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STATUTORY INSTRUMENTS

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**2003 No. 3146**

**LOCAL GOVERNMENT, ENGLAND**

**The Local Authorities (Capital Finance and  
Accounting) (England) Regulations 2003**

<i>Made</i>	- - - -	<i>3rd December 2003</i>
<i>Laid before Parliament</i>		<i>10th December 2003</i>
<i>Coming into force</i>		
<i>for the purposes of regulations 1 and 2</i>		<i>1st January 2004</i>
<i>for all other purposes</i>		<i>1st April 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 3, 7(3)(c), 8(3), 9(3), 10, 11, 15(1)(b), 16(2), 21, 23(2) and 123(1) and (2) of, and paragraph 4 of Schedule 1 to, the Local Government Act 2003<sup>(1)</sup>, hereby makes the following Regulations:

**PART 1**

**PRELIMINARY**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 and shall come into force for the purposes of regulations 1 and 2 on 1st January 2004 and for all other purposes on 1st April 2004.

(2) These Regulations apply only in relation to local authorities in England<sup>(2)</sup>.

(3) Regulations 2 to 6, 8, 9, 10(3) to (6), 12 to 22, 23(d) to (f), 24, 27(1), 28, 29, 32 and 33 shall not apply to parish councils and charter trustees.

(4) In these Regulations, unless the context indicates otherwise, any reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, the Local Government Act 2003.

(5) In these Regulations—

“CIPFA” means the body—

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(1) 2003 c. 26.

(2) As regards the application of Part 1 of the Local Government Act 2003 to Wales, *see* section 24 of that Act.

- (a) constituted by Royal Charter on 6th January 1959 and originally named “The Institute of Municipal Treasurers and Accountants”;
- (b) whose name was changed to “The Chartered Institute of Public Finance and Accountancy” by Royal Charter on 24th October 1973; and
- (c) registered with the Charity Commissioners of England and Wales (number 231060);

“debt-free authority” means a local authority which has no money outstanding by way of borrowing other than disregarded borrowing;

“disregarded borrowing” has the same meaning as that term had on 31st March 2004 in regulation 65 of the Local Authorities (Capital Finance) Regulations 1997 (capital receipts of debt-free authorities)(3);

“dwelling” means any building or part of a building which is occupied as a dwelling, or is a hostel providing accommodation for persons who, for the purposes of Part VII of the Housing Act 1996 (homelessness)(4), are homeless, or persons who have a special need for accommodation arising from physical or mental disability, age, infirmity or other special social disability or disadvantage;

“housing land” means any land, house or other building in relation to which the local authority is, or has been immediately before disposal of it, subject to the duty under section 74 of the Local Government and Housing Act 1989 (duty to keep Housing Revenue Account)(5);

“the National Association of Local Councils” means the unincorporated association of that name which was established in 1947(6);

“qualifying disposal” means a disposal of an interest in housing land which is a qualifying disposal for the purposes of section 135 or 136 of the Leasehold Reform, Housing and Urban Development Act 1993 (disposals of dwelling-houses by local authorities)(7); and

“the Society of Local Council Clerks” means the registered trade union of that name (Trade Union reference 1200T) which was established in 1972.

## PART 2

### BORROWING

#### Code of practice

2. In complying with their duties under section 3(1) and (2) (duty to determine affordable borrowing limit), a local authority and the Mayor of London shall have regard to the code of practice entitled the “Prudential Code for Capital Finance in Local Authorities” published by CIPFA, as amended or reissued from time to time(8).

(3) S.I. 1997/319; regulation 65 was amended by S.I. 2001/3649. There are other amendments to regulation 65 but none is relevant. S.I. 1997/319 will be 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 it was made. See S.I. 2003/2938 (C. 107).

(4) 1996 c. 52; Part VII was amended by sections 117 and 169 of, and paragraph 116 of Schedule 14 and Schedule 16 to, the Immigration and Asylum Act 1999 (c. 33), sections 5 to 12 of, paragraphs 2 and 7 to 21 of Schedule 1 and Schedule 2 to, the Homelessness Act 2002 (c. 7), and paragraphs 89 to 92 of Schedule 3 to the Adoption and Children Act 2002 (c. 38). There are other amendments to Part VII that are not relevant to these Regulations.

(5) 1989 c. 42; section 74 was amended by section 222 of, and paragraph 24(2) of Schedule 18 to, the Housing Act 1996.

(6) The National Association of Local Councils' current address is 109 Great Russell Street, London WC1B 3LD and their website address is [www.nalc.gov.uk](http://www.nalc.gov.uk).

(7) 1993 c. 28; section 135 was amended by S.I. 1996/2325. There are other amendments to section 135 and amendments to section 136 that are not relevant to these Regulations.

(8) The current issue of this code of practice was published in London in 2003. ISBN 0 85299 989 5.

**PART 3**  
**CREDIT ARRANGEMENTS**  
**TRANSACTIONS WHICH ARE NOT CREDIT ARRANGEMENTS**

**Liabilities that do not arise from capital expenditure**

**3.—**(1) The liabilities of a local authority specified in paragraph (2) are liabilities specified for the purposes of section 7(3)(c) (exclusion of certain liabilities from definition of “qualifying liabilities”).

(2) The liabilities specified for the purposes of paragraph (1) are liabilities that do not arise from a transaction which results in the local authority being required, in accordance with proper practices, to recognise a fixed asset in any balance sheet.

**Retirement benefits**

**4.—**(1) Liabilities for retirement benefits appropriated to a pension reserve in accordance with proper practices are liabilities specified for the purposes of section 7(3)(c).

