

2004 No. 3055

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Capital Finance and Accounting)
(Amendment) (England) (No. 2) Regulations 2004**

Made - - - - - *18th November 2004*

Laid before Parliament *25th November 2004*

Coming into force - - *16th December 2004*

The Secretary of State, in exercise of the powers conferred upon him by sections 9(3), 10, 11, 16(2), 21 and 123(1) and (2) of the Local Government Act 2003(a) hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance and Accounting) (Amendment) (England) (No. 2) Regulations 2004 and shall come into force on 16th December 2004.

(2) These Regulations apply only in relation to local authorities in England(b).

(3) In these Regulations, “the Principal Regulations” means the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003(c).

Interpretation of the Principal Regulations

2. In regulation 1 of the Principal Regulations (citation, commencement, application and interpretation), in paragraph (5)—

- (a) before the definition of “CIPFA”, there shall be inserted—
““the 1993 Act” means the Leasehold Reform, Housing and Urban Development Act 1993(d);
“associates” has the same meaning as in section 135 of the 1993 Act (disposals of dwelling-houses by local authorities)(e);”;
- (b) after the definition of “dwelling”, there shall be inserted—
““dwelling-house” has the same meaning as in section 135 of the 1993 Act(f);”;
- (c) after the definition of “housing land”, there shall be inserted—
““introductory tenant” has the same meaning as in Chapter 1 of Part V of the Housing Act 1996 (introductory tenancies)(g);
“long lease” means a lease for a term of years certain exceeding 21 years other than a lease which is terminable before the end of that term by notice given by or to the landlord;”;

(a) 2003 c. 26.

(b) As regards the application of Part 1 of the Local Government Act 2003 to Wales, *see* section 24 of that Act.

(c) S.I. 2003/3146, amended by S.I. 2004/534.

(d) 1993 c. 28.

(e) *See*, in particular, paragraph (b) of subsection (14) of section 135.

(f) *See*, in particular, subsection (13) of section 135.

(g) 1996 c. 52.

- (d) in the definition of “qualifying disposal”—
 - (i) for “Leasehold Reform, Housing and Urban Development Act 1993”, there shall be substituted “1993 Act”; and
 - (ii) at the end, “and” shall be omitted; and
 - (e) after the definition of “qualifying disposal”, there shall be inserted—
 - ““relevant disposal period” means the period of five years ending with the date of the disposal;
 - “secure tenant” has the same meaning as in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants)(a);
 - “small scale disposal” means a disposal by a local authority of an interest in housing land to any person where—
 - (a) the Secretary of State has given consent to the disposal under section 32 (power to dispose of land held for the purposes of Part II) or 43 (consent required for certain disposals not within section 32) of the Housing Act 1985(b);
 - (b) he has given that consent subject to the conditions that the local authority—
 - (i) takes reasonable steps to ascertain whether the majority of secure tenants and introductory tenants who would be affected by the disposal are not opposed to it; and
 - (ii) is satisfied that, at the time of the disposal, the majority of those tenants are not likely to be opposed to the disposal;
 - and
 - (c) the aggregate of the following, namely—
 - (i) the number of dwelling-houses included in the disposal; and
 - (ii) the number of dwelling-houses which, within the relevant disposal period, have been previously disposed of by the authority to that person, or that person and any associates of his taken together,
- is not more than 499,
but for the purposes of this definition, a disposal of any dwelling-house shall be disregarded if at the time of the disposal the local authority’s interest in the dwelling-house is or was subject to a long lease; and”.

Pooling of receipts from disposals of housing land

3. In regulation 12 of the Principal Regulations (pooling of receipts from disposals of housing land), in sub-paragraph (a) of paragraph (1), after “qualifying disposal”, there shall be inserted “or a small scale disposal”.

Capital receipts reduced by consideration for former new town assets

4. After regulation 20 of the Principal Regulations, there shall be inserted—

“Capital receipts reduced by consideration for former new town assets

20A.—(1) Subject to regulation 12(5), for the purposes of calculating the amount specified in regulation 12(4), a capital receipt derived from a disposal by a local authority of an interest in housing land, which meets the conditions specified in paragraph (2), shall be treated as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), the disposal meets the conditions specified in this paragraph if—

- (a) the local authority acquired the interest from a new town corporation;
- (b) the new town corporation disposed of the interest pursuant to section 36 of the

(a) 1985 c. 68.

(b) Sections 32 and 43 were amended by S.I. 1997/74 and section 43 was amended by section 132 of the Housing Act 1988 (c. 50). There are other amendments to sections 32 and 43 that are not relevant to these Regulations.

New Towns Act 1981 (functions of Commission)(a) or regulations made under section 172(1) of the Local Government and Housing Act 1989 (transfer of new town housing stock)(b); and

- (c) the whole or part of the consideration to be given by the local authority for the acquisition of the interest from the new town corporation is required to be given on the disposal of the interest by the local authority.

