

Finance Circular No. 11/2009

By email:

To: Local Authority Chief Executives
Local Authority Directors of Finance

Copy to: COSLA
Audit Scotland
LASAAC
CIPFA

Our ref: B3398829
13 November 2009

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

Earlier this year Ministers agreed to consider introducing a scheme to allow local authorities to borrow to help them manage equal pay costs. Following discussions with COSLA, CIPFA and Audit Scotland through the Capital Finance Working Group a draft scheme was prepared. After consideration by HM Treasury and Mr Swinney, the Cabinet Secretary for Finance and Sustainable Growth, the scheme was issued for consultation.

The response to the consultation was generally positive, with local authorities keen to see the introduction of such a scheme. All the comments submitted were carefully considered and several changes have been made to the guidance accompanying the scheme to provide greater clarity on the operation of the scheme.

A small number of comments related to whether non-equal pay costs may be included. As this scheme is intended to address only consents to borrow for equal pay costs, and separate limits apply to consents that may be granted for non-equal pay costs, this scheme remains limited to equal pay costs only. This scheme is issued without prejudice to any future consideration of a further scheme for non-equal pay costs. This will be the subject of further discussion with COSLA.

Local authorities are now invited to submit applications in accordance with the scheme attached. Details of the information that needs to be included in the accompanying business case are provided in the annex to the scheme.

A handwritten signature in black ink, appearing to read 'Simon P Stone', with a long horizontal stroke extending to the right.

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



REVENUE EXPENDITURE FUNDED FROM CAPITAL RESOURCES UNDER STATUTE

Consent to borrow to finance equal pay

Policy and Procedures 2009-10

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, the Scottish 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. Scottish Ministers have consulted with HM Treasury on the scheme to allow equal pay costs to be met from borrowing. HM Treasury require an equal pay scheme to operate independently from any scheme to address non-equal pay costs. This guidance sets out the equal pay scheme.

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 that there is a need to borrow.

7. The scheme has been created to assist those local authorities needing to settle equal pay claims but facing significant financial difficulties. A need to borrow must therefore be demonstrated through the business case.

8. 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 as the result of Employment Tribunals.

9. 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

10. Local authorities should apply for consent to borrow for equal pay by 30 November 2009. The Scottish Government intends to issue the consent to borrow by 31 December 2009.

11. 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.

12. 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.

13. 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.

14. Applications received after the closing date may be considered at the discretion of the Scottish Government. The Scottish Government will take into consideration the lateness of the application, the strength of the business case and the value of any consents already issued for equal pay.

ASSESSMENT OF APPLICATIONS

15. Applications will be considered against the policy on equal pay as set out above. The assessment of need will be the main criteria against which applications are assessed.

16. 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.

17. Applications will be reviewed based on the need for the local authority to borrow to fund equal pay back payments.

The assessment will consider:

- The value of equal pay back pay costs already met and still to be incurred by the authority, and any provisions that have been made for these costs;
- The level of reserves held and, where any of these reserves are earmarked, the strength of the case made for disregarding any of the earmarked reserves;
- Why an authority feels they need to borrow, and how such borrowing would form a part of their recovery plan; and
- What the implications would be for the authority if borrowing were not available, including any potential impact on both revenue and capital expenditure, and the capacity to meet future financial pressures.

CONSENT TO BORROW - CONDITIONS

18. Any consent to borrow issued does not attract any Scottish Government loan charge support. The local authority is responsible for ensuring that use of this borrowing consent is in accordance with the prudential indicators set by the authority and that the borrowing is both affordable and sustainable.

19. The consent to borrow for the equal pay costs may only be applied to actual expenditure incurred. It may be applied to accrued equal pay costs but may NOT be applied to any accounting provision made for equal pay. For clarification, authorities may apply for a consent to borrow before actual costs are incurred, but will not be able to use the consent to undertake borrowing until the costs are actually incurred.

20. The consent to borrow is valid for the financial year in which it is issued, plus one further financial year. So consents issued in 2009-10 may be used for borrowing up to, and including, 31 March 2011. 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.

