

Commentary on the
**Local Authorities
(Capital Finance and Accounting)
(Wales) (Amendment) Regulations 2010**
[S.I. No. 685 (W.67)]

This is an informal commentary and not an authoritative interpretation of the law. If you need legal advice about the meaning of the Regulations, we suggest, where appropriate you seek your own legal advice.

INTRODUCTION

The **Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2010** [SI 2010/685 (W67)] (“the 2010 Regulations”) are now in play. They were made and laid before the National Assembly for Wales in March 2010. Two of the regulations come into force on 31 March 2009 (see Paragraph 2 below) the rest take effect from 1 April 2010.

The link to the amending regulations can be found here:

http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi_20100685_mi.pdf

The regulations amend the **Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003** (“the 2003 Regulations”) [SI 2003/3239], as amended by various other SI’s – see below for details – being made under the **Local Government Act 2003** (“the 2003 Act”).

Links to the other legislation mentioned in the paragraph above are:

SI 2003/3239 http://www.opsi.gov.uk/legislation/wales/wsi2003/wsi_20033239_en.pdf
SI 2004/1010 http://www.opsi.gov.uk/legislation/wales/wsi2004/wsi_20041010_en.pdf
SI 2006/944 http://www.opsi.gov.uk/legislation/wales/wsi2006/wsi_20060944_mi.pdf
SI 2007/1051 http://www.opsi.gov.uk/legislation/wales/wsi2007/pdf/wsi_20071051_mi.pdf
SI 2008/588 http://www.opsi.gov.uk/legislation/wales/wsi2008/pdf/wsi_20080588_mi.pdf
SI 2009/560 http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi_20090560_mi.pdf
2003 Act <http://www.opsi.gov.uk/acts/acts2003/20030026.htm>

The CIPFA year end LAAP bulletin (LAAP Bulletin 84), issued this week, touches on (among other numerous other things) the content of these regulations. They can be found here;

http://www.cipfa.org.uk/pt/pt_details_l.cfm?news_id=60851

2. Timing

The 2010 Regulations come into force for the purposes of regulations 3(2) and (3) (Retirement Benefits) and 6 (Impairment of certain investments) on 31 March 2010. For all other purposes the regulations are effective from 1 April 2010, applying to Welsh local authorities.

3. Retirement Benefits

Regulations protect authorities from what could be an unmanageable burden imposed by accounting standards in relation to long-term pension liabilities. Without this, the full value of the future liabilities would have to be charged to revenue now. Regulation 24 provides for the revenue charge for a financial year to be equal to the retirement benefits *actually* payable in that year. For the purposes of Regulation 24, Regulation 4(2) lists by name the various specific pension schemes to which this measure applies. The relevant accounting provisions will be found in CIPFA's *Code of Practice on Local Authority Accounting in the United Kingdom (Chapter 6 - Employee benefits)*.

Existing references in legislation to specific retirement benefit schemes mainly relating to police and fire services have changed. To ensure the regulations match the name of the relevant schemes now and into the future specific reference to schemes are being replaced with general references. The regulation redefining references to Retirement benefit comes into effect from 31 March 2010.

4. Use of Capital receipts

Current regulations allow a local authority to defray the cost of disposal of a Housing Revenue Account (HRA) asset by using part of the capital receipt from the sale of the asset. As this concession did not apply to other assets it was thought this could be a disincentive where asset disposals were being considered. One reason for this could be because certain costs (e.g. advertising, professional fees) must be met from revenue and not sales proceeds. This permission is therefore now extended to non-housing revenue account assets. As these costs can be unpredictable and potentially large there is a proviso that the costs involved do not exceed 4% of the capital receipt arising on disposal. The position for HRA asset disposals remains unchanged with the 4% restriction not being applicable.

