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WELSH STATUTORY INSTRUMENTS

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**2003 No. 3239**

**The Local Authorities (Capital Finance  
and Accounting) (Wales) Regulations 2003**

**PART 3**

**CAPITAL RECEIPTS**

**SUMS TO BE TREATED AS CAPITAL RECEIPTS**

**Repayment of loan etc. to a local authority**

6.—(1) For the purposes of Chapter 1 of Part 1, the following sums must be treated as capital receipts—

- (a) the repayment to a local authority of, or payment to a local authority in respect of, any grant or other financial assistance given by the local authority of such a description that, if the giving of that financial assistance had been expenditure incurred at the time of the repayment or payment, it would have constituted capital expenditure; and
- (b) the repayment to a local authority of the principal of an advance made by the local authority for such a purpose that, if the making of the advance had been expenditure incurred at the time of the repayment, it would have constituted capital expenditure.

(2) For the purposes of paragraph 1(a), sums received by a local authority in connection with the repayment of any grants or other financial assistance —

- (a) to an officer of the authority pursuant to the terms and conditions of that officer's employment; or
  - (b) in connection with the appointment of a person as an officer of the authority, to that person
- in so far as, apart from this regulation, it would be a receipt for capital purposes, shall not be expenditure for capital purposes.

**Disposal of mortgage portfolio**

7. For the purposes of Chapter 1 of Part 1, a sum received by a local authority in respect of the disposal of the authority's rights and obligations as mortgagee of any housing land which, apart from this regulation, would not be a capital receipt must be treated as a capital receipt.

**Payment made to redeem landlord's share**

8. For the purposes of Chapter 1 of Part 1, where an interim or final payment is made to a local authority in accordance with Schedule 6A to the Housing Act 1985(1) (Redemption of landlord's share), the sum received by the authority must be treated as a capital receipt if, apart from this regulation, it would not be a capital receipt.

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(1) 1985 c. 68. Schedule 6A was inserted by section 117(2) of, and Schedule 16 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

## SUMS NOT TO BE TREATED AS CAPITAL RECEIPTS

### Capital receipts not exceeding £10,000

9.—(1) A sum received by a local authority which, apart from this regulation, would be a capital receipt by virtue of section 9(1) must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of an interest in a capital asset, for which the sum is paid, does not exceed £10,000.

(2) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 6, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of—

- (a) the repayment of a grant or other financial assistance;
- (b) the payment made in respect of a grant or other financial assistance; or
- (c) the repayment of the principal of an advance,

as the case may be, in respect of which the sum is paid, does not exceed £10,000.

(3) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 7, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of the authority's rights and obligations, for which the sum is paid, does not exceed £10,000.

(4) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 8, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of redemption of the landlord's share, for which the sum is paid, does not exceed £10,000.

(5) A notional capital receipt which, apart from this regulation, would be treated as a capital receipt received by a local authority by virtue of regulation 15(5), must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority, including the amount of all notional capital receipts determined, in respect of the disposal of the interest in housing land, for which the notional capital receipt is determined, does not exceed £10,000.

## POOLING OF RECEIPTS

### Pooling of receipts from disposals of housing land

10.—(1) This regulation applies to capital receipts, received by a local authority which has a debt-free housing revenue account at the date of the disposal, on or after the date of the coming into force of these Regulations, which a local authority derives from the disposal of an interest in housing land other than a disposal which is a qualifying disposal.

(2) For the purposes of paragraph (1) "debt-free" housing revenue account means a housing revenue account where the opening HRA capital financing requirement as defined in accordance with regulation 22(2) is nil or negative.

- (a) (3) (a) Where this regulation applies, the local authority must pay the amount specified in paragraph (4) to the National Assembly for Wales by the end of one calendar month after—
  - (i) 31st March;
  - (ii) 30th June;
  - (iii) 30th September; or
  - (iv) 31st December,

whichever is the earliest date following the day on which the authority receives the capital receipt.