21. Scottish Ministers will consider whether a further scheme should be made available in 2010-11.

22. 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.

23. Where borrowing is undertaken using the consent to borrow an advance from the loans fund shall be made and such advance shall be identifiable as the equal pay advance in the loans fund.

24. Local authorities are required to set out in their business case the repayment period of the loans fund advance they consider appropriate. 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 will not exceed 20 years. Local authorities applying for a consent under this scheme should not assume that the maximum period will be applied. Justification must be provided, and this justification will be considered when setting the repayment period.

25. There is no requirement to apply capital receipts to redeem the equal pay debt. However, 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 equal pay loans fund advance outstanding and may not be used to meet just the annual statutory repayment of this advance. If the application of the capital receipt does not extinguish the total equal pay advance outstanding the local authority is required to revise all the remaining annual statutory repayments for that advance. This revision should reflect that the capital receipt was applied to produce a proportionate reduction to all future annual statutory repayments for the equal pay advance. Should an authority choose to apply capital receipts to the repayment of the loan principal these conditions apply.

26. The local authority may not utilise this borrowing consent in the same year as revenue contributions to the capital programme exist (planned or actual) either directly from the General Fund or through in-year contributions to their capital programmes or capital fund. Revenue resources should be used to fund the equal pay revenue costs in the first instance. This does not prevent the use of revenue resources to support capital expenditure during the repayment period of the consented borrowing, just the year in which the borrowing is undertaken. Also, where the consent applies to borrowing for non-HRA costs an authority may continue to use HRA revenue resources to support HRA capital expenditure, and vice versa.

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

ACCOUNTING FOR ANY CONSENTS GRANTED

28. Expenditure, for which consent is provided, shall be accounted for in accordance with the local authority SORP/Code of Practice. This requires the expenditure to be charged to the income and expenditure account. This 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.

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

30. The use of a consent to borrow during 2009-10 in respect of equal pay back pay costs incurred in previous years does not, in itself, require restatement of previous year financial statements. The consent to borrow is issued in the financial year 2009-10 and any borrowing undertaken in reliance of that consent in 2009-10 should properly be reflected in the 2009-10 financial statements. So any equal pay costs incurred in prior years are properly charged to prior years with the statutory adjustment through the Statement of Movement on the General Fund in recognition of the effective capitalisation of the equal pay costs being made in the year that the borrowing is undertaken. Prior period adjustment would only be necessary where the criteria of paragraph 3.52 of the Local Authority SORP 2009 apply

Scottish Government
Local Government Division
13 November 2009

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 estimates of the potential costs of outstanding equal pay claims in 2009-10 and subsequent years.

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

6. The details required are:
 - 6.1 The total amount (£) of the equal pay back pay which is the subject of this application. Authorities may apply for a consent to cover costs incurred in prior years. However, in assessing applications it is unlikely that costs incurred prior to 1 April 2008 will be considered valid as such costs have already been met. Local authorities would therefore need to be able to demonstrate a very clear need to borrow for those costs before they could be considered.
 - 6.2 The amount you wish to borrow.
 - 6.3 If funding is available to meet some of the costs, provide details of what funding is available. This shall include available reserves and provisions already made.

6.4 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.

6.5 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

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

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

6.8 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.

6.9 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

7. The business case should set out the financial circumstances of the local authority which supports the need to borrow, and the plans the authority has to recover from their current position. 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 separate details of the HRA if the application covers the HRA. Provide details (reasons) for all transfers to or from these reserves in 2008-09, the final balance at 31 March 2009, any planned transfers in 2009-10 and the anticipated balance at 31 March 2010. Local authorities often earmark General Fund reserves. Except for earmarked HRA balances within the General Fund a strong case must be made to the Scottish Government if you wish any part of the General Fund or other usable revenue reserve balance to be disregarded when your application is considered.
- The value of any provision for equal pay as at 31 March 2009 should be provided and reflected in any consideration of funds available to meet equal pay costs.
- Budget provision for equal pay in 2009-10 and 2010-11.