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Finance Circular No 3/2009

Directors of Finance of Scottish Local Authorities

cc. COSLA, CIPFA, LASAAC, Audit Scotland

This replaces Finance Circular 5/2007

Our ref: B2616917

27 March 2009

Dear Director of Finance

CONSENT TO BORROW FOR GRANTS TO COMMUNITY GROUPS TO FINANCE CAPITAL EXPENDITURE

1. Ministers permit Local Authorities to borrow to finance grants to community groups under certain conditions. The conditions were set out in Finance Circular 5/2007, which is now replaced by this Circular.
2. As the scheme has now been in operation for two years a review of the scheme and associated guidance has been undertaken. The review identified that some changes needed to be made to make the scheme and guidance more useful.
3. Summary of changes:
 - a) Information on the issues that a Local Authority might need to consider when applying for a consent;
 - b) Inclusion of additional clauses in the example wording that may be used in an application;
 - c) Adjustment to the Annex used to submit details of a scheme for consideration.
4. There have been no changes to the underlying principles, or how these will be applied to an application for consent.
5. The revised procedures have been discussed and agreed by the Capital Finance Working Group. The operation of the scheme will remain under review and any comments will be taken into consideration as part of any future evaluation.

6. This circular is being sent to all Directors of Finance and will also be made available through the Local Government Finance section of the Scottish Government website at:

<http://www.scotland.gov.uk/Topics/Government/local-government/17999/11203>

7. Any applications under this provision, or enquiries relating to the circular, should be directed to me in the first instance.

Yours faithfully



Simon Stone
Deputy Team Leader
Local Government Finance Division



GUIDANCE ON CONSENT TO BORROW FOR GRANTS TO COMMUNITY GROUPS TO FINANCE CAPITAL EXPENDITURE

BACKGROUND AND COMMENTARY

1. Until April 2004, the system for controlling capital expenditure was through legislation known as 'section 94' capital consents. This resulted in a definition of capital expenditure that was wider than the formal definition under proper accounting practice as defined in the CIPFA/LASAAC Code of Practice on Local Authority Accounting: A Statement of Recommended Practice (known as the SORP).
2. Section 94 consents were replaced by the Prudential Borrowing Regime from 1 April 2004. A working group set up to help implement the prudential framework in Scotland, with representatives from the Scottish Government, COSLA, CIPFA and Audit Scotland, concluded that capital expenditure should be as defined in the SORP. This effectively excluded grants to third parties from being capitalised, as these do not result in an asset in the ownership of the local authority. As such, these grants can only be funded through revenue resources.
3. Representations from Comhairle nan Eilean Siar, that this decision was causing them funding issues, led to a review of the position by a similar working group in light of experience since the introduction of the prudential regime. This Group concluded that there is merit in allowing increased flexibility in how certain grants are funded. This flexibility was to be limited to grants to community groups on capital projects for the provision of public services, where such expenditure if incurred by the authority itself were classed as capital under the SORP.
4. The Minister, therefore, agreed to allow a limited relaxation in the rules surrounding the treatment of grants to third parties for capital projects.
5. It was initially suggested that this be managed through a change to proper accounting practice as defined under section 12 of the Local Government in Scotland Act 2003 (the 2003 Act). However, certain groups raised concerns over the associated impact on accounting practices. Use of the 2003 Act would require relevant expenditure to be capitalised and then the accounting adjusted, using a series of complicated accounting entries, to effectively return it to revenue.
6. An alternative provision was identified under Para 1 (2) of Schedule 3 of the Local Government (Scotland) Act 1975 (the 1975 Act). On balance, this alternative approach was considered to be preferable at this time. This approach allows a similar outcome in permitting authorities to borrow for eligible expenditure, in this case certain grants to community groups for capital projects.
7. The 1975 Act provides that:

'With the consent of the Secretary of State, a local authority may borrow, on such terms and conditions as to repayment as the Secretary of State may in so consenting allow, such sums as are required to meet expenses other than expenses to which sub-paragraph (1) above relates, which the authority have power to incur in the exercise of any of their functions (excluding functions relating to a public utility undertaking); but the Secretary of State shall give such consent only if satisfied that the expenses are of such a nature that they should be met by such borrowing.'
8. Scottish Ministers may, therefore, use this power to provide consent to extend the purposes for which local authorities may borrow.
9. Finance Circular 5/2007 was issued providing information on this provision, and how an application could be submitted for consideration. Finance Circular 5/2007 has now been replaced by this Circular.

WHAT CAN BE COVERED BY AN APPLICATION?

10. An application for consent may be made to cover grant schemes operated by the Authority, or for an individual project that the Authority wishes to support. In all cases it is for the Authority to ensure that any grant made under the consent meets the conditions of the consent.

11. Where the application is for a grant scheme operated by the Authority then the application should include details of the scheme. (I.e. what the Authority's scheme is for, how applications will be assessed, what legislation gives them the authority to make the grant, the percentage of any individual project that the Authority is prepared to fund, whether the Authority is willing to fund any consequential running costs etc.)

12. Where the application relates to supporting a specific project similar information will be required to that required for a grant scheme, although in these cases details of the project and the conditions that will be placed upon the community group should be included in the application.

13. Applications are not restricted to a single financial year, but can be made for an Authority's scheme that runs for several years, or for individual projects that span several years. In such cases the Authority should provide details of the amount of grant they intend to pay in any financial year, together with details of any grant conditions which deal with how payments will be made. In assessing such an application we would be looking for grant conditions that ensure that public monies are safeguarded, and that the community group does deliver the project being supported by the grant.

14. Where an application covers a number of years it is for the Authority to manage the payment of grant within the consented total.