- (b) Where the date for payment under paragraph (a) would be a working day the amount referred to in that paragraph must be paid before the end of the next working day following that day.
- (4) Subject to paragraph (5) and regulations 16 and 17, the specified amount is an amount equal to—
- (a) 75 per cent of the capital receipt in relation to the disposal of a dwelling;
  - (b) nil in relation to a disposal in accordance with paragraph (9); or
  - (c) 50 per cent of the capital receipt in relation to the disposal of any other interest in housing land.
- (5) For the purposes of calculating the amount specified in paragraph (4), the capital receipt must be treated as reduced by—
- (a) so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal; and
  - (b) an amount, by which the authority determines that it must be reduced, which may be an amount up to the value of its available capital allowance at the time the amount specified in paragraph (4) is calculated.
- (6) Paragraph (5)(b) does not apply to receipts which a local authority derives from the disposal of a dwelling where the disposal is made—
- (a) under Part 5 of the Housing Act 1985(2) (right to buy); or
  - (b) with a relevant consent, to a person who, when that person acquires that dwelling, occupies or intends to occupy the dwelling as their only or principal home.
- (7) For the purposes of paragraph (6)(b), “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.
- (8) The total amount of any reductions under paragraph (5), regulation 16 or regulation 17, in relation to a disposal, must not exceed the amount of the capital receipt for that disposal.

**9.—**(1) Subject to paragraph (4) for the purposes of paragraph (4)(b) a disposal means a disposal of—

- (a) an interest in land where the land is held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation) and if there is a building situated on the land, the building does not, in whole or in part, comprise a dwelling; or
- (b) an interest in a dwelling where 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 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; or
- (c) an interest in a lease, other than a shared ownership lease, where 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 disposal.

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(2) 1985 c. 68. Sections 32 and 43 were amended by paragraphs 38 and 39 of Schedule 17 to the Housing Act 1988 (c. 50), section 227 of, and Part 9 of Schedule 19 to, the Housing Act 1996 (c. 52) and S.I. 1997/74. Section 43 was also amended by section 132 of the Housing Act 1988 (c. 50) and section 194(2) of, and Schedule 12 to, the Local Government and Housing Act 1989.

(2) Paragraph (1)(c) is only applicable to paragraph(4)(b) where the authority make the disposal by—

- (a) conveying the freehold interest in the dwelling;
- (b) granting a lease for a term of not less than 125 years;
- (c) granting a shared ownership lease; or
- (d) assigning their leasehold interest in the dwelling; and

for the purposes of this paragraph a “shared ownership lease” means a lease of a dwelling granted on payment of a premium which is calculated by reference to a percentage of the value of the dwelling or the cost of providing it, and is not less than 25 per cent of that value or cost.

(3) Paragraph (1)(c) 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—

- (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 1 of the Housing Act 1980 (The right to buy), or with a relevant consent, to a person who, when that person acquired that interest, occupied, or intended to occupy, the dwelling as that person’s 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.

(4) In paragraph (3)—

“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(3), section 22 of the Housing and Building Control Act 1984(4) or section 104 of the Housing Act 1957(5);

“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; or
- (c) any other lease, other than a shared ownership lease within the meaning given to it in paragraph (2).

(10) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a day appointed for thanksgiving or public mourning, or a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971(6).

### **Available capital allowance**

**11.** For the purposes of regulation 10(5)(b), the value of a local authority’s available capital allowance at a particular time is the value of its total capital allowance at that time, as determined by the authority in accordance with regulation 12, less the total value of any amounts by which capital receipts have been treated as reduced by virtue of regulation 10(5)(b) prior to that time.

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(3) 1985 c. 68.

(4) 1984 c. 29.

(5) 1957 c. 56.

(6) 1971 c. 80.

