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STATUTORY INSTRUMENTS

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**1997 No. 319**

**The Local Authorities (Capital Finance) Regulations 1997**

**PART VIII**

**CAPITAL RECEIPTS TO BE TREATED AS REDUCED**

*Other disposals of interests in land*

**Disposal of recently acquired interests in land**

**96.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 97(3), are specified where the disposal—

- (a) meets the condition specified in regulation 84; and
  - (b) takes place not later than five years after the date on which the authority acquired the freehold interest or a leasehold interest in the land.
- (3) For the purposes of paragraph (1), the amount of the reduction is the aggregate of—
- (a) the initial cost of any credit arrangement entered into by the authority for the purpose only of acquiring the interest disposed of;
  - (b) the value of any consideration falling to be given for the acquisition of that interest, other than consideration under a credit arrangement; and
  - (c) the administrative costs of acquiring that interest and making the disposal.

**Land in England—disposal of certain dwellings**

**97.**—(1) For the purposes of this regulation—

“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<sup>(1)</sup> or section 104 of the Housing Act 1957<sup>(2)</sup>;

“relevant date”, in relation to a dwelling, means the date three years before the date on which a local authority make a disposal such as is mentioned in paragraph (3), or the first such disposal (if they make more than one in relation to the dwelling);

“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);

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(1) 1984 c. 29. Section 22 was repealed by the Housing (Consequential Provisions) Act 1985 (c. 71).

(2) 1957 c. 56. That Act was repealed by the Housing (Consequential Provisions) Act 1985.

- (b) an introductory tenancy within the meaning which that expression has in Chapter 1 of Part V of the Housing Act 1996<sup>(3)</sup>; 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) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (5).
- (3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling are specified where—
- (a) the authority are a local authority in England;
  - (b) the disposal meets the condition specified in regulation 84, or the authority make the disposal by granting a shared ownership lease; and
  - (c) paragraph (4) applies to the dwelling.
- (4) This paragraph applies to a dwelling if—
- (a) the dwelling has not at any time been occupied under a relevant lease granted by the authority; or
  - (b) the dwelling has been so occupied, and—
    - (i) since the last date on which it 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)<sup>(4)</sup> or, with a relevant consent, to a person who, when he acquired that interest, occupied, or intended to occupy, it as his only or principal home;
    - (ii) that disposal was made more than five years before the disposal from which the capital receipts are derived;
    - (iii) at any time within that period the authority acquired a further interest in the dwelling; and
    - (iv) the dwelling is a house (within the meaning which that expression has in section 44 of the Housing Act 1985).
- (5) For the purposes of paragraph (2), the amount of the reduction is the aggregate of the following amounts—
- (a) where the dwelling in relation to which a local authority make a disposal such as is mentioned in paragraph (3) (“the dwelling”) was acquired by the authority, the cost of the acquisition of the authority’s interest in the dwelling;
  - (b) where the dwelling was constructed by or for the authority, the cost of the construction;
  - (c) where the land on which the dwelling was constructed was acquired by the authority on or after the relevant date, the cost of the acquisition of the authority’s interest in the land;
  - (d) where the dwelling was provided by the conversion of a building or part of a building (“the building”) by or for the authority, the cost of the conversion and, if the building was acquired by the authority on or after the relevant date, the cost of the acquisition of the authority’s interest in the building;
  - (e) where, after the acquisition, construction or provision of the dwelling, the authority carried out works which amounted to the enhancement of the dwelling, the cost of the enhancement; and
  - (f) the administrative costs of making the disposal.

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<sup>(3)</sup> 1996 c. 52.

<sup>(4)</sup> 1980 c. 51 Part I was repealed by the Housing (Consequential Provisions) Act 1985.

- (6) For the purposes of paragraph (5), the cost of—
- (a) the acquisition of an interest in the dwelling or in any land or any building,
  - (b) the construction or the enhancement of the dwelling, or
  - (c) the conversion of a building or part of a building,

is the aggregate of the initial cost of any credit arrangement entered into exclusively for the purpose of the acquisition, construction, enhancement or, as the case may be, conversion, and the value of any consideration falling to be given for the purpose concerned other than consideration under a credit arrangement.

### **Disposal of recently improved land**

**98.**—(1) In this regulation—

- (a) a reference to the enhancement of land does not include a reference to the reclamation or laying out of the land or the construction, preparation or replacement of roads, buildings or other structures; and
- (b) “relevant period”, in relation to any land, means the financial year in which a local authority make a disposal such as is mentioned in paragraph (3) (or the first such disposal, if they they make more than one in relation to the land), and the two financial years immediately preceding that year.

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 97(3), are specified where—

- (a) the authority have, at any time during the relevant period, incurred expenditure on the enhancement of the land; and
- (b) the disposal meets the condition specified in regulation 84, or the authority make the disposal by granting a shared ownership lease (within the meaning given to that expression in regulation 22 (1)).

