

LOCAL GOVERNMENT AND PUBLIC SERVICES COMMITTEE

Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003

Purpose

1. The purpose of this paper is to advise the Committee on the nature of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 ("the Regulations") which have to be made as a result of the enactment of the Local Government Act 2003 ("the Act").

Recommendation

2. The Committee is invited to note the contents of this paper and to comment on the attached draft of the Regulations and commentary.

Background

3. The Regulations are designed to facilitate the introduction of the prudential borrowing system in Wales and were issued for consultation on 5 September, with a deadline of 24 October for comments. The Minister for Local Government and Public Services wrote to the Chair and Members of the Committee on 5 September seeking comments ahead of the scheduled Committee discussion on 22 October. The Regulations need to be in place by December to enable local authorities to prepare for the new prudential borrowing system which is due to start in April 2004.

4. There was a presentation and discussion of the Act and the prudential borrowing system generally at the Committee meeting on 1 October.

Consideration

5. The primary legislation contained in the Act is enabling in that it provides the National Assembly for Wales with a number of regulation making powers to provide the detailed framework for the operation of the prudential borrowing system in Wales. It is the intention of the Welsh Assembly Government that wherever possible these powers will be used to specify compliance with proper practices and/or specific, relevant professional codes of practice.

6. However, some aspects of these regulations relate to the implementation of specific policies of the Welsh Assembly Government. One such policy is that the pooling of housing capital receipts will only apply to those authorities with debt-free Housing Revenue Accounts (HRAs). Other aspects relate to activities where it is not yet appropriate for this new element of local government finance to operate on the basis of accounting practice, e.g. the regulations proposed in respect of the minimum revenue provision.

7. These regulations do not contain any reference to the 'reserve' powers which are provided to the National Assembly for Wales by the Act. These include the 'national longstop' (section 4(1)) which must be exercised by regulation and the issue of a limit for an individual authority (section 4(2)) which can be exercised by direction.

8. In the case of the former, this power can only be exercised for national economic reasons and should this power be required to be exercised then further regulations would be needed, including a system for authorities to transfer 'headroom'. In the case of the latter, this power would only be exercised after all other recourse had failed and an authority was planning to borrow more than it could afford and thus be in breach of the Chartered Institute of Public Finance and Accountancy's (CIPFA's) prudential code.

Local Authority Companies

9. Section 18 of the Act defines a local authority company for the purposes of the prudential system as one which meets the provisions set out in Part V of the Local Government and Housing Act 1989. However, during its progress through Parliament a new section (117) was added to the Act which provides the National Assembly with the power to amend legislative definitions by order in the light of generally accepted accounting practice ("GAAP"). The Welsh Assembly Government notes that CIPFA is currently reviewing this area of local authority accounting with a view to bringing it more in line with UK GAAP. When this exercise is completed, the Welsh Assembly Government will consider bringing forward an order which would change the definition of a local authority company for the purposes of the prudential system to be that which would be set out by proper practice.

Local Authority Investments

10. The Act does not provide the National Assembly for Wales with any powers to make regulations concerning local authority investments. The current Approved Investment Regulations will cease to have force on implementation of the prudential system as Part IV of the Local Government and Housing Act 1989 under which they are made will be repealed on implementation.

11. However, the Act provides the National Assembly for Wales with a power under section 15 (1)(a) to issue guidance to which authorities must have regard. The Welsh Assembly Government plans to use this power to issue guidance to encourage the development of prudent investment strategies akin to that informal guidance which was issued when the current investment regulations were amended to facilitate longer term investments by local authorities in Wales. A further consultation will be held on this guidance later in the year.

12. Versions of these draft regulations were discussed ahead of the formal consultation with local government, the Welsh Local Government Association (WLGA), CIPFA and the Audit Commission at various joint-working groups. However, the Welsh Assembly Government would welcome further comments from these parties and others with an interest in the regulations.

13. The following annexes are attached:

- Annex 1 draft regulations "*Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003*" which were issued for consultation on 5 September;
- Annex 2 Commentary on the draft regulations.

14. There are no additional costs for the Assembly as a result of the implementation of the prudential borrowing system and the issue of these regulations. Neither the implementation of the prudential borrowing system, nor consideration of the form of Assembly financial support to local authorities for capital investment within it, entail an increase in the amount of support. There will be no impact on the amounts in the Assembly's budget (though some switching of budget heads may result). Changes in the mechanisms for the delivery of support for capital investment to local authorities resulting from the implementation of the prudential system will not in themselves change the amount of that support. Any changes in the amount of support will only arise as a result of decisions in this year's and future years' budget planning rounds.

Action for Subject Committee

15. Committee is asked to note and discuss the contents of this report and the attached regulations and explanatory notes.

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