



# Levelling-up and Regeneration Act 2023

## 2023 CHAPTER 55

### PART 2

#### LOCAL DEMOCRACY AND DEVOLUTION

### CHAPTER 2

#### OTHER PROVISION

#### *Local government capital finance*

#### **78 Capital finance risk management**

- (1) The Local Government Act 2003 is amended as follows.
- (2) After section 12 (power to invest) insert—

*“Risk management: England*

#### **12A Risk-mitigation directions**

- (1) The Secretary of State may give one or more risk-mitigation directions to a local authority in England, for the purpose of reducing or mitigating the financial risk to the authority, if—
  - (a) a trigger event has occurred in relation to the local authority, and
  - (b) the Secretary of State is satisfied that the direction is, or (as the case may be) directions are, appropriate and proportionate to the level of that financial risk.
- (2) A “trigger event” occurs if (and when)—
  - (a) a risk threshold is breached by the local authority (see [section 12B](#));

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- (b) a report is made by the chief finance officer of the local authority under section 114(3) of the Local Government Finance Act 1988 (report to effect that authority’s expenditure is likely to exceed available resources); or
  - (c) the Secretary of State—
    - (i) gives a direction under section 16(2)(b) (request for expenditure to be, or not be, treated as capital) in respect of the local authority, or
    - (ii) makes a grant to the local authority under an enactment, for the purpose of preventing circumstances arising that would require such a report to be made.
- (3) The following are “risk-mitigation directions”—
- (a) a direction that sets limits in relation to the borrowing of money by the local authority;
  - (b) a direction that requires the local authority to take action specified in the direction.
- (4) A direction under [subsection \(3\)\(a\)](#)—
- (a) may set different limits in relation to different kinds of borrowing;
  - (b) must specify the period for which any limit has effect.
- (5) A direction under [subsection \(3\)\(b\)](#)—
- (a) may (amongst other things) require the local authority to take action to divest itself of a specified asset;
  - (b) must specify the time by which any specified action must be taken.
- (6) In deciding whether or not to exercise a power to give a direction under this section, the Secretary of State must have regard to—
- (a) the likely impact of the direction on the provision of services to the public by or on behalf of the local authority;
  - (b) the duty imposed on the local authority by section 3(1) of the Local Government Act 1999 (best value duty).
- (7) In deciding whether or not to exercise a power to give a direction under this section, the Secretary of State may, in particular, take account of the likely impact of that decision on the implementation of any central government policy, project or programme.
- (8) The Secretary of State may not give a risk-mitigation direction unless the Secretary of State—
- (a) has given the local authority notice of the proposed direction, and of the right of the local authority to make written representations to the Secretary of State about it within the period specified in the notice, and
  - (b) has considered any representations made by the local authority to the Secretary of State within that period.
- (9) In this section, “financial risk”, in relation to a local authority, means the risk that the expenditure of the local authority (including expenditure it proposes to incur) in the current or any future financial year is likely to exceed, or further exceed, the resources (including sums borrowed) available to it to meet that expenditure.

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- (10) This section is subject to [section 12C](#) (restriction of power to give risk-mitigation directions).

### **12B Risk thresholds**

- (1) For the purposes of [section 12A\(2\)\(a\)](#), a risk threshold is breached by a local authority in England if (and when) a capital risk metric for the local authority breaches the specified threshold for that metric.
- (2) Each of the following is a “capital risk metric”—
- (a) the total of a local authority’s debt (including credit arrangements) as compared to the financial resources at the disposal of the authority;
  - (b) the proportion of the total of a local authority’s capital assets which is investments made, or held, wholly or mainly in order to generate financial return;
  - (c) the proportion of the total of a local authority’s debt (including credit arrangements) in relation to which the counter-party is not central government or a local authority;
  - (d) the amount of minimum revenue provision charged by a local authority to a revenue account for a financial year;
  - (e) any other metric specified by regulations made by the Secretary of State.
- (3) The Secretary of State may, by regulations, make further provision—
- (a) specifying whether the specified threshold for a particular metric is breached by a failure to reach that threshold or by that threshold being exceeded;
  - (b) about how the metrics specified in, or under, [subsection \(2\)](#) are to be calculated for the purpose of determining whether the specified threshold for that metric has been breached.
- (4) Before making regulations under [subsection \(2\)\(e\)](#), the Secretary of State must consult all local authorities in England.
- (5) In this section—
- “capital asset” has the meaning given by section 9;
- “minimum revenue provision” has the meaning given by regulation 27 of the Local Authorities (Capital Finance and Accounting)(England) Regulations 2003 ([S.I. 2003/3146](#));
- “specified” means specified, or determined in a manner specified, in regulations made by the Secretary of State.
- (6) Regulations may require a specified threshold to be determined having regard to guidance issued under section 21(1A) (accounting practices).

