

1990 No. 767

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Borrowing) Regulations 1990

<i>Made - - - -</i>	<i>28th March 1990</i>
<i>Laid before Parliament</i>	<i>29th March 1990</i>
<i>Coming into force</i>	<i>1st April 1990</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 43(5), 46(6) and 190 of the Local Government and Housing Act 1989 (a) and of all other powers enabling them in that behalf, with the consent of the Treasury, hereby make the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Borrowing) Regulations 1990 and shall come into force on 1st April 1990.

(2) These Regulations shall not apply with respect to any stock issued before 1st April 1990.

Interpretation

2. In these Regulations—

“the Act” means the Local Government and Housing Act 1989;

“the listing rules” means any rules made pursuant to section 142(6) of the Financial Services Act 1986 (b);

“loan instrument”, except in regulations 3(5) and (6), 6 and 7, does not include instruments which are transferable by delivery;

“payment” includes repayment;

“the register” means a register maintained by a local authority under section 46 of the Act;

“the registrar” means a local authority acting as a registrar for some or all of the purposes of the register maintained by that authority or any person appointed by the authority as a registrar for any such purposes who is neither an officer nor any other employee of the authority;

“The Stock Exchange” means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited.

Terms of loan instruments

3.—(1) The terms of a loan instrument shall comply with the following provisions of this regulation.

(a) 1989 c.42.

(b) 1986 c.60.

(2) The total of the payments which fall to be made by a local authority under the instrument, other than payments in respect of interest, shall not, on the date on which the instrument is issued, exceed the amount of money borrowed by the authority under the instrument by more than—

- (a) fifteen per cent. of the amount borrowed, or
- (b) if less, the product of $\frac{1}{2}$ per cent. of the amount borrowed multiplied by the number of relevant years,

and, for the purposes of this paragraph, the “number of relevant years” means the number of complete periods of twelve months in the period beginning on the date on which the instrument is issued and ending on the last date by which all payments by the authority under the instrument fall to be made.

(3) Where a payment under the instrument in respect of interest is required to be made by a local authority in respect of any period, the payment shall be required to be made on a date (which may be specified in the instrument or not)—

- (a) within the period for which the interest is payable, and
- (b) if the period is a period of more than twelve months, within twelve months of the beginning of the period.

(4) Where payments under the instrument at any time fall to be made by a local authority to two or more persons in respect of the same liability, they shall be required to be treated as jointly entitled to those payments.

(5) Any payments under the instrument in respect of principal shall be required to be made by the local authority in question—

- (a) upon dates specified in the instrument; or
- (b) if the holder of the instrument and the authority agree to defer such payments, upon the dates agreed;

provided that where payments fall to be made as mentioned in sub-paragraph (b) above, the payment of interest in respect of the period of deferment shall be required to be made on a date or dates which accord with paragraph (3)(a) and (b) above.

(6) The authority or, as the case may be, the registrar shall not be required to make any payment by way of additional interest—

- (a) because payment of any amount in respect of principal is not duly made as a result of the holder of the instrument not complying with any requirement imposed under regulation 8(2); or
- (b) in a case where such a request as is mentioned in regulation 8(4) has been made, if a payment has not been duly made but the authority or the registrar have taken all reasonable steps to make that payment on or before the date on which it falls due in accordance with the request.

(7) After redemption of the instrument no payments shall be due under the instrument to the holder of the instrument in respect of any other loan, or the provision of any other funds, to a local authority.

(8) Where the instrument is issued in respect of a loan—

- (a) if the right under the instrument to receive payments in respect of the loan is transferred, the person whose particulars were entered in the register before the transfer as the person to whom the payments are due shall continue to be entitled to any such payments until particulars of the transferee are entered in the register; and
- (b) if the register is closed or the balance for interest is struck in respect of the loan, the person whose particulars are entered in the register on the date on which the register is closed or the balance is struck as the person to whom payments are due in relation to the loan shall be entitled to any such payments falling to be made in the period during which the register is closed or in respect of the interest the balance for which is being struck.

