

Explanatory Memorandum to the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Local Government Funding Policy & Sustainability Division and is laid before Senedd Cymru 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 2023.

Rebecca Evans MS

Minister for Finance and Local Government

20 April 2023

PART 1

1. Description

- 1.1. The Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (“the 2003 Regulations”) provide the regulatory regime for the accounting practices to be followed by local authorities in Wales. They set out detailed provisions about the regime for capital finance and accounting controls, including the rules on the use of capital receipts and what is to be treated as capital expenditure. They also modify accounting practices in order to prevent adverse impacts on local authority revenue resources.
- 1.2. The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2023 (“the Regulations”) amend the 2003 Regulations by extending the application of the statutory override in regulation 24K for a further two financial years up to 31 March 2025. The statutory override mitigates the impact of fair value movements on pooled investment funds on local authority budget setting as a result of the application of the International Financial Reporting Standards for Financial Instruments (IFRS9).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 These Regulations are made using the powers under section 21(1) and 123(1)(a) of the Local Government Act 2003 (“the 2003 Act”). The powers under that Act are expressed as being exercisable by the Secretary of State, however, section 24 of the 2003 Act provides that in its application to Wales, the powers are to be exercised by the Welsh Ministers.
- 3.2 Section 123(1)(a) gives the Welsh Ministers the power to make different provision for different cases. The Regulations extend the application of the statutory override which provides for different treatment for accounting purposes of investments made in pooled investment funds.
- 3.3 These Regulations are made under the negative resolution procedure by virtue of section 123(6) of the 2003 Act, read with paragraphs 30 and 34 of Schedule 11 to the Government of Wales Act 2006.

4. Purpose and intended effect of the Legislation

- 4.1 The purpose of these Regulations is to extend the application of the statutory override in regulation 24K of the 2003 Regulations regarding

the accounting treatment by local authorities of fair value gains and losses on pooled investment funds. The Regulations extend the override for a further two financial years to 31 March 2025.

- 4.2 Regulation 25(1)(a) of the 2003 Regulations specifies that the accounting practices contained in the “Code of Practice on Local Authority Accounting in the United Kingdom” (“the Code”), are to be regarded as proper practices. The Code is issued by the Chartered Institute of Public Finance and Accountancy (“CIPFA”), who may amend and reissue the Code from time to time.
- 4.3 In January 2018, IFRS 9 came into force in the United Kingdom and was incorporated by CIPFA into the Code, with effect from 1 April 2018. Welsh local authorities expressed concerns that the reporting changes brought in by IFRS 9 would mean that the fair value movements of investments that they held in pooled investment funds would need to be reflected in their budgets.
- 4.4 There is a statutory requirement on local authorities to set a balanced budget each year, and the need to reflect movements in the value of investments held in pooled investment funds in their revenue accounts would adversely affect local authority budget setting and the determination of council tax. The Welsh Government accepted that the increased budgetary volatility could detrimentally impact service delivery or place undue burdens on council taxpayers. Responding to those concerns, the Welsh Government introduced regulation 24K of the 2003 Regulations which created a statutory override to mitigate against the risks identified by the local authorities. The statutory override was time limited to apply to accounts prepared by local authorities for the financial years between 1 April 2019 and 31 March 2023.
- 4.5 The considerations which applied at the time that the statutory override was originally implemented have not changed. The Department for Levelling Up, Housing and Communities have extended the application of a statutory override provision which has the same effect to local authorities in England. Without the override, Welsh local authorities could potentially have to make financial provision for fair losses on pooled investments instead of being able to use that provision to fund services, putting them and service recipients at a disadvantage compared to their respective counterparts in England.
- 4.6 To avoid Welsh local authorities being placed at a disadvantage compared to their English counterparts, which could adversely impact on the provision of local authority services to people in Wales, the Welsh Ministers consider it expedient that the accounting framework for local authorities in Wales should largely match that for local authorities in England, unless there are strong reasons to the contrary. In this case, there are no policy or accounting reasons to support a divergence of practice.

5. Consultation

- 5.1 There is no statutory requirement to consult and as the Regulations make a limited amendment, affecting only a limited number of professional stakeholders, and do not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.
- 5.2 Welsh Government officials have engaged closely with the local government sector in Wales, with Audit Wales and CIPFA Wales regarding the extension of the statutory override. That engagement has confirmed the local government sector in Wales supports the extension of the statutory override for a further two financial years to 31 March 2025, which will have the effect of maintaining parity of accounting practices with their counterparts in England.

6. Regulatory Impact Assessment (RIA)

- 6.1 In line with the policy set out in the Welsh Minister's code of practice for carrying out of regulatory impact assessments for subordinate legislation, an RIA has not been produced.
- 6.2 The code (as referred to above) provides an exception to the requirement to carry out an RIA where a statutory instrument makes a technical amendment changing the wording of the law rather than its purpose or effect. These Regulations change a date in order to extend the application of an existing statutory override and make no change to the purpose of the policy (or its impact), nor make any significant effect in the way it is applied or on the law.