Background

1. The government recognises the valuable contribution that local authorities make to the social and economic infrastructure of this country, and is committed to the approach of local decision-making and accountability under the prudential regime.

2. The government supports local investment in part by offering low cost loans to local authorities through the Public Works Loan Board (PWLB). The purpose of the PWLB is to offer long-term, affordable loans to support local authority investment in service delivery, housing, economic regeneration, treasury management, and occasionally preventative action, under the prudential regime.

3. In February 2020 Parliament reformed the statutory basis of the PWLB, transferring its lending powers to HM Treasury. In March 2020 the government consulted on revising the PWLB's lending terms to reflect these new governance arrangements, and to end the situation in which a minority of local authorities used PWLB loans to support the acquisition of investment assets primarily for yield. The government published its response to this consultation and implemented these reforms in November 2020.

Scope and purpose of this document

4. HM Treasury has issued this document to help local authorities ensure that their capital plans are compliant with ongoing access to the PWLB under the lending terms published in November 2020. This document should be read alongside the Operational Circular and other technical materials issued by the DMO.

5. The government has chosen to issue guidance rather than strict definitions because of the challenges of developing strict definitions that reliably give the intended categorisation when applied to something as diverse as local government. This is in line with the wider approach of the prudential system of recognising the complexity of the sector and drawing on the expertise of the finance director (s151 officer or equivalent) of each LA. This supplements the existing principle in the

prudential code that LAs should not enter into financial arrangements which serve no direct policy or treasury management purpose.

6. These arrangements apply to local authorities in England, Scotland, and Wales operating under the prudential code. They apply to all capital spending, whether it is within the local authority's borders or outside. Separate arrangements exist for parishes, town and community councils, and drainage boards. A full list of affected authorities is given in Annex A. HM Treasury will advise any entity unsure of its eligibility under the lending criteria.

7. The government will monitor how practice develops following the implementation of these reforms and will revise this document as required to ensure that the new lending arrangements meet their objective of protecting local authorities' freedom to pursue high-value capital projects under the prudential code.

Applying to the PWLB

8. Each local authority that wishes to borrow from the PWLB should submit a high-level description of their capital spending and financing plans for the following three years, including their expected use of the PWLB. Local authorities will be able to revise these plans in-year as required.

9. Plans will be submitted through DELTA, an online data collection system run by MHCLG. A sample template is attached in Annex B. Local authorities will be asked to provide:

    a. how much they plan to spend in each year in each of a set of categories which have been developed through consultation with the sector and which between them cover all acceptable capital activity if the local authority wishes to borrow from the PWLB. See paragraphs 13 and 14 of this document for guidance on how to assign projects to these categories.

    b. a short description of the main projects in each of these categories covering at least 75% of the spending in that category.

c. an assurance from the section 151 officer or equivalent that the local authority is not borrowing in advance of need and does not intend to buy investment assets primarily for yield.

10. When applying for a new loan, the local authority will be required to confirm that the plans they have most recently submitted remain current and that the assurance that they do not intend to buy investment assets primarily for yield remains valid.

11. Receipt of these summaries does not imply that the plans have been endorsed by HM Treasury or the government.

Assigning capital projects to categories

12. HM Treasury has developed the following guidance in consultation with the sector to help local authorities ensure that their capital plans are compliant with ongoing access to the PWLB. The PWLB will continue to support service spending, housing, economic regeneration, preventative action, and treasury management. The guidance also includes a definition of investment assets bought primarily for yield, which the PWLB will not support.

13. Individual projects and schemes may have characteristics of several different categories. In these cases, the section 151 officer or equivalent of the authority should use their professional judgment to assess the main objective of the investment and consider which category is the best fit.

14. If a local authority wishes to on-lend money to deliver objectives in an innovative way, the government would expect that spending to be reported in the most appropriate category (service spending, housing, economic regeneration, preventative action, or treasury management) based on the eventual use of the money.

Defining activity

15. **Service spending** is activity that would normally captured in the following areas in the MHCLG Capital Outturn Return (COR): education, highways & transport, social care, public health, culture & related

services, environmental & regulatory services, police, and fire & rescue services.

16. **Housing** is activity normally captured in the HRA and General Fund housing sections of the COR, or housing delivered through a local authority housing company. This is given separately from 'service spending' because of the relative concentration of cross-subsidy and other innovative financing arrangements in housing projects.

17. **Regeneration** projects would usually have one or more of the following characteristics:

   a. the project is addressing an economic or social **market failure** by providing services, facilities, or other amenities that are of value to local people and would not otherwise be provided by the private sector

   b. the local authority is making a significant **investment** in the asset beyond the purchase price: developing the assets to improve them and/or change their use, or otherwise making a significant financial investment

   c. the project involves or generates significant **additional** activity that would not otherwise happen without the local authority's intervention, creating jobs and/or social or economic value

   d. while some parts of the project may generate rental income, these rents are **recycled within the project or applied to related regeneration projects**, rather than being applied to wider services

18. **Preventative action** would have all of the following characteristics:

   a. the intervention **prevents a negative outcome**, such as by buying and conserving assets of community value that would otherwise fall into disrepair, or providing support to maintain economic activity that would otherwise cease

   b. there is **no realistic prospect of support** from a source other than the local authority

c. the local authority has an **exit strategy**, and does not propose to hold the investment for longer than is necessary to achieve the objectives that justified the intervention

d. the intervention takes the form of grants, loans, sale and leaseback, equity injections, or other forms of business support that generate a **balance sheet asset.**

19. The government does not anticipate that LAs would spend significant sums on preventative action. Local authorities that are considering such action should ensure that they have assessed the compliance of the proposed action with all relevant subsidy control provisions in domestic and international law. HM Treasury is not responsible for ensuring that local authorities meet this requirement.