Issue of loan instruments

4.—(1) This regulation applies with respect to the issue of a loan instrument by a local authority unless—

- (a) the instrument is to be issued in respect of a loan or the provision of funds and the loan or funds comprise an investment which has been or is to be admitted to the Official List of the Stock Exchange;
 - (b) the person who is to make the loan or provide the funds in question (referred to in this regulation as "the lender") is a person—
 - (i) carrying on a business consisting wholly or mainly of lending money; or
 - (ii) if the amount of the loan or funds in question is not less than £30,000, carrying on any business in the course of which he lends money or makes deposits; or
 - (c) the lender may require the local authority to make all payments which fall to be made by the authority under the instrument—
 - (i) without notice;
 - (ii) at less than twelve months notice; or
 - (iii) within twelve months of the date of issue of the instrument.
- (2) Where this regulation applies, a loan instrument shall be issued by a local authority only where a form of application has been received by the authority.
- (3) The form of application shall—
- (a) comply with the Schedule to these Regulations as respects the matters to be stated (or not to be stated) in the form and the manner in which matters are stated; and
 - (b) be signed by or on behalf of the lender.
- (4) In this regulation, "deposit" has the same meaning as in the Banking Act 1987(a).

Transfer of loan instruments

5.—(1) The rights and obligations under any loan instrument issued in respect of a loan, other than an instrument which provides that the rights and obligations are not transferable or are only transferable by or with the agreement of the authority by or to which the instrument was issued, shall only be transferable by instrument in writing in accordance with the Stock Transfer Act 1963(b) delivered to the registrar.

(2) Any instrument delivered to the registrar in accordance with paragraph (1) above may be destroyed after a period of thirty years beginning on the date on which particulars are entered in the register in respect of the transfer.

Redemption of loan instruments

6. Where in any circumstances a local authority redeem a loan instrument, they may do so by issuing a further loan instrument, provided that—

- (a) the holder of the instrument being redeemed agrees to redemption in this manner; and
- (b) if the instrument being redeemed was issued in respect of an investment which has been admitted to the Official List of The Stock Exchange, redemption in this manner is in accordance with the listing rules applicable to the instrument being redeemed or with the consent of the Council of The Stock Exchange.

Loan instruments transferable by delivery

7.—(1) Subject to paragraphs (4) and (7) below, a local authority may not issue a loan instrument which is transferable by delivery unless the instrument is a bill, sterling commercial paper or a sterling medium term note.

(2) For the purposes of this regulation,—

- (a) a loan instrument is a bill if—
 - (i) all payments by the authority under the instrument fall to be made not later than 187 days after the date of issue of the instrument; and
 - (ii) it does not fall within sub-paragraph (b) or (c) below;
- (b) a loan instrument is sterling commercial paper if—

(a) 1987 c.22.

(b) 1963 c.18.

- (i) all payments which fall to be made by the authority under the instrument are to be in sterling and to be made not earlier than seven days and not later than one year after the date of issue of the instrument;
 - (ii) the aggregate redemption value of the instrument at the date of issue is not less than £100,000;
 - (iii) it is transferable only if its aggregate redemption value at the date of transfer is not less than £100,000; and
 - (iv) it contains the statements and bears the rubric required by paragraph (9) below; and
- (c) a loan instrument is a sterling medium term note if—
- (i) all payments which fall to be made by the authority under the instrument are to be in sterling and all payments other than payments in respect of interest are to be made later than one year but not later than five years after the date of issue of the instrument; and
 - (ii) it complies with paragraphs (ii) to (iv) of sub-paragraph (b) above.

(3) In paragraph (2) above, “aggregate redemption value” means the aggregate amount in respect of principal which is payable upon redemption of the loan instrument in question.

(4) A local authority shall not issue a bill if to do so would cause the total amount of the payments which fall to be made by the authority under all bills issued by the authority to exceed the relevant amount.

(5) In paragraph (4) above, the relevant amount for each authority, other than the Common Council of the City of London, shall be an amount in pounds equal to the product of the formula—

$$\frac{A \times B \times C}{D}$$

where—

“A” is, in the case of the Broads Authority, 60,000, and in the case of a local authority which is—

- (a) a charging authority, the relevant population of the area of the authority;
- (b) a precepting authority, the aggregate of the relevant population of each charging authority’s area, or (as the case may be) the part, which falls within the precepting authority’s area;
- (c) an authority established under section 10 or 28 of the Local Government Act 1985 (a) (waste disposal authorities and metropolitan county passenger transport authorities), the aggregate of the relevant population of the area of each charging authority to which they issue a levy;
- (d) a joint or special planning board constituted for a National Park by an order under paragraph 1 or 3 of Schedule 17 to the Local Government Act 1972 (b), 60,000;
- (e) a combined police authority established by an amalgamation scheme under the Police Act 1964 (c), 1,000,000;

and, for this purpose, “charging authority” and “precepting authority” have the meaning given by subsections (1) and (2), respectively, of section 144 of the Local Government Finance Act 1988 (d), and “relevant population” of an area or part of an area means the relevant population for the financial year in which the loan instrument is issued calculated, or last calculated before that year begins, under paragraph 4, 5 or 6, as the case may be, of Schedule 12A to that Act (e);

“B” is, in the case of—

county councils and metropolitan district councils, 110,
 non-metropolitan district councils, 15,
 London borough councils, 120,
 the Council of the Isles of Scilly, 125,
 any other local authority, 5;

(a) 1985 c.51.

