STATUTORY INSTRUMENTS

1995 No. 1982

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Capital Finance and Approved Investments) (Amendment No. 2) Regulations 1995

Made - - - -	*25th July 1995*
Laid before Parliament	*2nd August 1995*
Coming into force - -	*24th August 1995*

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 40(5)(b), 42(4)(a), 49(3), 51(7), 58(9)(b), 59(3) and (5), 64(2), 66(1)(a), 190(1) and 191(1) of, and paragraphs 10 and 15(1)(a) of Schedule 3 to, the Local Government and Housing Act 1989(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Commencement and citation

1. These Regulations may be cited as the Local Authorities (Capital Finance and Approved Investments) (Amendment No. 2) Regulations 1995 and shall come into force on 24th August 1995.

Amendment of Regulations

2. The Local Authorities (Capital Finance) Regulations 1990(**2**) shall be amended in accordance with the provisions of regulations 3 to 11 of these Regulations.

Expenditure not to be expenditure for capital purposes

3. In regulation 3—

(a) at the beginning insert "(1)"; and

(b) at the end add the following paragraphs—

"(2) Expenditure by a local authority which would otherwise be expenditure for capital purposes by virtue of section 40(4) shall not be expenditure for capital purposes if it is relevant expenditure.

(3) In this regulation—

(**1**) 1989 c. 42.
(**2**) S.I. 1990/432; amended by S.I. 1992/738 and S.I. 1995/850. There are other amendments not relevant to these Regulations.

[DOE 0229]

"relevant expenditure" means expenditure by a local authority on the making of an investment, where—

(a) the authority apply a relevant amount to meet the expenditure in question; and

(b) the investment consists of a deposit made with, or any security or other instrument issued by, an institution or building society (in this paragraph referred to as "the relevant body") which was liable to pay a relevant amount;

"relevant amount" means any amount which—

(a) is due to the authority under an investment which is an approved investment under regulation 2(b) or (c) of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(**3**); and

(b) becomes payable by the relevant body, before the date on which the authority are entitled under the terms of the investment to require it to be repaid or redeemed, by reason of a default or breach of covenant on the part of the relevant body in relation to the payment of the principal sum deposited or interest.".

Expenditure excluded from section 41(1)

4. After regulation 4 insert the following regulation—

"**4A.**—(1) Expenditure by a local authority which would otherwise not be expenditure falling within section 42(2) shall be expenditure falling within that section if it is relevant expenditure.

(2) The following expenditure shall be expenditure falling within section 42(2)—

(a) expenditure consisting of the application of relevant amounts for any of the purposes specified in regulation 26B(1) or (3);

(b) expenditure consisting of the transfer of relevant amounts to any of the bodies specified in regulation 26B(2); and

(c) expenditure consisting of the application of relevant amounts to meet any liability of a local authority in respect of any levy payable under section 136 of the Leasehold Reform, Housing and Urban Development Act 1993(**4**).

(3) In this regulation—

"relevant amounts" means any amounts for the time being set aside by the authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities; and

"relevant expenditure" has the same meaning as in regulation 3(3) above.".

Variation of credit arrangements

5. In regulation 8, in paragraph (4)—

(a) omit the words "falling within regulation 7(3) above"; and

(b) in sub-paragraph (b), for "regulation 7(5F)" substitute "regulation 7(5C), (5D) or (5F)".

Sums not to be capital receipts

6. In regulation 13, after paragraph (2) add the following paragraphs—

(**3**) S.I. 1990/426; amended by S.I. 1991/501 and S.I. 1992/1353.
(**4**) 1993 c. 28.

"(3) Any sums received by a local authority in respect of the disposal of any investment which, at the time of disposal, is not an approved investment shall not be capital receipts if—

(a) by virtue of regulation 4(2) above, the expenditure by the authority on making the investment was expenditure falling within section 42(2); or

(b) the investment was an approved investment under regulation 2(b) or (c) of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990 ("the 1990 Regulations"), and has ceased to be an approved investment because—

(i) where the deposit which constitutes the investment was made with an authorised institution, that institution has ceased to be an authorised institution within the meaning of regulation 1(2) of the 1990 Regulations; or

(ii) where the deposit which constitutes the investment was made with a building society, that building society has ceased to be a building society within the meaning of regulation 2(c) of the 1990 Regulations.".

