



# Local Government Finance Act 1988

## 1988 CHAPTER 41

### PART XI

#### MISCELLANEOUS AND GENERAL

##### *Capital expenditure*

#### **130 Acquisition of interests less than freehold**

After section 79 of the Local Government, Planning and Land Act 1980 there shall be inserted the following section—

##### **“79A Acquisition of leasehold etc. treated as acquisition of freehold**

(1) In any case where—

- (a) an interest in or right over land is acquired on or after 10 March 1988, and
- (b) the interest or right confers a right to possession or occupation of the land, and
- (c) the interest or right is neither the fee simple absolute in possession nor an interest or right not exceeding one year in duration, and
- (d) the acquisition is neither by gift nor by deed with no consideration other than the presumed consideration imported by the deed,

then, for the purposes of this Part of this Act, the authority making the acquisition shall be treated as having acquired, for a consideration which is not in money alone, the fee simple absolute in possession in that land, subject only to the interests and rights referred to in subsection (2) below.

(2) The interests and rights referred to in subsection (1) above are those (if any) to which the interest or right which is actually acquired is subject at the time of the acquisition, excluding any which arise by virtue of a mortgage or charge to secure the payment of money.

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- (3) In subsection (1)(b) above—
  - (a) “possession” has the same meaning as in the Law of Property Act 1925, that is to say, it includes receipt of rents and profits or the right to receive the same, if any; and
  - (b) “occupation” means occupation with-out possession but, subject to that, includes future occupation.
- (4) Subsection (12) of section 80 below applies for the purposes of this section but where, by virtue of that subsection, an authority is taken to acquire an interest exceeding one year in duration, that interest shall not be regarded for the purposes of subsection (1)(c) above as the fee simple absolute in possession.”

### **131 Prescribed expenditure**

- (1) In the Local Government, Planning and Land Act 1980 (in this section referred to as “the 1980 Act”), in section 71 (expenditure to which Part VIII of the 1980 Act applies) for subsection (2) there shall be substituted the following subsection—
  - “(2) Where any of the activities specified in paragraph 1 of Schedule 12 to this Act is undertaken by or for an authority, then, subject to paragraphs 2 to 5 of that Schedule, the amount of expenditure which,—
    - (a) by virtue of sections 79A to 80B below, the authority is to be taken to incur on that activity, or
    - (b) in a case not falling within those sections, the authority actually incurs on that activity,
 is prescribed expenditure for the purposes of this Part of this Act.”
- (2) In section 80 of the 1980 Act (which determines the amount of expenditure which is to be taken to be incurred where an interest in or right over property is acquired) for subsection (4) there shall be substituted the following subsection—
  - “(4) Where the acquisition is, or is treated by virtue of section 79A above as being, the acquisition of the fee simple absolute in possession and subsection (3) above does not apply, the amount is the consideration in money which would be obtained for that fee simple if it were sold on the open market by a willing seller at the time of the acquisition; and in determining, for the purpose of calculating that amount, to what interests and rights the fee simple is at that time subject—
    - (a) where section 79A applies there shall be taken into account only those mentioned in subsection (2) of that section; and
    - (b) there shall be left out of account those arising by virtue of a mortgage or charge to secure the payment of money.”
- (3) In subsection (5) of the said section 80 for paragraph (a) there shall be substituted the following paragraph—
  - “(a) the acquisition, though treated by virtue of section 79A above as the acquisition of a fee simple, is in fact the acquisition of a leasehold interest in land; and”.
- (4) In subsection (8) of the said section 80 for the words “right to occupy” there shall be substituted “right to possession or occupation of”.
- (5) Subsection (14) of the said section 80 shall be omitted.

- (6) In section 80A of the 1980 Act (payment for works carried out for an authority), in subsection (5) (value of works at any time) at the end of paragraph (b) there shall be added “and
- (c) the value of any consideration which is not in money and which has been or is to be given by the authority for the carrying out of the works”.
- (7) In subsection (9) of the said section 80A (works treated as carried out for an authority in cases specified in or determined under regulations) after the words “subsection (1)” there shall be inserted “and section 71(2)”.
- (8) This section shall be deemed to have come into force on 10 March 1988 but, subject to subsection (9) below, the reference in section 80A(5)(c) of the 1980 Act (as amended by subsection (6) above) to consideration which is not in money does not include consideration given in pursuance of a contract entered into before that date.
- (9) In any case where the consideration which is not in money and which is given pursuant to a contract entered into before 10 March 1988 is affected by—
- (a) a variation of the contract on or after that date,
- or
- (b) the exercise on or after that date of an option or other right conferred by the contract,
- so much (if any) of that consideration as exceeds what it would have been if the contract had not been so varied or, as the case may be, if the option or other right had not been so exercised shall be regarded for the purposes of subsection (8) above as given in pursuance of a contract entered into after 10 March 1988.