(b) 1972 c.70.

(c) 1964 c.48.

(d) 1988 c.41.

(e) Schedule 12A to the 1988 Act was inserted by paragraph 74 of Schedule 5 to the Act.

“C” is the non-domestic rating multiplier specified by the Secretary of State under paragraph 3 or 4 of Schedule 7 to the Local Government Finance Act 1988(a) for the financial year in which the loan instrument is issued; and

“D” is the non-domestic rating multiplier specified by the Secretary of State under paragraph 2(1) of Schedule 7 to the Local Government Finance Act 1988 for the financial year beginning on 1st April 1990.

(6) In paragraph (4) above, the relevant amount for the Common Council of the City of London is an amount equal to the product of the formula—

$$\frac{\text{£15 million} \times C}{D}$$

where “C” and “D” have the same meaning as in paragraph (5) above.

(7) A local authority shall not issue sterling commercial paper or a sterling medium term note unless—

- (a) the authority have issued debt securities some or all of which are included in the Official List of The Stock Exchange;
- (b) the authority have complied with their obligations under the listing rules in respect of their listed debt securities and, since the last publication in compliance with the listing rules of information about the authority, the authority, having made all reasonable enquiries, have not become aware of any change in their circumstances which could reasonably be regarded as significantly and adversely affecting their ability to meet their obligations in respect of sterling commercial paper or sterling medium term notes as the obligations fall due; and
- (c) the requirements of paragraph (8) below are complied with.

(8) The requirements of this paragraph are that—

- (a) the authority have notified the Bank of England (referred to in this paragraph as “the Bank”) of the amount and maturity period of the paper or note to be issued, and provided the Bank with a detailed description of the purposes for which the proceeds of the issue would be used; or
- (b) if the paper or note is part of a programme for the issue of such paper or such notes—
 - (i) the authority have notified the Bank of the total amount to be raised under the programme and the maturity period of the paper or the notes to be issued under the programme (if known) and provided the Bank with a detailed description of the purposes for which the proceeds of the programme would be used; and if the programme has been subsequently extended, the authority have notified the Bank of details of the increased amount to be raised and any other material changes to the information initially provided; and
 - (ii) the authority have reported to the Bank, within one week after the end of each calendar month following the month in which a notification was given in accordance with paragraph (i) above, the amount of sterling commercial paper or sterling medium term notes issued by the authority outstanding at the end of that calendar month and, in the case of a second or subsequent report, the amounts of such paper or notes issued and redeemed since the date of the previous report, distinguishing in each case between paper or notes guaranteed by an authorised institution and paper or notes not so guaranteed.

(9) Any sterling commercial paper or sterling medium term note which is issued by a local authority shall—

- (a) contain a statement that the authority are in compliance with their obligations under the listing rules in respect of their listed debt securities and that, since the last publication in compliance with the listing rules of information about the authority, the authority, having made all reasonable enquiries, have not become aware of any change in their circumstances which could reasonably be regarded as significantly and adversely affecting their ability to meet their obligations in

(a) Schedule 7 was amended by paragraph 39 of Schedule 5 to the Act.

respect of sterling commercial paper or sterling medium term notes as the obligations fall due;

- (b) state that the authority's liabilities to make payments under the instrument are charged on all the revenues of the authority;
- (c) state that it is sterling commercial paper or, as the case may be, a sterling medium term note;
- (d) bear the rubric—

“sterling commercial paper issued in accordance with regulations made under section 43(5) of the Local Government and Housing Act 1989”

or, as the case may be,

“sterling medium term note issued in accordance with regulations made under section 43(5) of the Local Government and Housing Act 1989”; and

- (e) contain a statement to the effect that the instrument is issued by a person for the time being specified in Schedule 2 to the Banking Act 1987, and accordingly exempted from the requirement in section 3(1) of that Act to be authorised by the Bank of England for the purposes of accepting a deposit in the course of carrying on a deposit-taking business.
- (10) In this regulation—
- “authorised institution” has the same meaning as in the Banking Act 1987;
 - “debt security” means bonds, stock, annuities, debentures, debenture stock or loan instruments;
 - “maturity period” means the period from the date of issue of the loan instrument to the date of its redemption.