15. In summary, a scheme may cover one or a number of years, and also may cover one or a number of projects / community groups. The application process will be the same regardless of the scheme for which consent is being sought, although the content of the application will need to be tailored to suit the detail of the individual schemes.

CONDITIONS FOR CONSENT

16. Before consent is given, two tests must be met:

- a) the authority must have a statutory power to incur the expenses in exercise of their functions; and
- b) Scottish Ministers must be satisfied that the expenses are of such a nature that they should be met by borrowing.

17. In meeting the first test above, consent will only be considered where:

- a) the authority can identify a statutory power to incur the expenditure for which it wishes to borrow; and
- b) borrowing for the expenditure is not prohibited under any other enactment.

18. It should be noted that we are unable to issue a consent to borrow for grants made under the Power to Advance Well-being (section 20 of the 2003 Act), as the use of borrowing is specifically precluded within the legislation (at section 22 (7) of the 2003 Act). This same restriction would have applied if we had made a change of policy and allowed community grants to fund capital projects to be capitalised. Authorities will need to ascertain (through their own legal advice) that the provisions under which they are issuing grants are appropriate, and that the use of borrowing to fund the expenditure is not precluded.

19. In meeting the second test, consent will only be considered for expenditure:
- a) on grants made to a properly constituted community group (not local authority controlled companies, trusts or partnerships, housing associations or other public sector bodies); and
 - b) which would, if incurred by the authority be capital expenditure, i.e. would result in a fixed asset in the authority's balance sheet.
20. A properly constituted community group is considered to be a local body set up for the public good in the specific local authority's area, that operates on a 'not for profit' basis, and has a constitution, or set of rules. This may or may not be incorporated, but does not extend to local authority controlled companies, trusts or partnerships, housing associations or to other public sector bodies.
21. It is presumed that the projects supported with the grants would be for works that are of economic, social or environmental benefit to their local area where:
- a) the authority would not meet the full costs of such projects, but provide sufficient capital investment to leverage additional funding from other sources; and
 - b) the authority shall not be liable for the ongoing or future maintenance of any facility or infrastructure provided with the aid of the grant assistance.
22. Lastly, the use of borrowing to fund this expenditure should be as a last resort. Authorities will be asked to confirm that there are no revenue contributions to their current capital programmes or capital fund as revenue resources should be used to fund third party grants in the first instance.
23. If a project meets all the above conditions, it is likely that Scottish Ministers would be satisfied that the expenses are of such a nature that they should be met by borrowing.
24. Where Authorities are unable to confirm that there are no revenue contributions to their capital programmes or their capital fund, additional justification will be required as to why borrowing for the projects should be allowed. In such cases it is unlikely that a consent will be granted.
25. Any consent to borrow would require that repayment of the associated loans fund advance should not exceed 10 years from the date of the advance.

PROCEDURE FOR APPLYING FOR CONSENT

26. If an authority wishes to apply for consent to borrow for their grants programme, they must apply in writing. Example wording that may be used in the letter requesting consent is outlined below:

"On behalf of XXX Council, I am writing to request that Scottish Ministers provide consent for the council to borrow under Para 1 (2) of Schedule 3 of the Local Government (Scotland) Act 1975 for the purposes outlined in the attached Annex.

The total budget for the schemes for which consent is requested is estimated at £X over the financial year(s) XXXX.

In making this request, I confirm that borrowing will only be used to finance expenditure on grants to properly constituted community groups where:

- a. the council has a statutory power to incur the expenditure;
- b. the use of borrowing is not precluded under this power or any other legislation;
- c. the expenditure would, if incurred by the council, be capital expenditure;
- d. the council does not intend to meet the full cost of the project, but to provide sufficient capital investment to enable the community group to leverage additional funding from other sources; and
- e. the council will not be contractually obliged to meet the ongoing or future maintenance of any facility or infrastructure provided with the aid of the grant assistance.

In making this application I recognise that borrowing to meet this expenditure should not be undertaken where revenue resources are used to contribute to the council's capital expenditure programme as these resources should be used to support this expenditure before undertaking borrowing. Further, I can confirm that the Council's planned capital expenditure programme does not include any revenue contributions to capital, and nor will any revenue contribution be made to the Council's Capital Fund in the year(s) when borrowing will be used to fund the grant being the subject of this application

I further confirm that the council will keep appropriate records of any borrowing incurred under this consent for audit purposes."

27. Information on the schemes for which consent is being requested should be included in an attachment to the letter using the template form as at Annex A. Individual template forms should be completed for each grant scheme for which the Authority wishes to borrow.

28. Electronic versions of the template form are now available on our website at:

<http://www.scotland.gov.uk/Topics/Government/local-government/17999/11203>.

29. Applications should be sent to Simon Stone at the address at the head of this circular. In addition you should contact him if you have any queries concerning an existing or proposed application, or the process of making an application (e-mail: simon.stone@scotland.gsi.gov.uk, tel. 0131 244 7950).

**Local Government Finance Division
March 2009**

APPLICATION FOR CONSENT TO BORROW FOR GRANTS TO COMMUNITY GROUPS TO FINANCE CAPITAL EXPENDITURE

Local Authority:		Column For Official Use Only
Scheme for which consent requested:		Ref. No.
	Comments	
1. Who are grants to be provided to?		
2. What proportion of the project costs are funded by the grant?		
3. What commitments are expected from grant recipients (e.g. maintenance of infrastructure)?		
4. What statutory power does the authority have to incur this expenditure?		
5. What expenditure are the grants provided for?		
6. For what purpose are the grants provided?		
7. Estimated expenditure involved in this financial year (£) (Please state year)		
8. Will this scheme continue? If so, for how long and what is the projected expenditure in forward years?		
9. Any other supporting information (E.g.conditions of scheme, payment timing policy)		

Checked by: