POLICY NOTE

THE LOCAL AUTHORITY (CAPITAL FINANCE AND ACCOUNTING) (SCOTLAND) REGULATIONS 2016

SSI 2016 No. xxx

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 paragraph 5(1) of Schedule 3 to the Local Government (Scotland) Act 1975. They are subject to affirmative procedure.

Section 165 enables Scottish Ministers to make provision as to the powers of local authorities to borrow and lend money and to operate loans funds. These will be the first such Regulations to be made.

The Regulations replace provision in Schedule 3 of the 1975 Act, which will be repealed by commencement of parts of Schedule 14 to the 1994 Act, which provides for the repeal of that provision by the Local Government etc. (Scotland) Act 1994 (Commencement No. 9) Order 2016.

Policy Objectives

The policy objective is to provide local authorities with greater autonomy and responsibility for decisions on borrowing and on the repayment of that borrowing. In making those decisions a local authority are to act prudently and to have regard to generally recognised codes of practice and to guidance in relation to capital finance and treasury management. The CIPFA Prudential Code and the CIPFA Treasury Management Code are both recognised codes of practice for the public sector.

The 1975 Act sets out ways a local authority may borrow, including from banks and the UK Public Works Loans Board or by issue of stocks or bonds. The Regulations do not specify how a local authority may raise money for borrowing, leaving this at its discretion, as long as it has regard to generally recognised codes of practice.

Capital expenditure is financed from a number of sources. When this is by borrowing money or a credit arrangement a debt liability is created to be repaid by a local authority from future revenues. The CIPFA Prudential Code sets out a framework for a local authority to demonstrate its capital investment plans are affordable, prudent and sustainable. A number of prudential indicators are set and monitored against three year capital expenditure plans. To demonstrate affordability an authority must set and monitor an authorised limit for external debt. This must be consistent with the authority's plans for capital expenditure and financing and with its treasury management policy statement and practices. The Regulations create a requirement for a local authority to set and monitor an authorised limit for external debt.

The 1975 Act sets out the purposes for which a local authority may borrow; for financing capital expenditure of the local authority, for treasury cash flow purposes and to lend to certain other statutory bodies. Local authorities may borrow for the same purposes in the Regulations. Recognising that local authorities often work in partnership with other public, third sector, or private bodies the Regulations will also allow a local authority to borrow to

support the capital investment plans of third parties. The support may either be in the form of a grant or through direct expenditure on third party assets. The new provision is consistent with the conditions of the Scottish Government capital grant paid to local authorities which permits a local authority to use the capital grant for these same purposes.

Both the 1975 Act and the Regulations require a local authority to maintain a loans fund. The value of a loans fund will increase whenever an advance is made for expenditure incurred, or loans made, in any financial year. The value of the loans fund will reduce when loans fund advances are repaid by making a charge to the General Fund or Housing Revenue Account. The balance of a loans fund at 31 March each year represents the amount of past expenditure a local authority has a liability to meet from its future revenue budgets.

The 1975 Act has detailed arrangements for administration of loans funds. Local authorities sought more autonomy to determine the period over which an advance is to be repaid and the amount of repayment in any financial year. The Regulations provide that flexibility replacing detail with a requirement for a local authority to administer a loans fund in accordance with the Regulations, proper accounting practices and prudent financial management.

Statutory accounting guidance is to be issued by Scottish Ministers using powers contained in section 12 of the Local Government in Scotland Act 2003. The guidance will identify options for the prudent repayment of loans fund advances, and will require local authorities to publish their policy on the repayment of loans fund advances.

Review and Consultation

Local government requested a change in the legislation to give greater autonomy. A review group was established in December 2014 with representation from the Convention of Scottish Local Authorities (Directors of Finance and Treasury Managers), Audit Scotland and the Chartered Institute of Public Finance and Accountancy (CIPFA). The papers and minutes of the review group have been published on the Scottish Government website: http://www.gov.scot/Topics/Government/local-government/17999/LACapital/consultations

There is no requirement for consultation. A four-week consultation was undertaken with all Scottish local authorities, Audit Scotland, CIPFA and external treasury management advisors.

Impact Assessments

The Regulations are financial in nature, dealing with the powers of local authorities to borrow, to lend and to administer loans funds. A Privacy Impact Assessment (PIA) has not been undertaken as the Regulations do not deal with personal information. An Equality Impact Assessment (EQIA) has not been undertaken as the Regulations do not affect people or any section of the population. A Strategic Environmental Assessment (SEA) has not been undertaken as the Regulations have no provisions which would impact the environment.

No Business and Regulatory Impact Assessment (BRIA) is required as the Regulations have no significant financial effects on the Scottish Government, local government or business.

Scottish Government
Local Government and Communities Directorate
25 January 2016