5. Back pay following unequal pay

Many authorities are liable to make lump-sum back-pay awards in relation to former unequal pay arrangements. Accounting practice requires financial provision for anticipated future liabilities to be made in the current financial year, rather than in the year when the actual payments fall due. It is detrimental for authorities to have to fund these often large provisions in advance of the need to make the payments. To protect authorities against this a regulation was brought forward in 2007 which meant that authorities need not charge back pay awards until the date on which they must make the payments. It is estimated that it may take a further two years for this issue to reach a conclusion. Therefore the existing mitigating regulation has been

extended to 31 March 2013. Also included is a new regulation 24A(6) that makes clear that where a liability is identified on or before 1 April 2013, the benefit of regulation 24A will apply, even though the payment falls due after that date.

6. Impairment of certain investments

A change last year made via the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2009 meant that authorities with investments at risk in Icelandic banks could temporarily defer setting aside an estimated impairment loss. This temporary mitigation allowed a breathing space until it became clearer what the actual loss, if any, would be. The mitigation was envisaged to end on 31 March 2011. As the situation has not yet been fully clarified, the intention of this regulation is to allow for an extension to the original date until 31 March 2012 when the position is likely to have been resolved across the board. This amending regulation will come into effect on 31 March 2010.

7. Short-term accumulating compensated absences

The new IFRS accounting standards will require authorities to make a charge in each year for the value of holiday entitlements that employees have not taken up by the end of the year. The relevant accounting provisions will be found in CIPFA's *Code of Practice on Local Authority Accounting in the United Kingdom (Chapter 6 - Employee benefits)*. The amounts will be high for numerous authorities, in particular because of the nature of teachers' employment contracts. By 31 March 2010 teachers will have built up significant entitlements, which they will take in the summer of 2010, but which under the new rules must be charged in 2009-10.

To negate this impact on transition to the new IFRS accounting basis, a new regulation provides that holiday benefits are to be charged to revenue in the financial year in which the holiday absence occurs.

It may also be helpful to clarify two points. Firstly, the regulation determines what ultimately impacts on the revenue account, but the accounting code will specify the treatment in the Income and Expenditure Account and will require compliance with IAS 19. Secondly, in the context of accounting for schools, it should be noted that the holiday pay accrual will not need to be charged against the delegated budget: what is charged against that delegated budget will be determined by the new regulation.

8. Lease Classification

Authorities often own and grant leases on buildings (e.g. shops, industrial units) from which the rents make a contribution to their revenues. Under IFRS accounting standards, property leases are to be accounted for as separate leases of land and buildings. The relevant accounting provisions will be found in CIPFA's *Code of Practice on Local Authority accounting in the United Kingdom (Chapter 4 – Non-current assets)*.

This accounting change may lead to *operating leases* being reclassified as *finance leases* and vice versa. In both cases, while this reclassification does not change the income received under the lease, it can have an adverse impact on the authority's

flexibility to apply those resources to meet expenditure. To protect authorities from unexpected revenue shortfalls this year, a new regulation has been brought forward (24 I and J). This provides that authorities may account for the money received under the lease in accordance with the accounting practices which applied on 31 March 2010.

It is important to note that the regulation is a transitional one for existing leases, since authorities granting leases subsequently will do so in full knowledge of the new accounting standards. The regulation thus applies only to leases in existence on 31 March 2010. The regulation only covers cases where authorities are lessors. The implications of the accounting changes where authorities are lessees require different treatment, which is provided in the revised Welsh Assembly Government Guidance on Minimum Revenue Provision.

9. Proper Practices

Regulation 25 lists accounting codes which are “proper practices”. There are a number of changes to note. One important one is that general references to codes are used so that in future name changes may not necessarily lead to the need to amend regulations. The phrase “*as may be amended or reissued from time to time (whether under the same title or not)*” achieves this purpose.

The CIPFA code is to be renamed in 2010-11, so the reference has been amended to reflect the naming of the new code - ***Code of Practice on Local Authority Accounting in the United Kingdom*** – effective from 1 April 2010.

In relation to community councils and larger joint committees (i.e. with gross income or expenditure greater than £1m for the year and the two preceding), the accounting practices contained in the “Governance and accountability for Local Councils: A Practitioners Guide 2008 (Wales)” are defined as proper practices.

Any queries about this commentary should be addressed to:

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April 2010