### **132 Share and loan capital and guarantee payments**

- (1) In the Local Government, Planning and Land Act 1980 (in this section referred to as “the 1980 Act”), in Schedule 12 (prescribed expenditure under Part VIII), in paragraph 1, in sub-paragraph (f) the final “and” shall be omitted and at the end of sub-paragraph (g) there shall be added—
- “(h) the acquisition of share capital or loan capital (within the meaning of section 78 of the Finance Act 1986) of any body corporate which is not an authority to which this Part of this Act applies, and
- (i) the making of payments pursuant to an obligation arising under a guarantee or indemnity given with respect to money borrowed by any person”.
- (2) At the end of paragraph 3 of the said Schedule 12 there shall be inserted the following paragraph—
- “3A The reference in paragraph 3 above to a county council includes a reference to any district council or other body in whom, by virtue of an order under any provision of Part VII of the Local Government Act 1985, there is for the time being vested a superannuation fund which, before the abolition date, within the meaning of that Act, was maintained by the Greater London Council or a metropolitan county council as mentioned in section 60 of that Act.”
- (3) With respect to expenditure on the matters specified in paragraphs (h) and (i) of paragraph 1 of the said Schedule 12 (as amended by subsection (1) above), the

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powers conferred by paragraph 4 of that Schedule (to provide by regulations that certain expenditure which would otherwise be prescribed expenditure shall not be such expenditure) may be exercised so as to have effect with respect to expenditure incurred (or treated by virtue of any provision of Part VIII of the 1980 Act as incurred) on or after 10 March 1988.

- (4) In section 75 of the 1980 Act (capital receipts) the power conferred by subsection (5) (d) (to provide that certain assets are brought within the scope of the section) may be exercised with respect to disposals on or after 10 March 1988 of assets acquired on or after that date in cases where, by virtue of the amendments made by subsection (1) above, expenditure on the acquisition of the assets is prescribed expenditure; and, with respect to capital receipts resulting from such disposals, the powers conferred by sections 72(3)(d) and 75(5)(a) of that Act (which relate to the prescribed proportion of an authority's capital receipts) may be similarly exercised.
- (5) In section 80 of the 1980 Act (valuation)—
- (a) in subsections (9) and (10) (which relate to the acquisition of property in goods or an interest or right in goods) after the word “goods”, in each place where it occurs, there shall be inserted “share capital or loan capital”; and
  - (b) at the end of subsection (15) (definition of “property” for subsections (9) and (10)) there shall be added the words “and loan capital has the same meaning as in section 78 of the Finance Act 1986.”
- (6) Subsections (1), (2) and (5) above shall be deemed to have come into force on 10 March 1988.

*Other miscellaneous provisions*

**133 Community charges: cross-border information**

- (1) The Secretary of State may make regulations providing that any person mentioned in subsection (2) below shall supply to a community charges registration officer for an English or Welsh charging authority such information as fulfils the following conditions—
- (a) it is in the possession or control of the person concerned,
  - (b) the registration officer requests the person concerned to supply it,
  - (c) it is requested by the registration officer for the purpose of carrying out his functions under Part I, and
  - (d) it does not fall within any prescribed description of information which need not be supplied.
- (2) The persons are—
- (a) the community charges registration officer for a Scottish region or islands area,
  - (b) a Scottish regional council or islands council, and
  - (c) the assessor or electoral registration officer for any area in Scotland.
- (3) The Secretary of State may make regulations providing that any person mentioned in subsection (4) below shall supply to a community charges registration officer for a Scottish region or islands area such information as fulfils the following conditions—
- (a) it is in the possession or control of the person concerned,
  - (b) the registration officer requests the person concerned to supply it,

- (c) it is requested by the registration officer for the purpose of carrying out his functions under the Abolition of Domestic Rates Etc. (Scotland) Act 1987, and
  - (d) it does not fall within any prescribed description of information which need not be supplied.
- (4) The persons are—
- (a) the community charges registration officer for an English or Welsh charging authority,
  - (b) an English or Welsh charging authority, and
  - (c) the electoral registration officer for any area in England and Wales.
- (5) Regulations under this section may include provision that the information is to be supplied in a prescribed form and within a prescribed period of the request being made.

