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Local Government Division

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Local Government Finance Circular No. 9/2011

By email:

To: Local Authority Chief Executives
Local Authority Directors of Finance

Copy to: COSLA
Audit Scotland
LASAAC
CIPFA

Our ref: B4972088
2 August 2011

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

Scottish Ministers have agreed to make available a further consent to borrow scheme for equal pay costs in 2011-12. This Finance Circular provides details of the scheme, and sets out the information that should be provided by a local authority should they wish to make an application.

Applications should be sent electronically to simon.stone@scotland.gsi.gov.uk and should be submitted no later than 23 September 2011.



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Local Government Division



REVENUE EXPENDITURE FUNDED FROM CAPITAL UNDER STATUTE

Consent to Borrow to Finance Equal Pay

Policy and Procedures 2011-12

A guidance note issued by the Scottish Government

TABLE OF CONTENTS

INTRODUCTION AND GENERAL POLICY	1
CONSENT TO BORROW FOR EQUAL PAY.....	1
APPLICATIONS - CONSENT TO BORROW	2
ASSESSMENT OF APPLICATIONS.....	2
CONSENT TO BORROW - CONDITIONS	3
APPLICATIONS TO EXTEND THE TIME PERIOD FOR EXISTING CONSENTS....	5
ACCOUNTING FOR ANY CONSENTS GRANTED	6
ADDITIONAL INFORMATION.....	6
ANNEX A - INFORMATION REQUIRED IN SUPPORT OF AN APPLICATION.....	7
General Information.....	7
Background and overview	7
Details of equal pay back pay costs for which the application to borrow applies	7
Demonstration of need to borrow.....	8
Provisions, Budgets and Reserves.....	8
Repayment Period.....	9

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 1975 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 also 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's (HM Treasury's) 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. It is unlikely that borrowing will be permitted 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 - CONSENT TO BORROW

9. Local authorities should apply for consent to borrow for equal pay by **23 September 2011**. For applications received by this date the Scottish Government intends to issue the consent to borrow approvals by 16 December.

10. Applications received after the closing date above may be considered. In deciding whether to accept any late applications, consideration will be given to the reasons for the late application, and the ability of Scottish Ministers to provide any additional borrowing consents.

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 comprehensive but succinct 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.

ASSESSMENT OF APPLICATIONS

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. The Scottish Government reserves the right to seek further information where this is required to assess the application.

15. Applications will be assessed to determine that the costs which are the subject of the application are eligible for a consent to borrow.

16. Decisions as to whether to provide a consent to individual councils will be primarily based on financial need. The level of funds, provisions and reserves, available to the local authority to meet equal pay costs will be considered. In making an assessment of need Scottish Ministers acknowledge that authorities will wish to maintain a reasonable level of reserves to meet other financial pressures. This will be reflected in their decision on an application. Local authorities will need to make a very strong case if they consider that ear-marked reserves should be disregarded. Further information on reserves and provisions can be found in Annex A.

17. The overall total that authorities are seeking to borrow will be considered in the light of the limits agreed with the UK Government. If Scottish Ministers are satisfied that successful applications can be met from agreed limits, consents may be issued to each applicant for the full amount of the expenditure which meets the

assessment criteria. If, however, successful applications exceed the agreed level, consideration will be given at that stage to a method of distributing between applicants the amount available. The approach adopted could be influenced by the scale of the reduction needed.

18. Having applied under a previous scheme will not bar a local authority from applying under this scheme. All applications will be assessed for need on the same basis. Local authorities may wish to note that subsequent applications are only likely to be successful where the total equal pay costs to be met by the council have increased, or other external factors, beyond the authority's control, have had a significant effect on the Council's finances.

19. A local authority is required to set out in their application the repayment period of the loan advance they consider is appropriate. This should reflect need. The repayment period requested may not exceed 20 years.

20. In all cases Scottish Ministers reserve the right to decide how the value and repayment period for any individual consent is determined.

