



Equal pay capitalisation directions 2011–12: policy and procedures

Updated guidance (to Section 3 only)



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**NOTE: THIS GUIDANCE ONLY RELATES TO THE EQUAL PAY
CAPITALISATION PROCESS. THIS GUIDANCE SHOULD BE READ IN
CONJUNCTION WITH THE GENERAL POLICY ON CAPITALISATION.**

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3.0 Policy on capitalisation in respect of equal pay

3.1 Conditions for applications

- 3.1.1 Many local authorities have successfully implemented equal pay without the need for capitalisation. Capitalisation should only be considered where an authority can make a very strong case.
- 3.1.2 For 2011-12, authorities should apply by **16 September**. The period for preparing and submitting applications is shorter than in previous years. This is to ensure that running a later application process this year does not adversely impact on councils' budgeting arrangements. The Department intends to issue capitalisation directions in **mid to late October**.
- 3.1.3 The only kind of expenditure relating to equal pay for which a capitalisation direction would be likely to be issued is the one-off compensation payments for arrears of remuneration or damages (referred to as equal pay compensation award) to present or former employees of the local authority in respect of equal pay. This would include, for example, payments via COT3 agreements, or as a result of Employment Tribunals.
- 3.1.4 It is extremely unlikely that capitalisation directions would be granted in relation to continuing costs, such as ongoing salary increases, transition pay or pay protection. The information required in an application for a capitalisation direction in respect of equal pay focuses, therefore, on equal pay compensation awards. This fits with the wider capitalisation policy; that borrowing is appropriate for one-off payments, but not for ongoing ones.
- 3.1.5 Capitalisation directions for equal pay cannot be used for direct payments to solicitors, including no-win-no-fee arrangements.
- 3.1.6 Directions apply only in respect of expenditure which is incurred in the same financial year that the direction is used. However, the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended on 30 March 2007 and extended from April 1 2010), allow local authorities greater flexibility in managing their financial liabilities relating to equal pay. Authorities can defer making financial provision for anticipated liabilities arising from equal pay compensation awards until the date on which the local authority must make the payments, rather than as soon as they can be reliably estimated. CIPFA guidance on accounting for back pay is available at: <http://www.cipfa.org.uk/pt/download/laap68.pdf>
- 3.1.7 Ministers have discretion under Section 20 of the local Government Act 2003 to impose other conditions – for example, that the capitalised expenditure is to be met out of capital receipts rather than by external borrowing. That section also confers power to revoke and vary directions already issued.

3.2 Policy on school support staff

3.2.1 The School Finance (England) Regulations 2008, S.I. 2008/228 make clear that the repayment cost for school support staff can be funded from the schools budget.

3.2.2 When submitting a request for equal pay capitalisation local authorities should identify in their application, where applicable, any compensation awards for school support staff, and any anticipated contribution from the school's budget towards these costs. It should be noted that Voluntary Aided and Foundation Schools' support staff are employed by the Schools' Board of Governors and as such can not be included in a capitalisation direction from the Department.

3.3 Information required

3.3.1 In order to consider applications as fairly as possible, the Department is seeking a range of information. This is provided as a checklist in the appendix.

3.3.2 Applications should present all the required information as fully as possible, in the order given on the checklist. Failure to do so may result in consideration of the application being delayed whilst the Department seeks clarification and, where clarification is not forthcoming, the application not being considered. The Department expressly reserves the right to seek further information where this may be required. It is the authority's responsibility to ensure that all the relevant information is submitted, including any additional information which it wishes to be taken into account.

3.3.3 Local authorities are reminded of their duty under section 14 of the Local Government Act 2003 to supply the Secretary of State with such information as the Secretary of State may request in relation to the issuing of capitalisation directions.

3.3.4 The contact details for the Director of Finance, or equivalent post, should be included on the application so Communities and Local Government officials are able to inform the Director of Finance directly of the outcome of the authority's application. A direct telephone number should also be provided.

3.3.5 Applications to capitalise equal pay compensation award costs should be submitted electronically to the address below, by the deadline of **16 September**. Please note that all electronic applications will be acknowledged. If no acknowledgement is received, please contact Jennifer Oliver at the number below.

Jennifer Oliver

Tel: 0303 44 44046

Email: EPCapitalisation@communities.gsi.gov.uk

3.4 Assessment of applications

- 3.4.1 Applications are considered with regards to the policy set out in this guidance note, and with reference to the information supplied in the application, as asked for in the checklist in the appendix.
- 3.4.2 Applications will be closely scrutinised for affordability and necessity in relation to both the authority's financial circumstances and Government's deficit reduction priority. Authorities should therefore carefully consider their financial situation before submitting an application. The Secretary of State has the right to refuse capitalisation directions to any authority which he deems could otherwise afford the liability costs.
- 3.4.3 Government's top priority is to reduce the deficit. Regardless of whether the capitalised expenditure is funded through borrowing or the use of receipts (e.g. from asset sales), capitalisation scores as revenue expenditure in the national accounts. It therefore impacts directly on the deficit reduction programme. The overall total of the amounts which authorities are seeking to capitalise in respect of equal pay compensation awards will be considered in the light of the expected requirements for other categories of capitalisation and the implications of capitalisation across the board. It will be necessary for the Secretary of State to decide whether the total expenditure can be capitalised in the financial year in the light of macroeconomic considerations at that time. If the Secretary of State is satisfied that it can, directions may be issued to each applicant for the full amount of the expenditure which met the policy criteria for capitalisation (subject to any changes in circumstances).
- 3.4.4 If, however, the Secretary of State considers that a lower overall level of capitalisation would be more manageable, the total sum of directions issued will need to be kept within that figure. Consideration will be given at that stage to a method of distributing the amount available between successful applicants. The approach adopted could be influenced by the scale of the reduction needed.
- 3.4.5 It is intended that formal capitalisation directions in respect of equal pay will be issued by mid to late October.

