

1988 No. 1534

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Local Government (Prescribed Expenditure)  
(Amendment) (No. 2) Regulations 1988**

<i>Made</i> - - - -	<i>6th September 1988</i>
<i>Laid before Parliament</i>	<i>9th September 1988</i>
<i>Coming into force</i>	<i>1st October 1988</i>

The Secretary of State for the Environment and the Secretary of State for Transport (a), as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 72(3), 75(5), 80A (7) and 84 of, and paragraph 4 of Schedule 12 to, the Local Government, Planning and Land Act 1980(b) and section 132(3) and (4) of the Local Government Finance Act 1988(c) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1.—(1) These Regulations may be cited as the Local Government (Prescribed Expenditure) (Amendment) (No. 2) Regulations 1988.

(2) These Regulations shall come into force on 1st October 1988.

2. The Local Government (Prescribed Expenditure) (Consolidation and Amendment) Regulations 1987(d) are amended as follows—

- (a) in regulation 2, after the definition of “housing association” insert—
  - ““land”, except where the context otherwise requires, includes buildings and structures on land;
  - “share capital and loan capital” means share capital and loan capital (within the meaning of section 78 of the Finance Act 1986(e)) of any body corporate which is not an authority to which Part VIII of the Act applies;”;
- (b) in regulation 3(2), for “paragraphs 2, 4 or 5” substitute “paragraphs 2, 4, 5 or 10”;
- (c) in regulation 4(1)(c), omit the words from “except to the extent of” to the end of that sub-paragraph, and omit the word “and” before sub-paragraph (d);
- (d) after regulation 4(1)(d) insert—
  - “(e) land, vehicles, vessels, movable and immovable plant, machinery and apparatus if the authority disposing of the asset had no interest in it immediately before 1st April 1981 and the subsequent acquisition of an interest by the authority—
    - (i) did not involve the authority in prescribed expenditure, or involved expenditure the amount of which was, for the purposes of Part VIII of the Act, nil;
    - (ii) was not by way of a transfer by operation of law;

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(a) The functions of the Minister of Transport under section 84(5) of the Local Government, Planning and Land Act 1980 (c.65) were transferred to the Secretary of State for Transport by article 2(1)(b) of the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238).

(b) 1980 c.65; section 80A was inserted by Part I of Schedule 1 to the Local Government Act 1987 (c.44).

(c) 1988 c.41.

(d) S.I. 1987/2186.

(e) 1986 c.41.

- (iii) was not pursuant to an agreement approved by the Secretary of State as an agreement for the sale of new town community related assets;
  - (iv) was not pursuant to an agreement under section 39 of the New Towns Act 1981(a); and
  - (v) was not pursuant to a scheme approved or made by the Secretary of State under Part III of the New Towns Act 1981; and
- (f) land, vehicles, vessels, movable and immovable plant, machinery and apparatus where, if the authority were the party acquiring the asset under the transaction instead of the party disposing of it, the acquisition—
- (i) would not involve the authority in prescribed expenditure; or
  - (ii) would involve expenditure the amount of which was, for the purposes of Part VIII of the Act, nil.”;
- (e) after regulation 4 insert—
- “Classes of assets to be treated as if they were mentioned in section 75(2)**
- 4A.** The following classes of assets shall be treated as if they were mentioned in section 75(2) of the Act—
- (1) share capital and loan capital where the acquisition of the asset by the authority involved the authority in prescribed expenditure, the amount of which was, for the purposes of Part VIII of the Act, other than nil; and
  - (2) share capital and loan capital of a company formed in pursuance of section 59, or under sections 61 or 67, of the Transport Act 1985(b), where the acquisition of the asset by the authority did not involve prescribed expenditure, or involved expenditure the amount of which was, for the purposes of Part VIII of the Act, nil.”;
- (f) in regulation 5, after the words “which are mentioned in” insert the words “paragraphs 1 to 12 of, and sums equal to the amounts mentioned in paragraph 13 of,”;
- (g) in regulation 9, at the end, add—
- “and, where any consideration given by the authority for the carrying out of the works is not in money, to make payments in respect of expenditure on the works equal to the value of any such consideration when and as any such consideration is given by the authority.”;
- (h) in Schedule 1, after item 9, add the following item—
- “10.** Share capital and loan capital      30%      50%”;
- (i) for paragraph 7 of Schedule 2 substitute—
- “7. Such part of any payment made to a highway authority by the Secretary of State under any agency arrangement whereby the authority discharges any functions of the Secretary of State as a highway authority for the purposes of section 1(1) of the Highways Act 1980(c) as is equal to the payments made by the authority in respect of prescribed expenditure in the discharge of its obligations under that arrangement.”;
- (j) for paragraph 10 of Schedule 2 substitute—
- “10. Such part of any payment made to a local authority by a special, district, regional or former area health authority in respect of a project as is equal to the payments made by the recipient authority in respect of prescribed expenditure on that project.”;
- (k) in paragraph 11 of Schedule 2, omit item (v), and for items (a), (l) and (s) substitute at the appropriate places the following items—
- “ (a) the Training Commission,
  - (l) the National Council for Educational Technology,
  - (s) the British Railways Board,”;