(3) For the purposes of paragraph (1), the amount of the reduction is an amount equal to the value of the consideration that the local authority is required to give, as described in paragraph (2)(c), on making the disposal from which the capital receipt is derived.

(4) In this regulation, “new town corporation” means the Commission for the New Towns or a development corporation, within the meaning of the New Towns Act 1981(c).”.

Non-money receipts

5. In regulation 22 of the Principal Regulations (non-money receipts), in paragraph (1), after “qualifying disposal”, there shall be inserted “or a small scale disposal”.

Calculation of minimum revenue provision

6. In regulation 28 of the Principal Regulations (calculation of minimum revenue provision)—

- (a) for paragraph (1), there shall be substituted—

“(1) Subject to paragraphs (2) and (3) and regulation 29, the minimum revenue provision for the current financial year shall be calculated by the local authority in accordance with the following formula—

$$\frac{4[\text{CFR} - (\text{A} + \text{HC})]}{100}$$

where—

CFR is the capital financing requirement at the end of the preceding financial year;

A is an adjustment (which may be a positive, nil or negative amount) to be calculated in accordance with paragraph (1A); and

HC is—

- (a) in the case of a housing authority, the opening HRA capital financing requirement for the current financial year, except that if that opening HRA capital financing requirement is a negative amount, HC is nil; and
(b) in the case of any other local authority, nil.

(1A) For the purposes of paragraph (1), A is to be calculated—

- (a) in the case of a 2003 housing authority, in accordance with the following formula—

$$[\text{CFRM} - (\text{HA} + \text{NHA})] + \frac{(\text{HA} - \text{HB})}{2}$$

and

- (b) in the case of any other local authority, in accordance with the following formula—

$$\text{CFRM} - \text{RA}$$

where—

CFRM is the capital financing requirement on 31st March 2004;

HA is the housing amount for 2004;

HB is the opening HRA capital financing requirement for the financial year beginning on 1st April 2004, except that if that opening HRA capital financing requirement is a negative amount, HB is nil;

(a) 1981 c. 64. Section 36 was amended by sections 1 and 14 of, and paragraph 4 of Schedule 3 and Schedule 4 to, the New Towns and Urban Development Corporations Act 1985 (c. 5) and S.I. 1998/85.

(b) 1989 c. 42; relevant regulations made under section 172 are the New Towns (Transfer of Housing Stock) Regulations 1990 (S.I. 1990/1700, amended by S.I. 1990/2366 and 1991/1281).

(c) See sections 3 (establishment of development corporations for new towns) and 35 (establishment of the Commission).

NHA is the non-housing amount for 2004; and

RA is the relevant amount for 2004.”; and

(b) for paragraphs (3) and (4), there shall be substituted—

“(3) Where, in relation to the current financial year—

(a) the total of—

(i) the amount calculated in accordance with the formula for the minimum revenue provision in paragraph (1); and

(ii) the additional amount, if any, calculated under paragraph (2),
is a negative amount; or

(b) CFR is nil or a negative amount,

the minimum revenue provision, including the additional amount, if any, for the current financial year shall be treated as nil.

(4) For the purposes of this regulation—

“arms length management organisation” means a body set up by a local authority as a housing management company to exercise management functions as agent of the local authority under an arrangement approved by the Secretary of State under section 27 of the Housing Act 1985 (management agreements)(a);

“capital financing requirement” has the same meaning as in the “Prudential Code for Capital Finance in Local Authorities” published by CIPFA, as amended or reissued from time to time(b);

“certified value” means the market value certified by the district valuer or by a suitably qualified valuer employed by the local authority;

“current financial year” means any financial year for which the local authority is determining the amount of its minimum revenue provision;

“district valuer”, in relation to any land in the district of a local authority, means an officer of the Commissioners of Inland Revenue appointed by them for the purpose of exercising, in relation to that district, the functions of the district valuer under the Housing Act 1985;

“housing amount for 2004” and “non-housing amount for 2004” have the same meaning, respectively, as the terms “housing amount” and “non-housing amount” had on 31st March 2004 in Part XII of the Local Authorities (Capital Finance) Regulations 1997 (minimum revenue provision)(c), except that “the current year” within the meaning of that Part shall be treated as the financial year beginning on 1st April 2004;

“housing authority” means a local authority which is required to keep a Housing Revenue Account for the current financial year by virtue of section 74 of the Local Government and Housing Act 1989 (duty to keep Housing Revenue Account)(d) and “2003 housing authority” means a local authority which was required by that section to keep a Housing Revenue Account for the financial year beginning on 1st April 2003;

“Housing Revenue Account”, also referred to as “HRA”, has the same meaning as in section 74 of the Local Government and Housing Act 1989 (duty to keep Housing Revenue Account);

“major repairs reserve” has the same meaning as in regulation 7(5) of the Accounts and Audit Regulations 2003 (statement of accounts)(e);

“opening HRA capital financing requirement” means—

(a) for the financial year beginning on 1st April 2004, the amount calculated in accordance with paragraph (5);

(b) for the financial year beginning on 1st April 2005 and any subsequent financial year, the amount calculated in accordance with paragraph (6);

(a) 1985 c. 68. Section 27 was substituted by S.I. 2003/940.