### **12C Restriction of power to give risk-mitigation directions**

- (1) If, after the power to give risk-mitigation directions becomes exercisable under [section 12A\(1\)](#) in relation to a local authority—
- (a) at least 12 months have elapsed since the Secretary of State last became aware of a trigger event having occurred in relation to the authority,

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- (b) any risk-mitigation direction given to the authority has been complied with or revoked, and
  - (c) the Secretary of State is satisfied no further risk-mitigation direction is likely to be required in the foreseeable future for the purpose of reducing or mitigating the financial risk to the authority,
- the Secretary of State must give the local authority a notice to that effect (“a cessation notice”).
- (2) Where a cessation notice is given, the power conferred by [section 12A\(1\)](#) is no longer exercisable, in relation to that authority, by reason of any trigger event of which the Secretary of State was aware at the time that notice was given.
  - (3) In this section “risk-mitigation direction”, “trigger event” and “financial risk” have the same meaning as in [section 12A](#).

### **12D Duty to cooperate with independent expert**

- (1) This section applies where—
  - (a) a trigger event has occurred in relation to a local authority in England,
  - (b) [section 12C\(2\)](#) does not apply to prevent the power conferred by [section 12A\(1\)](#) being exercisable, in relation to that authority, by reason of that event, and
  - (c) the Secretary of State has appointed an independent expert to review the level of the financial risk to the local authority.
- (2) The local authority must, so far as reasonably practicable, co-operate with the independent expert in any way that the independent expert considers necessary or expedient for the purposes of the conduct of the review.
- (3) In this section—
  - “financial risk” has the same meaning as in [section 12A](#);
  - “independent expert” means a person—
    - (a) who is independent of the local authority and the Secretary of State, and
    - (b) who has relevant experience or knowledge which is relevant to the matter in question;
  - “trigger event” has the same meaning as in [section 12A](#).”
- (3) In section 2 (control of borrowing), in subsection (1)—
  - (a) after paragraph (b) insert “, or”, and
  - (b) after that paragraph insert—
    - “(c) any limit for the time being applicable to it under section 12A.”
- (4) In section 5 (temporary borrowing)—
  - (a) in subsection (1), after “section 4” insert “or 12A”, and
  - (b) in subsection (2), after “section 4(2)” insert “or 12A”.
- (5) In section 8 (control of credit arrangements), in subsection (1)—
  - (a) after paragraph (b) insert “, or”, and
  - (b) after that paragraph insert—

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“(c) any limit for the time being applicable to it under section 12A.”

(6) In section 12 (power to invest), at the end insert—

“This is subject to a direction under section 12A (risk-mitigation directions).”

(7) In section 19 (application to parish and community councils), in subsection (1) for “9 to 13” substitute “9 to 12, 13”.

(8) In section 23 (meaning of “local authority” in Chapter 3 of Part 1), in subsection (4), after “1 to 8,” insert “12A to 12D,”.

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#### Commencement Information

**I1** S. 78 not in force at Royal Assent, see **s. 255(2)(p)**

**I2** S. 78 in force at 31.1.2024 by **S.I. 2024/92, reg. 2(a)**

**Changes to legislation:**

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