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STATUTORY INSTRUMENTS

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**2004 No.**

**LOCAL GOVERNMENT, ENGLAND**

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

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| <i>Made</i> - - - -           | <i>2004</i> |
| <i>Laid before Parliament</i> | <i>2004</i> |
| <i>Coming into force</i> - -  | <i>2004</i> |

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 \*\*\*\* 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;”;

(c) after the definition of “housing land”, there shall be inserted—

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(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 (14)(b) of section 135.

““introductory tenant” has the same meaning as in Chapter 1 of Part V of the Housing Act 1996 (introductory tenancies)(a);

“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;”;

- (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;
- (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)(b);
- “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(c);
  - (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—

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(a) 1996 c. 52.

(b) 1985 c. 68.

(c) 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.

### **“Capital receipts reduced by consideration for former new town housing land**

**20A.**—(1) 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(a).

(2) Subject to regulation 12(5), for the purposes of calculating the amount specified in regulation 12(4), a capital receipt of a description specified in paragraph (3) shall be treated as reduced by an amount determined in accordance with paragraph (4).

(3) A capital receipt is of a description specified for the purposes of paragraph (2) where—

- (a) a local authority derives the capital receipt from the disposal of an interest in housing land;
- (b) the local authority acquired the interest from a new town corporation;
- (c) the new town corporation disposed of the interest pursuant to section 36 of the New Towns Act 1981 (functions of Commission)(b) or regulations made under section 172(1) of the Local Government and Housing Act 1989 (transfer of new town housing stock)(c); and
- (d) 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.

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

### **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”.

### **Loans, grants and financial assistance to officers**

**6.** Regulation 26 of the Principal Regulations (expenditure not to be capital expenditure) shall be revoked.

### **Calculation of minimum revenue provision**

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

- (a) in paragraph (1)—
  - (i) for “paragraphs (2) and (3)”, there shall be substituted “paragraphs (2) to (3A)”;
  - (ii) for the definition of A, there shall be substituted—

“A is an adjustment (which may be a positive, nil or negative amount) to be calculated—

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

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

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and

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(a) 1981 c. 64. See sections 3 (establishment of development corporations for new towns) and 35 (establishment of the Commission).

(b) 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.

(c) 1989 c. 42.

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

CFRM - RA

where—

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

HA is the housing amount on 31st March 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;

NHA is the non-housing amount on 31st March 2004; and

RA is the relevant amount on 31st March 2004; and”;

- (iii) for the definition of HC, there shall be substituted—

“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.”;

- (b) after paragraph (3), there shall be inserted—

“(3A) Where, in relation to the current financial year, 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.”;

- (c) in paragraph (4)—

- (i) at the end of the definition of “capital financing requirement”, there shall be added—

“, calculated as if any amount that is treated as a capital receipt by virtue of regulation 33 were treated as a capital receipt received by the authority on 31st March 2004;”;

- (ii) after the definitions of “housing amount” and “non-housing amount”, there shall be inserted—

““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) 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;”;

- (iii) at the end, there shall be added—

“; and

“relevant amount” has the same meaning as that term had on 31st March 2004 in regulation 152 of the Local Authorities (Capital Finance) Regulations 1997 (relevant amount for subsequent financial years)(a).”.

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

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

- (a) in paragraph (1)—

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(a) 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).

- (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) for paragraph (3), there shall be substituted—
- “(3) The amount specified in paragraph (2) shall not exceed—
- (a) the amount by which the local authority’s credit ceiling on 31st March 2004 was less than nil; or
  - (b) if a greater amount, the amount by which the local authority’s capital financing requirement on 31st March 2004 was less than nil.
- (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) Except in relation to the calculation of the capital financing requirement for the purposes of the minimum revenue provision under regulation 28, 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.
- (6) For the purposes of paragraph (3), “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(a).”

Signed by authority of the Secretary of State

2004

Minister of State  
Office of the Deputy Prime Minister

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(a) 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.

## 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 housing 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 housing land was to be given by the local authority when it subsequently disposed of the housing 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 such 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 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 26 of the Principal Regulations provided for capital expenditure to be treated as not being capital expenditure where it was incurred by a local authority on the giving of loans, grants or other financial assistance to officers. **Regulation 6** of these Regulations revokes regulation 26.

**Regulation 7** 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 on 31st March 2004 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. The definition of capital financing requirement is amended to take into account amounts set aside by debt-free authorities before 1st April 2004 as provision to meet credit liabilities (which may be treated as capital receipts by virtue of regulation 33 of the Principal Regulations).

**Regulation 8** amends the maximum amount that a local authority may treat as a capital receipt under regulation 33 of the Principal Regulations. It also 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 (except when calculating the minimum revenue provision).

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.