(4) For the purposes of paragraph (2), the amount of the reduction is the aggregate of—

- (a) the initial cost of any credit arrangement entered into by the authority during the relevant period for the purpose only of the enhancement of the land; and
- (b) the amount of any expenditure incurred by the authority for that purpose during the relevant period, other than expenditure under a credit arrangement.

### **Disposal and replacement of land or buildings**

**99.**—(1) In this regulation—

“new land” means land in which a local authority acquire an interest, or on which they carry out works, in accordance with a decision such as is mentioned in paragraph (4)(b);

“new works” means works carried out in accordance with such a decision, and includes works executed by any person in consideration of the disposal made by the authority in accordance with that decision;

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories of Schedule 1 to these Regulations, and “category” means one of those categories; and

“works” includes construction works and other works which are for the enhancement of any land or a building on any land.

- (2) For the purposes of this regulation—
- (a) a disposal made pursuant to a compulsory purchase order shall be treated as if made by virtue of a decision of the authority made at the same time as the decision mentioned in paragraph (4)(b); and
  - (b) land held for housing purposes is land held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation)(5), but not for any qualifying purpose.
- (3) Capital receipts of a description specified in paragraph (4) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (6).
- (4) For the purposes of paragraph (3), capital receipts derived from a disposal of an interest in land (“the land”) are specified where paragraph (5) applies to the disposal and—
- (a) the authority decided to dispose of the land not more than five years before the date of the disposal or, if earlier, the date on which the capital receipts are received;
  - (b) at the time of that decision, the authority also decided to acquire a new interest in the land after the disposal, or an interest in any other land, or to carry out works on any land;
  - (c) if the new interest is a lease of part of the land, the initial cost of the lease is less than 50 per cent. of the amount which would be the initial cost of a lease on identical terms of the whole of the land; and
  - (d) the disposal meets the condition specified in regulation 84.
- (5) This paragraph applies to a disposal of an interest in land if—
- (a) at the time of the decision to make the disposal, the land was in use for a qualifying purpose and the authority decided to use the new land for the same qualifying purpose, or a different purpose within the same category as that which includes the same qualifying purpose;
  - (b) the disposal is made pursuant to a compulsory purchase order, and the land has been held for housing purposes for a period of at least two years ending on the date of the disposal (or, if earlier, the date on which the authority give up possession of the land pursuant to the order), and the authority have decided to use the new land for housing purposes; or
  - (c) there is situated on the land, at the time of the disposal, a defective dwelling within the meaning given to that expression in Part XVI of the Housing Act 1985 (assistance for owners of defective housing), and the authority have decided that the new land shall be held for housing purposes.
- (6) For the purposes of paragraph (3), the amount of the reduction is, subject to paragraph (7), the aggregate of—
- (a) the initial cost of any credit arrangement entered into by the authority for the purpose only of acquiring the new land or carrying out the new works;
  - (b) the value of any consideration falling to be given for such a purpose under any contract other than a credit arrangement; and
  - (c) any other costs incurred by the authority in connection with the acquisition of the new land or the carrying out of the new works.
- (7) For the purposes of paragraph (6)(b), the value of the consideration falling to be given under a contract shall be the amount which, if the contract were a lease, would be the capital cost of the contract determined in accordance with regulation 14.

### **Disposal of former new town assets**

**100.**—(1) In this regulation, “dwelling” and “new town corporation” have the same meaning as in section 172 (transfer of new town housing stock).

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling are specified where—

- (a) the authority acquired the interest from a new town corporation;
- (b) the new town corporation disposed of the interest pursuant to section 36 of the New Towns Act 1981 (functions of Commission)(**6**) or regulations made under section 172(1)(**7**); and
- (c) the whole or part of the consideration falling to be given by the authority for the acquisition of the interest is required to be given on the disposal of the interest.

(4) For the purposes of paragraph (2), the amount of the reduction is an amount equal to the value of the consideration which falls to be given by the authority, as mentioned in paragraph (3)(c), on making the disposal from which the capital receipts are derived.

### **Disposal of former residuary body assets**

**101.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) the authority acquired the interest from a residuary body established by section 57 of the Local Government Act 1985(**8**); and
- (b) the whole or part of the consideration falling to be given by the authority for the acquisition of that interest is required to be given when the authority dispose of the interest.

(3) For the purposes of paragraph (1), the amount of the reduction is an amount equal to the value of the consideration which falls to be given by the authority, as mentioned in paragraph (2)(b), on making the disposal from which the capital receipts are derived.

### **Disposal of land—compensation for planning decision**

**102.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) the interest was compulsorily acquired or sold as described in section 23(1)(a) of the Land Compensation Act 1961 (compensation where planning decision made after acquisition)(**9**);
- (b) a planning decision (as mentioned in that section) has been made in relation to the land, or a planning permission (as mentioned in column 1 of the table in section 25(1) of that Act) has been granted, or is deemed to have been granted in relation to the land; and

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(6) 1981 c. 64.

(7) See S.I. 1990/1700, S.I. 1990/2366 and S.I. 1991/1281.

(8) 1985 c. 51.

(9) 1961 c. 33.

