



# Local Government and Housing Act 1989

## 1989 CHAPTER 42

### PART IV

#### REVENUE ACCOUNTS AND CAPITAL FINANCE OF LOCAL AUTHORITIES

##### *Capital receipts*

#### **58 Capital receipts.**

- (1) For the purposes of this Part, the capital receipts of a local authority are, subject to the following provisions of this section, those sums received by the authority in respect of—
- (a) the disposal of any interest in an asset if, at the time of disposal, expenditure on the acquisition of the asset would be expenditure for capital purposes;
  - (b) the disposal of any investment other than an investment which, at the time of disposal, is an approved investment;
  - (c) the repayment of, or a payment in respect of, any grants or other financial assistance of such a description that, if the expenditure on the grant or assistance had been incurred at the time of the repayment or payment, it would have constituted expenditure for capital purposes; or
  - (d) the repayment of the principal of an advance (not being an approved investment) made by the authority for such a purpose that, if the advance had been made at the time of the repayment, expenditure incurred on it would have constituted expenditure for capital purposes;
- and those sums become capital receipts at the time they are in fact received.
- (2) The following sums are not capital receipts for the purposes of this Part, namely, sums received by an authority in respect of—
- (a) the disposal of an interest in an asset which, at the time of the disposal, is an asset of a superannuation fund which the authority are required to keep by virtue of the <sup>M1</sup>Superannuation Act 1972; or
  - (b) the disposal of an investment held for the purposes of such a superannuation fund; or

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- (c) any repayment or payment such as is mentioned in paragraph (c) or paragraph (d) of subsection (1) above which is made to such a superannuation fund.
- (3) Subsection (1) above applies to sums received on or after 1st April 1990 but regardless of when the disposal or advance was made or the grant or other financial assistance was given and, in particular, whether or not it was made or given on or after that date but, in the case of a disposal made before that date, the reference in paragraph (a) or, as the case may be, paragraph (b) of subsection (1) above to the time of the disposal shall be construed as a reference to 1st April 1990.
- (4) Subject to subsection (6) below, to the extent that any sums which were received by a local authority before 1st April 1990 and either—
- (a) constituted capital receipts for the purposes of Part VIII of the <sup>M2</sup>Local Government, Planning and Land Act 1980, or
  - (b) did not constitute such receipts by virtue of regulations under section 75(5) of that Act but are specified for the purposes of this subsection by regulations made by the Secretary of State,
- are represented in the authority's accounts for the financial year ending immediately before that date either by amounts shown as capital receipts which are unapplied as at the end of that year or by amounts included in the balance as at the end of that year of any fund established by the authority under paragraph 16 of Schedule 13 to the <sup>M3</sup>Local Government Act 1972, those sums shall be treated for the purposes of this Part as capital receipts received by the authority on that date; and any reference in this Part to "1980 Act receipts" is a reference to sums which are capital receipts by virtue of this subsection.
- (5) So far as may be necessary for the purposes of this Part, a local authority shall identify which (if any) sums falling within paragraphs (a) and (b) of subsection (4) above are represented by amounts included as mentioned in that subsection in the balance of a fund established as so mentioned.
- (6) Subsection (4) above does not apply to a sum in respect of which an amount shown as an unapplied capital receipt or included in a balance as mentioned in that subsection is, on 1st April 1990, held in an investment which is not on that date an approved investment; and, so far as may be necessary for the purposes of this Part, where on that date a local authority hold investments which are not then approved investments, the authority shall identify which (if any) of the amounts so shown or included are to be treated as held in such investments.
- (7) Where an asset or investment falling within paragraph (a) or paragraph (b) of subsection (1) above is disposed of and the whole or part of the purchase price is not received by the authority at the time of the disposal, then, subject to subsection (9) below, any interest payable to the authority in respect of the whole or any part of the price shall not be regarded as a capital receipt.
- (8) Subject to subsection (9) below, in the case of a disposal of an asset which consists of the grant, assignment or surrender of a leasehold interest in any land or the lease of any other asset, only the following are capital receipts, —
- (a) any premium paid on the grant or assignment;
  - (b) any consideration received in respect of the surrender;
  - (c) any sum paid by way of rent more than three months before the beginning of the rental period to which it relates;

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- (d) any sum paid by way of rent in respect of a rental period which exceed some year; and
  - (e) so much of any other sum paid by way of rent as, in accordance with directions given by the Secretary of State, falls to be treated as a capital receipt.
- (9) If the Secretary of State by regulations so provides,—
- (a) the whole or such part as may be determined under the regulations of a sum received by a local authority and which, apart from this subsection, would not be a capital receipt shall be such a receipt; and
  - (b) the whole or such part as may be so determined of a sum which, apart from this subsection, would be a capital receipt shall not be such a receipt.
- (10) This section and sections 59 to 61 below have effect subject to Part II of Schedule 3 to this Act in relation to certain disposals, payments and repayments occurring before 1st April 1990.

