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Local Government Finance Circular No. 11/2010

By email:

To: Local Authority Chief Executives
Local Authority Directors of Finance

Copy to: COSLA
Audit Scotland
LASAAC
CIPFA

Our ref: B4070867
3 August 2010

Dear Chief Executive/Director of Finance,

CONSENT TO BORROW UNDER PARA 1 (2) OF SCHEDULE 3 OF THE LOCAL GOVERNMENT (SCOTLAND) ACT 1975 – EQUAL PAY

1. A scheme whereby a local authority could apply for a consent to borrow to assist them in managing equal pay costs was made available in 2009-10. Following a request from COSLA, Scottish Ministers agreed to make available a similar scheme in 2010-11. This Finance Circular provides details of the scheme, and the information that should be provided by a local authority wishing to make an application under the scheme.

2. Local authorities are now invited to submit applications, which should be sent electronically to simon.stone@scotland.gsi.gov.uk no later than 17 September 2010.



Simon P Stone
Deputy Team Leader (Capital)
Local Government Division



REVENUE EXPENDITURE FUNDED FROM CAPITAL UNDER STATUTE

Consent to Borrow to finance Equal Pay

Policy and Procedures 2010-11

A guidance note issued by the Scottish Government

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INTRODUCTION AND GENERAL POLICY

1. The Local Government (Scotland) Act 1975 (the 1975 Act) sets out the statutory powers of a local authority to borrow. The Act effectively limits Scottish local authority borrowing to support capital expenditure. However, the 1975 Act provides Scottish Ministers with the power to consent to a local authority borrowing to meet costs that they would not otherwise be able to meet from borrowing. In providing any consent under this power Ministers are required to be satisfied that the expenses are of such a nature that they should be met from borrowing. In providing consent Ministers may apply such terms and conditions as they consider appropriate.

2. Permitting local authorities to fund revenue expenditure from capital resources such as borrowing raises concerns at the macroeconomic level by facilitating a practice which threatens long-standing fiscal rules. For that reason it is appropriate that the Scottish Government should control and monitor the use of capital resources used in this way and applies strict criteria in permitting such use.

3. Borrowing to meet revenue costs runs counter to the principles of prudent financial management. Scottish Ministers will only consider issuing a local authority with consent to borrow to fund revenue expenditure for one-off payments or lump sum payments and not indefinitely continuing payments. It would be imprudent to allow a local authority to borrow to fund on-going costs.

4. Borrowing does not solve the financial difficulties of the local authority but simply allows the costs to be spread over time. The costs of borrowing undertaken to meet revenue costs will have to be met from revenue resources over several years. Borrowing for revenue costs is therefore likely to impact on the level of capital investment for service delivery. In making an application to Scottish Ministers to use borrowing to meet equal pay costs local authorities should consider these issues.

5. In exercising their statutory powers, Scottish Ministers are required to give consideration to the UK Government (HM Treasury) role in managing the economy and finances.

CONSENT TO BORROW FOR EQUAL PAY

6. Many local authorities have successfully implemented equal pay without the need for borrowing. An application for consent to borrow should only be considered where an authority can make a very strong case.

7. The only expenditure relating to equal pay for which consent to borrow is likely to be given is the one-off lump sum back-pay payments to present or former employees of the local authority in respect of equal pay. This would include, for example, payments via COT 3 agreements, or the result of Employment Tribunals.

8. Under the policy consent to borrow would not be considered for continuing costs, such as ongoing salary increases, transition pay or pay protection. This is in line with the general policy that borrowing may be considered appropriate for one-off payments, but not for ongoing costs.

APPLICATIONS FOR CONSENT TO BORROW

9. Local authorities should apply for consent to borrow for equal pay by 17 September 2010. The Scottish Government intends to issue the consent to borrow approvals early to mid November 2010.

10. In order to consider applications as fairly as possible the Scottish Government will be seeking a range of information. This is provided as a checklist at Annex A.

11. Applications should be in the form of a business case and present the required information as fully as possible. Please include any additional information you wish to be considered. Failure to provide all the required information may result in consideration of the application being delayed whilst the Scottish Government seeks clarification. In the event of the local authority not providing that clarification the application will not be considered.