- (c) by virtue of that planning decision or planning permission, a claim for compensation under section 23 of that Act, or under that section as applied by section 25(1) of that Act, has been duly made before the date on which any such capital receipt is received.

(3) For the purposes of paragraph (1), the amount of the reduction is the amount of compensation assessed in relation to the claim mentioned in paragraph (2)(c) or, where, at the time the capital receipt is received, that amount has not yet been assessed, the authority's estimate of the amount likely to be assessed in relation to the claim.

### **Disposal of land—development of land by authority**

**103.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) before making the disposal, the authority incurred expenditure on—
- (i) obtaining planning permission for the development of the land, or taking any other steps required to facilitate such development;
  - (ii) preparing the land for development;
  - (iii) acquiring an interest, easement, servitude or right in or over the land or adjoining land for the purpose of facilitating the disposal of the interest; or
  - (iv) obtaining the release of a restrictive covenant affecting the land;
- (b) the total amount of capital receipts derived from the disposal exceeds the total amount of capital receipts that would have been derived from the disposal if the authority had not incurred that expenditure; and
- (c) the amount of that excess is not less than the amount of the expenditure.
- (3) For the purposes of paragraph (1), the amount of the reduction is the aggregate of—
- (a) the amount of the expenditure incurred by the authority on any of the matters mentioned in paragraph (2) (a), other than so much of the expenditure in respect of which a contribution, grant or subsidy has been paid by a Minister of the Crown, or a body to which such a Minister may pay sums out of moneys provided by Parliament, or a Community institution; and
  - (b) the administrative costs of making the disposal from which the capital receipts are derived.

### **Disposals of dwellings in exchange for certain flats**

**104.**—(1) In this regulation—

“flat” has the same meaning as in section 183 of the Housing Act 1985(10) (“the 1985 Act”);

“former tenant” means a person to whom a qualifying lease was granted, or a person who has succeeded to the lessee's interest under a qualifying lease by virtue of a disposal of a description falling within paragraph (a), (b) or (c) of subsection (1) of section 160 of the 1985 Act (disposals exempt from requirement to repay discount);

“lending institution” means an institution which is an approved lending institution for the purposes of section 156 of the 1985 Act; and

“qualifying lease” means a lease of a flat granted by a local authority pursuant to Part V of the 1985 Act (the right to buy), or with the consent of the Secretary of State under section 32 or 43 of that Act and the benefit of a discount of not less than 44 per cent.

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(10) 1985 c. 68.

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling to a former tenant are specified where—

- (a) immediately before the disposal, the former tenant occupied the flat demised by his qualifying lease (“the flat”) as his only or principal home;
- (b) the authority granted the qualifying lease not less than three years before the date of the disposal;
- (c) the authority make the disposal by conveying the freehold interest in the dwelling, granting a lease for a term of not less than 99 years, or assigning their entire leasehold interest in the dwelling;
- (d) if the interest disposed of is a 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;
- (e) the consideration received by the authority for the disposal includes the assignment or surrender to them of the qualifying lease;
- (f) upon such assignment or surrender there is attributed, as part of the consideration for the disposal, an amount equal to the price paid on the grant of the qualifying lease; and
- (g) the authority is satisfied that any person wishing to buy the qualifying lease would be unlikely, for reasons which do not relate to the personal or financial status of that person, or the terms of that lease, or the condition of the flat or the building in which the flat is situated, to obtain from a lending institution an advance—
  - (i) secured by a mortgage of the qualifying lease for a term of twenty-five years, and
  - (ii) of an amount equal to 75 per cent. of the value of that lease determined not more than three months before the date of the disposal in accordance with paragraph (5).

(4) For the purposes of paragraph (2), the amount of the reduction is the aggregate of—

- (a) an amount equal to the price paid on the grant of the qualifying lease; and
- (b) the amount of any costs incurred by the authority in connection with the disposal and the surrender or assignment of the qualifying lease.

(5) For the purposes of paragraph (3)(g), the value of the qualifying lease shall be determined by an approved surveyor on the basis that it is the price which that lease would realise at the date of the valuation if sold on the open market by a willing vendor on the assumption that—

- (a) the vendor was selling with vacant possession;
- (b) the purchaser was purchasing the lease for the purposes of owner occupation; and
- (c) the criteria applied by lending institutions for the assessment of mortgage applications, so far as they relate to the number of storeys in the building in which a dwelling is situated or the number of dwellings in the building which are occupied by owners, are not applicable to the flat or any other flat in the same building.

(6) A surveyor is approved for the purposes of paragraph (5) if he has ability in, and experience of, the valuation of dwellings of the same kind, and in the same area, as the flat, and is—

- (a) a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers; or

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- (b) a person who satisfies such other requirement or requirements as may be prescribed by regulations made under section 13(7) of the Leasehold Reform, Housing and Urban Development Act 1993<sup>(11)</sup>.

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<sup>(11)</sup> 1993 c. 28. See the Collective Enfranchisement and Tenants' Audit (Qualified Surveyors) Regulations 1994 (S.I. 1994/1263).