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## STATUTORY INSTRUMENTS

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# 1997 No. 319

## The Local Authorities (Capital Finance) Regulations 1997

### PART VII

#### RESERVED PART OF CAPITAL RECEIPTS

##### *Preliminary provisions*

##### **Interpretation**

**64.** In this Part—

“nil per cent. receipt” means a capital receipt of which the reserved part is nil per cent. by virtue of regulation 65;

“the authority”, in relation to a capital receipt, means the local authority by whom the receipt is received; and

“reserved part”, in relation to a capital receipt received by a local authority, means the amount or the percentage of the receipt which is the reserved part of the receipt for the purposes of section 59 (the reserved part of capital receipts).

##### **Capital receipts of debt-free authorities**

**65.—(1)** In this regulation—

“disregarded borrowing” means—

- (a) borrowing which is short-term borrowing for the purposes of section 45(1)(b) (the authority’s own borrowing limits);
- (b) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924(1); 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

“relevant lender” means—

- (a) the Public Works Loan Board;
- (b) the Bank of England;
- (c) the European Investment Bank;
- (d) a body mentioned in any of paragraphs 1 to 17, or in paragraph 28, 29 or 30, of Part II of the Schedule to the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990;

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(1) 1924 c. xxxvii. Section 5 was repealed by section 40(1) of the City of London (Various Powers) Act 1960 (c. xxxvi).

- (e) an authorised institution (within the meaning which that expression has in the Banking Act 1987 **(2)**); or
  - (f) a building society (within the meaning given to that expression in the Building Societies Act 1986 **(3)**).
- (2) The reserved part of a capital receipt shall be nil per cent. where—
- (a) at the beginning of the financial year in which the receipt is received, the credit ceiling of the authority, as determined under Part III of Schedule 3 to the Act, was nil or a negative amount;
  - (b) at the time the receipt is received, the authority have no money outstanding by way of borrowing other than disregarded borrowing;
  - (c) the reserved part does not fall to be determined under regulation 67, 68, 69 or 70; and
  - (d) if the receipt was derived from the disposal of an interest in a dwelling held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation)**(4)**, the disposal was made by virtue of Part V of that Act (the right to buy).

#### *Share capital and loan capital*

#### **Disposal of share and loan capital**

**66.—**(1) In this regulation—

“capital in a bus company” means share capital or loan capital which—

- (a) is in a company formed under section 59 or 67 of the Transport Act 1985**(5)**, and was acquired by the authority before 15th February 1989; or
- (b) is in a company formed under section 61 of that Act, and was acquired by the authority before the date, if any, specified in relation to the company under subsection (9) of that section;

“capital in a public airport company” means share capital or loan capital which is in a public airport company, and which was acquired by the authority—

- (a) before 15th February 1989; or
- (b) on or after 15th February 1989 as consideration for a transfer to the company of any property or rights of the authority, or in advance of such a transfer by virtue of a scheme under section 15 of the Airports Act 1986**(6)**;

“education or training company” means a company which is engaged principally either—

- (a) in the activities of providing, constructing, improving, repairing and maintaining land and any other assets in use for the purposes of a school which is a maintained school within the meaning given to that expression in section 305 of the Education Act 1993**(7)**; or
- (b) in the provision of the services which the Secretary of State is under a duty to secure under section 8 of the Employment and Training Act 1973 (careers services for school

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(2) 1987 c. 22.  
 (3) 1986 c. 53.  
 (4) 1985 c. 68.  
 (5) 1985 c. 67.  
 (6) 1986 c. 31.  
 (7) 1993 c. 35.

and college students)(8), or has a power to secure under section 9 of that Act (careers services for others); and

“non-housing company”, in relation to any share capital or loan capital, means a company which has not, at any time since the date of issue of the capital concerned, engaged in any of the activities of providing, constructing, improving, managing, facilitating or encouraging the construction or improvement of housing accommodation; and

“public airport company” has the same meaning as in Part II of the Airports Act 1986.

(2) The reserved part shall be 75 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received in respect of a disposal of share capital or loan capital in a body corporate, other than a disposal of share capital or loan capital which—

- (a) is capital in a bus company;
- (b) is capital in a public airport company;
- (c) is capital in a company such as is mentioned in paragraph (4);
- (d) is in a company which was formed by, or with the participation of, the authority, and, at the time of the disposal, is an education or training company;
- (e) is in a non-housing company, and was acquired by the authority—
  - (i) before 10th March 1988; or
  - (ii) on or after 1st April 1990 for the purpose of providing financial assistance under section 33 (promotion of economic development);
- (f) is in a company formed by, or with the participation of, the authority for any of the purposes referred to in section 145(1) of the Local Government Act 1972 (provision of entertainments)(9); or
- (g) is in a company formed by, or with the participation of, the authority as mentioned in subsection (3)(a) of section 32 of the Environmental Protection Act 1990 (transition to waste disposal companies)(10), or pursuant to directions given by the Secretary of State under section 32(2) of that Act.

(3) The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of—

- (a) a disposal of capital in a bus company; or
- (b) a disposal of capital in a public airport company, where the company, by virtue of the disposal and the issue of any further share capital in the company, ceases to be a public airport company.