20. **Treasury management** covers refinancing or extending existing debt from any source, and the externalisation of internal borrowing.

21. The government recognises the benefits of having ready access to the PWLB for refinancing. The PWLB will therefore lend for this purpose even if the local authority is planning activity that makes them otherwise ineligible for PWLB support.

22. Local authorities must not pursue a deliberate strategy of using private borrowing or internal borrowing to support investment in an asset that the PWLB would not support and then refinancing or externalising this with PWLB loans. Under the prudential code, local authorities cannot borrow from the PWLB or any other lender for speculative purposes, and must not use internal borrowing to temporarily support investments purely for yield.

23. **Investment assets bought primarily for yield** would usually have one or more of the following characteristics:

a. buying land or existing buildings to let out at **market rate**

b. buying land or buildings which were previously operated on a commercial basis which is then continued by the local authority without any **additional investment or modification**

c. buying land or existing buildings other than housing which **generate income and are intended to be held indefinitely**, rather than until the achievement of some meaningful trigger such as the completion of land assembly

Reviewing decisions

24. The government is committed to the prudential system. The decision over whether a project complies with the terms of the PWLB is for the local authority's section 151 officer or equivalent. This decision will be final unless the Treasury has concerns that issuing the loan is incompatible with HM Treasury's duty to Parliament to ensure that public spending represents good value for money to the Exchequer and aligns with relevant legislation. In practice such an eventuality is highly unlikely and would only occur after extensive discussion with the local authority in question – but a safeguard is necessary to protect the taxpayer.

25. Local authorities should expect that their auditors will review their internal decision-making processes around borrowing and investment, including the assessment of whether their plans are compliant with the lending terms of the PWLB. Local authorities should make sure that these processes are robust. Auditors do not have the power to overrule the assessment of the section 151 officer or equivalent whether the LA's plans are compatible with access to the PWLB. If auditors raise concerns about these processes, HM Treasury may contact the local authority to understand the situation.

26. If the government has concerns **before** a loan is issued:

a. The government would suspend the advance of the loan and work urgently with the applicant to gain a full understanding of the situation.

b. If the authority can assure the government that the planned project is an acceptable use of the PWLB, the loan will be processed and advanced as soon as practicable in accordance with the agreed terms (including, if possible, the interest rate agreed at the time of the initial application, although HM Treasury reserves the right to reset the rate depending on market conditions).

c. If the project is an inappropriate use of the PWLB, the government will ask the authority to drop this project as a condition of accessing the PWLB. If the local authority refuses to give these assurances, they will not be allowed to borrow from the PWLB.

27. If the government has concerns **after** a loan is issued:

a. The government will notify the borrower and work urgently with them to gain a full understanding of the situation.

b. If the government concludes that the transaction in question was not an appropriate use of the PWLB, and that the information provided in the application to the PWLB was materially incorrect or misleading in the view of the Treasury:

i. as a condition of ongoing access to the PWLB, the LA will be required to provide additional information about their future capital plans, to assure HM Treasury that the plans do not contain any other activity that would not be an appropriate use of PWLB support. This exercise would focus on activity that is more likely to be contentious – HM Treasury does not intend to review the entirety of the capital plan. This would be a time-limited intervention until government is satisfied that the risk of a further breach has subsided

ii. Where the transaction was in clear breach of the rules, the government may also require that the borrower agree a plan to unwind the transaction to a reasonable timetable

iii. Finally, in extremis, the government would reserve the right to require that loans be repaid in full, with any applicable exit charges.

Annex A: List of affected bodies

- The councils of all counties and districts in England
- The councils of all counties and county boroughs in Wales
- The councils of all London boroughs
- The Common Council of the City of London
- The Greater London Authority and its functional bodies
- The councils of local government areas in Scotland
- The council of the Isles of Scilly
- The Broads Authority
- National Park Authorities established under the Environment Act 1995
- A Combined Authority established under the Local Democracy, Economic Development and Construction Act 2009
- Police & Crime Commissioners
- Fire & Rescue Authorities
- Waste Disposal Authorities
- Port Health Authorities
- Regional Transport Partnerships in Scotland
- Other authorities in England, Wales or Scotland having power to levy council tax or to issue a precept or levy

HM Treasury will advise any entity unsure of its eligibility under the lending criteria. Queries should be directed to pwlb@hmtreasury.gov.uk

Annex B: form for local authorities to submit their plans

Applicants should submit their plans on DELTA at https://delta.communities.gov.uk/login.

	2020-21	2021-22	2022-23
Service spending			
Housing			
Regeneration			
Preventative action			
Treasury management			
Debt for yield			
Expected borrowing from the PWLB			

Please enter financial information in £thousands

Please enter a short description of the activity in each category, covering at least 75% of the spending in that category

	Description of activity (c100 words per field)
Service spending	
Housing	
Regeneration	
Preventative action	
Treasury management	
Debt for yield	
Expected borrowing from the PWLB	

Statement from the section 151 officer (or equivalent senior finance officer)

I confirm that the information submitted here is an accurate representation of my organisation’s plans. I confirm that my organisation does not plan to buy investment assets primarily for yield in any of the years given in the table above.

Name	Date