21. A local authority will be informed by letter of the result of their application. Where an application is successful this letter may include additional conditions applying to the consent granted.

CONSENT TO BORROW - CONDITIONS

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

23. 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.

24. A consent to borrow is valid for the financial year in which it is issued, plus one further financial year. So consents issued in 2011-12 may be used for borrowing up to, and including, 31 March 2013.

25. Within three months of each financial year end the Director of Finance, or equivalent, shall advise the Scottish Government of the actual borrowing undertaken reliant upon 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.

26. Actual and planned use of any consent to borrow for equal pay should be included in the capital returns submitted periodically by local authorities.

27. If a local authority determines that a consent to borrow is still needed but the expenditure is unlikely to be incurred by its expiry date, a local authority may apply to

the Scottish Government to extend the period of the consent. Further details are provided below.

28. Should a local authority determine that, having been granted a consent to borrow, it will not require either part or all of the consent, the authority should inform the Scottish Government as soon as possible. Having this information will facilitate the assessment of any late applications, or enable agreed applications to be increased where the consent had been reduced due to oversubscription.

29. Where borrowing is undertaken using the consent to borrow, an advance from the loans fund shall be made and such advance shall be separately identifiable within the loans fund.

30. There is no requirement to apply capital receipts to redeem the loans fund advance made under a consent issued under this scheme. 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 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 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.

31. 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.

32. An illustration may make this clearer:

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

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

Revised capital programme financing based on consent conditions:

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

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.

33. 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.

34. 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".

35. The local authority is required to keep appropriate records of any borrowing incurred under this consent for audit purposes, and to provide such information as may be necessary to demonstrate that the conditions of the scheme have been met.

APPLICATIONS TO EXTEND THE TIME PERIOD FOR EXISTING CONSENTS

36. If a local authority wishes to extend the period of a consent, an application to do so should be submitted. This should provide an update to the information previously provided in support of the original application. In particular information on the value of reserves, provisions and any budget provision made in year for equal pay costs must be provided. There is an expectation that an existing consent will be applied to any eligible costs incurred before a local authority applies to extend the consent to future costs. Applications to extend must therefore include details of any eligible costs incurred and the use of the borrowing consent to support them.

37. On receipt of an application to extend the time period of an existing consent a new assessment will be undertaken using the updated information to determine whether there is a continuing need to borrow, and the level of borrowing that may be carried forward.

38. Applications to extend the period of a consent may not seek an increase to the value of the consent. Applications to increase the value of an existing consent will be treated as new applications.

39. An application to extend the period of any consent may be made at any time and need not be delayed to coincide with the dates required for new applications. However, in order that they can be assessed prior to the completion of draft accounts

they should be submitted within six weeks of the expiry of the consent, i.e. by 12 May following expiry.

40. Applications to extend the borrowing period should be sent electronically to simon.stone@scotland.gsi.gov.uk and their receipt will be acknowledged. Subject to all the necessary information being provided local authorities can expect to be informed of the outcome of an application to extend a consent within six weeks of the date of the application.

ACCOUNTING FOR ANY CONSENTS GRANTED

41. Equal pay costs shall be accounted for in accordance with the Code of Practice on Local Authority Accounting. This requires the expenditure to be charged to the Comprehensive Income and Expenditure account. 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.

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

ADDITIONAL INFORMATION

43. Any queries concerning the scheme, applications made, or consents granted under it, should be sent electronically to simon.stone@scotland.gsi.gov.uk

44. A summary of all applications made and consents issued under this scheme will be published on the Scottish Government website:

www.scotland.gov.uk/Topics/Government/local-government/17999/LACapital/Borrowing/Consent

Scottish Government
Local Government Division
29 July 2011

INFORMATION REQUIRED IN SUPPORT OF AN APPLICATION

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.
6. 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.

