

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)**  
**(AMENDMENT) (ENGLAND) (NO.2) REGULATIONS 2004**

**2004 No.3055**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, which make provision for capital finance and accounts of local authorities in England. These Regulations make changes to the provisions concerning pooling of capital receipts, the calculation of minimum revenue provision and the use of amounts that were set aside under the former capital finance system (under Part IV of the Local Government and Housing Act 1989).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 These Regulations are made under Part 1 (capital finance etc and accounts) and section 123 (orders and regulations) of the Local Government Act 2003. Part 1 of the 2003 Act brought in a new system of capital finance for local authorities for financial years beginning on or after 1st April 2004. This replaced the capital finance provisions in Part IV of the Local Government and Housing Act 1989, which were repealed by virtue of the Local Government Act 2003. Detailed provisions of the new system are set out in the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146, amended by S.I. 2004/534) (“the 2003 Regulations”). The 2003 Regulations apply to local authorities in England. Some of the provisions in the 2003 Regulations do not apply to parish councils or charter trustees (see regulation 1(3) of S.I. 2003/3146).

4.2 To enable the transition from the old capital finance system to the new one, consequential, savings and transitional provisions were included in the Local Government Act 2003 (Commencement No. 1 and Transitional Provisions and Savings) Order 2003 (S.I. 2003/2938 (C. 107)), the Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 (S.I. 2004/533) and the Local Authorities (Capital Finance) (Further Consequential and Saving Provisions) Order 2004 (S.I. 2004/2044).

4.3 Following the start of the new capital finance system, the need has been identified for further amendments to the 2003 Regulations, mainly as a result of questions raised by local authorities as they have begun to apply the rules in practice. All the changes are beneficial to authorities. The latest amendments do not affect any of the provisions in the 2003 Regulations that apply to parish councils and charter trustees.

## 5. Extent

5.1 This instrument applies to England.

## 6. European Convention on Human Rights

Not applicable.

## 7. Policy background

7.1 All local authorities in England, the local authority associations, the Audit Commission, CIPFA (The Chartered Institute of Public Finance and Accountancy) and other interested parties have been consulted on a draft of the Regulations. All responses were in favour of the changes.

### **Pooling of capital receipts: small scale housing stock disposals (regulations 2, 3 and 5)**

7.2 In the 2003 Regulations, regulation 12 defines the housing capital receipts that are subject to the "pooling" requirement, under which part of the capital receipts have to be paid to the Secretary of State. It excludes from pooling the receipts from certain transfers of housing stock ("qualifying disposals") (regulation 12(1)(a)). These qualifying disposals are transfers of property, occupied by tenants, to registered social landlords ("RSLs") (non profit-making bodies registered with the Housing Corporation). To protect the tenants, RSLs are the only transferees the Secretary of State allows. Authorities are assumed to use some of the capital receipts from qualifying disposals to repay debt, enabling the Secretary of State to reduce their housing subsidy, so it would be unfair if pooling also applied.

7.3 The definition of qualifying disposals is based on a definition of stock transfers which refers only to large scale disposals, involving 500 or more properties (sections 135 and 136 Leasehold Reform, Housing and Urban Development Act 1993). In practice, the exclusion of qualifying disposals should cover all transfers of housing stock to RSLs and ODPM is unaware of any authority disadvantaged by the limitation on size. However, it remains possible that a smaller scale transfer might some day be undertaken by an authority, which may also result in a reduction in the authority's housing subsidy. Regulation 3, and new definitions in regulation 2, enable *all* transfers of stock to RSLs to be exempt from pooling.

- 7.4 A consequential amendment is made by regulation 5 so that an authority does not need to determine a notional capital receipt for the purposes of calculating pooling, under regulation 22 of the 2003 Regulations, where sale proceeds from transfers of stock to RSLs are received in non-money form.

**Pooling of capital receipts: disposal of former new town assets (regulation 4)**

- 7.5 New town corporation assets were transferred to local authorities on the basis that, in the event of subsequent sales, part of the capital receipt was to be paid to the Commission for the New Towns (now, together with the Urban Regeneration Agency, known as English Partnerships).
- 7.6 The former capital finance regime took account of that "clawback" arrangement in regulations requiring part of a housing capital receipt to be set aside for debt-redemption. Authorities were relieved of the double burden of providing both for the clawback and the full amount of set-aside.
- 7.7 From 1<sup>st</sup> April 2004, set-aside has been replaced by pooling. However, there will still be occasions when authorities selling housing land have to make clawback payments to English Partnerships, as well as paying up to 75% of the total receipt to the Secretary of State under the pooling provisions.
- 7.8 Regulation 4 mitigates this double impact, by inserting regulation 20A in the 2003 Regulations. The effect of regulation 20A is that authorities will first treat the capital receipt as reduced by any payment due to English Partnerships before calculating the amount to be pooled.