#### Marginal Citations

- M1** 1972 c. 11.
- M2** 1980c. 65.
- M3** 1972 c. 70.

## 59 The reserved part of capital receipts.

- (1) At the time when a local authority receive a capital receipt, a part of that receipt (in this Part referred to as “the reserved part”) shall be set aside by the authority as provision to meet credit liabilities.
- (2) Subject to the following provisions of this section, the reserved part of a capital receipt shall be—
  - (a) in the case of a receipt in respect of the disposal of dwelling-houses for the purposes of Part II of the <sup>M4</sup>Housing Act 1985 (provision of housing), 75 per cent; and
  - (b) in the case of any other receipt, 50 per cent.
- (3) The Secretary of State may by regulations alter the percentage which (by virtue of subsection (2) above or the previous exercise of this power) is for the time being the reserved part of any capital receipt or provide that the amount which is the reserved part of any capital receipt shall be determined in accordance with the regulations; and any such regulations may make different provision in relation to—
  - (a) different descriptions of capital receipts; and
  - (b) different descriptions of local authority;and where the regulations specify a percentage, it may be any percentage from nil to 100.
- (4) If the Secretary of State by regulations so provides, capital receipts of a description specified in the regulations shall be treated for the purposes only of this section as reduced by an amount determined in accordance with the regulations.
- (5) In the exercise of the power conferred by subsection (3) or subsection (4) above, capital receipts and local authorities may be differentiated in any manner which appears to the Secretary of State to be appropriate and, in particular,—

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- (a) capital receipts may be differentiated by reference to the source from which they are derived including, in the case of receipts derived from disposals, different descriptions of disposals; and
  - (b) local authorities may be differentiated by reference to their type, their credit ceilings and the nature of their statutory powers and duties.
- (6) Without prejudice to subsection (3) above, in any case where—
- (a) the consent of the Secretary of State is required for a disposal of a dwelling-house or any other property, and
  - (b) the Secretary of State gives a direction under this subsection with respect to a capital receipt in respect of that disposal,

subsection (2) above shall have effect in relation to that capital receipt as if it provided that the reserved part of the receipt were a percentage thereof specified in the direction or, according as the direction provides, an amount determined in accordance with the direction; but any direction under this subsection relating to a 1980 Act receipt shall be made before 1st April 1990.

- (7) Subsection (1) above does not apply to a capital receipt received by an authority as trustee of a trust fund which is held for charitable purposes.
- (8) Where a local authority receive a capital receipt in respect of an asset, investment, grant or other financial assistance which was originally acquired or made by the authority wholly or partly out of moneys provided by Parliament on terms which require, or enable a Minister of the Crown to require, the payment of any sum to such a Minister on or by reference to the disposal of the asset or investment or the repayment of the grant or assistance, the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by the sum which appears to the authority to be so payable, including, in the case of a 1980 Act receipt, any sum which was payable, but was not in fact paid, before 1st April 1990.
- (9) Where a local authority receive a capital receipt, not being a 1980 Act receipt, in respect of—
- (a) a disposal of land held for the purposes of Part II of the <sup>M5</sup>Housing Act 1985, or
  - (b) any other disposal of land made by virtue of Part V (the right to buy) of that Act,

the amount of the capital receipt shall be treated for the purposes of the preceding provisions of this section as reduced by so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal.

**Modifications etc. (not altering text)**

- C1 S. 59 modified by S.I. 1990/432, **regs. 17, 18, 19(1)–(4)** and reg. 19A (as added by S.I. 1991/500, **reg. 2(f)**)
- C2 S. 59 restricted (1.4.1996) by S.I. 1996/633, **art. 7(1)(b)**
- C3 S. 59(2) restricted (1.4.1996) by S.I. 1996/633, **art. 7(1)(a)**

**Marginal Citations**

- M4 1985 c. 68.
- M5 1985 c.68.