(2) For the purposes of paragraph (1) and regulation 30, “retirement benefits” means benefits payable pursuant to—

- (a) section 31 of the London County Council (General Powers) Act 1921 (compensation to persons in Council’s service on abolition of office)(**9**);
- (b) the “principal civil service pension scheme” within the meaning of section 2(10) of the Superannuation Act 1972 (further provisions relating to superannuation schemes under section 1)(**10**) and for the time being in force;
- (c) the Police Pensions Regulations 1987(**11**);
- (d) the Firemen’s Pension Scheme Order 1992(**12**);
- (e) the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(**13**);
- (f) the Local Government Pension Scheme Regulations 1997(**14**);
- (g) the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(**15**); and
- (h) any other regulations made under section 24 of the Superannuation Act 1972 (compensation for loss of office etc.)(**16**).

**SUPPLEMENTARY PROVISION**

**Varied transactions**

**5.** For the purposes of Chapter 1 of Part 1 (capital finance etc.), a local authority shall be taken to have entered into a credit arrangement where—

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(9) 1921 c. 1; section 31 was amended by S.I. 1974/520, S.I. 1977/1341 and section 40 of the [Greater London Council \(General Powers\) Act 1968 \(c. xxxix\)](#).

(10) 1972 c. 11.

(11) S.I. 1987/257, to which there are amendments not relevant to these Regulations.

(12) S.I. 1992/129, to which there are amendments not relevant to these Regulations.

(13) S.I. 1997/311, to which there are amendments not relevant to these Regulations.

(14) S.I. 1997/1612, to which there are amendments not relevant to these Regulations.

(15) S.I. 2000/1410, to which there are amendments not relevant to these Regulations.

(16) Section 24 was amended by section 13(1) of, and paragraph 10 of Schedule 2 to, the Police Pensions Act 1976 (c. 35).

- (a) on or after 1st April 2004, it enters into a transaction (“the new transaction”) which varies a transaction entered into previously, whether before, on or after 1st April 2004 (“the earlier transaction”);
- (b) the earlier transaction did not result in the local authority being taken to have entered into a credit arrangement; and
- (c) the local authority would, if it had entered into the earlier transaction as varied by the new transaction on—
  - (i) the date on which the earlier transaction was entered into; or
  - (ii) if later, 1st April 2004,
 be taken to have entered into a credit arrangement,

and the date on which it is taken to have entered into the credit arrangement by virtue of this regulation is the date on which it enters into the new transaction.

## COST OF CREDIT ARRANGEMENTS

### Calculation of cost of credit arrangements

6. For the purposes of section 8(2) (entry into a credit arrangement or variation to be treated as the borrowing of an amount equal to the cost of the arrangement or variation), the cost of a credit arrangement or variation of a credit arrangement shall be the amount of the liability in respect of that arrangement or variation which is shown, in accordance with proper practices, in the authority’s accounts.

## PART 4

### CAPITAL RECEIPTS

#### SUMS TO BE TREATED AS CAPITAL RECEIPTS

#### Repayment of loan etc. to a local authority

7.—(1) For the purposes of Chapter 1 of Part 1 (capital finance etc), the sums referred to in paragraph (2), paid on or after 1st April 2004, shall be treated as capital receipts.

(2) Subject to paragraph (3), the sums referred to for the purposes of paragraph (1) are sums paid to a local authority as repayment of any loan, grant or other financial assistance given by the local authority for such a purpose that, if the giving of that financial assistance had been expenditure incurred at the time of the repayment, it would have constituted capital expenditure<sup>(17)</sup>.

(3) Where the financial assistance referred to in paragraph (2) is a loan given by a parish council or charter trustees, any sums paid to the local authority as repayment of that loan shall not be treated as capital receipts.

#### Disposal of mortgage portfolio

8. For the purposes of Chapter 1 of Part 1, a sum received by a local authority on or after 1st April 2004 in respect of the disposal of the authority’s rights and obligations as mortgagee of any housing land which, apart from this regulation, would not be a capital receipt, shall be treated as a capital receipt.

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<sup>(17)</sup> See section 16 (“capital expenditure”) and regulations 25 and 26.

### **Payment made to redeem landlord's share**

9. For the purposes of Chapter 1 of Part 1, where an interim or final payment is made to a local authority, on or after 1st April 2004, in accordance with Schedule 6A to the Housing Act 1985 (redemption of landlord's share)(18), the sum received by the authority shall be treated as a capital receipt if, apart from this regulation, it would not be a capital receipt.

### **SUMS NOT TO BE TREATED AS CAPITAL RECEIPTS**

#### **Capital receipts not exceeding £10,000**

10.—(1) A sum received by a local authority which, apart from this regulation, would be a capital receipt by virtue of section 9(1) shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of an interest in a capital asset, for which the sum is paid, does not exceed £10,000.

(2) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 7, shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority as repayment of a loan, grant or other financial assistance, for which the sum is paid, does not exceed £10,000.

(3) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 8, shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of the authority's rights and obligations, for which the sum is paid, does not exceed £10,000.

(4) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 9, shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of redemption of the landlord's share, for which the sum is paid, does not exceed £10,000.

(5) A notional capital receipt(19) which, apart from this regulation, would be treated as a capital receipt received by a local authority by virtue of regulation 22(5), shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of the interest in housing land, for which the notional capital receipt is determined, does not exceed £10,000.

(6) In paragraphs (1) and (5), "all sums received or to be received by the authority" include the amount of all notional capital receipts determined in respect of the disposal.

