
STATUTORY INSTRUMENTS

1988 No. 1747

**LOCAL GOVERNMENT, ENGLAND
AND WALES LONDON GOVERNMENT**

The London Government
Reorganisation (Mortgages) Order 1988

Made - - - - *11th October 1988*
Laid before Parliament *18th October 1988*
Coming into force - - *14th November 1988*

Whereas the London Residuary Body, acting pursuant to section 67(1)(a) of the Local Government Act 1985(1), has submitted proposals to the Secretary of State for the transfer of certain functions, property, rights and liabilities (being functions, property, rights and liabilities of that Body which are likely to subsist for longer than the period of five years beginning with 1st April 1986) to the Council of the London borough of Richmond-upon-Thames:

And whereas the Secretary of State has decided to give effect to those proposals:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 67(3) of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

PART I

Citation, commencement and interpretation

1.—(1) This Order may be cited as the London Government Reorganisation (Mortgages) Order 1988, and shall come into force on 14th November 1988.

(2) In this Order —

“the Housing Act” means the Housing Act 1985(2);

“the 1980 Act” means the Local Government, Planning and Land Act 1980(3);

(1) 1985 c. 51.

(2) 1985 c. 68; see also section 2(3) of the Housing (Consequential Provisions) Act 1985 (c. 71) as to references to corresponding earlier provisions. The Residuary Body is treated, by virtue of paragraph 22 of Schedule 13 to the Local Government Act 1985 as a local authority for the purposes of the provisions of the Housing Act mentioned in that paragraph; paragraph 22 was substituted by the Housing (Consequential Provisions) Act 1985, Schedule 2, paragraph 61.

(3) 1980 c. 65.

“equity-sharing agreement” means a lease granted in accordance with section 150 of the Housing Act (shared ownership leases) or an agreement to similar effect made by virtue of any consent given under section 32 of the Housing Act or by virtue of any enactment;

“further advance” means any sum advanced by Richmond pursuant to section 453 of, or Schedule 9 to, the Housing Act (right to further advances) in respect of —

- (a) any mortgage vested by article 2(1) of this Order; or
- (b) any mortgage of which they have taken a transfer in pursuance of section 442(2) of the Housing Act,

not being an advance which is repayable over a period which ends after the last day of the period over which the original advance was repayable;

“house” includes any yard, garden, outhouses or appurtenances belonging to the house or usually enjoyed with it, and any part of a building which is occupied or intended to be occupied as a separate dwelling including, in particular, a flat;

“housing advance” means money advanced pursuant to section 435 of the Housing Act or any other enactment, for any of the purposes mentioned in that section;

“local housing authority” means a district council, a London borough council or the Common Council of the City of London and references to “the local housing authority”, in relation to any mortgage or right to a mortgage, are to the local housing authority in whose area the land to which the mortgage or right to a mortgage relates is situated;

“Richmond” means the Council of the London borough of Richmond-upon-Thames;

“the Residuary Body” means the London Residuary Body; and references to that Body shall, so far as the context permits, be construed as including references to any predecessor in title;

“Thamesmead” means the land vested in the Residuary Body in accordance with article 15 of the Local Government Reorganisation (Property etc.) Order 1986(4);

“the transfer date” means 14th November 1988.

PART II

Transfer of mortgage interests, etc

2.—(1) On the transfer date —

- (a) any interest of the Residuary Body as mortgagee in respect of any mortgage referred to in paragraph (2); and
- (b) any interest of that Body (whether as freehold owner, lessor, or mortgagee) in any house which is the subject of an equity-sharing agreement, other than a house at Thamesmead,

shall vest in Richmond.

(2) The mortgages referred to in paragraph (1)(a) are mortgages on any house for securing any housing advance or any amount left outstanding on terms which enable repayments to be deferred.

(3) Subject to article 3, all functions of the Residuary Body, and all rights acquired and liabilities incurred by that Body in connection with any interest vested by paragraph (1) shall on the transfer date become functions of or, as the case may be, vest in or be discharged by Richmond.