### **Total capital allowance**

**12.**—(1) For the purposes of regulation 11, a local authority’s total capital allowance is the total value of—

- (a) the costs of expenditure incurred by the authority in enhancing the value of an interest in housing land where—
  - (i) the authority subsequently makes a disposal of that interest;
  - (ii) the capital receipts derived from that disposal are capital receipts to which regulation 10 applies; and
  - (iii) those costs are incurred within the period of three years ending on the date of the disposal;
- (b) to the extent not included in sub-paragraph (a), the costs of expenditure incurred by the authority, for the purpose of facilitating the disposal of an interest in land, 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; or
  - (iv) obtaining the release of a restrictive covenant affecting the land,where capital receipts derived from the disposal are capital receipts to which regulation 10 applies;
- (c) to the extent not included in sub-paragraph (a) or (b), the amount of the contributions which the authority has made, or has decided to make but has not yet made, on or after the date of the coming into force of these Regulations, towards the costs of the projects specified in regulations 13 to 14 by —
  - (i) constructing or enhancing the value of dwellings, or providing dwellings by the conversion of a building or a part of a building;
  - (ii) making a gift of land;
  - (iii) paying a contribution, grant or subsidy under any power conferred on the authority under any enactment; or
  - (iv) giving consideration for any benefit which the authority has received, or shall receive, by virtue of the project.

(2) For the purposes of paragraph (1), the authority makes a gift of land where it transfers an interest in land and either —

- (a) no consideration falls to be given for the transfer; or
- (b) the value of the consideration which falls to be given for the transfer is less than the price which the interest transferred would realise at the date of the valuation if sold by the authority on the open market.

### **Provision of affordable housing**

**13.**—(1) In this regulation “provision of affordable housing” means the provision of dwellings to meet the housing needs, as identified by the local authority, of persons on low incomes, whether provided by the authority or a social landlord registered under section 1 of the Housing Act 1996(7).

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(7) 1996 c. 52.

(2) For the purposes of regulation 12(1)(c), the provision of affordable housing is a specified project.

### **Regeneration projects**

**14.—**(1) In this regulation —

“regeneration project” means any project for the carrying out of works or activities on any land where —

- (a) the land, or a building on the land, is vacant, unused, under-used, ineffectively used, contaminated or derelict; and
- (b) the works or activities are carried out in order to secure that the land or the building shall be brought into effective use.

(2) For the purposes of regulation 12(1)(c), the undertaking of a regeneration project on land situated within the area of the local authority is a specified project.

### **Non-money receipts**

**15.—**(1) Subject to paragraphs (2) to (4), where on or after the date of the coming into force of these Regulations a local authority makes a disposal, other than a qualifying disposal, of an interest in housing land—

- (a) which is a disposal of the kind mentioned in section 9(1) and the consideration for the disposal does not consist wholly of money payable to the authority; or
- (b) in respect of which the authority receives otherwise than in the form of money any consideration which, if received in that form, would be a capital receipt under section 9,

the authority shall determine the amount (the “notional capital receipt”) which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(2) Subject to paragraphs (3) and (4), where money is payable to the authority in respect of the disposal, the notional capital receipt shall be determined by deducting the amount of that money from the amount which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(3) Where the consideration for the disposal, or the part of the consideration which does not consist of money payable to the authority, consists of —

- (a) the grant of a right to the local authority to nominate a person either to occupy any dwelling or to acquire the freehold of, or a leasehold interest in, any dwelling; or
- (b) an undertaking given to the local authority to allow only a person of a particular description to occupy any dwelling or acquire the freehold of, or a leasehold interest in, any dwelling,

the amount of the notional capital receipt for the disposal shall be treated as nil.

(4) For the purposes of determining the notional capital receipt for a disposal, the consideration for the disposal shall be deemed to be received by the authority at the time that the authority makes the disposal.

(5) For the purposes of Chapter 1 of Part 1, a notional capital receipt shall be treated as a capital receipt and the amount specified in regulation 10(4) shall be calculated accordingly.

### **Capital receipts reduced by costs of buying back dwellings**

**16.—**(1) In this regulation and regulation 17—

“current year”, in relation to any capital receipts, means the financial year in which the capital receipts are received;

“new town corporation”, “housing action trust” and “urban development corporation” have the same meaning as in section 4 of the Housing Act 1985 (other descriptions of authority)(8); “preceding year”, in relation to any capital receipts, means the financial year immediately preceding the current year; and

“shared ownership lease” means a lease of a dwelling granted on payment to a local authority of a premium which is calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and is not less than 25 per cent of that value or cost.