#### **Operating and finance leases**

11. A sum received by a local authority—

- (a) under any arrangement which is treated, in accordance with proper practices, as an operating lease or a finance lease;
- (b) which, apart from this regulation, would be a capital receipt; and
- (c) which, in accordance with proper practices, is to be credited to a revenue account,

shall not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt.

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(18) 1985 c. 68; Schedule 6A was inserted by section 117(2) of, and Schedule 16 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28). There are amendments to Schedule 6A that are not relevant to these Regulations.

(19) See regulation 22 for meaning of "notional capital receipt".

## POOLING OF RECEIPTS

### **Pooling of receipts from disposals of housing land**

- 12.**—(1) This regulation applies to capital receipts which—
- (a) a local authority derives from the disposal of an interest in housing land other than a disposal which is a qualifying disposal; and
  - (b) on or after 1st April 2004, have been received by the local authority.
- (2) Subject to paragraph (3), where this regulation applies, the local authority shall use capital receipts to pay the amount specified in paragraph (4) (“the specified amount”) to the Secretary of State on or before—
- (a) the last day of the calendar month immediately following—
    - (i) 31st March;
    - (ii) 30th June;
    - (iii) 30th September; or
    - (iv) 31st December,whichever of those is the earliest date following the day on which the authority receives the capital receipt; or
  - (b) if later, such date as is notified to the local authority by the Secretary of State.
- (3) Where it is not reasonably practicable for the local authority to calculate the specified amount by the date on or before which it is payable under paragraph (2) (“the due date”)—
- (a) the amount to be paid by the due date shall be instead the local authority’s best estimate of the specified amount (“the estimated amount”);
  - (b) the local authority shall notify the Secretary of State in writing, at the time of payment, that it is paying the estimated amount rather than the specified amount;
  - (c) the local authority shall—
    - (i) provide the Secretary of State with a statement of the specified amount, the estimated amount, and the amount which is equal to the specified amount less the estimated amount already paid (“the balance”); and
    - (ii) if the balance is positive, pay that amount to the Secretary of State,by no later than 30th June in the financial year immediately following the financial year in which the capital receipt was received; and
  - (d) if the balance is negative, the Secretary of State shall repay to the local authority, as soon as reasonably practicable after he receives the local authority’s statement, the amount it paid in excess of the specified amount.
- (4) Subject to reductions made under regulations 14 to 21, the specified amount is an amount equal to—
- (a) 75 per cent of the capital receipt in relation to the disposal of a dwelling; and
  - (b) 50 per cent of the capital receipt in relation to the disposal of any other interest in housing land.
- (5) The total amount of any reductions made to the capital receipt for a disposal under regulations 14 to 21, shall not exceed the amount of that capital receipt.

### Interest on late payments

13.—(1) Where all or part of the specified amount is not paid by the local authority to the Secretary of State on the due date, the local authority shall use capital receipts, which it has derived from the disposal of an interest in housing land, to pay to him interest on the unpaid amount.

(2) The interest shall be calculated at one per cent. above base rate on a day to day basis from the due date to the date of payment and compounded with three-monthly rests.

(3) In this regulation—

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in descending sequence of seven, is fourth in the sequence; and “reference banks” means the seven largest persons for the time being who—

- (a) have permission under Part IV of the Financial Services and Markets Act 2000 (permission to carry on regulated activities)(20) to accept deposits;
- (b) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
- (c) quote a base rate in sterling,

and for the purpose of this definition the size of a person at any time is to be determined by reference to the gross assets denominated in sterling of that person, together with any subsidiary (as defined in section 736 of the Companies Act 1985 (“subsidiary”, “holding company” and “wholly owned subsidiary”)(21)), as shown in the audited end-of-year accounts last published before that time.

### Capital receipt treated as reduced

14.—(1) Subject to regulation 12(5) and paragraph (2), for the purposes of calculating the specified amount, the capital receipt in relation to the disposal of the interest in housing land shall be treated as reduced by—

- (a) so much of the capital receipt as is applied by the local authority in meeting the administrative costs of and incidental to the disposal;
- (b) the costs of expenditure incurred by the local authority in improving the housing land within the period of three years ending on the date of the disposal; and
- (c) an amount, by which the authority determines that it shall be reduced, which may be an amount up to the value of its available capital allowance at the time the specified amount is calculated.

(2) Paragraph (1)(c) shall not apply to capital receipts which a local authority derives from the disposal of a dwelling where the disposal is made—

- (a) under Part V of the Housing Act 1985 (right to buy)(22); or
- (b) with a relevant consent, to a person who, when he acquires that dwelling, occupies or intends to occupy the dwelling as his only or principal home.

(3) For the purposes of paragraph (2)(b), “relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985 (disposal of land held for housing purposes)(23).

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(20) 2000 c. 8, to which there are amendments not relevant to these Regulations.

(21) 1985 c. 6; section 736 was substituted for section 736 as originally enacted by section 144(1) of the Companies Act 1989 (c. 40).

(22) 1985 c. 68.

(23) Sections 32 and 43 were amended by paragraphs 38 and 39 of Schedule 17 to the Housing Act 1988 (c. 50), section 227 of, and Part IX of Schedule 19 to, the Housing Act 1996 (c. 52) and S.I. 1997/74. Section 43 was also amended by section 132

**Available capital allowance**

**15.** For the purposes of regulation 14(1)(c), the value of a local authority's available capital allowance at a particular time is the value of its total capital allowance at that time, as determined by the authority in accordance with regulation 16, less the total value of any amounts by which capital receipts have been treated as reduced by virtue of regulation 14(1)(c) prior to that time.