12. Applications for consent to borrow for equal pay back pay should be made electronically to simon.stone@scotland.gsi.gov.uk. All applications will be acknowledged by an email response. If no acknowledgement is received please call Simon Stone on 0131 244 7950.

ASSESSMENT OF APPLICATIONS

13. Applications will be considered against the policy on equal pay as set out above.

14. Applications will be considered based on the business case submitted by the local authority. This should cover, as a minimum, the information requirements listed at Annex A. Failure to provide all the information requested may delay an application whilst this information is sought. Failure to provide the information will result in the application not being considered. Local authorities should provide any additional information that they consider supports their application.

15. Applications will be reviewed based on the need for the local authority to borrow to fund equal pay back payments. This will include a consideration of the level of funds, provisions and reserves, available to the local authority to meet equal pay costs. In making this assessment Scottish Ministers recognise that authorities need to maintain a reasonable level of available reserves to meet other financial pressures. Scottish Ministers will determine what level of available reserves will be excluded from assessments of applications. This will be based upon a percentage of an authority's net revenue expenditure. The same percentage will be applied to all applications. Local authorities will need to make a very strong case for any earmarked reserves to be disregarded.

CONSENT TO BORROW - CONDITIONS

16. A consent to borrow does not attract Scottish Government loan charge support. The Council is responsible for ensuring that use of a borrowing consent is in accordance with the prudential indicators set by the Council and that the borrowing is both affordable and sustainable.

17. A consent to borrow issued for equal pay may only be applied to actual expenditure incurred. It may not be applied to any accounting provision made for equal pay.

18. A consent to borrow is valid for the financial year in which it is issued, plus one further financial year. So consents issued in 2010-11 may be used for borrowing up to, and including, 31 March 2012. If the consent to borrow has not been used by this time the local authority may apply to the Scottish Government to extend the validity of the consent. A further assessment of the need to borrow will be undertaken in such cases.

19. Within three months of each financial year end the Director of Finance, or equivalent, shall advise the Scottish Government of the actual borrowing undertaken relying on any consent to borrow. The local authority must confirm that such borrowing has been used only for the expenditure as detailed in the consent letter. The Scottish Government requires this information to monitor the borrowing position and enable us to share the information with HM Treasury.

20. The fixed period for the repayment of the loans fund advance made for equal pay in reliance of the consent to borrow will be set out in the consent letter. The fixed period shall not exceed 20 years.

21. Capital receipts may be used to meet the cost of the principal element of the loans fund advance made in reliance of this consent to borrow. The receipt must be applied to the total loans fund advance outstanding. If the application of the capital receipt does not extinguish the total advance outstanding the Council is required to revise all the remaining annual statutory repayment of debt charges for that advance. This revision should reflect that the capital receipt was applied to produce a proportionate reduction to all future annual statutory charges.

22. A consent to borrow for equal pay allows the use of capital resources (borrowing) to finance revenue expenditure. As such a condition of any consent is that a borrowing consent may not be used in the same year that there is a revenue contribution to finance the capital programme, or where there is a revenue contribution to the Capital Fund. In such cases we would expect the local authority to borrow for the capital programme, up to the proposed revenue contribution value. This will release the revenue contribution back to the General Fund and make this sum available to meet equal pay expenditure. The borrowing consent may still be used for any sum in excess of the revenue contribution. This consent condition is financially neutral for local authorities. Rather it requires a local authority to correctly align resource use for capital control purposes. An illustration may make this clearer:

	£000
Capital Programme to be financed	2,500
Financed by:	
Capital receipts	500
Borrowing	1,500
Revenue Contribution to Capital	250
Grants	250
Total financing	2,500

Consent to borrow for equal pay granted – say £400k

Revised capital programme financing based on consent conditions:

	£000
Capital Programme to be financed	2,500
Financed by:	
Capital receipts	500
Borrowing	1,750
Grants	250
Total financing	2,500

Equal pay - £250k financed from the released revenue contribution to capital, and £150k financed from borrowing relying on the consent issued. The same total borrowing will have been undertaken (£1,900k) and the same use of revenue funds (£250k). However, the borrowing will have been properly aligned to capital expenditure limiting the need to borrow for revenue purposes.