### **134 Duty to consult ratepayers**

- (1) A relevant authority shall consult under this section persons or bodies appearing to it to be representative of persons subject to non-domestic rates under sections 43 and 45 above as regards hereditaments situated in the authority's area.
- (2) Consultations must be made as to each chargeable financial year, and must be about the authority's proposals for expenditure (including capital expenditure) in that financial year; and the Secretary of State may by regulations prescribe matters which are to be treated as expenditure for this purpose.
- (3) Each of the following is a relevant authority—
- (a) a charging authority;
  - (b) a precepting authority which falls within section 144(2)(a) to (e) below.
- (4) The duty to consult as to a financial year shall be performed—
- (a) where the authority is a charging authority, before it makes calculations (otherwise than by way of substitute) in relation to the financial year under section 95 above;
  - (b) where the authority is a precepting authority, before it issues the first precept to be issued by it for the financial year.
- (5) In performing the duty to consult, an authority shall have regard to any guidance issued by the Secretary of State concerning—
- (a) persons or bodies to be regarded for the purposes of this section as representative of persons subject to non-domestic rates under sections 43 and 45 above as regards hereditaments situated in the authority's area, and
  - (b) the timing and manner of consultations under this section.
- (6) An authority shall make available to persons or bodies it proposes to consult under this section such information as may be prescribed by regulations made by the Secretary of State and is in its possession or control; and it shall do so in such form and manner, and at such time, as the regulations may prescribe.

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**135 Social security**

Schedule 10 below (which amends the Social Security Act 1986 so as to make provision for benefits in respect of community charges in England and Wales and Scotland) shall have effect.

**136 Tribunals**

Schedule 11 below (which contains provisions about the establishment of, and other matters relating to, valuation and community charge tribunals) shall have effect.

**137 Amendments**

Schedule 12 below (which contains amendments) shall have effect.

*General*

**138 Judicial review**

(1) The matters mentioned in subsection (2) below shall not be questioned except by an application for judicial review.

(2) The matters are—

- (a) the setting by a charging authority of an amount or amounts for its personal community charges for a chargeable financial year, whether originally or by way of substitute,
- (b) the determination by a charging authority of any standard community charge multiplier for properties in its area,
- (c) a specification by the Secretary of State under section 40 above,
- (d) a precept issued under this Act, whether originally or by way of substitute,
- (e) a levy issued under regulations under section 74 above,
- (f) a special levy issued under regulations under section 75 above,
- (g) a calculation under section 95(4) above, whether original or by way of substitute,
- (h) the specification of a non-domestic rating multiplier under paragraph 2 of Schedule 7 below,
- (i) the specification of a non-domestic rating multiplier under paragraph 7 of Schedule 7 below, and
- (j) the setting by a special authority of a non-domestic rating multiplier under Schedule 7 below, whether originally or by way of substitute.

(3) If on an application for judicial review the court decides to grant relief in respect of any of the matters mentioned in subsection (2)(a) or (d) to (j) above, it shall quash the setting, precept, levy, special levy, calculation or specification (as the case may be).

**139 Functions to be discharged only by authority**

(1) Each of the functions of an authority mentioned in subsection (2) below shall be discharged only by the authority.

(2) The functions are—

- (a) setting an amount or amounts for the authority's personal community charges for a chargeable financial year, whether originally or by way of substitute,
- (b) issuing a precept under this Act, whether originally or by way of substitute,
- (c) making a calculation under section 95(4) above, whether originally or by way of substitute, and
- (d) setting a non-domestic rating multiplier under Schedule 7 below, whether originally or by way of substitute, in a case where the authority is a special authority.

