

Explanatory Memorandum to the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2014

This Explanatory Memorandum has been prepared by the Local Government Finance & Performance Division in the Local Government Public Service Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2014.

Lesley Griffiths

Minister for Local Government and Government Business

27 February 2014

1. Description

- 1.1 This Statutory Instrument amends existing Regulations, the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”).
- 1.2 The circumstances of the way authorities fund and manage liabilities for equal pay awards has led to the need to amend the framework which supports local government capital finance and accounting in Wales. The amendments to the Regulations will help authorities fund and manage liabilities for equal pay awards.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative Background

- 3.1 Section 21 of the Local Government Act 2003 provides the Welsh Ministers with powers to make provision in regulations about the accounting practices to be followed by a Local Authority, in particular with respect to the charging of expenditure to a revenue account. Section 11 of that Act also provides the Welsh Ministers with the powers to make provision about the use of capital receipts by a Local Authority.
- 3.2 These Regulations are subject to annulment in pursuance of a resolution of the Assembly (the negative resolution procedure).

4. Purpose and intended effect of the legislation

- 4.1 The 2003 Regulations contain detailed provisions for the capital finance and accounting controls applicable to local government bodies in Wales, including the rules on the use of capital receipts and what is to be treated as capital expenditure. They also modify accounting practice in various ways to prevent adverse impacts on authorities’ revenue resources.

4.2 Funding – back payment following unequal pay (Regulation 24A)

Equal pay awards would normally be funded out of Local Authorities’ revenue resources; but for many Authorities that could be unaffordable. The Welsh Government has considered whether Authorities should be allowed to meet these payments out of capital resources – by borrowing or by using their “capital receipts”. Given concern about public sector debt, borrowing would not be appropriate.

The 2003 Regulations are being amended to allow Local Authorities to be able to use the receipts from asset sales raised from 2013-14 onward to fund outstanding equal pay claims. Section 11 of the Local Government Act 2003 provides a power to make regulations specifying

the use of capital receipts; various such uses are already listed in the 2003 Regulations (Regulation 18).

The amendment will come into force on 31 March 2014 so it applies to the current financial year as well as to subsequent ones. An authority will therefore be able to fund an element of back-payment which would otherwise have been charged to its revenue account in 2013-14, from the capital receipts which it has received on or after 1 April 2013.

4.3 Accounting – back payment following unequal pay (Regulation 24A)

Accounting practice requires provision to be made for probable future liabilities to be made in the financial year when the liability is first identified, rather than in the year when the actual payment falls due. In the case of equal pay, authorities are likely to have identified a potential liability significantly in advance of having to make the payment, for example, allowing for the progress of Employment Tribunal cases. Scoring liabilities when first identified could therefore cause Authorities serious budgetary difficulties.

To protect Authorities, regulation 24A was introduced into the 2003 Regulations in 2010. It offered authorities a breathing space, allowing them not to charge back-payments to their revenues until the payments were due. Originally set to expire in 2011, the regulation was extended until 1 April 2013. As equal pay claims are still going through the courts, the process is unlikely to be complete by 2013-14. Therefore, the effect of regulation 24A is being extended beyond 1 April 2013 to continue to have effect until 1 April 2018 (the same as England). The effect is no charge would need to be made to revenue for a back-payment liability identified during the period until the payment is actually due to be made.

5. Implementation.

5.1 These Regulations will come into force on 31 March 2014.

6. Consultation

6.1 The amendments were part of a consultation when proposed policy and draft Regulations were put to appropriate stakeholders. This included Local Authorities, Wales Audit Office (WAO), Welsh Local Government Association (WLGA) and the Chartered Institute of Public Finance and Accountancy (CIPFA).

6.2 There were 9 replies received from Local Authorities and other interested parties including WAO and CIPFA. All the respondents supported the amendments to the Regulations regarding equal pay. No additional amendments to the Regulations have been included as a result of the consultation.

7. Regulatory Impact Assessment (RIA)

- 7.1 A regulatory impact assessment has not been produced for this instrument as the amendments to the Regulations do not create an additional regulatory burden. No impact on business, charities or the voluntary sector is foreseen.

8. Post Implementation Review

- 8.1 The current regulatory framework has been in place since April 2004. Since that time the effectiveness of the system in place has been kept under regular review by the Welsh Government and in regular formal and informal situations with interested stakeholder's examples being Local Authorities, WLGA and Wales Audit Office.