**Total capital allowance**

**16.—(1)** For the purposes of regulation 15, a local authority's total capital allowance is the total value of—

- (a) the amount of any reduction determined by the authority before 1st April 2004 under regulation 104B(4) of the Local Authorities (Capital Finance) Regulations 1997 (disposal of land to assist in the provision of affordable housing)(**24**) where—
  - (i) no capital receipts were treated as reduced by that amount, for the purposes of section 59 of the Local Government and Housing Act 1989 (the reserved part of capital receipts)(**25**), before 1st April 2004; and
  - (ii) capital receipts could be treated as reduced by that amount under regulation 104B, for the purposes of that section, but for the repeal of that section on 1st April 2004(**26**).
- (b) to the extent not included in sub-paragraph (a), the costs of expenditure incurred by the authority, for the purpose of facilitating the disposal of an interest in land, on—
  - (i) obtaining planning permission for the development of the land, or taking any other steps required to facilitate such development;
  - (ii) preparing the land for development;
  - (iii) acquiring an interest, easement, servitude or right in or over the land or adjoining land; or
  - (iv) obtaining the release of a restrictive covenant affecting the land,
 where capital receipts derived from the disposal are capital receipts to which regulation 12 applies;
- (c) to the extent not included in sub-paragraph (a) or (b), the amount of the contributions which the authority has made, or has decided to make but has not yet made, on or after 1st April 2004, towards the costs of the projects specified in regulations 17 and 18 by —
  - (i) constructing or improving dwellings, or providing dwellings by the conversion of a building or a part of a building;
  - (ii) making a gift of land;
  - (iii) paying a contribution, grant or subsidy under any power conferred on the authority under any enactment; or
  - (iv) giving consideration for any benefit that the authority has received, or will receive, by virtue of the project.

(2) For the purposes of paragraph (1)(c)(ii), the authority makes a gift of land where it transfers an interest in land and either —

- (a) no consideration falls to be given for the transfer; or

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of the Housing Act 1988 (c. 50), section 194(2) of, and Schedule 12 to, the Local Government and Housing Act 1989 (c. 42) and section 78 of, and paragraph 24(1) of Schedule 10 to, the Environment Act 1995 (c. 25).

(24) S.I. 1997/319; regulation 104B was inserted by S.I. 2003/43.

(25) 1989 c. 42.

(26) See S.I. 2003/2938 (C. 107).



- (b) the value of the consideration that falls to be given for the transfer is less than the price that the interest transferred would realise at the date of the valuation if sold by the authority on the open market.

### **Provision of affordable housing**

**17.**—(1) In this regulation “provision of affordable housing” means the provision of dwellings to meet the housing needs, as identified by the local authority, of persons on low incomes, whether provided by the authority or a social landlord registered under section 1 of the Housing Act 1996 (the register of social landlords)(**27**).

(2) For the purposes of regulation 16(1)(c), the provision of affordable housing is a specified project.

### **Regeneration projects**

**18.**—(1) In this regulation —

“regeneration project” means any project for the carrying out of works or activities on any land where —

- (a) the land, or a building on the land, is vacant, unused, under-used, ineffectively used, contaminated or derelict; and
- (b) the works or activities are carried out in order to secure that the land or the building will be brought into effective use.

(2) For the purposes of regulation 16(1)(c), the undertaking of a regeneration project on land situated within the area of the local authority is a specified project.

### **Capital receipts reduced by costs of buying back “right to buy” dwellings**

**19.**—(1) Subject to regulation 12(5), for the purposes of calculating the amount specified in regulation 12(4)(a), a capital receipt derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (2), shall be treated as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), the disposal meets the conditions specified in this paragraph if—

- (a) prior to the disposal, an interest in the dwelling was disposed of by the local authority under Part V of the Housing Act 1985 (right to buy)(**28**) (“the initial sale”);
- (b) within the period of five years beginning on the date of the initial sale, the local authority reacquired that interest in the dwelling (“the repurchase”);
- (c) the disposal is made by the authority within the period of three years beginning on the date of the repurchase;
- (d) the authority makes the initial sale and the disposal by, in each case—
  - (i) conveying the freehold interest in the dwelling;
  - (ii) granting a lease of the dwelling for a term of not less than 125 years;
  - (iii) assigning its entire leasehold interest in the dwelling; or
  - (iv) granting a shared ownership lease; and

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(27) 1996 c. 52; section 1 was amended by section 140 of, and paragraphs 82(1)(a) and 83 of Schedule 16 and Part VI of Schedule 18 to, the Government of Wales Act 1998 (c. 38).

(28) 1985 c. 68.

- (e) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by it within one year of the date of the disposal.
- (3) The amount of the reduction for the purposes of paragraph (1) is—
- $$X \div Y$$

where—

X is the amount of expenditure incurred by the authority on the repurchase; and

Y is the amount of the administrative costs of and incidental to the repurchase.

(4) In this regulation, “shared ownership lease” means a lease of a dwelling granted on payment to the local authority of a premium which is calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and is not less than 25 per cent. of that value or cost.