- (2) In this regulation and regulation 17, an interest in land is a relevant interest if—
- (a) it is the freehold interest or a leasehold interest in a dwelling and is not acquired pursuant to a compulsory purchase order;
  - (b) the freehold interest or a leasehold interest in the dwelling has previously been disposed of by the authority, another local authority, a new town corporation, a housing action trust or an urban development corporation; and
  - (c) the person from whom it is acquired is not a body of persons corporate or unincorporate.

(3) For the purposes of calculating the amount specified in regulation 10(4)(a), capital receipts derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (4) must be reduced by —

$X + Y$

where—

X is the amount of expenditure incurred by the authority on the repurchase; and

Y is the amount of the administrative costs of and incidental to the repurchase.

(4) For the purposes of paragraph (3), a disposal meets the conditions specified in this paragraph if—

- (a) the authority makes the disposal by—
  - (i) conveying the freehold interest in the dwelling;
  - (ii) granting a lease of the dwelling for a term of not less than 125 years;
  - (iii) assigning its entire leasehold interest in the dwelling; or
  - (iv) granting a shared ownership lease; and
- (b) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates 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 of the date of the disposal.

### **Capital receipts reduced by costs of buying back and improving dwellings**

**17.—**(1) For the purposes of calculating the amount specified in regulation 10(4)(a), capital receipts derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (2), must 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) prior to the disposal, an interest in the dwelling was disposed of by the local authority under Part 5 of the Housing Act 1985 (right to buy) (“the initial sale”);

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(8) 1985 c. 68; section 4 was amended by section 62(7) of the Housing Act 1988 (c. 50). There are other amendments to section 4 which are not relevant to these Regulations.

- (b) within the period of five years beginning on the date of the initial sale, the local authority reacquired that interest in the dwelling (“the repurchase”);
  - (c) the disposal is made by the authority within the period of three years beginning on the date of the repurchase;
  - (d) the authority makes the initial sale and the disposal by, in each case—
    - (i) conveying the freehold interest in the dwelling;
    - (ii) granting a lease of the dwelling for a term of not less than 125 years;
    - (iii) assigning its entire leasehold interest in the dwelling; or
    - (iv) granting a shared ownership lease; and
  - (e) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates that not less than 90 per cent of the capital value of the lease has been, or is to be, received by it within one year of the date of the disposal.
- (3) The amount of the reduction, for the purposes of paragraph (1) is—
- $$X - Y + Z$$

where—

X and Y have the same meaning as in Regulation 17(3); and

Z is the amount of expenditure incurred by the authority in enhancing the value of the interest in the dwelling between the date of the repurchase and the date of the disposal.

#### MISCELLANEOUS

#### Use of capital receipts

- 18.—(1) This regulation applies to —
- (a) a capital receipt other than a capital receipt to which regulation 10 applies; and
  - (b) the balance of a capital receipt to which regulation 10 applies after the amount specified in regulation 10(4) has been deducted.
- (2) Subject to paragraphs (3) and (6) a capital receipt, or the balance of a capital receipt, to which this regulation applies may only be used for one or more of the following purposes—
- (a) to meet capital expenditure;
  - (b) to repay the principal of any amount borrowed; or
  - (c) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to a revenue account.
- (3) Subject to paragraphs (4) and (6) a capital receipt received after 31st March 2004 in respect of a housing revenue account must only be used for the purposes in paragraph (2) in so far as those purposes relate to the housing revenue account functions of the authority in accordance with section 74 of the Local Government and Housing Act 1989.
- (4) Any residual capital receipts from a qualifying disposal are excluded from the requirements of paragraph (3).
- (5) For the purposes of paragraph (4) “residual capital receipts” means those receipts remaining after a local authority has extinguished the debts in respect of its housing revenue account functions.
- (6) Where a local authority receive a capital receipt in respect of —
- (a) a disposal of land held for the purposes of Part II of the Housing Act 1985, or
  - (b) any other disposal of land made by virtue of Part V (the right to buy) of that Act,

the capital receipt may be applied by the local authorities in defraying the administrative costs of and incidental to any such disposal.