Payments to holders of loan instruments

8.—(1) Subject to paragraphs (3) and (4) below, any payment which falls to be made by a local authority to the holder of a loan instrument shall be made by means of a cheque or warrant made payable to the holder, and in the case of a loan particulars of which are required to be registered under section 46 of the Act, the cheque or warrant shall be sent to the address which is entered in the register as the address of the person to whom payments are due.

(2) Before making any payments in respect of principal, the authority or, as the case may be, the registrar may require the production of—

- (a) the loan instrument;
- (b) a certificate, issued in accordance with regulation 9(7) or in accordance with any other statutory requirement, relating to a loan in respect of which the instrument has been issued;
- (c) instructions for payment; or
- (d) such indemnity as the authority, or as the case may be, the registrar consider appropriate.

(3) Where two or more persons are jointly entitled to a payment in respect of a loan particulars of which are required to be registered under section 46 of the Act, the payment shall, subject to paragraph (4) below, be made to the person whose name or description is first mentioned in the register in the case of that loan.

(4) The authority or, as the case may be, the registrar may make a payment by a different means if requested by the holder of the loan instrument to do so, or where two or more persons are jointly entitled to a payment, if so requested by all those persons.

(5) Where, in the case of a loan particulars of which are required to be registered under section 46 of the Act, a payment is made by means of a cheque or warrant, the posting of the cheque or warrant to a person shall, as respects the liability of the authority to make the payment, be equivalent to the delivery of the cheque or warrant to the person.

Keeping of the register

9.—(1) The registrar shall not be required to enter in the register particulars of the person to whom payments are due after a transfer of the rights and obligations in respect

of a loan unless there is produced to him such evidence as he may require of the right of the transferor to make the transfer, and, in the case of a transfer by instrument in writing in accordance with the Stock Transfer Act 1963, either—

- (a) the instrument of transfer is accompanied by a certificate, issued in accordance with paragraph (7) below or in accordance with any other statutory requirement, demonstrating that the transferor is the person who is entitled to payments in respect of the loan; or
- (b) there is produced to the registrar such evidence as he may require that a certificate such as is referred to in sub-paragraph (a) above has been lost or destroyed and such indemnity in respect thereof as he may require.

(2) The registrar shall not be required to enter in the register particulars of the person to whom payments are due after a transfer of the rights and obligations in respect of a loan in relation to which a deceased person is shown in the register as the person to whom payments are due unless—

- (a) where the deceased person has two or more personal representatives, a request to the registrar to do so is made by all the personal representatives; and
- (b) there is produced to the registrar any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of the deceased person having been granted.

(3) The registrar shall not be required to enter in the register particulars of the person to whom payments are due after a transfer of the rights and obligations in respect of a loan until the expiration of fifteen clear days after the day on which he receives—

- (a) a written instrument of transfer; and
- (b) such other evidence as he may require under these Regulations.

(4) Where a person becomes entitled, by any lawful means other than by the transfer of the rights and obligations under a loan instrument in accordance with regulation 5 or the death of the holder of a loan instrument, to any payments in respect of a loan particulars of which are required to be registered under section 46 of the Act, the registrar shall, on production of such evidence of the person's entitlement as he may require—

- (a) enter in the register particulars of the person; or
- (b) at the request of that person after a transfer by him of the rights and obligations in respect of that loan, enter in the register particulars of another person as the person to whom payments are due.

(5) Where a written instrument of transfer or written instructions for payment are produced to the registrar, and the document has not been signed by the transferor or, as the case may be, the person to whom payments are due, the registrar shall not be required to take any account of the document unless there is produced to him such evidence as he may require that the effect of the document was intended by the transferor or, as the case may be, the person to whom payments are due.

(6) The registrar, with the approval of the local authority where the registrar is not the local authority, may—

- (a) close the register in relation to a loan during the whole or part of the period of one month preceding any day on which payments are due to be made in relation to that loan; or
- (b) strike the balance for interest in relation to a loan on any day not more than 37 days before a day on which any payment by way of interest in respect of that loan falls to be made.

(7) Subject to paragraphs (9) to (11) below, the registrar shall, as soon as reasonably practicable after the particulars with respect to a loan are entered in the register, or particulars are entered after the transfer of the rights and obligations in respect of a loan, issue a certificate to the person to whom payments are due in the case of that loan.

(8) A certificate issued in respect of a loan in accordance with paragraph (7) above shall—

- (a) contain the matters stated in the entry relating to the loan; and
- (b) specify a serial number or other means of identifying the entry.

(9) The registrar shall not be required to issue a certificate to a person in the case of a loan the rights and obligations in respect of which are only transferable by or with the agreement of the local authority to which the loan was made.

(10) Where more than two persons are shown in the register as the persons to whom payments are due in connection with a loan, it shall be a sufficient compliance with paragraph (7) above by the registrar if he issues a certificate to one of those persons.

