EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (ENGLAND) (AMENDMENT) REGULATIONS 2021

2021 No. 611

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 ("2003 Regulations") which make provision about the use of capital receipts by a local authority. They include provision relating to sums that must be paid to the Secretary of State derived from the disposal of an interest in housing land (a process known as 'pooling'). The purpose of the instrument is to:

(a) reduce the frequency of pooling payments from four times a year to once a year;

(b) update and rationalise elements of the formula used in the calculation of pooling payments; and

(c) amend provision relating to the interest payable on late pooling payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Since 2004, local authorities have been required to pay a proportion of their housing receipts to the Government through a process known as "pooling" under the 2003 Regulations – provision for which is made under section 11(1) and (2)(b) of the Local

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Government Act 2003. Over the years the rules governing the pooling of housing receipts have evolved.

7. Policy background

What is being done and why?

7.1 A major change in the rules occurred in 2012 when the Government implemented its proposals to re-invigorate the policy of Right to Buy (whereby secure tenants of local authorities have the right to purchase their homes at a discount). The Right to Buy discounts were increased and a new "one for one" commitment was introduced, with the aim that homes sold as a result of the reinvigoration would be replaced. To achieve this, receipts arising from additional Right to Buy sales were captured such that they might be available to invest in new supply. However, at the same time, the formulae for calculating pooling payments in the 2003 Regulations were amended to ensure that a sufficient proportion of the receipt was held back to pay down debt associated with any property sold and that income anticipated by both local authorities and central Government was protected.

Annual Payments

7.2 One thing that has not changed until now has been the deadlines for making pooling payments which are quarterly. The housing receipts received by each local authority in a three-month period are taken into account in calculating the poolable amount which is due on the last day of the month following that period (known as the "due date") (regulation 12 of the 2003 Regulations). Any late payment or under-payment incurs interest - interest is compounded every three months on the due date (regulation 13 of the 2003 Regulations).

7.3 Authorities can retain a greater level of Right to Buy receipts if they incur a sufficient level of expenditure on replacement social housing. To reduce the administrative burden on local authorities, it has been agreed that the pooling deadlines should be changed to annual deadlines. Not only will it become easier for authorities to achieve their deadlines, it will also achieve a long-running aim of simplifying the pooling process.

7.4 This instrument effects that change. Housing receipts received by each housing authority in a financial year will be taken into account when calculating the poolable amount which will be due on 30th April for the preceding financial year. Furthermore, any interest incurred on late pooling payments will only be compounded every twelve months, instead of every three months.

7.5 A reduction in frequency of required pooling payments would be of benefit to authorities, both in their financial planning and in the demands on their staff resources. There would be fewer payments to calculate and annual payments would be easier to forecast than quarterly payments as they are less affected by in-year volatile levels of receipts. This change will also save staff resources in central government.

Rationalising and Updating of Calculation of the Pooling Payments

7.6 In order to ensure that the receipts are equitably divided in the way set out in paragraph 7.1 above, annually changing variables for each authority have been set out in a table in the regulations since 2012 and updated every few years. These variables were due to be updated this financial year, but they have now been replaced by a formula.

7.7 Updating and rationalising of the formula for calculating poolable amounts will have no effect on the amounts local authorities may retain, but it will mean that "routine" updating of the regulations will no longer be necessary.

Calculation of Interest Incurred on Late Pooling Payments

7.8 Regulation 13 of the 2003 Regulations, provides that interest is due in respect of any part of the poolable amount which is paid late and that the rate of interest is set at one per cent above the Bank of England interest rate (Bank Rate). The Bank of England's Monetary Policy Committee (MPC) have now lowered Bank Rate to 0.1% and financial markets have at times expected Bank Rate to turn negative in the future. This instrument amends the rate of interest payable to take account of this possibility by holding the rate for charging interest for late payments at 1% in the event of the base rate falling below 0%.

7.9 This provision, which ensures that the interest incurred by local authorities on late payment of poolable amounts will not go below one percent, will only have an effect if the Bank Rate becomes negative.

Correction of Drafting

7.10 This instrument also corrects a minor drafting deficiency in the definition of sub-liability in regulation 1(5) of the 2003 Regulations and remove the redundant definition of sub-liability from their Schedule. The free issue procedure has therefore been followed.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government has no current plans to make consolidating legislation.

10. Consultation outcome

10.1 On 14 August 2018, MHCLG published a consultation on how local authorities could use the receipts they obtained from sales of council housing under the Right to Buy to deliver replacement homes. In particular, it asked how some relaxation to the rules governing the use of additional Right to Buy receipts (see paragraph 4.2 above) could make it easier for local authorities to use their housing receipts more effectively.

10.2 On 19 August 2021, the Government responded to this consultation, including announcing the move to annual pooling. These regulations make authorities' payments easier, thereby making the planned spend of their additional receipts on one-for-one replacement easier to manage.

11. Guidance

11.1 The Government intends to revise its non-statutory guidance on the pooling of Right to Buy receipts, to aid local authorities' (and others') understanding.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector, although the changes introduced will result in reduced workload in processing payments in both local and central government.

12.3 An Impact Assessment has not been prepared for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans for a review of the legislation.

14.2 As this instrument does not make regulatory provision in relation to any qualifying activity, no review clause is required.

15. Contact

15.1 Ross Buchanan at the Ministry of Housing, Communities and Local Government, (Telephone: 0303 444 3725 or email: ross.buchanan@communities.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Victoria Latham, Deputy Director for Local Authority Housing Finance and Right to Buy, at the Ministry of Housing, Communities and Local Government, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Christopher Pincher, Minister of State at the Ministry of Housing, Communities and Local Government, can confirm that this Explanatory Memorandum meets the required standard.