

Local Government, Housing and Planning Committee

9th Meeting, 2021 (Session 6)

Tuesday 15 March 2022

SSI cover note for: The Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2022

DRAFT/2022

Title of Instrument: [The Local Authority \(Capital Finance and Accounting\) \(Scotland\) \(Coronavirus\) Amendment Regulations 2022](#)

Type of Instrument: Affirmative

Laid Date: 27 January 2022

Meeting Date: 15 March 2022

Minister to attend meeting: Yes

Motion to approve: [S6M-02977](#)

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 16 March 2022

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Background

2. 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.
3. To extend, for one further year, the 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, 2021-22 or 2022-23, but in only one of these years. The reduced amounts must be repaid in future financial years.
4. To extend, for one further year, the delay to the deadlines for completion of audit of local authority accounts for the 2021-22 financial year.
5. To delay, for one year, amendments to provisions about the way local authorities determine loan fund repayment provision, so that this is based more fully on proper accounting practice.
6. An electronic copy of the instrument available at:
<https://www.legislation.gov.uk/sdsi/2022/9780111053195/contents>
7. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

8. To extend, for one further year, the 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, 2021-22 or 2022-23, but in only one of these years. The reduced amounts must be repaid in future financial years. 2. To extend, for one further year, the delay to the deadlines for completion of audit of local authority accounts for the 2021-22 financial year. 3. To delay, for one year, amendments to provisions about the way local authorities determine loan fund repayment provision, so that this is based more fully on proper accounting practice.

Delegated Powers and Law Reform Committee consideration

9. At its meeting on 8 February 2022, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

10. A copy of the Explanatory Notes and the Policy Notes are included with the papers.

Procedure for Affirmative instruments

11. The draft **Order** was laid on 31 January 2022 and referred to the Local Government, Housing and Planning Committee. The **Order** is subject to affirmative procedure (Rule 10.6). It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved. The Minister for Public Finance, Planning and Community Wealth has, by motion S6M-02977 (set out in the agenda), proposed that the Committee recommends the approval of the **Order**.

Recommendation

12. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 16 March 2022.

Clerks

Local Government, Housing and Planning Committee

Annexe A

Scottish Government Explanatory Note

These Regulations amend the Local Authority Accounts (Scotland) Regulations 2014 (“the 2014 Regulations”), the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 (“the 2016 Regulations”) and the Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2021 (“the 2021 Regulations”).

Regulation 2 amends dates set by the 2014 Regulations which prescribe when local authorities must approve and publish audited accounts.

The amended dates are later than would otherwise apply in relation to accounts for the 2021-22 financial year.

Regulation 3 amends regulation 14A of the 2016 Regulations, which enables a local authority to defer repayment in either, but not both, the 2020-21 financial year or the 2021-22 financial year. Regulation 3 allows local authorities to make use of the deferral for a further year in financial year 2022-23. The power to defer can only be used in one of the three financial years.

Regulation 4 amends the 2021 Regulations so that the 2016 Regulations will provide that from 1 April 2023, rather than 1 April 2022, the requirement for local authorities to set repayment periods and amounts will be replaced for loans fund advances that are made on or after that date. Existing arrangements for the repayment of any loans fund advances that are made prior to 1 April 2023 will allow the local authority to continue to vary any such advance, where the local authority considers it prudent to do so. Regulation 4 also defers the revocation of regulation 14A of the 2016 Regulations for a further year, to 1 April 2023.

As per purpose above and including:

Scottish Government Policy Note

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 extend, for one further year, the 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, 2021-22 or 2022-23, but in only one of these years. The reduced amounts must be repaid in future financial years.

2. To extend, for one further year, the delay to the deadlines for completion of audit of local authority accounts for the 2021-22 financial year.

3. To delay, for one year, amendments to provisions about the way local authorities determine loan fund repayment provision, so that this is based more fully on proper accounting practice.

Policy Objectives

In order to respond to the financial pressures faced by local authorities as a result of the pandemic, 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 in 2020-21. These flexibilities were enacted through the Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2021 (the 2021 Regulations) which amend the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016 (the 2016 Regulations).

At that time the Scottish Government considered that these short term measures were sufficient. It was not foreseen that the pandemic would continue to have such an impact or for such an extended period. As such, these Regulations seek to extend amendments to the Local Authority (Capital Finance and Accounting) (Scotland) Regulations 2016, to be made by the 2021 Regulations, for a further year. The Scottish Government does not anticipate that any further extension will be required.

Part 4 of the 2016 Regulations, places a duty on a local authority to maintain a loans fund and 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 to address the funding pressures in 2020-21 was 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.

These Regulations provide a local authority with the power to reduce the statutory repayments of loans fund advances in either the financial year 2020-21, 2021-22, 2022-23, but in only one of these years. If statutory repayments are reduced the Regulations require planning for the repayment of that amount in future financial years.

In order to facilitate the extension to the loans fund repayment holiday, the Regulations also defer, by one year, the provision made by the 2021 Regulations, to alter the existing repayment provisions in regulation 14 of the 2016 Regulations with a new provision, regulation 13(3), which requires repayments to be made in accordance with proper accounting practices. This provision was originally due to take effect from 1 April 2022. 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).

To ensure appropriate time is provided, the new provision requiring repayments to be made in accordance with proper accounting practices will not take effect until 1 April 2023.

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 2021-22 Annual Accounts. Delays to completion of the 2019-20 and 2020-21 local authority accounts and the audit of those accounts, arising from the pandemic, have continuing consequences for the timely completion of the 2021-22 accounts. As a result, Audit Scotland have requested a further one year extension to the audit completion deadline for the 2021-22 annual accounts of local authorities from 30 September to 30 November 2022. The change in the audit completion date only applies to the 2021-22 Annual Accounts, with the 30 September date being reinstated from the 2022-23 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.

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

As the amendment regulations relate solely to an extension of the regulations laid in 2021, no impact assessment is required. A Business and Regulatory Impact Assessment (BRIA) was completed to accompany the original policy note in 2021. 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.