**Calculation of minimum revenue provision (regulation 6)**

- 7.9 In the 2003 Regulations, regulation 28 sets out the rules for calculating minimum revenue provision (MRP) - the annual revenue provision that authorities have to make in respect of their debts and credit liabilities. The requirement to make MRP has existed since 1990 and continues within a new framework under the new system. The need for four adjustments has been identified.
- 7.10 The effect of regulation 6(a) is to redefine factor "A" in the MRP calculations so that the new MRP regime introduced on 1st April 2004 does not produce a more severe revenue impact than the former regulations. At present, it fails to deal explicitly with *non-housing* authorities (such as county councils), which were covered by a different formula under the old provisions, based on a factor called the "relevant amount". The new definition clarifies the treatment of non-housing authorities in this context.

- 7.11 Regulation 6(a) also makes clear that, for non-housing authorities, factor "HC" (the opening Housing Revenue Account capital financing requirement for the current year) always has the value of nil.
- 7.12 Regulation 6(b) amends regulation 28(3) of the 2003 Regulations, which deals with circumstances in which MRP is to be nil. When, under the former system, authorities were, exceptionally, allowed to borrow for revenue expenditure, they could be required to provide for repaying that debt over a very short *amortisation* period (normally 7 years). Some amortisation periods are still running and regulation 28(2) in the 2003 Regulations ensures that authorities continue to make this additional amount of MRP at the specified rate. However, it remains the policy that an authority may stop making MRP once the amount it has set aside for debt redemption equals or exceeds its debts. This position is achieved when the *capital financing requirement* (CFR) is nil or negative. But regulation 28 currently requires the amortisation component of MRP still to be provided for in those circumstances. The amendment therefore ensures that, in relation to a financial year, *all* MRP ceases once the CFR is nil or negative.
- 7.13 Regulation 6(b) also amends regulation 28(4) of the 2003 Regulations. Definitions of the terms "housing amount for 2004", "non-housing amount for 2004" and "relevant amount for 2004", which are referred to in the MRP calculations in regulation 28(1), are inserted. The definitions make clear that these amounts are to be calculated in relation to the financial year beginning on 1st April 2004.

#### **Use of amounts set aside under the Local Government and Housing Act 1989 (regulation 7)**

- 7.14 Regulation 33 of the 2003 Regulations concerns amounts set aside as provision for debt redemption under the former capital finance system. The former provisions allowed authorities that became debt-free to use set-aside amounts for capital expenditure. However, authorities that were debt-free on 31st March 2004 (the last day of the former system) may not have had time to spend all the set-aside amounts they were entitled to under the old provisions. So regulation 33 provides for those outstanding amounts to be treated as capital receipts and thus remain available for capital expenditure. This ensures that debt-free authorities do not lose spending power as a result of the transition to the new system. Regulation 7 makes several changes to regulation 33 of the 2003 Regulations.
- 7.15 Regulation 7(a)(ii) clarifies that authorities may choose to convert all or, if they prefer, just part of the specified amount of set-aside into capital receipts.
- 7.16 Regulation 7(b) adds two new paragraphs at the end of regulation 33, dealing with the procedure for converting set-aside into capital

receipts. New paragraph (4) gives authorities until the end of September 2005 to decide on the amount of the conversion (thus allowing them up to six months to finalise their accounts for the 2004-05 financial year). New paragraph (5) provides that the conversion is to be treated as taking place during the 2004-05 financial year. These amendments clarify the accounting procedures in relation to regulation 33.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is beneficial. The amendments will overall reduce costs for local authorities.

## **9. Contact**

Trevor Emmott at the Office of the Deputy Prime Minister, Tel: 020 7944 4226 or e-mail: [trevor.emmott@odpm.gsi.gov.uk](mailto:trevor.emmott@odpm.gsi.gov.uk), can answer any queries regarding the instrument.