(4) The right of the Residuary Body to enforce any covenant required by section 35 or required by or imposed by virtue of section 155 of the Housing Act (repayment of discount on early disposal)(5) or a covenant to similar effect shall on the transfer date vest in Richmond.

(5) All rights and liabilities of the Residuary Body in connection with or arising in consequence of the exercise by the Residuary Body before the transfer date of a mortgagee's power of sale shall on that date vest in or, as the case may be, be discharged by Richmond.

(6) All rights and liabilities of the Residuary Body pursuant to any agreement made under section 442 of the Housing Act (agreement by local authority to indemnify mortgagee) shall vest in or, as the case may be, be discharged by Richmond.

(7) All records relating exclusively to any matter transferred to Richmond by paragraphs (1) and (3) to (6) shall vest in Richmond.

Right to a mortgage

3.—(1) On the transfer date the functions of the Residuary Body under those provisions of Part V of the Housing Act that relate to the right to a mortgage shall become functions of the local housing authority.

(2) All records relating exclusively to functions which become functions of a local housing authority by virtue of paragraph (1) shall vest in that authority.

Rates of interest

4.—(1) This article applies to any mortgage transferred by article 2 other than a mortgage in respect of which the rate of interest cannot be varied.

(2) Where the rate of interest applicable to the mortgage immediately before the transfer date is higher than the rate applicable to a mortgage of the same description granted to Richmond ("the Richmond rate"), the rate applicable to that mortgage on and after the transfer date shall, until such time as a different rate falls to be applied in accordance with Schedule 16 to the Housing Act, be the Richmond rate.

(3) Where the rate of interest applicable to the mortgage immediately before the transfer date is lower than the Richmond rate, that lower rate shall continue to be applicable to that mortgage on and after the transfer date until such time as —

(a) the Richmond rate becomes a lower rate; or

(b) the next declaration by the Secretary of State of the standard national rate(6) takes effect, whichever first occurs; and thereafter the rate applicable to that mortgage shall be the rate determined in accordance with Schedule 16 to the Housing Act.

(5) Sections 35 and 155 of the Housing Act 1985 were amended by section 2(3) of the Housing and Planning Act 1986 (c. 63). Part V of the Housing Act 1985 continues to apply where there has been a disposal by a landlord which is a residuary body; see article 3(1) of the Local Government Reorganisation (Preservation of Right to Buy) Order 1986 (S.I. 1986/2092) and the definition of "successor authority" in article 2(1) of that Order. Where the right to buy is preserved, section 155 of the 1985 Act is modified; see paragraph 21 of Schedule 1 to S.I. 1986/2092. Section 155 is further modified in the circumstances mentioned in the Housing (Extension of Right to Buy) Order 1987 (S.I. 1987/1732); see paragraph 27 of the Schedule to that Order.

(6) See paragraph 2 of Schedule 16 to the Housing Act 1985.

PART III

Financial adjustments

5. On the transfer date Richmond shall pay to the Residuary Body an amount equal to the aggregate of—

- (a) the amount of any interest accrued and unpaid immediately before the transfer date in respect of any mortgage transferred by article 2;
- (b) the total of the amounts of principal outstanding immediately before the transfer date (whether then due and payable or not) in respect of any housing advance other than one made by the London Residuary Body; and
- (c) any amount accrued and unpaid immediately before the transfer date under the terms of any equity-sharing agreement.

6.—(1) Any monies which are held by the Residuary Body immediately before the transfer date pursuant to section 105 of the Law of Property Act 1925⁽⁷⁾ (application of proceeds of sale following exercise of mortgagee's power of sale) shall on that date vest in Richmond; and Richmond shall hold those monies in accordance with that section.

(2) On the transfer date Richmond shall pay to the Residuary Body an amount equal to the amount of any difference between the sums received by the Residuary Body as a consequence of the exercise of a mortgagee's power of sale and the sums which the Residuary Body would have been entitled to apply for the purposes mentioned in section 105 of the Law of Property Act 1925 if the sum so received had been sufficient for those purposes.

