



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.