ANNEX A – INFORMAL COMMENTARY ON THE STATUTORY GUIDANCE ON LOCAL GOVERNMENT INVESTMENTS

Power under which this Guidance is issued [paragraph 1]

1. The **Local Government Act 2003**, section 15(1), requires a local authority "…to have regard (a) to such guidance as the Secretary of State may issue, and (b) to such other guidance as the Secretary of State may by regulations specify…".

2. The guidance on investments in the main part of this document is issued under section 15(1) of the 2003 Act and authorities are therefore required to have regard to it. This part (**Annex A**) contains an informal commentary ("the commentary") on the Statutory Guidance.

3. Two codes of practice issued by the *Chartered Institute of Public Finance and Accountancy* (CIPFA) contain investment guidance which complements the MHCLG guidance. These publications are:
   - *Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes*
   - *The Prudential Code for Capital Finance in Local Authorities*

4. Local authorities are required to have regard to the current editions of the CIPFA codes by regulations 2 and 24 of the *Local Authorities* (*Capital Finance and Accounting) (England) Regulations 2003 [SI 3146] as amended.*

Objectives in updating the Guidance

5. The 2nd edition of this Guidance, which was issued in 2010, reflected concerns raised by the CLG and Treasury Select committees as part of their enquiries into the financial crash of 2007-8. The key areas of focus were:
   - The practice of investing for yield, especially in Icelandic Banks;
   - The need for transparent investment strategies; and
   - The use of Treasury Management advisors.

6. The changes made to the 3rd edition of this Guidance reflect changes in patterns of local authority behaviour. Some local authorities are investing in non-financial assets, with the primary aim of generating profit. Others are entering into very long term investments or providing loans to local enterprises or third sector entities as part of regeneration or economic growth projects that are in line with their wider role for regeneration and place making.

7. In addition, the National Audit Office and the Public Accounts Committee have raised a number of concerns about local authority behaviour that this guidance aims to address. These are:

   - Local authorities are exposing themselves to too much financial risk through borrowing and investment decisions;
   - There is not enough transparency to understand the exposure that local authorities have as a result of borrowing and investment decisions; and
   - Members do not always have sufficient expertise to understand the complex transactions that they have ultimate responsibility for approving.

Effective Date [paragraphs 11-12]

8. This Guidance applies from 1 April 2018. It supersedes all previous editions of the Guidance.

9. The Guidance requires local authorities to produce a number of additional disclosures. Many local authorities already produce these as part of internal reporting and risk management procedures. However, if these disclosures are not currently produced, then local authorities do not need to prepare them in full for Strategies presented to full Council or equivalent before 1 April 2018. Those local authorities who do not include the required disclosures in their 2018-19 strategies, should present them for approval the first time the relevant Strategy is updated or superseded.

Local Authorities [paragraphs 12-13]

10. This Guidance applies to all local authorities, who hold or during the next financial year intend to hold financial or non-financial investments, solely or in part to generate revenue income.

11. It applies to parish councils whose investments exceed the thresholds set out in paragraph 14. The decision to lower the financial threshold for parish councils has been taken in recognition that some parishes have begun to engage in commercial ventures. As parish councils tend to be fairly small and to obtain a greater percentage of their funding directly from council tax payers than other types of local authority, it is right that they demonstrate that they have carefully considered the expertise that they need to manage the risks arising from their strategy.

Transparency and democratic accountability [paragraphs 15-19]

12. The Government believes that local authorities need to be better at explaining "why" not just "what" they are doing with their investment activity. That means that the sector needs to demonstrate more transparency and openness and to make it easier for informed observers to understand how good governance and democratic accountability have been exercised.

13. The additional disclosures required by the Guidance should be included in a single document presented to full Council or the equivalent. Although the Guidance refers to an Investment Strategy, providing that all of the disclosures are easy for interested parties to find and are in or linked from a single document, a separate Strategy does not need to be prepared. The Strategy should be updated at least annually.

14. Subject to the provisions in paragraph 35 and 36 of the commentary, local authorities can exclude specific non-financial investments from the required disclosures on grounds of commercial confidentiality. The Government expects that non-disclosure on grounds of commercial confidentiality will be an exceptional circumstance. A local authority should only determine that it would breach commercial confidentiality to include an investment in the disclosures on receipt of appropriate professional advice, using the same criteria as would be used to exclude the public from a Council meeting. Local authorities should reassess whether the commercial confidentiality test is met every time a new Strategy is presented to full Council or the equivalent.

15. Under Regulation 17 of the *The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012* as amended overview and scrutiny committee members have right of access to any confidential information relating to any decision by any committee or any member of the executive of their council. Nothing in this Guidance has the power to override this regulation.

16. Assets that generate revenue income solely through fees and charges for discretionary services levied under Section 93 of the *Local Government Act 2003* should not be classified as non-financial investments for this purpose.

17. If disclosures are already produced in another document that is publicly available then a local authority can provide a link to the disclosures from the Strategy rather than reproducing them. The exception is disclosures contained in the Statutory Accounts, which do not meet the requirements of this Strategy. This is because local authority statutory accounts can be complex and difficult for users who are not familiar with local government accounting to understand and statutory accounts are prepared to a higher level of materiality than local authorities should use for internal risk management.

Contribution [paragraphs 20-22]

18. Local authorities may have several different objectives, when deciding to acquire an asset. If an asset is not solely held for yield, then a local authority may have a different risk appetite or be willing to accept a lower return than it otherwise would.

19. Each local authority should determine how it categorises different types of contribution, and each investment can have more than one type of contribution. A non-exhaustive list of types of contribution include:

    • Yield/profit

    • Regeneration

    • Economic benefit/business rates growth

    • Responding to local market failure

    • Treasury management

20. Where a local authority classifies an investment as contributing to regeneration or local economic benefit, it should be able to demonstrate that the investment forms part of a project in its Local Plan.

Use of indicators [paragraphs 23-25]

21. Local authorities should present a range of indicators to allow members and other interested parties to understand the total exposure from borrowing and investment decisions. The indicators should cover both the local authority's current position and the expected position assuming all planned investments for the following year are completed. The indicators do not need to take account of Treasury Management investments unless these are expected to be held for more than 12 months.

22. The Guidance requires local authorities to develop quantitative indicators that allow Councillors and the public to assess a local authority's total risk exposure as a result

of its investment decisions. We recommend that, the indicators in the table below are used. Where local authorities have a different risk appetite or different expectation of returns depending on the contribution(s) each type of investment makes, they should consider presenting the indicators, classified by type of contribution or risk appetite.

Debt to net service expenditure (NSE) ratio	*Gross debt as a percentage of net service expenditure, where net service expenditure is a proxy for the size and financial strength of a local authority.*
Commercial income to NSE ratio	*Dependence on non-fees and charges income to deliver core services. Fees and charges should be netted off gross service expenditure to calculate NSE.*
Investment cover ratio	*The total net income from property investments, compared to the interest expense.*
Loan to value ratio	*The amount of debt compared to the total asset value.*
Target income returns	*Net revenue income compared to equity. This is a measure of achievement of the portfolio of properties.*
Benchmarking of returns	*As a measure against other investments and against other council's property portfolios.*
Gross and net income	*The income received from the investment portfolio at a gross level and net level (less costs) over time.*
Operating costs	*The trend in operating costs of the non-financial investment portfolio over time, as the portfolio of non-financial investments expands.*
Vacancy levels and Tenant exposures for non-financial investments	*Monitoring vacancy levels (voids) ensure the property portfolio is being managed (including marketing and tenant relations) to ensure the portfolio is productive as possible.*