Reserved part of capital receipts

7.—(1) In regulation 14—

(a) in paragraphs (1) and (2), for the words "Subject to paragraphs (3) to (9) below" substitute "Subject to paragraphs (3) to (16) below"; and

(b) insert the following paragraphs after paragraph (9)—

"(10) For the purposes of section 59(3), the reserved part of a capital receipt shall be 10 per cent. in the case of a receipt derived from the disposal by a local authority of any freehold or leasehold interest in land where—

(a) the receipt is received during the period beginning on 1st September 1995 and ending on 31st August 1996;

(b) the land is not land to which section 74(1) applied immediately before the disposal;

(c) the whole of the land—

(i) was in use as a car park on 23rd March 1995; or

(ii) ceased to be used as a car park not more than 12 months before that date; or

(iii) had on that date the benefit of a planning permission granted on or after 23rd March 1993 for the provision or use of a car park for an unlimited period or a period of not less than five years; and

(d) if, on the date of the disposal, the land has ceased to be used as a car park, it has not, since the date on which it ceased to be used as a car park, been used under a planning permission granted for any other use for a period of more than five years.

(11) For the purposes of section 59(3), the reserved part of a capital receipt shall be the percentage determined in accordance with paragraph (12) below in the case of a receipt which is derived from the disposal by a local authority of any freehold or leasehold interest in any land (in this paragraph and in paragraphs (12), (13) and (14) below referred to as "the land") where—

(a) on the date of the disposal, the land in whole or part comprises shops;

(b) the receipt is received during the period beginning on 1st September 1995 and ending on 31st August 1996; and

(c) the land is not land to which section 74(1) applied immediately before the disposal.

(12) For the purposes of paragraph (11) above—

(a) where the whole of the land comprises shops, the reserved part of the capital receipt shall be 10 per cent. of the receipt; and

(b) where a part of the land comprises shops, the reserved part of the capital receipt shall be the amount which, but for this paragraph, would be the reserved part of the receipt less the amount, if any, by which the product of the formula

$$(C \times D \times E)$$

exceeds the product of the formula

$$(F \times D \times E).$$

(13) For the purposes of paragraph (12)(b) above—

C is the percentage of the capital receipt which, but for paragraph (12), would be the reserved part;

D is the percentage of the notional value of the land, estimated immediately before the disposal, which is attributable to the part of the land comprising shops;

E is the capital receipt; and

F is 10 per cent.

(14) In paragraphs (11) to (13) above—

(a) a reference to the notional value of the land is a reference to the capital sum which would be paid for the grant of a leasehold interest in the land for a term of 999 years on the assumption that the lease reserved a nominal rent and that the lessee would have vacant possession; and

(b) "shops" includes—

(i) all buildings and all parts of any building on the land which are constructed or adapted for use as a shop; and

(ii) all other parts of the land which are in use for the purposes of, or in connection with, the business of a shop on the land, or are intended for use for the purposes of, or in connection with, such a business (whether or not they are being so used).

(15) For the purposes of section 59(3), the reserved part of a capital receipt shall be 10 per cent. in the case of a receipt which does not fall within paragraph (11) above, and is derived from the disposal by a local authority of any freehold or leasehold interest in any land (in this paragraph referred to as "the land") where—

(a) the receipt is received during the period beginning on 1st September 1995 and ending on 31st August 1996;

(b) the land is not land to which section 74(1) applied immediately before the disposal; and

(c) the land had, on 23rd March 1995, the benefit of a planning permission granted on or after 23rd March 1993 for the provision or use of shops for an unlimited period or a period of not less than five years.

(16) For the purposes of section 59(3), the reserved part of a capital receipt shall be 10 per cent. in the case of a receipt which—

(a) is derived from the disposal by a local authority of any freehold or leasehold interest in land comprising a crematorium within the meaning of section 2 of the Cremation Act 1902(**5**); and

(**5**) 1902 c. 8.

(b) is received during the period beginning on 1st January 1996 and ending on 30th June 1997.".