### **Capital receipts reduced by costs of buying back dwellings in the preceding year**

**20.**—(1) Subject to regulation 12(5), for the purposes of calculating the amount specified in regulation 12(4)(a), a capital receipt derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (2), shall be treated as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), a disposal meets the conditions specified in this paragraph if—

- (a) the authority makes the disposal by—
- (i) conveying the freehold interest in the dwelling;
  - (ii) granting a lease of the dwelling for a term of not less than 125 years;
  - (iii) assigning its entire leasehold interest in the dwelling; or
  - (iv) granting a shared ownership lease; and
- (b) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by them within one year of the date of the disposal.
- (3) The amount of the reduction for the purposes of paragraph (1) is—
- $$A \div B$$

where—

A is 47 per cent. of the amount, if any, by which the total net expenditure exceeds the sum of £50,000; and

B is the total amount, if any, by which capital receipts of the authority have already been reduced in the current year under this regulation.

(4) In this regulation—

“current year”, in relation to any capital receipts for a disposal, means—

- (a) in the case of notional capital receipts, the financial year in which the disposal is made; and
- (b) in any other case, the financial year in which the capital receipts are received;

“new town corporation”, “housing action trust” and “urban development corporation” have the same meaning as in section 4 of the Housing Act 1985 (other descriptions of authority)(**29**);

(29) Section 4 was amended by section 62(7) of the Housing Act 1988 (c. 50). There are other amendments to section 4 that are not relevant to these Regulations.

“preceding year”, in relation to any capital receipts, means the financial year immediately preceding the current year;

“shared ownership lease” has the same meaning as in regulation 19; and

“total net expenditure” is—

$$C - D$$

where—

- (i) C is the total amount of expenditure incurred by the local authority in the preceding year on acquiring relevant interests in land (including the administrative costs of and incidental to any such acquisitions); and
  - (ii) D is the total amount of reductions made by the authority under regulation 19 in the preceding year by virtue of expenditure on repurchases incurred in that year and administrative costs of and incidental to repurchases incurred in that year.
- (5) In this regulation, an interest in land is a relevant interest if—
- (a) it is the freehold interest or a leasehold interest in a dwelling and is not acquired pursuant to a compulsory purchase order;
  - (b) the freehold interest or a leasehold interest in the dwelling has previously been disposed of by the authority, another local authority, a new town corporation, a housing action trust or an urban development corporation; and
  - (c) the person from whom it is acquired is not a body of persons corporate or unincorporate.

#### **Transitional reductions for debt-free authorities**

**21.**—(1) Where a local authority was a debt-free authority on 31st March 2004, for the purposes of calculating the specified amount, the capital receipt may be treated as reduced in accordance with paragraph (2).

(2) Subject to regulation 12(5) and paragraph (3), after the local authority has made any reductions to the amount of the capital receipt under regulations 14 to 20, the resulting amount of the capital receipt may be treated as further reduced—

- (a) in relation to any capital receipt received in the financial year beginning on 1st April 2004, by up to 75%;
- (b) in relation to any capital receipt received in the financial year beginning on 1st April 2005, by up to 50%; and
- (c) in relation to any capital receipt received in the financial year beginning on 1st April 2006, by up to 25%.

(3) The total amount of—

- (a) any reduction to a capital receipt calculated under paragraph (2), in relation to a financial year in which the capital receipt was received; and
- (b) any reductions previously made under paragraph (2) in relation to that financial year,

shall not exceed the total amount of housing expenditure which the local authority, at the time when the reduction referred to in sub-paragraph (a) is calculated, has incurred in that financial year or has decided in that financial year to incur but has not yet incurred.

(4) In this regulation—

“housing expenditure” means expenditure incurred or to be incurred by the local authority when discharging functions in its capacity as local housing authority; and

“local housing authority” has the same meaning as in section 1 of the Housing Act 1985 (local housing authorities)(30).

### **Non-money receipts**

**22.**—(1) Subject to paragraphs (2) to (4), where on or after 1st April 2004 a local authority makes a disposal, other than a qualifying disposal, of an interest in housing land—

- (a) which is a disposal of the kind mentioned in section 9(1) (capital receipt) and the consideration for the disposal does not consist wholly of money payable to the authority; or
- (b) in respect of which the authority receives otherwise than in the form of money any consideration which, if received in that form, would be a capital receipt under section 9,

the authority shall determine the amount (the “notional capital receipt”) which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(2) Where money is payable to the authority in respect of the disposal, the notional capital receipt shall be determined by deducting the amount of that money from the amount which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(3) Where the consideration for the disposal, or part of the consideration, consists of —

- (a) the grant of a right to the local authority to nominate a person either to occupy any dwelling or to acquire the freehold of, or a leasehold interest in, any dwelling; or
- (b) an undertaking given to the local authority to allow only a person of a particular description to occupy any dwelling or acquire the freehold of, or a leasehold interest in, any dwelling,

the amount of the notional capital receipt in respect of that consideration or that part of the consideration, as the case may be, shall be treated as nil.

(4) For the purposes of determining the notional capital receipt for a disposal, the consideration for the disposal shall be deemed to be received by the authority at the time that the authority makes the disposal.

(5) For the purposes of Chapter 1 of Part 1, a notional capital receipt shall be treated as a capital receipt and the amount specified in regulation 12(4) shall be calculated accordingly.

### **MISCELLANEOUS**

#### **Use of capital receipts**

**23.** Capital receipts may only be used for one or more of the following purposes—

- (a) to meet capital expenditure;
- (b) to repay the principal of any amount borrowed;
- (c) to pay a premium charged in relation to any amount borrowed;
- (d) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to a revenue account;
- (e) to meet the administrative costs of or incidental to a disposal of an interest in housing land; or
- (f) to make a payment to the Secretary of State under regulation 12 or 13.

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(30) 1985 c. 68; there are amendments to section 1 which are not relevant to these Regulations.