Consequential financial provisions

7.—(1) In each financial year beginning with the financial year commencing 1st April 1988 Richmond shall pay to each of the other local housing authorities in London an amount which shall be ascertained in accordance with Schedule 1 to this Order, and shall retain the balance of the aggregate of the appropriate capital and appropriate revenue sums as defined in that Schedule.

(2) Richmond shall use its best endeavours to secure that payments required by paragraph (1) are made on or before the last day of the financial year in question; and any part of a payment not so made ("the residual amount") shall be paid no later than 30th June in the next financial year.

(3) Residual amounts shall be deemed to vest in the authority entitled to them on the last day of the financial year in question and shall thereafter be regarded as interest-free loans to Richmond.

(4) Richmond shall be entitled to recover from each of the other housing authorities in London any amount ascertained in accordance with paragraph 4 of Schedule 1.

8.—(1) For the purposes of section 72(3) of the 1980 Act, the net capital receipts of each local housing authority in London for each financial year commencing with the financial year beginning 1st April 1988 shall be treated as if they included an amount which shall be determined in accordance with Schedule 2.

(2) Without prejudice to paragraph (1), sums received by Richmond in respect of—

- (a) the sale of any property vested in that council by this Order; and
- (b) the repayment of discount on early disposal or of advances of a capital nature the right to the repayment of which is vested in that council by this Order,

(7) 1925 c. 20.

shall not be capital receipts for the purposes of Part VIII of the 1980 Act (capital expenditure of local authorities etc.)(8).

9. Any sum paid to or retained by an authority by virtue of article 7 as part of an appropriate capital sum shall be applied for any purpose for which capital money received by that authority on the disposal of land under Part VII of the Local Government Act 1972(9) may properly be applied.

10. For the purposes of Part VIII of the 1980 Act and notwithstanding section 80 of that Act, the amount of expenditure which Richmond shall be taken to have incurred in connection with —

- (a) the transfer of any interest mentioned in article 2(1);
- (b) the discharge of any liability mentioned in article 2(6);
- (c) the making of any further advance; or
- (d) the acquisition, installation, renewal or replacement of any plant, machinery or apparatus which is required to facilitate the discharge of the functions, rights and liabilities vested in them by this Order,

shall be zero.

PART IV

Consequential administrative arrangements

11.—(1) On or before 31st December 1988 and 31st October in any later year, Richmond shall notify each of the other local housing authorities in London of its estimate of —

- (a) the amount to be paid to that authority in the current and next succeeding financial years in accordance with article 7(1) of this Order, identifying the amount which reflects the authority's share of the appropriate capital sum; and
- (b) the amount which, in accordance with article 8, is to be treated as included in the authority's net capital receipts for those years.

(2) On or before 30th June in each financial year commencing with the financial year beginning 1st April 1989, Richmond shall notify each authority of the amounts determined for the preceding financial year in accordance with articles 7 and 8.

(3) When Richmond send a notification under paragraph (1) or (2) to another authority they shall send a copy to the Secretary of State.

(4) Richmond shall —

- (a) on or before the relevant date mentioned in paragraph (1) provide the Secretary of State with an estimate of the amounts they anticipate —
 - (i) they will retain in accordance with article 7(1) by way of capital and revenue sums; and shall identify the amounts which reflect their share of the appropriate capital sum; and
 - (ii) will be treated, in accordance with article 8(1), as included in their net capital receipts for those years; and
- (b) on or before the date mentioned in paragraph (2) notify the Secretary of State of the amounts —
 - (i) retained by them in the preceding financial year in accordance with article 7(1); and

(8) Part VIII was amended by the Local Government Finance Act 1988 (c. 41), sections 130 to 132.

(9) 1972 c. 70.

(ii) included in their net capital receipts for that year in accordance with article 8(1).