(4) The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of share capital or loan capital in a company where—

- (a) at the time of the disposal, the company is carrying on the business of operating an airport and is not a public airport company; and
- (b) at the time when the authority acquired the share capital or loan capital, the company was carrying on the business of operating an airport, or was in the course of taking over that business from the authority.

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(8) 1973 c. 50. Sections 8 and 9 were substituted by section 45 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(9) 1972 c. 70.

(10) 1990 c. 43.

### *Repayment of grants and other receipts*

#### **Grants and advances to housing associations**

**67.**—(1) In the case of a payment which is a capital receipt by virtue of section 58(1)(c) or (d), the reserved part shall be 100 per cent. if the payment is made in respect of a grant, an advance or other financial assistance which—

- (a) was made or given by the authority to a housing association (within the meaning given to that expression in section 1 of the Housing Associations Act 1985<sup>(11)</sup>); and
- (b) was to be applied towards expenditure for which the housing association received a grant under section 18 of the Housing Act 1996<sup>(12)</sup>, section 50 of the Housing Act 1988<sup>(13)</sup>, section 41(1) of the Housing Associations Act 1985 <sup>(14)</sup> or section 29(1) of the Housing Act 1974 <sup>(15)</sup>.

(2) In the case of a capital receipt which is received in respect of—

- (a) the disposal of an interest in land acquired by the authority under a mortgage made as security for an advance, or
- (b) the assignment of a debt owed to the authority in connection with an advance,

the reserved part shall be 100 per cent. if the reserved part of a repayment of the principal of the advance would fall to be determined under paragraph (1).

#### **Payments in respect of transferred property and deemed borrowing**

**68.** The reserved part shall be 100 per cent. in the case of a sum which is a capital receipt by virtue of regulation 56, 57 or 58, and is an annual or other periodic payment calculated by reference to any amounts outstanding by way of principal of money borrowed by the authority.

#### **Payments for redemption of landlord's share**

**69.** The reserved part shall be 75 per cent. in the case of a sum which is a capital receipt by virtue of regulation 59.

#### **Payments in respect of disposal of premises transferred to grant-maintained school**

**70.**—(1) In this regulation, “relevant proceeds” means the proceeds of any disposal made by the governing body of a grant-maintained school (within the meaning given to that expression in regulation 60) with the consent of the Secretary of State under section 298(1) of the Education Act 1996<sup>(16)</sup>.

(2) Subject to paragraph (3), the reserved part shall be 100 per cent. in the case of a sum which is a capital receipt by virtue of regulation 60 (“a relevant sum”).

(3) In the case of a relevant sum, where—

- (a) the Secretary of State notifies the authority, before they receive the relevant sum, of the amount of the relevant proceeds in respect of which that sum is payable (“the proceeds”), and

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(11) 1985 c. 69.

(12) 1996 c. 52.

(13) 1988 c. 50.

(14) Section 41 was repealed by section 140(2) of, and Schedule 18 to, the Housing Act 1988.

(15) 1974 c. 44. Section 29 was repealed by section 3 of, and Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c. 71).

(16) 1996 c. 56.

(b) treating the disposal from which the proceeds are derived as a disposal by the authority and the proceeds as a capital receipt of the authority, the amount which would be the reserved part of that capital receipt is less than the amount which, apart from this paragraph, would be the reserved part of the relevant sum,

the reserved part shall be that lesser amount.

### *Interests in land and other assets*

#### **Assets held for the administration of justice or for the purposes of the police or civil defence**

**71.** The reserved part shall be 75 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received in respect of the disposal of an interest in any asset which, at any time on or after 23rd March 1989, has been held for the purposes of or in connection with—

- (a) the Central Criminal Court;
- (b) the police, probation or magistrates' court services; or
- (c) any functions of the authority conferred under section 2 of the Civil Defence Act 1948<sup>(17)</sup>.

#### **Hostels and lodging houses**

**72.** In the case of a capital receipt which is received in respect of the disposal of an interest in a hostel (within the meaning given to that expression in section 622 of the Housing Act 1985) or a lodging-house (within the meaning given to that expression in section 56 of that Act), the reserved part shall be 75 per cent. if—

- (a) the hostel or lodging-house is held for the purposes of Part II of that Act (provision of housing accommodation);
- (b) the receipt is not a nil per cent. receipt; and
- (c) where the authority is a local authority in Wales, the reserved part of the receipt does not fall to be determined in accordance with regulation 78.

#### **Crematoria**

**73.** The reserved part shall be 10 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 30th June 1997 in respect of a disposal of a freehold or leasehold interest in land comprising a crematorium within the meaning given to that expression in section 2 of the Cremation Act 1902<sup>(18)</sup>.

#### **Land used for the purposes of education**

**74.** The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of a freehold or leasehold interest in land where—

- (a) on 1st April 1993, the land was in use by the authority in whole or in part for the purposes of a school or an institution providing further education (within the meaning given to that expression in section 14 of the Further and Higher Education Act 1992<sup>(19)</sup>) or education for adults;

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<sup>(17)</sup> 1948 c. 5.