(2) In Part I of Schedule 1, in paragraph 6, substitute for sub-paragraph (b) the following sub-paragraph—

"(b) at the time the receipts are received, the authority have no money outstanding by way of borrowing other than—

(i) short-term borrowing (within the meaning of section 45(6));

(ii) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924(**6**); or

(iii) borrowing undertaken before 24th August 1995, other than borrowing by the issue of stock on or after 15th December 1993, from a person who is not a relevant lender as defined for the purposes of Part VIIIA in regulation 26A(**7**);".

Minimum revenue provision for subsequent financial years

8. In regulation 26—

(a) in paragraph (1), for the words "Subject to paragraphs (5) to (13) below" substitute "Subject to paragraphs (5) to (16) below"; and

(b) at the end add the following paragraphs—

"(14) This paragraph applies to a county council of which a committee was a police authority before the establishment of new police authorities under section 3 of the Police Act 1964(**8**) (as substituted by section 2 of the Police and Magistrates' Courts Act 1994(**9**)).

(15) In relation to a county council to which paragraph (14) above applies, the amount in respect of principal for the purposes of paragraph 15(1)(a) of Schedule 3 to the Act shall, for the financial year beginning on 1st April 1995, be the amount determined under paragraph (1) above as if the council's credit ceiling on 31st March 1995 had been reduced by the amount, if any, by which amount A exceeds amount B, where—

(a) amount A is the police amount; and

(b) amount B is the total amount, if any, by which the council's credit ceiling is increased on 24th August 1995 in accordance with paragraph 10C of Schedule 3 to the Act(**10**).

(16) In paragraph (15) above, "the police amount" means the police amount for the council for 31st March 1995 determined in accordance with sub-paragraph (2) of paragraph 10B of Schedule 3 to the Act(**11**).".

Use of amounts set aside to meet credit liabilities

9. In regulation 26A—

(a) for the definition of "relevant authority" substitute the following—

""relevant authority" means a local authority in England whose credit ceiling, as determined under Part III of Schedule 3 to the Act, is, on the relevant date for any

(**6**) 1924 c. xxxvii. Section 5 was repealed by section 40(1) of The City of London (Various Powers) Act 1960 (c. xxxvi).
(**7**) The definition of "relevant lender" is inserted by regulation 9 of these Regulations.
(**8**) 1964 c. 48.
(**9**) 1994 c. 29.
(**10**) Paragraph 10C of Schedule 3 to the Act is inserted by paragraph 5 of Schedule 3 to the Local Authorities (Capital Finance) Regulations 1990 (S.I. 1990/432; amended by S.I. 1995/850 and regulation 10 of these Regulations).
(**11**) Paragraph 10B of Schedule 3 to the Act was inserted by paragraph 4 of Schedule 3 to the Local Authorities (Capital Finance) Regulations 1990 (S.I. 1990/432; amended by S.I. 1995/850).

financial year, a negative amount, and who have no money outstanding by way of borrowing other than—

(a) short-term borrowing (within the meaning of section 45(6));

(b) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924; or

(c) borrowing undertaken before 24th August 1995, other than borrowing by the issue of stock on or after 15th December 1993, from a person who is not a relevant lender."; and

(b) at the end add the following—

""relevant lender" means the Public Works Loan Board, the Bank of England, the European Investment Bank, a body mentioned in any of paragraphs 1 to 17, or in paragraph 28 or 29, of Part II of the Schedule to the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(**12**), an authorised institution within the meaning of the Banking Act 1987(**13**) or a building society within the meaning of the Building Societies Act 1986(**14**).".