Continuity of the exercise of functions

12.—(1) Anything done by or in relation to (or having effect as if done by or in relation to) the Residuary Body in the exercise of or in connection with a function which by virtue of this Order becomes a function of Richmond or another local housing authority shall, so far as is required for continuing its effect after the transfer date, have effect as if done by or in relation to Richmond or that other authority, as the case may be.

(2) Without prejudice to the generality of paragraph (1), that paragraph applies to the making of any application, decision or determination; to the giving of any notice; to the entering into of any agreement or other instrument; and to the bringing of any action or proceeding; but nothing in this Order shall be construed as transferring any contract of employment.

(3) Any pending action or proceeding may be amended in such a manner as may be appropriate in consequence of this Order.

11th October 1988

Nicholas Ridley
Secretary of State for the Environment

SCHEDULE 1

Article 7

PAYMENTS TO OR BY HOUSING AUTHORITIES IN LONDON

PART I
INTERPRETATION

1. In this Schedule —

“appropriate capital sum” means the aggregate of the amounts received by Richmond in the financial year in question which are attributable to —

- (a) repayments of principal in respect of —
 - (i) any mortgage on terms which enable repayments to be deferred;
 - (ii) any housing advance made by the London Residuary Body; or
 - (iii) any further advance; and
- (b) repayments of discount on early disposal, the right to the repayment of which is vested by article 2(4),

less the aggregate of —

- (c) the expenditure incurred by Richmond in that year in making —
 - (i) any further advance; or
 - (ii) any payment under section 442(1) of the Housing Act pursuant to an agreement mentioned in article 2(6);
- (d) the amount of Richmond’s expenses in that year which is charged to any capital account; and
- (e) the amount which is written off by Richmond in that year as irrecoverable in relation to any interest vested by article 2(1) in respect of which Richmond has made a payment in accordance with article 5, or any right vested by article 2(5) in respect of which Richmond has made a payment in accordance with article 6(2);

“appropriate percentage” in relation to any housing authority means the percentage specified in relation to that authority in Schedule 3 to this Order;

“appropriate revenue sum” means the aggregate of the amounts received by Richmond in the financial year in question which are attributable to —

- (a) interest in respect of any mortgage on terms which enable repayments to be deferred, any housing advance made by the London Residuary Body or any further advance; and
- (b) any equity-sharing agreement,

less the amount attributable to Richmond’s expenses in that year which is charged to any revenue account;

“expenses” means administrative expenses properly attributable to any provision of this Order;

“housing authority” means a London borough council or the Common Council of the City of London.

2. For the purposes of this Schedule, the population of the area of a housing authority shall be taken to be the number estimated by the Registrar General and certified by him to the Secretary of State by reference to 30th June 1986.

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PART II

FORMULAE FOR THE PURPOSES OF ARTICLE 7

3. The formula for ascertaining the amount to be paid by Richmond to each of the other housing authorities is —

$$\frac{AS}{T} + BY$$

where—

- A is an amount equal to the appropriate revenue sum for the year in question;
- B is an amount equal to the appropriate capital sum for that year;
- S equals the population of the area of the housing authority in question;
- T Equals the population of the area of all the housing authorities; and
- Y is the appropriate percentage:

Provided that —

- (a) if A is less than zero but B is greater than zero the formula shall be $(A + B)Y$;
- (b) If A is greater than zero but B is less than zero the formula shall be —

$$\frac{(A + B)S}{T}; \text{ and}$$

- (c) if both A and B are zero or less than zero, or if the application of either of the formulae specified in subparagraphs (a) and (b) produces a negative result, the product of the formula shall be deemed to be zero.

4. If the proviso in paragraph 3(c) applies in any financial year, the expenditure incurred by Richmond in that year in consequence of this Order shall be apportioned among the housing authorities by applying the formula —

$$\frac{CS}{T}$$

where—

- C is the amount of Richmond’s expenditure; and
- S and T have the same meanings as in paragraph 3.

