EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (ENGLAND) (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 1328

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities ("the Department") and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) (the "2003 Regulations") provide for the accounting practices to be followed by local authorities. One such practice has the effect of separating schools budget[1] deficits from local authorities' wider finances for the financial years beginning on 1st April 2020, 1st April 2021 and 1st April 2022. This instrument amends the 2003 Regulations to extend the application of the practice for a further three financial years.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 21(1) of the Local Government Act 2003 (the "2003 Act") provides that the Secretary of State may make provision about the accounting practices ("proper practices") to be followed by local authorities, in particular with respect to the charging of expenditure to a revenue account[2]. Section 21(2) provides that proper practices includes both enactments in legislation, and codes of practice specified by the Secretary of State in legislation.

[1] Schools budget has the meaning given to it in Section 45A(2) of the School Standards and Framework Act 1998.

[2] References to a 'revenue account' has the same meaning as given in section 22 of the Local Government Act 2003.

6.2 Section 21(3) of the 2003 Act provides that where there is a conflict between enactments in legislation, and accounting practices in codes of practice, that the legislative provisions are to be regarded as the proper practices.

6.3 Regulation 30L of the 2003 Regulations provides that where a local authority has a deficit on its schools budget relating to its accounts for a financial year beginning on 1st April 2020, 1st April 2021 or 1st April 2022, it must not charge the amount of that deficit to a revenue account. The local authority must record any such deficit in a separate account established solely for the purpose of recording deficits relating to its schools budget. This instrument extends the application of that provision to financial years beginning on 1st April 2023, 1st April 2024 and 1st April 2025.

6.4 As this provision will be contained in a legislative enactment, it will override any conflicting accounting practice contained in a code of practice or other document identified by the Secretary of State.

7. Policy background

What is being done and why?

7.1 A Dedicated Schools Grant[3] ("DSG") is paid to local authorities in support of their schools budget. Deficits relating to local authorities' schools budgets arise where the schools expenditure exceeds that of the available funding.

7.2 The government's policy is that resolving these deficits should neither involve the redirection of resources required for other essential services, nor place pressure on local authorities' reserves. Therefore, the School and Early Years Finance (England) Regulations 2020 (the "2020 Regulations") made provision to allow local authorities to carry forward these deficits to future financial years. The intent was to ring-fence the deficits and make sure they are held separately from a council's wider finances (their general funds).

7.3 Local authorities raised concerns about the costs to high needs budgets and growth in Dedicated Schools Grant (DSG) deficits since delivering the government's 2014 Children's and Families Act reforms. The government has therefore introduced a statutory override in 2020 to provide temporary financial flexibility to help mitigate the risks these deficits pose to wider local government financial sustainability.

7.4 At the same time a widespread review into the Special Educational Needs and Disabilities (SEND) system was underway to set the foundations for systemic change and to address the unintended consequences of the 2014 reforms.

7.5 The government has agreed to the extension of the statutory override for a one-off period of three years (until March-end 2026), affording the short-term financial flexibility that authorities continue to require as they implement sustainable change, underpinned and reinforced by the government's longer-term reforms that will be set out in a SEND Improvement Plan from 2023.

7.6 The work by the government and local authorities to reduce the deficits is ongoing.

[3] The DSG is payable to local authorities under section 14 of the Education Act 2002. It is the main source of income for the schools budget.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the 2003 Regulations.

10. Consultation outcome

10.1 The Department conducted a three-week voluntary call for evidence across local authorities in August 2022 (informal consultation). Of the 120 respondents, 75% stated there would be an adverse impact on wider financial sustainability and 40% said there would be immediate adverse impacts on service delivery if the accounting treatment were to end on 31 March 2023. A large majority, 85%, of responding local authorities reported being in favour of the existing schools budget accounting practices being extended but consider it should be viewed as a temporary accounting measure. Therefore, the government has agreed that the accounting treatment introduced in 2020 will be continued up to and including the financial year beginning 1 April 2025. This extension remains time limited, reflecting the position that such deficits cannot continue indefinitely.

10.2 The Department has not consulted generally on these changes as they represent technical amendments.

11. Guidance

11.1 There are no current plans for DLUHC to issue guidance on implementing these regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there will not be an impact on business as a result of these changes.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Department will monitor the impact of these regulations throughout the periods in which they will have effect.

15. Contact

15.1 Matt Hemsley at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 0472 or email: matthew.hemsley@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lucy Pedrick, Deputy Director for Care and Reform, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley MP, Minister of State for Local Government and Building Safety, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.