## PART 5

### SUPPLEMENTARY

#### **Guidance**

**24.** In carrying out its functions under Chapter 1 of Part 1, a local authority shall have regard to the code of practice contained in the document entitled “Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes” published by CIPFA, as amended or reissued from time to time<sup>(31)</sup>.

#### **Expenditure to be capital expenditure**

**25.—(1)** For the purposes of Chapter 1 of Part 1 the following expenditure of a local authority, incurred on or after 1st April 2004, shall be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 16(1) —

- (a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the authority acquire or prepare the program for use for a period of at least one year for any purpose relevant to its functions;
- (b) subject to paragraph (2), the giving of a loan, grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure;
- (c) the repayment of any grant or other financial assistance given to the local authority for the purposes of expenditure which is capital expenditure;
- (d) the acquisition of share capital or loan capital in any body corporate; and
- (e) expenditure incurred on works to any land or building in which the local authority does not have an interest, which would be capital expenditure if the local authority had an interest in that land or building.

(2) Where the expenditure referred to in paragraph (1)(b) is a loan given by a parish council or charter trustees to any person, it shall not be treated as being capital expenditure by virtue of this regulation.

#### **Expenditure not to be capital expenditure**

**26.** Expenditure incurred by a local authority on the giving of loans, grants or other financial assistance—

- (a) to an officer of the authority pursuant to the terms and conditions of his employment; or
- (b) in connection with the appointment of a person as an officer of the authority, to that person,

in so far as, apart from this regulation, it would be capital expenditure, shall be treated for the purposes of Chapter 1 of Part 1 as not being capital expenditure.

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<sup>(31)</sup> The current issue of this document was published in London in 2001. ISBN 0 85299 943 7.

## PART 6

### REVENUE PROVISION

#### **Duty to make revenue provision**

**27.**—(1) During the financial year beginning on 1st April 2004 and every subsequent financial year, a local authority—

- (a) shall charge to a revenue account a minimum amount (“minimum revenue provision”) for that financial year; and
- (b) may charge to a revenue account any amount in addition to the minimum revenue provision,

in respect of the financing of capital expenditure incurred by the local authority in that year or in any financial year prior to that year.

(2) During the financial year beginning on 1st April 2004 and every subsequent financial year, a parish council or charter trustees may charge to a revenue account any amount in respect of the financing of capital expenditure incurred by the parish council or the charter trustees, as the case may be, in that year.

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

**28.**—(1) Subject to paragraphs (2) and (3) and regulation 29, the minimum revenue provision for the current financial year shall be calculated by the local authority in accordance with the following formula—

$$\frac{4[\text{CFR} - (A - \text{HC})]}{100}$$

where—

CFR is the capital financing requirement at the end of the preceding financial year;

A is an adjustment (which may be a positive, nil or negative amount) to be calculated in accordance with the following formula—

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

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; and

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

HC is 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.

(2) An additional amount of minimum revenue provision for the current financial year (“the additional amount”) shall be calculated by the local authority where—

- (a) a credit approval, within the meaning of regulation 136 of the Local Authorities (Capital Finance) Regulations 1997 (use of certain credit approvals)(32), was issued to the local authority before 1st April 2004; and
- (b) the amortisation period specified in the credit approval expires during or after the current financial year,

and the additional amount shall be the total amount determined by the local authority under regulation 136(2) of those Regulations for the current financial year, as if those Regulations were still in force for the purposes of this regulation.

- (3) Where, in relation to the current financial year, the total of—
  - (a) the amount calculated in accordance with the formula for the minimum revenue provision in paragraph (1); and
  - (b) the additional amount, if any, calculated under paragraph (2),

is a negative amount, the minimum revenue provision for the current financial year shall be treated as nil.

- (4) For the purposes of this regulation—

“arms length management organisation” means a body set up by a local authority as a housing management company to exercise management functions as agent of the local authority under an arrangement approved by the Secretary of State under section 27 of the Housing Act 1985 (management agreements)(33);

“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(34);

“certified value” means the market value certified by the district valuer or by a suitably qualified valuer employed by the local authority;

“current financial year” means any financial year for which the local authority is determining the amount of its minimum revenue provision;

“district valuer”, in relation to any land in the district of a local authority, means an officer of the Commissioners of Inland Revenue appointed by them for the purpose of exercising, in relation to that district, the functions of the district valuer under the Housing Act 1985;

“housing amount” and “non-housing amount” have the same meaning as those terms had on 31st March 2004 in Part XII of the Local Authorities (Capital Finance) Regulations 1997 (minimum revenue provision);

“Housing Revenue Account”, also referred to as “HRA”, has the same meaning as in section 74 of the Local Government and Housing Act 1989 (duty to keep Housing Revenue Account)(35);

“major repairs reserve” has the same meaning as in regulation 7(5) of the Accounts and Audit Regulations 2003 (statement of accounts)(36);

“opening HRA capital financing requirement” means—

- (a) for the financial year beginning on 1st April 2004, the amount calculated in accordance with paragraph (5);

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(32) S.I. 1997/319; regulation 136 was amended by S.I. 1998/371 and 2002/2299.

(33) 1985 c. 68. Section 27 was substituted by S.I. 2003/940.

(34) 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.

(35) 1989 c. 42; section 74 was amended by section 222 of, and paragraph 24(2) of Part IV of Schedule 18 to, the Housing Act 1996 (c. 52).

(36) S.I. 2003/533.

- (b) for the financial year beginning on 1st April 2005 and any subsequent financial year, the amount calculated in accordance with paragraph (6); and

“preceding financial year” means the financial year immediately preceding the current financial year.