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(a) 1981 c.64.  
(b) 1985 c.67.  
(c) 1980 c.66.

(l) in Schedule 2, at the end, add—

“ 13.—(1) Where an authority disposes of leasehold interests in land held for any purpose other than the purposes of Part II of the Housing Act 1985<sup>(a)</sup>, or where any such interest belonging to the authority comes to an end by any means, any amount which the authority was taken to have paid under section 80 of the Act on the acquisition of that interest or any superior interest in the land, and the amount of any prescribed expenditure incurred by an authority on the construction, preparation, conversion, improvement, renewal or replacement of buildings or structures on the land.

(2) In this paragraph a leasehold interest means one which—

- (a) has an unexpired term not exceeding twenty years which is not capable of being renewed or extended so that the unexpired term and any renewal or extension of the interest together exceed twenty years;
- (b) if it is granted to commence on the expiry of another interest, does not, together with any interest in the same land previously disposed of by the authority, exceed twenty years.”;

(m) for paragraph 3 of Part I of Schedule 3 substitute—

“ 3.—(1) Expenditure on the acquisition of an interest in land to which this sub-paragraph applies except where—

- (a) it is intended at the time of acquisition that some person shall erect a building on the land for the authority; or
- (b) at the time of the acquisition the authority already owns the freehold of the land or has a leasehold interest in the land the term of which is greater than the term which is being acquired; or
- (c) there is in force at the time of acquisition or has been in force at any time during the five years immediately preceding the acquisition, a development agreement;

and in this sub-paragraph, “ development agreement ” means an agreement to which the acquiring authority is party and which requires or entitles—

- (i) another person to develop all or any part of the land in question; or
- (ii) that authority to acquire an interest in (or a right to use) the whole or any part of that land once specified conditions as to the development of the land are satisfied.

(2) Sub-paragraph (1) applies to a leasehold interest for a term not exceeding three years unless—

- (a) it is a lease which creates a tenancy to which Part II of the Landlord and Tenant Act 1954<sup>(b)</sup> (security for business and professional tenants) applies, except where a court has authorised an agreement excluding in relation to that tenancy the provisions of sections 24 to 28 of that Act; or
- (b) the term of the lease, when added to the length of any period before the acquisition of the lease (but after 1st April 1980) for which the authority was entitled to the rents and profits of the land or during which it occupied the land, exceeds three years.

(3) Sub-paragraph (1) also applies to a leasehold interest (in this paragraph referred to as “ the later interest ”) acquired by the authority to commence on the expiry of an earlier interest of the authority in the land in question where—

- (a) the earlier interest was a lease acquired by the authority before 1st April 1980, for a term which did not exceed 20 years, or
- (b) the earlier interest was a lease acquired by the authority on or after 1st April 1980 and before 10th March 1988 and the term of the earlier interest, together with the term of any other leases of in the land in question acquired by the authority on or after 1st April 1980 including the later interest, does not exceed 20 years.

(4) For the purposes of this paragraph the term of any lease shall be taken to be the period unexpired at the date of acquisition by the authority on the assumption that any right or option to renew it or to extend its term is exercised, provided that no such assumption shall be made in relation to any right to apply to the court for a new tenancy under Part II of the Landlord and Tenant Act 1954.”;

(a) 1985 c.68.

(b) 1954 c.56.

(n) In Part I of Schedule 3, after paragraph 13 insert—

“13A. Expenditure on the acquisition of share capital or loan capital where the acquisition is of an investment falling within Parts I or II of Schedule 1 to the Trustee Investments Act 1961(a).”.