<sup>(18)</sup> 1902 c. 8.

<sup>(19)</sup> 1992 c. 13.

- (b) if, at the time of the disposal, the land has ceased to be used for such purposes, it has not, since ceasing to be so used, been in use under a planning permission granted for any other use for a period of more than five years; and
- (c) the land is not land to which section 74(1) (duty to keep Housing Revenue Account) applied immediately before the disposal.

### **Agricultural holdings**

**75.**—(1) In this regulation—

- (a) the expressions “agricultural holding” and “contract for an agricultural tenancy” shall be construed in accordance with section 1 of the Agricultural Holdings Act 1986<sup>(20)</sup>;
- (b) “relevant agricultural holding” means an agricultural holding in relation to which the landlord is not a smallholdings authority; and
- (c) “smallholdings estate” and “smallholdings authority” have the same meaning as in Part III of the Agriculture Act 1970 (smallholdings in England and Wales)<sup>(21)</sup>.

(2) The reserved part shall be 10 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of a freehold or leasehold interest in land where—

- (a) on 17th October 1994 the land was held by the authority, as a smallholdings authority, as part of their smallholdings estate, or constituted a relevant agricultural holding;
- (b) if, at the time of the disposal, the land has ceased to be held as part of the authority’s smallholdings estate, or, as the case may be, has ceased to constitute a relevant agricultural holding, it has not, at any time since 17th October 1994, been in use other than as an agricultural holding under a planning permission granted for a period of more than five years;
- (c) the land is not land to which section 74(1) applied immediately before the disposal; and
- (d) if, at the time of the authority’s decision to dispose of their interest in the land, the land was subject to a contract for an agricultural tenancy, the authority have offered to dispose of their interest to the tenant under the tenancy at a price not exceeding an amount determined in accordance with the formula—

$$\frac{3 \times (P1 - P2)}{4} + P2$$

where—

“P1” means the price which the authority would reasonably expect to be agreed for a sale of the interest on the open market subject to a surrender of the tenancy; and

“P2” means the price which the authority would reasonably expect to be agreed for a sale of the interest on the open market subject to the tenancy.

### *Special provisions for Wales*

### **Disposal of land held for housing purposes**

**76.** The reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in land where—

- (a) the authority is a local authority in Wales;

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<sup>(20)</sup> 1986 c. 5.

<sup>(21)</sup> 1970 c. 40. See sections 37 and 38 of that Act.

- (b) the land is held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation); and
- (c) if there is a building situated on the land, the building does not, in whole or in part, comprise a dwelling (within the extended meaning given to that expression in regulation 22(1)).

### **Disposal of shared ownership leases**

77. The reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in a dwelling where—

- (a) the authority is a local authority in Wales;
- (b) the dwelling was normally let, or available for letting, for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation); and
- (c) the authority make the disposal by granting a shared ownership lease (within the meaning given to that expression in section 622 of the Housing Act 1985), or on condition that the purchaser, for the purpose of repairing or improving the dwelling, will carry out significant works within a specified period.

### **Other disposals of dwellings**

78.—(1) In this regulation—

“capital value”, in relation to a lease, has the same meaning as in Part VIII of these Regulations;

“dwelling” has the extended meaning which it has in regulation 22(1);

“relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985, section 22 of the Housing and Building Control Act 1984 or **section 104 of the Housing Act 1957 (22)**;

“relevant lease” means—

- (a) a secure tenancy within the meaning which that expression has in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants);
- (b) an introductory tenancy within the meaning which that expression has in Chapter 1 of Part V of the Housing Act 1996(23); or
- (c) any other lease, other than a shared ownership lease; and

“shared ownership lease” has the same meaning as in regulation 22(1).

(2) Subject to paragraph (3), the reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in a dwelling where—

- (a) the authority is a local authority in Wales who make the disposal by—
  - (i) conveying the freehold interest in the dwelling;
  - (ii) granting a lease for a term of not less than 125 years;
  - (iii) granting a shared ownership lease; or
  - (iv) assigning their leasehold interest in the dwelling; and
- (b) where the interest disposed of is a lease, other than a shared ownership lease, the authority estimate that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by them within one year after the date of the disposal.

(3) Paragraph (2) shall not apply to a disposal (“the current disposal”) of an interest in a dwelling which has at any time been occupied under a relevant lease granted by the authority, unless—

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(22) 1957 c. 56. That Act was repealed by the Housing (Consequential Provisions) Act 1985.

(23) 1996 c. 52.

- (a) since the last date on which the dwelling was so occupied, the authority have disposed of an interest in it under Part V of the Housing Act 1985 (the right to buy), or Chapter 1 of Part I of the Housing Act 1980 (the right to buy)(24) or, with a relevant consent, to a person who, when he acquired that interest, occupied, or intended to occupy, the dwelling as his only or principal home;
- (b) that disposal was made more than five years before the current disposal;
- (c) at any time within that period the authority acquired a further interest in the dwelling; and
- (d) the dwelling is a house (within the meaning which that expression has in section 44 of the Housing Act 1985).

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(24) 1980 c. 51. Part I was repealed by the Housing (Consequential Provisions) Act 1985.