreciation being set aside in a statutory adjustment account within those statutory Annual Accounts.

Over the last few years with the adoption of International Financial Reporting Standards (IFRS) by the public sector local authority accounts have become more complex. The adjustments required have increased.

CIPFA/LASAAC, the Code Board, issued a discussion paper in 2019 about the future of local government financial reporting. The paper includes an approach to move towards a situation where Scotland loans fund repayments are replaced by, or are equivalent to, depreciation charges. This has already been undertaken for Housing Revenue Account balances in England.

Initial work undertaken by the Scottish Government suggests this can be achieved. However, further work is required to work through the proposal. Directors of Finance have indicated they are content to support this work and participate in this loans fund review, but that this review needs to be given the appropriate time, consideration and due diligence to ensure that there is awareness of likely consequences for future funding and budgets.

To ensure appropriate time is provided, the new provision which is repayments in accordance with proper accounting practices will not take effect until 1 April 2022.

The change being proposed adopts the same approach already in place for borrowing by way of a credit arrangement as set out in regulation 5 of the 2016 Regulations. This places reliance on The CIPFA/LASAAC Code, with statutory guidance being issued to vary the Code to reflect a local authority context.

Separately, the Regulations also amend The Local Authority Accounts (Scotland) Regulations 2014. Audit Scotland requested a change to the audit completion deadline for local government 2020-21 Annual Accounts from 30 September to 31 October 2021. The request is principally due to the 2019-20 audits being completed later than normal due to coronavirus, which will mean a consequent later commencement of 2020-21 audits. The change in the audit completion date only applies to the 2020-21 Annual Accounts, with the 30 September date being reinstated from the 2021-22 Annual Accounts.

Consultation

Amongst other powers, the Local Authority Accounts (Scotland) Regulations 2014 are made under section 105(1) of the Local Government (Scotland) Act 1973. Before making regulations under this section, the Scottish Ministers are required to consult with such associations of local authorities as appear to them to be concerned.

The Scottish Government worked jointly with the Convention of Scottish Local Authorities (COSLA) to identify a package of financial flexibilities for local authorities to address the funding pressure. One flexibility identified was the reduction in the statutory repayment of loans fund advances. This was subsequently agreed by Scottish Ministers.

Whilst Audit Scotland did not participate in the development of the financial flexibility they were informed of the work and the proposal at an early stage and raised no issues with the proposal. They requested the change to audit completion deadlines. No consultees expressed any concerns about the Audit Scotland proposal to amend the audit completion deadlines. proposal.

A short consultation with a draft of the SSI was undertaken with all Scottish local authorities, COSLA and Audit Scotland.

Impact Assessments and Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The financial effect of this policy is only on local government, it changes the repayment profile of the statutory repayments to be made to the loans fund. It does not change the total amount to be repaid to the loans fund, i.e. it is cost neutral over the life of that loan.

There is no business impact. There are no impacts on child rights and wellbeing, equalities, data protection, strategic environmental, fairer Scotland or Island Communities.

Scottish Government
Directorate for Local Government and Communities
January 2021