3.5 Late applications

- 3.5.1 Under exceptional circumstances, equal pay applications for the current financial year received after the closing date of **16 September** may be considered after capitalisation directions are issued in mid to late October. Consideration of late applications will take into account the level of capitalisation already reached and the fact that for macroeconomic management reasons, authorities should meet the deadline. Late capitalisation directions are most unlikely to be issued in view of their potential effect on the Government's deficit reduction priority.

3.6 Contacts

- 3.6.1 Queries and applications relating to capitalisation in respect of equal pay should be directed no later than **16 September** to the Department for Communities and Local Government as follows:
Email: EPCapitalisation@communities.gsi.gov.uk

Please note that all applications will be acknowledged. If no acknowledgement is received, please contact Jennifer Oliver at the number above.

- 3.6.2 A list of Frequently Asked Questions relating to the guidance and the process of equal pay capitalisation directions can be found on the Communities and Local Government website at <http://www.communities.gov.uk/localgovernment/localgovernmentfinance/capitalfinance/capitalisation/capdirections201112/>

Please note: The FAQs are intended as an informal aid to local authorities only and should not be taken as a guide to the law. The FAQ's may be subject to periodic updates and amendments.

Appendix

Information required in support of capitalisation requests in respect of equal pay

APPLICATIONS FOR 2011-12 ONLY - COSTS MUST BE INCURRED IN THIS FINANCIAL YEAR.

1. Name of authority:

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Address:

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2. Contact name and details:

Name:	
Direct telephone line:	
Email address:	

3. Director of Finance:

Name:	
Direct Telephone line:	
Email address:	

4. Amount of application: £

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DETAILS OF THE COSTS FOR COMPENSATION FOR ARREARS OF REMUNERATION OR DAMAGES (NOTE – from this point forward costs for compensation for arrears of remuneration or damages will be referred to as equal pay compensation awards)

5. Is the amount of equal pay compensation awards you are facing in response to:

- Employment Tribunal claims? Yes No
- a local pay review? Yes No
- a compensation package in anticipation of a local pay review? Yes No
- A combination – please explain?

6. Please provide more information in the table below

Name of Payment	Number of people covered	Average pay out	Number of years of remuneration arrears (if applicable)
Employment Tribunals			
Local Pay Review			
Compensation package			

7. Please set out the state of progress of your pay review. Tick one of the following.

Implemented	Completed	Target 2011	Target 2012	Target 2013

8. Please provide details of your current expectations of the cost profile, as set out in the table below:

	2011-12	2012-13	2013-14
Total compensation award – best estimate	£	£	£
Funding available through other sources*	£	£	£
Capitalisation sought**	£	£	£

* This should include; any contribution that will be made from schools to cover equal pay compensation awards arising from school support staff, provisions from previous capitalisation directions, and earmarked reserves.

**Only applications for capitalisation directions for the current financial year will be considered; applications cannot be made now for any other year. Please provide, however, any estimates of equal pay compensation awards or capitalisation for equal pay compensation award costs which you expect to seek in future years. The figure for capitalisation sought in this question should match that used in question 4.

- Does this profile include base pay/tax/NI/pensions/other? (*if other please explain*)
- If you have indicated that funding is available through other sources, please expand on this point, including amounts.

9. How much of the equal pay compensation award costs relate to school support staff?
£

10. What contribution to the equal pay compensation award costs which relate to school support staff will be made from schools' budgets?

11. What have you done to manage down the risks/costs?

12. Do you anticipate that equal pay for work of equal value will be established by settlements in 2011-12?

Yes No *If no please explain*

13. Please give your total equal pay compensation award liability, for all expected years, as a percentage of your pay bill in 2011-12.
%

DETAILS OF CAPITALISATION APPLICATION

14. Please state how much of these equal pay compensation award costs you are seeking to have capitalised as:

a) a sum of money? £

b) a proportion of the total equal pay compensation costs you face? %

15. Is this amount a final figure or an estimate?

16. Please confirm that your application does not relate to ongoing salary increases, transitional pay, pay protection or payments to solicitors.

17. Please give the following information on the funding of capitalised costs:

- a) What proportion would you meet out of capital receipts? %
- b) At the start of the financial year for which you are seeking a direction, what amount of capital receipts did you hold? £
- c) What amount of capital receipts do you expect to receive during that financial year? £
- d) What proportion would you meet through new borrowing? %
- e) How would you propose to finance this additional borrowing?

18. Did you apply for a capitalisation direction for equal pay in 2010-11? If not please go to 20.

If yes please provide the following:

- The sum of the direction issued to your authority on 3 November 2010? £
- How much of that direction had you used by 31 March 2011 (excluding provisions)? £
- How much of your direction has been put aside in the form of a provision? £

19. For which reasons was the authority not able to finalise its equal pay liabilities with its 2010-11 direction?

OTHER RESOURCES AVAILABLE

20. What other sources of funding do you have to meet equal pay compensation award liabilities in 2011-12? (This should include any provisions funded by capitalisation in previous years.)

21. What else are you doing to try to rectify your financial position?

- Please give any options you have rejected and your reasons for doing so.

22. How are you using balances for this pressure?

23. Please provide your projected balances for 31/3/11 and 31/3/12, again split into unallocated and earmarked.

a) 31/3/11 - Earmarked £ Unallocated £

b) 31/3/12 – Earmarked £ Unallocated £

Please indicate the reason for any difference between the budget figures in the application and the RA return.

24. Please set out what you have assigned the above audited and projected earmarked balances to, broken down by year.

25. Please set out the estimated continuing costs of your revised pay structure.

Please attach any extra information which you wish to be taken into account.