#### **140 Separate administration in England and Wales**

- (1) Parts III, V and VII shall be read as applying separately, and be administered separately, in England and Wales.
- (2) In particular, for England and Wales respectively—
  - (a) separate central non-domestic rating lists shall be compiled and maintained,
  - (b) separate estimates shall be made under paragraph 5(6) and (7) of Schedule 7 below for the purpose of determining non-domestic rating multipliers,
  - (c) separate non-domestic rating accounts shall be kept,
  - (d) separate revenue support grant reports shall be made,
  - (e) separate distribution reports under section 80 above shall be made, and
  - (f) separate principles shall be determined under section 100(4) above.
- (3) Parts III, V and VII shall be construed accordingly so that (for instance) references to authorities shall be read as references to those in England or Wales, as the case may be.
- (4) Any power conferred by this Act on the Secretary of State or the Treasury may be exercised differently for England and Wales, whether or not it is exercised separately; and this shall not prejudice the generality of section 143(1) below.

#### **141 Payments to and from authorities**

- (1) The Secretary of State may make regulations in relation to any case where—
  - (a) he is liable to pay to a receiving authority at any time an amount or amounts under one or more of the first relevant provisions, and
  - (b) the authority is liable to pay to him at the same time an amount or amounts under one or more of the second relevant provisions.
- (2) The regulations may provide that if the total of the amount or amounts mentioned in subsection (1)(a) above exceeds the total of the amount or amounts mentioned in subsection (1)(b) above, he may set off the latter in paying the former.
- (3) The regulations may provide that if the total of the amount or amounts mentioned in subsection (1)(b) above exceeds the total of the amount or amounts mentioned in subsection (1)(a) above, the authority shall set off the latter in paying the former.
- (4) The regulations may provide that if the total of the amount or amounts mentioned in subsection (1)(a) above is the same as the total of the amount or amounts mentioned in subsection (1)(b) above no payment need be made in respect of the former or the latter.
- (5) Without prejudice to section 143(2) below, the regulations may include provision—
  - (a) treating any liability mentioned in subsection (1) above as discharged accordingly;

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- (b) requiring prescribed provisions of this Act (such as sections 79(2) and 86(2)) to be read subject to the regulations;
  - (c) requiring prescribed provisions of this Act (such as paragraph 2 of Schedule 8) to be read as if references to sums received or payments made were to sums or payments which would have been received or made apart from the regulations.
- (6) Each of the following is a receiving authority—
- (a) a charging authority, and
  - (b) in the application of this section to Wales, a county council.
- (7) The first relevant provisions are sections 83 and 86 above, paragraph 5(10) of Schedule 8 below, regulations made under paragraph 6(5) of that Schedule, and paragraphs 9, 12 and 13 of that Schedule.
- (8) The second relevant provisions are section 83 above and paragraph 5 of Schedule 8 below.

## **142 Saving for remedies**

No provision of this Act which provides an express remedy shall prejudice any remedy available to a person (apart from that provision) in respect of a failure to observe a provision of this Act; and references here to this Act include references to instruments made under it.

## **143 Orders and regulations**

- (1) The power to make an order or regulations under this Act may be exercised differently in relation to different areas or in relation to other different cases or descriptions of case.
- (2) An order or regulations under this Act may include such supplementary, incidental, consequential or transitional provisions as appear to the Secretary of State or the Treasury (as the case may be) to be necessary or expedient.
- (3) Subject to subsections (4) to (9) below, the power to make an order or regulations under this Act shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The power to make regulations under section 57 or 58 above shall be exercisable by statutory instrument, and no such regulations shall be made unless a draft of them has been laid before and approved by resolution of each House of Parliament.
- (5) As regards the power to make regulations under section 75 or 118 above, subsection (3) above shall have effect without the words from “subject” to the end.
- (6) As regards the power to make an order under section 101(1) or (2) above or section 150 below, subsection (3) above shall have effect without the words from “subject” to the end.
- (7) The power to make an order under section 104 or 106 above shall be exercisable as there mentioned.
- (8) The power to make an order under paragraph 3 of Schedule 6 below shall be exercisable by statutory instrument, and no such order shall be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.



- (9) The power to make an order under paragraph 5 of Schedule 7 below shall be exercisable as there mentioned.
- (10) Before he makes regulations under section 75 or 118 above, the Secretary of State shall, by means of a notice in a newspaper or newspapers, take such steps as he thinks reasonably practicable to bring the contents of the proposed regulations to the notice of persons likely to be affected.
- (11) An order under paragraph 3 of Schedule 6 below shall, if apart from the provisions of this subsection it would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, proceed in that House as if it were not such an instrument.