23. Where a consent relates only to the General Fund this condition does not apply to revenue contributions to the Housing Revenue Account capital programme. The reverse also applies. The condition only applies in the year in which the borrowing is undertaken, not the repayment of the advance.

24. The exception is for PPP/PFI lifecycle replacement costs which are met from the unitary payment and required by statutory guidance to be charged to the General Fund as “Capital expenditure charged to the General Fund balance”.

25. The local authority is required to keep appropriate records of any borrowing incurred under this consent for audit purposes.

ACCOUNTING FOR ANY CONSENTS GRANTED

26. Expenditure, for which consent is provided, shall be accounted for in accordance with the local authority accounting Code of Practice. This requires the expenditure to be charged to the income and expenditure statement. The consent to borrow permits the revenue expenditure to be neutralised for council tax purposes with the capital adjustment account being debited (and the General Fund credited). This will increase the capital financing requirement under the prudential framework by the amount of the expenditure effectively being capitalised.

27. A statutory charge for the repayment of debt shall be made each financial year in accordance with the conditions of this consent.

INFORMATION REQUIRED IN SUPPORT OF A CONSENT TO BORROW FOR EQUAL PAY

General information

1. Name and address of the local authority
2. Contact name and details
 - Name
 - Direct telephone number
 - Email address
3. Director of Finance or equivalent
 - Name
 - Direct telephone number
 - Email address

Background and overview

4. Provide details of the progress of the local authority to implement single status and settle equal pay claims.
5. Provide an overview of current expectations in terms of equal pay. Include details of whether it is anticipated that the equal pay back payments will be established by settlements, or through the tribunal system. Provide details of actual costs incurred in each financial year to date for equal pay, plus an estimate of the potential costs of outstanding equal pay claims.

Details of equal pay back pay costs for which the application to borrow applies

6. The total amount (£) of the equal pay back pay which is the subject of this application.
7. The amount you wish to borrow. This should be expressed as both a value (£) and a percentage of the total amount.
8. If funding is available to meet some of the costs provide details of what funding is available.
9. Details of the back pay costs this application is addressing – for example whether this is due to Employment Tribunal claims, a local pay review or a compensation package in anticipation of a local pay review. If a combination of these please provide details.
10. For each type of back pay please provide for each
 - The number of people covered

- The average pay out
- The number of years back pay

11. If the application includes back pay for the Housing Revenue Account (HRA) please provide the information for the HRA separately.

12. Please provide details of what the total cost includes – e.g. base pay, tax, NI, pensions etc.

13. The application must confirm that the application does not contain any values which relate to ongoing salary increases such as transitional pay or pay protection.

14. The business case should set out the loan repayment period the local authority considers is affordable based on financial projections. Details should be provided.

Assessment of need

15. The business case should set out the financial circumstances of the local authority which supports the need to borrow. This should include, as a minimum, consideration of the following:

- Provide details of the local authority's approach to implementing single status and settling equal pay claims in terms of budgeting and reserves. Provide details of options considered and rejected, with reasons, and why an application to borrow to meet all or part of the costs has been made.
- Details of reserves held. Include details of all usable statutory revenue reserves with the exception of the Insurance Reserve. Provide details of the HRA if the application covers the HRA. Provide details of each reserve, including the value as at 31 March 2010, the reasons for any proposed transfers to or from these reserves in 2010-11, and the final anticipated balance at 31 March 2011.

Note: Scottish Ministers recognise that authorities need to maintain a reasonable level of available reserves to meet other financial pressures. Scottish Ministers will determine what level of available reserves will be excluded from assessments of applications. This will be based upon a percentage of an authority's net revenue expenditure. The same percentage will be applied to all applications. Local authorities will need to make a strong case for any ear-marked reserves, except HRA balances, to be disregarded.

- The value of any provision for equal pay as at 31 March 2010 should be provided and reflected in any consideration of funds available to meet equal pay costs.
- Budget provision for equal pay in 2010-11.
- The value of any unused existing consent to borrow for equal pay.