- (5) The amount referred to in sub-paragraph (a) of the definition of “opening HRA capital financing requirement” in paragraph (4) is the amount calculated in accordance with the following formula—

$$\text{OHCC} - \text{IA} - \text{ID}$$

where—

OHCC is the opening HRA credit ceiling for the financial year beginning on 1st April 2003, which has the same meaning as the “opening HRA credit ceiling” in paragraph 7.1 of the Item 8 Credit and Item 8 Debit (General) Determination 2003-2004 (“the Determination”)(37);

IA means the total of—

- (a) the items to be aggregated as specified in paragraph 7.2 of the Determination but substituting “2003-2004” for “2002-2003” in each place where it occurs in that paragraph; and
- (b) the amounts of all supplementary credit approvals issued in respect of financial years beginning before 1st April 2004 under section 54 of the Local Government and Housing Act 1989 (supplementary credit approvals)(38) for the purposes of expenditure in relation to arms length management organisations; and

ID means the items to be deducted as specified in paragraph 7.3 of the Determination but substituting “2003-2004” for “2002-2003” in each place where it occurs in that paragraph.

- (6) The amount referred to in sub-paragraph (b) of the definition of “opening HRA capital financing requirement” in paragraph (4) is the amount calculated in accordance with the following formula—

$$\text{OCFR} - \text{TIA} - \text{TID}$$

where—

OCFR means the opening HRA capital financing requirement for the preceding financial year;

TIA means the total items to be aggregated, being the total of the following—

- (a) the capital expenditure of the local authority financed by borrowing or credit arrangements which was incurred during the preceding financial year on any interest in housing land; and
- (b) the certified value of any interest in housing land which commenced or recommenced to be accounted for in the Housing Revenue Account in the preceding financial year for a reason other than acquisition by the local authority;

TID means the total items to be deducted, being the total of the following—

- (a) such part of any capital receipt from the disposal of an interest in housing land which was used during the preceding financial year to repay the principal of any amount borrowed by the local authority or to meet any liability in respect of credit arrangements;
- (b) 75 per cent. of the certified value of any interest in a dwelling, and 50 per cent. of the certified value of any interest in other housing land, that ceased to be accounted for in

(37) The Determination was made by the Secretary of State on 17 December 2002 as respects all local housing authorities in England.

(38) There are amendments to section 54 that are not relevant to these Regulations.



the Housing Revenue Account in the preceding financial year other than by virtue of disposal by the local authority;

- (c) the amount of the provision for the repayment of the principal of any amount borrowed by the local authority or the meeting of any liability in respect of credit arrangements which the local authority determined during the preceding financial year to make from the Housing Revenue Account; and
- (d) the amount of the provision for the repayment of the principal of any amount borrowed by the local authority or the meeting of any liability in respect of credit arrangements which the local authority determined during the preceding financial year to make from the major repairs reserve.

### Commutation adjustment

**29.**—(1) Subject to paragraph (2), where a commuted payment was made to or for the benefit of a local authority in the financial year beginning on 1st April 1992, the local authority may reduce the amount of its minimum revenue provision for the current financial year, calculated in accordance with regulation 28, by an amount calculated in accordance with the following formula—

$$G - (I - M)$$

where—

G is the total amount of contributions, grants and subsidies which would have been payable to the local authority by the Secretary of State for the current financial year but for commutation;

I is the total of—

- (a) the amount by which interest, payable by the local authority in the current financial year on loans, is reduced; and
- (b) the amount by which interest, payable to the local authority in the current financial year on deposits and investments, is increased,

by virtue of commutation; and

M is the amount of minimum revenue provision for the current financial year which would have been calculated by the local authority in accordance with regulation 28 but for commutation, less the amount of minimum revenue provision for the current financial year actually calculated in accordance with regulation 28.

(2) Where the amount calculated in accordance with the formula in paragraph (1) is a negative amount, that amount shall be treated as nil.

(3) For the purposes of paragraph (1)—

“commutation” means the making of a commuted payment to, or for the benefit of, a local authority in the financial year beginning on 1st April 1992;

“commuted payment” has the same meaning as that term had on 31st March 2004 in section 157 of the Local Government and Housing Act 1989 (commutation of, and interest on, periodic payments of grants etc.)<sup>(39)</sup>; and

“current financial year” has the same meaning as in regulation 28(4).

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<sup>(39)</sup> Section 157 was amended by paragraph 43 of Schedule 4 to the Police and Magistrates' Courts Act 1994 (c. 29) and by section 103 of, and paragraph 1(2)(zd) of Schedule 7 to, the Police Act 1997 (c. 16); there are other amendments to section 157 that are not relevant to these Regulations.

## PART 7

### ACCOUNTS

#### Retirement benefits

**30.** For a financial year beginning on or after 1st April 2004, a local authority shall charge to a revenue account an amount equal to the retirement benefits payments and contributions to pension funds which are payable for that financial year in accordance with the legislation specified in sub-paragraphs (a) and (c) to (h), and the scheme specified in sub-paragraph (b), of regulation 4(2).

#### Proper practices

**31.** For the purposes of section 21(2) (accounting practices) the accounting practices contained in the following codes of practice and guide are proper practices—

- (a) “A Statement of Recommended Practice: Code of Practice on Local Authority Accounting in the United Kingdom” published by CIPFA, as amended or reissued from time to time<sup>(40)</sup>;
- (b) “Best Value Accounting Code of Practice” published by CIPFA, as amended or reissued from time to time<sup>(41)</sup>; and
- (c) in relation to parish councils only, “Governance and Accountability in Local Councils in England and Wales: A Practitioners' Guide 2003 Edition” published jointly by the National Association of Local Councils and the Society of Local Council Clerks, as amended or reissued from time to time<sup>(42)</sup>.