3. These Regulations shall have effect with respect to expenditure incurred (or treated by virtue of any provision of Part VIII of the Act as incurred) by, and disposals by, an authority on or after 1st October 1988 except as follows—

- (a) regulation 2(b), (e) and (h) shall have effect with respect to disposals on or after 10th March 1988 of assets acquired on or after that date; and
- (b) regulation 2(n) shall have effect with respect to expenditure incurred (or treated by virtue of any provision of Part VIII of the Act as incurred) on or after 10th March 1988.

5th September 1988

*Nicholas Ridley*  
Secretary of State for the Environment

Signed by authority of the Secretary of State

30th August 1988

*Michael Portillo*  
Minister of State, Department of Transport

6th September 1988

*Peter Walker*  
Secretary of State for Wales

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(a) 1961 c.62, amended by the Post Office Act 1969 (c.48), Trustee Savings Banks Act 1976 (c.4), Finance Act 1982 (c.39), Building Societies Act 1986 (c.53), Income and Corporation Taxes Act 1988 (c.1), S.I. 1962/658, 2611, 1964/703, 1404, 1966/401, 1968/470, 1972/1818, 1973/1332, 1393, 1975/1710, 1977/831, 1878, 1982/1086, 1983/772, 1525, 1985/1780 and 1986/601.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 72(3) of the Local Government, Planning and Land Act 1980 ("the Act") limits the prescribed expenditure of a local authority, and other bodies to whom Part VIII of the Act applies, to the aggregate of various amounts including its net capital receipts. "Prescribed expenditure" is expenditure, essentially of a capital nature, described in Schedule 12 to the Act.

The disposal of assets mentioned in section 75(2) of the Act gives rise to capital receipts, from which net capital receipts are derived. The Secretary of State may by regulations provide that the disposal of specified classes of assets does not give rise to capital receipts or gives rise to such receipts only to the extent specified in the regulations. Regulations may also provide that particular expenditure is not to be prescribed expenditure and that authorities are to be treated as incurring prescribed expenditure in certain circumstances.

These Regulations amend the Local Government (Prescribed Expenditure) (Consolidation and Amendment) Regulations 1987 ("the 1987 Regulations"). They reproduce, with amendments, the provisions of the Local Government (Prescribed Expenditure) (Amendment) Regulations 1988 ("the 1988 Regulations") (S.I. 1988/434), which cease to have effect on 1st October 1988, and they make certain other amendments to the 1987 Regulations.

Regulation 4 of the 1987 Regulations lists certain classes of assets on the disposal of which no capital receipt arises. These Regulations make the same additions to the list as were made by the 1988 Regulations, but provide that the first of these additions does not apply to new town assets transferred to local authorities nor to cases where the acquisition of the asset occurred by operation of law (regulation 2(d)).

Regulation 6 of, and Schedule 3 to, the 1987 Regulations provide that expenditure incurred in certain circumstances, or for certain purposes, is not to be prescribed expenditure. These Regulations make similar provision to the 1988 Regulations, so that, in general, expenditure on leases of three years or less and leases which succeed certain other interests will not constitute prescribed expenditure (regulation 2(m)).

There are two new changes of substance, both of which relate to provisions in the Local Government Finance Act 1988. Section 131(6) of that Act provides for the value of any consideration which is not in money to be taken into account in calculating the payments that an authority is to be treated as making in respect of expenditure on works under section 80A(1) of the Act. These Regulations provide that regard is also to be had to any consideration not in money which is given by an authority in calculating its prescribed expenditure where section 80A(1) does not apply by virtue of regulation 8 of the 1987 Regulations (regulation 2(g)).

Amendments are also made by these Regulations relating to the addition, by section 132(1) of the 1988 Act, of the acquisition of share capital and loan capital to the list of activities in Schedule 12 to the Act, expenditure on which is prescribed expenditure. Regulation 2(n) provides that expenditure on the acquisition of share capital or loan capital where the acquisition is of an investment falling within Parts I or II of Schedule 1 to the Trustee Investments Act 1961 is not to be prescribed expenditure. Regulation 2(e) provides for the disposal of share capital and loan capital in certain circumstances to give rise to capital receipts. The proportion of the sums received on the disposal of these assets, which is to be taken into account for the purposes of the limit on the prescribed expenditure of any authority in any year, is prescribed by regulation 2(b) and (h).

The provisions in these Regulations relating to share capital and loan capital are given effect with respect to disposals of assets on or after 10th March 1988 of assets acquired on or after that date, and with respect to expenditure incurred (or treated as incurred) on or after that date. The remainder of the Regulations have effect with respect to expenditure incurred (or treated as incurred), and disposals, on or after 1st October 1988 (regulation 3).