SCHEDULE 2

Article 8(1)

ADDITIONS TO NET CAPITAL RECEIPTS

1. In this Schedule —

“appropriate percentage” has the same meaning as in Schedule 1 to this Order;
 “net capital residue” means the aggregate of the amounts received by Richmond in the financial year in question which are attributable to —

- (a) repayments of principal in respect of any mortgage vested by article 2(1) or any further advance; or
- (b) repayments of discount on early disposal, the right to the repayment of which is vested by article 2(4),

less the aggregate of —

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- (c) the amount which, but for article 10, would be treated as prescribed expenditure incurred by Richmond in that year in connection with the matters specified in heads (b), (c) and (d) of that article; and
- (d) any amount which for the purposes of the definition of “appropriate capital sum” in Schedule 1 has been written off in that year as irrecoverable;

“prescribed expenditure” has the same meaning as in section 71 of the 1980 Act.

2. The amount to be included in the net capital receipts of any authority by virtue of article 8(1) shall be an amount equal to 20% of the appropriate percentage of the net capital residue for the financial year in question:

Provided that if the net capital residue for any year is a negative amount, no amount shall be added to any authority’s net capital receipts for that year.

SCHEDULE 3

Schedule 1

APPROPRIATE PERCENTAGES

Name of authority	Percentage
Barking and Dagenham	1.05
Barnet	1.30
Bexley	0.74
Brent	5.17
Bromley	1.13
Camden	6.16
City of London	0.07
Croydon	1.35
Ealing	2.92
Enfield	1.13
Greenwich	4.13
Hackney	7.38
Hammersmith & Fulham	3.85
Haringey	5.99
Harrow	0.92
Havering	0.93
Hillingdon	1.27
Hounslow	1.76
Islington	6.65
Kensington & Chelsea	2.94
Kingston-upon-Thames	0.39

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Name of authority	Percentage
Lambeth	7.90
Lewisham	5.03
Merton	1.02
Newham	4.85
Redbridge	0.90
Richmond-upon-Thames	1.03
Southwark	7.84
Sutton	0.55
Tower Hamlets	4.14
Waltham Forest	1.99
Wandsworth	4.47
Westminster	3.05

EXPLANATORY NOTE

(This note is not part of the Order)

This Order transfers to the Council of the London borough of Richmond-upon-Thames (“Richmond”) a variety of interests, functions, rights and liabilities held by the London Residuary Body in relation to mortgages of residential property.

Part I defines terms and specifies 14th November 1988 as “the transfer date”.

Part II provides for the transfer to Richmond of various interests, functions, rights and liabilities of the Residuary Body. Article 3 confers on the housing authority in whose area the relevant land is situated the Residuary Body’s liability to provide a mortgage under Part V of the Housing Act 1985. Article 4 deals with interest rates.

Part III contains financial provisions. Article 5 provides for the payment by Richmond to the Residuary Body of a sum which reflects the value of the interests transferred, recognising that arrears may have accrued. Article 6 relates to mortgages in respect of which the Residuary Body or its predecessors in title have exercised the mortgagee’s power of sale.

Article 7 provides for the retention by Richmond and the distribution by them to other London housing authorities of amounts which are to be calculated in accordance with Schedule 1. Article 7(4) provides for the recovery by Richmond of expenditure associated with the Order if Richmond’s receipts are insufficient for the purpose. Article 8 provides for additions to the net capital receipts of London housing authorities in accordance with Schedule 2 on the basis of the percentages listed in Schedule 3. Article 9 requires an authority which receives capital sums by virtue of article 7 to apply the money for the redemption of debt or for other capital purposes. Article 10 enables Richmond to disregard for prescribed expenditure purposes certain expenditure which they are required to incur as a consequence of the Order.

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Part IV prescribes the administrative arrangements that apply to the distribution of cash and additional capital spending power and makes provision for continuity. Article 11 requires Richmond to notify the recipient councils and the Secretary of State of its estimates of the amounts available for distribution or retention and of the amount actually distributed or retained. Article 12 deals with continuity in the exercise of functions transferred by the Order.