#### **144 Interpretation: authorities**

- (1) Each of the following is a charging authority—
  - (a) a district council,
  - (b) a London borough council,
  - (c) the Common Council, and
  - (d) the Council of the Isles of Scilly.
- (2) Each of the following is a precepting authority—
  - (a) a county council,
  - (b) a metropolitan county police authority,
  - (c) the Northumbria Police Authority,
  - (d) a metropolitan county fire and civil defence authority,
  - (e) the London Fire and Civil Defence Authority,
  - (f) the Receiver for the Metropolitan Police District,
  - (g) the sub-treasurer of the Inner Temple,
  - (h) the under-treasurer of the Middle Temple,
  - (i) a parish or community council,
  - (j) the chairman of a parish meeting, and
  - (k) charter trustees.
- (3) A waste disposal authority is an authority established at any time by an order under section 10(1) of the Local Government Act 1985.
- (4) A combined police authority is a combined police authority established at any time by an amalgamation scheme under the Police Act 1964.
- (5) A combined fire authority is a fire authority constituted at any time by a combination scheme under the Fire Services Act 1947.
- (6) A charging authority is a special authority if its population on 1 April 1986 was less than 10,000, and its gross rateable value on that date divided by its population on that date was more than #10,000.
- (7) An authority's population on 1 April 1986 is the Registrar General's estimate of its population on that date as certified by him to the Secretary of State for the purposes of the enactments relating to rate support grant; and an authority's gross rateable value on that date is the aggregate of the rateable values on that date of the hereditaments in its area.

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#### **145 Interpretation: financial years etc**

- (1) Chargeable financial years are financial years beginning in 1990 and subsequent years.
- (2) Transitional years are financial years beginning in 1990, 1991, 1992 and 1993; and the first transitional year is that beginning in 1990.
- (3) A financial year is a period of 12 months beginning with 1 April.

#### **146 Interpretation: other provisions**

- (1) Unless the context otherwise requires, a precept is a precept under this Act.
- (2) Unless the context otherwise requires, a levy is a levy under regulations made under section 74 above, and a levying body is a body with power to issue a levy under those regulations.
- (3) A special levy is a special levy under regulations made under section 75 above.
- (4) The Common Council is the Common Council of the City of London.
- (5) The Inner Temple and the Middle Temple shall be taken to fall within the area of the Common Council.
- (6) “Prescribed”, in the context of an order or regulations, means prescribed by the order or regulations.
- (7) This section and sections 144 and 145 above apply for the purposes of this Act.

#### **147 Power to make supplementary provision**

- (1) The Secretary of State may at any time by order make such supplementary, incidental, consequential or transitional provision as appears to him to be necessary or expedient for the general purposes or any particular purposes of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) An order under this section may in particular make provision for amending, repealing or revoking (with or without savings) any provision of an Act passed before or in the same session as this Act, or of an instrument made under an Act before the passing of this Act, and for making savings or additional savings from the effect of any amendment or repeal made by this Act.
- (3) Any provision that may be made under this section shall be in addition and without prejudice to any other provision of this Act.
- (4) No other provision of this Act shall be construed as prejudicing the generality of the powers conferred by this section.
- (5) In this section “Act” includes a private or local Act.

#### **148 Finance**

- (1) There shall be paid out of money provided by Parliament—
  - (a) any expenses of the Secretary of State incurred in consequence of this Act, and
  - (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

- (2) Any sums received by the Secretary of State in consequence of this Act shall be paid into the Consolidated Fund.

**149 Repeals**

The enactments mentioned in Schedule 13 below are repealed to the extent specified in column 3, but subject to any provision at the end of any Part of that Schedule.

**150 Commencement: Scotland**

The provisions of this Act which extend only to Scotland shall come into force on such day as the Secretary of State may by order appoint; and different days may be so appointed for different provisions or for different purposes.

**151 Extent**

- (1) Part X of this Act, section 150 above, Part II of Schedule 12 below, and Part IV of Schedule 13 below, extend to Scotland only.
- (2) Sections 133, 135, 137, 143, 144(1), 145, 146(6) and (7), 147, 148 and 149 above, this section, section 152 below, Schedule 10 below, and Part III of Schedule 12 below, extend to England and Wales and Scotland.
- (3) Subject to subsections (1) and (2) above, this Act extends to England and Wales only.

**152 Citation**

This Act may be cited as the Local Government Finance Act 1988.