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## **60 The usable balance of capital receipts.**

- (1) This section applies to the balance of any capital receipts received by a local authority after deducting—
  - (a) the reserved part of each such receipt; and
  - (b) any sum which, by virtue of subsection (8) or subsection (9) of section 59 above, falls to be deducted in determining the amount of any receipt for the purposes of the preceding provisions of that section;but nothing in this section applies to a capital receipt which falls within section 59(7) above.
- (2) The balance referred to in subsection (1) above (in this Part referred to as “the usable part” of the authority’s capital receipts) shall be applied by the local authority, according as they determine, in one of the following ways, or partly in one way and partly in the other,—
  - (a) to meet expenditure incurred for capital purposes; or
  - (b) as provision to meet credit liabilities;and, subject to subsection (3) below, may be so applied in the financial year in which the receipts are received or in any later financial year.
- (3) A determination by a local authority under subsection (2) above as to the manner in which the usable part of their capital receipts are to be applied may not be made later than 30th September in the financial year following that in which, in accordance with the determination, the receipts are to be applied.
- (4) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(a) above, it shall be taken to be so applied at the time when the expenditure in question is defrayed.
- (5) For the purposes of this Part, to the extent that the usable part of an authority’s capital receipts are applied as mentioned in subsection (2)(b) above, it shall be taken to be so applied—
  - (a) if it is used as an amount of credit cover as mentioned in section 50(3)(b) above, when the credit arrangement in question is entered into or varied; and
  - (b) subject to subsection (6) below, in any other case, on the last day of the financial year in which (pursuant to the local authority’s determination) it is so applied.
- (6) In the case of a determination under subsection (2) above which—
  - (a) relates to the application of the usable part of a 1980 Act receipt in the financial year beginning on 1st April 1990, and
  - (b) is made not later than 30th September 1990,subsection (5)(b) above shall have effect with the substitution of a reference to 1st April 1990 for the reference to the last day of the financial year in which the usable part is so applied.

## **61 Capital receipts not wholly in money paid to the authority.**

- (1) This section applies where—
  - (a) the whole or part of the consideration received by a local authority on or after 1st April 1990 for a disposal falling within section 58(1) above either is not

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- in money or consists of money which, at the request or with the agreement of the local authority concerned, is paid otherwise than to the authority; or
- (b) the right of a local authority to receive such a repayment or payment as is referred to in section 58(1) above is assigned or waived for a consideration which is received on or after 1st April 1990 and which, in whole or in part, is not in money or which, at the request or with the agreement of the local authority, is paid otherwise than to the authority; or
- (c) on a disposal falling within section 58(8) above, any consideration is received on or after 1st April 1990 and, if it had been in money paid to the authority, it would have been a capital receipt.
- (2) Where this section applies in relation to any consideration, there shall be determined the amount which would have been the capital receipt if the consideration had been wholly in money paid to the local authority; and, subject to subsection (3) below, the amount so determined is in this section referred to as “the notional capital receipt”.
- (3) From the amount which, apart from this subsection, would be the notional capital receipt in relation to a disposal, repayment or payment there shall be deducted any amount of money that was paid or is payable to the local authority in respect of that disposal, repayment or payment and in respect of which section 59 above actually applies or will actually apply when the payment is received.
- (4) Where consideration to which this section applies is received in respect of a disposal, repayment or payment, the local authority shall set aside, at the time of the disposal or the assignment or waiver of the repayment or payment, and as provision to meet credit liabilities, an amount which, except in so far as regulations made or directions given by the Secretary of State otherwise provide, shall be equal to that which, under section 59 above, would be the reserved part of the notional capital receipt.
- (5) The amount falling to be set aside by a local authority under subsection (4) above shall be so set aside—
- (a) from the usable part of the authority’s capital receipts; or
- (b) from a revenue account of the authority.
- (6) If the Secretary of State by regulations so provides,—
- (a) consideration which is not in money, which is received by a local authority and which is of a description specified in the regulations, or
- (b) consideration which is in money, which is paid otherwise than to the authority and which is of a description specified in the regulations,
- shall be treated for the purposes of subsections (2), (4) and (5) above as consideration to which this section applies and, in relation to any such consideration, subsection (4) above shall apply with such modifications as are specified in the regulations.

**Modifications etc. (not altering text)**

**C4** S. 61 excluded by S.I. 1990/720, art. 6(2)(b)

**C5** S. 61(4) modified by S.I. 1990/432, reg. 20(7)

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