Modification of the credit ceiling

10. In Part II of Schedule 3—

(a) for paragraph 3 substitute the following—

"**3.** A local authority's credit ceiling at any time on or after 24th August 1995 shall be determined in accordance with Part III of Schedule 3 to the Act subject to the following modifications—

(a) no account shall be taken of any amount set aside by the authority by virtue of regulation 26(1)(e), and

(b) where, at any time, amounts for the time being set aside by the authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities are applied by the authority under section 136(8) of the Leasehold Reform, Housing and Urban Development Act 1993(**15**), the authority's credit ceiling shall, at that time, be increased by an amount equal to the amount so applied.";

(b) in paragraph 4—

(i) after "For the purposes of this paragraph" insert "and paragraph 5 below", and for "modification" in sub-paragraph (2) substitute "modifications"; and

(ii) in the modification to Schedule 3 to the Act, for "10C. In paragraphs 10A and 10B above" substitute "10D. In paragraphs 10A, 10B and 10C above"; and

(c) after paragraph 4 insert the following paragraph—

"**5.**—(1) For the purposes of this paragraph, "new police authority" means a police authority established under section 3 of the Police Act 1964 (as substituted by section 2 of the Police and Magistrates' Courts Act 1994) for a police area.

(2) In relation to—

(a) a new police authority whose credit ceiling on 1st April 1995 was determined in accordance with paragraph 10B(1) of Schedule 3 to the Act; and

(**12**) S.I. 1990/426; amended by S.I. 1991/501 and S.I. 1992/1353.
(**13**) 1987 c. 22.
(**14**) 1986 c. 53.
(**15**) 1993 c. 28.

(b) a local authority which is a relevant county council,

in addition to the modifications made in paragraphs 3 and 4 above, Schedule 3 to the Act is modified by the insertion after paragraph 10B of the following paragraph—

"**10C.**—(1) In this paragraph—

"the council", in relation to a new police authority, means the county council of which a committee was the old police authority in accordance with section 2 or 3(4) of the 1964 Act;

"the Order" means the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994(**16**); and

"retained arrangement" means a credit arrangement in relation to property, rights and liabilities which have not vested in a new police authority under article 9 of the Order, or have been apportioned under that article.

(2) Where the credit ceiling of a new police authority on 1st April 1995 has been determined in accordance with paragraph 10B(1) above—

(a) the credit ceiling of the new police authority on 24th August 1995 shall be reduced by the amount, if any, which that authority are deemed to have borrowed from the council by virtue of article 11 of the Order; and

(b) the credit ceiling on 24th August 1995 of the council shall be increased by that amount.

(3) Where the credit ceiling of a new police authority on 1st April 1995 has been determined in accordance with paragraph 10B(1) above, and includes an amount attributable to the use by the council of a credit approval as authority to enter into or agree to a variation of a retained arrangement—

(a) the credit ceiling of the new police authority on 24th August 1995 shall be reduced by an amount determined for each such arrangement in accordance with sub-paragraph (4) below; and

(b) the credit ceiling on 24th August 1995 of the council shall be increased by an equivalent amount for each such arrangement.

(4) For the purposes of sub-paragraph (3)(a) above, the amount to be determined for a retained arrangement is either—

(a) the amount equal to the extent to which a credit approval has been used as authority to enter into or agree to a variation of the arrangement less the total amount set aside from the revenue account of the council as provision for credit liabilities in relation to the arrangement (otherwise than in accordance with a determination under section 50(3)(c) of the Act); or

(b) where a proportion has been agreed under article 9 of the Order for the purposes of apportioning the property, rights and liabilities relating to the arrangement, that proportion of the amount referred to in paragraph (a) above.""

Housing and non-housing amounts for subsequent financial years

11. In paragraph 6 of Schedule 5—

(**16**) S.I. 1994/3262 (C.83); amended by S.I. 1995/246 (C.8) and S.I. 1995/899 (C.23).

(a) in paragraph (i) of sub-paragraph (a), for "in accordance with paragraph 14(2) of Schedule 3 to the Act" substitute "in accordance with paragraph 10C(2)(b) or (3)(b) or 14(2) of Schedule 3 to the Act or in accordance with paragraph 3(b) of Schedule 3 above,"; and

(b) in paragraph (i) of sub-paragraph (b), for "paragraph 12(1) or 14(1)" substitute "paragraph 10B(1)(b), 12(1) or 14(1)".