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

7. Provide details of actual eligible back pay costs incurred for equal pay in previous years (not provisions), plus an estimate of the eligible costs of outstanding equal pay claims to be met in the current year, next year, and future years:

Equal Pay Costs	£m
Prior Years	
2010-11	
2011-12	
2012-13	
Future years	
Total	

8. Identify the amount you wish to borrow. This should be expressed as both a value (£) and a percentage of the total costs of equal pay.

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

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

11. Provide details of the forecast net revenue expenditure for 2011-12. This should equate to the Total Expenditure figure for 2011-12 reported on the POBE, adjusted for any proposed transfers to/from reserves, contingency, and revenue contributions to capital. Authorities may update this information with known changes, but must provide explanations of any revisions.

12. 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.

Demonstration of need to borrow

13. The business case should set out the financial circumstances of the local authority which support the need to borrow. This should include 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.

14. Provide details of any other factors affecting the local authority's ability to meet the costs of equal pay.

Provisions, Budgets and Reserves

15. Applications should provide details of any provision for equal pay as at 31 March 2011, and the estimated value of any such provision at 31 March 2012. The movement in the provision i.e. – whether used / reduced / increased, should be clear from the business case.

16. Applications should provide details of any amounts included in the authority's budget for 2011-12 or 2012-13 to meet equal pay costs.

17. Scottish local authorities may only hold reserves if there is a statutory power to do so. Statutory powers require / permit the following revenue reserves – General Fund (including HRA), a Renewal and Repair Fund and an Insurance Fund. Other statutory powers permit other revenue reserves to be held for specific authorities e.g. Harbour Reserve. With the exception of the Insurance Fund all of these reserves will be treated as available unless the specific legislation restricts their use.

18. Available reserves do not include reserves that reflect the differences in timing between accounting recognition requirements and statutory recognition requirements (e.g. pension reserve and any statutory adjustment accounts).

19. Provide details of all statutory revenue reserves. Provide details of the HRA if the application covers the HRA. Note that this information should include both earmarked and un-earmarked amounts.

20. For each reserve applications should provide:

- The opening balance as at 1 April 2011;
- Details (reasons) for all proposed transfers to or from these reserves in 2011-12;
- Any earmarked amounts (with reasons for earmarking and when the reserves are likely to be used); and,
- The anticipated level of reserves at 31 March 2012.

A table in the format below should be provided together with an explanation of movements in reserves. Details of movements in the Insurance Fund are not required, nor for the HRA if this is not the subject of the application:

<i>Reserves (£k)</i>	<i>General Fund</i>	<i>HRA Reserve</i>	<i>Renewal and Repair Fund</i>	<i>Insurance Reserve</i>	<i>Other Statutory Reserves</i>	<i>Total</i>
<i>Balance at 1 Apr 2011</i>	1,000	200	150	100	50	1,500
<i>Use of Reserves</i>	-450	-50	-20	-20	-10	-550
<i>Additions to Reserves</i>	150	60	15	+20		245
<i>Balance at 31 Mar 2012</i>	700	210	145	100	40	1,195
<i>Included in Balance:</i>						
<i>Earmarked amount #1</i>	150					150
<i>Earmarked amount #2</i>					40	40
<i>Earmarked amount #3</i>		210				210
<i>Earmarked amount #4</i>			30			30
<i>Earmarked amount #5</i>				100		100

21. In determining the level of reserves available to the local authority Scottish Ministers will automatically exclude the following:

- Insurance reserve.
- Sums earmarked in the General Fund for 'second homes discounts' which are restricted and may only be used for affordable housing.
- The Housing Revenue Account (HRA) where the application does not relate to the HRA.
- Other statutory reserves which have a restricted use – details of the statutory restriction must be provided with the application.

22. A strong case must be made should you wish any other reserve, or earmarked part of a reserve, to be disregarded when your application is considered.

23. Where a local authority has already been granted a consent to borrow for equal pay the business case must make it clear the impact this has had on reserves and provisions.

Repayment Period

24. The application should set out the loan repayment period the local authority considers is affordable based on financial projections. A detailed justification should be provided.