(b) The current issue of this code of practice was published in London in 2003. ISBN 0 85299 989 5. See, in particular, paragraph 85 of the current issue.

(c) S.I. 1997/319; these Regulations were revoked on 1st April 2004 by virtue of the repeal of Part IV of the Local Government and Housing Act 1989 (c. 42) under which they were made. See S.I. 2003/2938 (C.107).

(d) 1989 c. 42; section 74 was amended by section 222 of, and paragraph 24(2) of Part IV of Schedule 18 to, the Housing Act 1996 (c. 52).

(e) S.I. 2003/533; paragraph (5) of regulation 7 was substituted by S.I. 2004/556.

“preceding financial year” means the financial year immediately preceding the current financial year; and

“relevant amount for 2004” has the same meaning as the term “relevant amount” had on 31st March 2004 in regulation 152 of the Local Authorities (Capital Finance) Regulations 1997 (relevant amount for subsequent financial years), except that “the current year” within the meaning of that regulation 152 shall be treated as the financial year beginning on 1st April 2004.”.

Use of amounts set aside under the Local Government and Housing Act 1989

7. In regulation 33 of the Principal Regulations (use of amounts set aside under the Local Government and Housing Act 1989)—

(a) in paragraph (1)—

(i) at the beginning, there shall be inserted “Subject to paragraph (4),”; and

(ii) after “may treat”, there shall be inserted “the whole or part of”;

and

(b) at the end, there shall be added—

“(4) Any decision to treat the whole or part of the amount specified in paragraph (2) as if it were a capital receipt, by virtue of paragraph (1), shall be made by the local authority before 1st October 2005.

(5) Any amount treated as if it were a capital receipt, by virtue of paragraph (1), shall be treated as if it were received during the financial year beginning on 1st April 2004.”.

Signed by authority of the Secretary of State

18th November 2004

Nick Raynsford
Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (“the Principal Regulations”) and apply only in relation to local authorities in England.

Regulation 2 of these Regulations inserts a definition of “small scale disposal”, and other definitions for the purposes of that term, into regulation 1(5) of the Principal Regulations. A small scale disposal is a disposal by a local authority of an interest in housing land where the Secretary of State has consented to the disposal subject to the local authority being satisfied that the majority of secure and introductory tenants are not opposed to it. A disposal is not a small scale disposal unless the aggregate number of dwelling-houses disposed of by the authority in the five year period ending on the date of the disposal does not exceed 499.

Regulation 3 of these Regulations provides for small scale disposals to be excluded from the requirements to pool receipts from the disposals of housing land that are in regulation 12 of the Principal Regulations.

Some local authorities acquired dwellings and other land from the Commission for the New Towns (now, together with the Urban Regeneration Agency, known as English Partnerships) or a development corporation on the basis that the whole or part of the consideration for the land was to be given by the local authority when it subsequently disposed of the land. **Regulation 4** of these Regulations inserts a new regulation 20A in the Principal Regulations. This provides that, for the purposes of the pooling of a percentage of the capital receipts, derived from housing land, under regulation 12 of the Principal Regulations, the capital receipts may be treated as reduced by an amount equal to the value of the consideration that the local authority is required to give English Partnerships on making the disposal.

Regulation 5 of these Regulations excludes small scale disposals from those disposals for which notional capital receipts have to be determined under regulation 22 of the Principal Regulations.

Regulation 6 of these Regulations amends the provisions in regulation 28 of the Principal Regulations concerning the calculation of minimum revenue provision. The calculation is amended to reflect the differences between local authorities which are housing authorities, required to keep a Housing Revenue Account, and other local authorities. The latter would not have had a housing amount and a non-housing amount under Part XII of the Local Authorities (Capital Finance) Regulations 1997 nor do they have an opening HRA capital financing requirement. Where the capital financing requirement at the end of the preceding financial year is a nil or negative amount, the minimum revenue provision (including any additional amount of minimum revenue provision) for the current financial year is to be treated as nil.

Regulation 7 requires that any decision, to treat an amount as a capital receipt under regulation 33, must be made before 1st October 2005. Any amount treated as a capital receipt is to be treated as if it were received in the financial year beginning on 1st April 2004.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of businesses, charities or voluntary bodies; neither does it have significant financial impact on any public bodies.

STATUTORY INSTRUMENTS

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The Local Authorities (Capital Finance and Accounting)
(Amendment) (England) (No. 2) Regulations 2004

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1544 11/2004 141544 19585

ISBN 0-11-050349-X



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