Approved investments

12. The Local Authorities (Capital Finance) (Approved Investments) Regulations 1990 (**17**) shall be amended—

(a) in regulation 1(2), after the definition of "gilt-edged securities", by inserting the following—

> ""relevant lender" means the Public Works Loan Board, the Bank of England, the European Investment Bank, a body mentioned in any of paragraphs 1 to 17, or in paragraph 28 or 29, of Part II of the Schedule to these Regulations, an authorised institution or a building society within the meaning of the Building Societies Act 1986(**18**);"; and

(b) in regulation 3(3), by substituting for sub-paragraph (c) the following sub-paragraph—

"(c) the authority making the investment, at the beginning of the financial year in which the investment is made, have a credit ceiling, as determined under Part III of Schedule 3 to the Local Government and Housing Act 1989(**19**), which is nil or a negative amount, and, at the time the investment is made, have no money outstanding by way of borrowing other than—

(i) short-term borrowing (within the meaning of section 45(6) of that Act);

(ii) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924; or

(iii) borrowing undertaken before 24th August 1995, other than borrowing by the issue of stock on or after 15th December 1993, from a person who is not a relevant lender.".

Signed by authority of the Secretary of State for the Environment

David Curry
Minister of State,
Department of the Environment

24th July 1995

(**17**) S.I. 1990/426; amended by S.I. 1991/501 and S.I. 1992/1353.
(**18**) 1986 c. 53.
(**19**) 1989 c. 42.

Signed by authority of the Secretary of State for Wales

Gwilym Jones
Parliamentary Under-Secretary of State, Welsh Office

25th July 1995

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Local Authorities (Capital Finance) Regulations 1990 ("the principal Regulations").

Regulations 3 and 4 make provision as to the consequences of a default in the payment of principal or interest under certain approved investments. If specified conditions are met, expenditure on making an investment in substitution for a relevant approved investment shall not be expenditure for capital purposes and does not have to be charged to a revenue account.

Regulation 4 also excludes from the requirement that all expenditure shall be charged to a revenue account expenditure which consists of the application for specified purposes, or the transfer, of amounts set aside as provision for credit liabilities.

Regulation 5 amends regulation 8 of the principal Regulations to provide that where a lease of land is varied by the grant of a new lease of the same land, the adjusted cost of the credit arrangement shall be nil, provided that the new lease would, if granted when the original lease expired, fall within regulation 7(5C), (5D) or (5F) of the principal Regulations.

Regulation 6 amends regulation 13 of the principal Regulations to provide that, if specified conditions are met, the sums received in respect of the disposal of an investment which, at the time of disposal, is not an approved investment shall not be capital receipts.

Regulation 7 amends regulation 14 of, and Part I of Schedule 1 to, the principal Regulations. The main effect of the amendments is that if specified conditions are met—

(a) the reserved part of a local authority's capital receipts shall be 10 per cent. where a receipt is received within a specified period in respect of a disposal of land which is used as a car park, or comprises a crematorium or, in whole or part, comprises shops; and

(b) a local authority shall not be required to set aside part of its capital receipts as provision to meet credit liabilities notwithstanding that they still have certain outstanding debt (other than short-term borrowing).

Regulation 9 amends regulation 26A of the principal Regulations to provide that an authority may have the use of amounts set aside as provision to meet credit liabilities notwithstanding that they still have certain outstanding debt (other than short-term borrowing).

Regulations 8 and 10 make further amendments to Part VIII of the principal Regulations (minimum revenue provision) and Part II of Schedule 3 to the principal Regulations (credit ceiling on or after 1st April 1990) to take account of the new police authorities established under section 3 of the Police Act 1964 (as substituted by section 2 of the Police and Magistrates' Courts Act 1994).

Regulation 10 also amends Part II of Schedule 3 to the principal Regulations to provide that the credit ceiling of a local authority shall be increased where the authority apply the amount set aside as provision to meet credit liabilities to meet any levy payable under section 136 of the 1993 Act.

Regulation 11 amends Part II of Schedule 5 to the principal Regulations which describes how an authority required to keep a Housing Revenue Account calculate the housing and non-housing amounts for the purposes of minimum revenue provision. The modification affects the determination of the non-housing amount.

Regulation 12 further amends the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990 to provide that an authority may meet the conditions for their longer-term

investments to be approved investments notwithstanding that they still have certain outstanding debt (other than short-term borrowing).