(11) The registrar shall not be required to issue a certificate after entering in the register the particulars of any outstanding loans in accordance with section 46(2) of the Act.

(12) If a certificate is defaced, lost or destroyed, the registrar may, on receipt of such evidence and indemnity as he may require, and on the surrender of the certificate in a case where it is defaced, issue a replacement.

Particulars to be entered in the register

10. Where more than four persons are jointly entitled to any payments in respect of a loan particulars of which are required to be registered under section 46 of the Act, the registrar shall not be required to enter the name or description and address of more than four of them.

11. In relation to any loan particulars of which are required to be registered under section 46 of the Act, the amount of principal in respect of that loan is specified as an additional particular which is to be entered in the register.

28th March 1990 *Chris Patten*
Secretary of State for the Environment

Signed by authority of the Secretary of State for Wales

27th March 1990 *Wyn Roberts*
Minister of State, Welsh Office

We consent,

28th March 1990 *John Taylor*
David Lightbown
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE
CONTENT OF THE FORM OF APPLICATION

Regulation 4

1. The form of application shall state—
 - (a) the dates on which the authority are to make payments under the instrument or how such dates are to be ascertained;
 - (b) the amount of each of those payments or how that amount is to be calculated;
 - (c) either the annual percentage rates of interest applicable to the instrument or (if it is the case) that it is not practicable to calculate such rates;
 - (d) that, if the lender is an individual, he will not be liable to pay income tax at the basic rate in respect of any interest paid by the authority, but that he may be liable in respect of income tax at a higher rate;

- (e) the means, if any, by which any rights of the lender under the instrument are transferable;
- (f) the circumstances in which the authority are able to redeem the instrument other than at the request or under the instruction of the lender;
- (g) that the instrument is to be issued in accordance with the Local Government and Housing Act 1989 and that, under the Act, all money borrowed by the authority, together with any interest thereon, is charged indifferently on all the revenues of the authority; and
- (h) if the Secretary of State has designated the authority under Part VII of the Local Government Finance Act 1988 (limitation of charges etc.), or has notified the authority of a decision to designate them, as regards the financial year in which the instrument is to be issued, or any financial year in which payments fall to be made, that this is the case.

2. If the form of application states that it is not practicable to calculate annual percentage rates of interest, no other numerical rate of interest shall be stated.

3. Where annual percentage rates of interest are stated, they shall be shown no less prominently than any other rate of interest which is stated.

4. For the purposes of this Schedule, the annual percentage rates of interest are—

- (a) the net annual percentage rate; and
- (b) the gross equivalent annual percentage rate.

5. In paragraph 4(a) above, the net annual percentage rate means a rate per annum compounding annually expressed as a percentage such that—

- (a) the sum of the present values as at the date when the loan instrument is to be issued (referred to in this Schedule as “the relevant date”) of the amounts of any payments to be made by the authority to the lender; and
- (b) the total amount of money borrowed by or funds provided to the authority under the loan instrument;

would, when calculated at that date, be equal.

6. For the purposes of paragraph 5 above, the present value as at the relevant date—

- (a) of an amount to be paid on or before that date, is that amount; and
- (b) of an amount to be paid at a later date, is an amount found by the following formula—

$$\frac{A}{(1 + \frac{r}{100})^t}$$

where “A” is the amount of the payment to be made;

“r” is the rate per annum expressed as a percentage; and

“t” is the period beginning with the relevant date and ending with the date of payment of the amount expressed in years.

7. In paragraph 4(b) above, the gross equivalent annual percentage rate means a rate calculated in the same manner as the net annual percentage rate but with the amount of any payment to be made by the authority to the lender increased by the product of the formula—

$$\frac{z \times y}{(100 - y)}$$

where

“z” is so much of the amount of the payment as is in respect of interest; and

“y” is the basic rate of income tax as at the relevant date expressed as a percentage.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are concerned with the new borrowing powers of local authorities conferred by Part IV of the Local Government and Housing Act 1989. The powers will be exercisable from 1st April 1990 as part of the new capital finance system for local authorities.

Section 43 of that Act provides that one of the ways in which local authorities will be able to borrow is by means of loan instruments. These Regulations make various provision as to the terms of loan instruments, the manner of their issue, transfer and redemption, and the way in which payments or repayments are to be made to the holder of an instrument. Regulation 7 restricts the issue of loan instruments which are transferable by delivery.

Section 46 of the Act requires local authorities to maintain a register of loans. These Regulations make provision as to the keeping of a register, and as to the particulars which are required to be registered.

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