## PART 8

### MISCELLANEOUS PROVISIONS

#### Local authorities for the purposes of Part 1 of the Local Government Act 2003 – levying bodies

**32.** The following levying bodies, within the meaning of section 74 of the Local Government Finance Act 1988 (levies)<sup>(43)</sup>, are specified for the purposes of section 23(1)(o) (local authorities for the purposes of Part 1)—

- (a) the Broads Authority<sup>(44)</sup>;
- (b) the Lee Valley Regional Park Authority<sup>(45)</sup>;
- (c) a National Park authority<sup>(46)</sup>;
- (d) the London Pensions Fund Authority<sup>(47)</sup>; and
- (e) the South Yorkshire Pensions Authority<sup>(48)</sup>.

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<sup>(40)</sup> The current issue of this code of practice was published in London in 2003. ISBN 0 85299 981 X.

<sup>(41)</sup> The current issue of this code of practice was published in London in 2003. ISBN 0 85299 975 5.

<sup>(42)</sup> The current issue of this guide was published in Taunton in 2003.

<sup>(43)</sup> 1988 c. 41; there are amendments to section 74 which are not relevant to these Regulations.

<sup>(44)</sup> The Broads Authority was established by section 1 of the Norfolk and Suffolk Broads Act 1988 (c. 4).

<sup>(45)</sup> The Lee Valley Regional Park Authority was established by the Lee Valley Regional Park Act 1966 (c. xli).

<sup>(46)</sup> National Park authorities are established under section 63 of the Environment Act 1995 (c. 25).

<sup>(47)</sup> The London Pensions Fund Authority was established by S.I. 1989/1815.

<sup>(48)</sup> The South Yorkshire Pensions Authority was established by S.I. 1987/2110.

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

**33.**—(1) Any local authority—

- (a) whose credit ceiling on 31st March 2004, as determined under Part III of Schedule 3 to the Local Government and Housing Act 1989 (provisions supplementing Part IV – credit ceiling)(**49**), was a negative amount; and
- (b) who was a debt-free authority on that date,

may treat the amount specified in paragraph (2) as if it were a capital receipt to which regulation 23 applies.

(2) Subject to paragraph (3), the amount specified is the amount which was, on 31st March 2004, the amount set aside by the authority (whether voluntarily or pursuant to a requirement under Part IV of the Local Government and Housing Act 1989 (revenue accounts and capital finance of local authorities)) as provision to meet credit liabilities.

(3) The amount specified in paragraph (2) shall not exceed the amount by which the local authority's credit ceiling on 31st March 2004 was less than nil.

### **Loans to qualifying local government bodies**

**34.** For the purposes of paragraph 4 of Schedule 1 (loans by parish councils and charter trustees) any local authority which is a local authority for the purposes of Part 1 or Schedule 1 is specified as a qualifying local government body.

Signed by authority of the First Secretary of State

3rd December 2003

*Nick Raynsford*  
Minister of State,  
Office of the Deputy Prime Minister

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(49) 1989 c. 42.

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## EXPLANATORY NOTE

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

These Regulations make provisions for capital finance and accounts under Part 1 of the Local Government Act 2003 (“the 2003 Act”). The capital finance provisions in and under Part IV of the Local Government and Housing Act 1989 (including the Local Authorities (Capital Finance) Regulations 1997) are repealed or revoked, as the case may be, on or before 1st April 2004 by virtue of the 2003 Act, with savings and transitional provisions (*see* the Local Government Act 2003 (Commencement No. 1 and Transitional Provisions and Savings) Order 2003).

These Regulations apply only in relation to local authorities in England. Some of the provisions do not apply in relation to parish councils and charter trustees (**regulation 1**).

**Regulation 2** requires a local authority and the Mayor of London to have regard to the “Prudential Code for Capital Finance in Local Authorities” when determining, under section 3 of the 2003 Act, how much money they can afford to borrow.

**Regulations 3 and 4** make provision excluding certain liabilities from the definition of “qualifying liabilities”, under section 7 of the 2003 Act, so that certain transactions are not credit arrangements.

**Regulation 5** makes provision for varied transactions to be credit arrangements and **regulation 6** sets out how the cost of credit arrangements are to be calculated.

**Regulations 7 to 11** provide for certain sums received by a local authority to be treated, or not to be treated, as capital receipts.

**Regulation 12** makes provision requiring a specified amount of capital receipts from disposals of housing land, other than qualifying disposals, to be paid to the Secretary of State. This is subject to certain reductions (**regulations 14 to 21**). Interest is payable (out of capital receipts) to the Secretary of State on late payments of the specified amount (**regulation 13**). **Regulation 22** provides for the calculation of notional capital receipts where the consideration for a disposal of housing land does not consist wholly of money.

**Regulation 23** provides that capital receipts may only be used for specified purposes.

In carrying out its capital finance functions, a local authority must have regard to the code of practice in “Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes” (**regulation 24**).

**Regulations 25 and 26** provide for expenditure which is, and which is not, to be treated as capital expenditure for the purposes of Chapter 1 of Part 1 of the 2003 Act.

**Regulation 27** provides that local authorities must charge to a revenue account a minimum amount (“minimum revenue provision”), and may charge to a revenue account an additional amount, in respect of the financing of capital expenditure. The minimum revenue provision is calculated in accordance with **regulations 28 to 29**. Parish councils and charter trustees may charge to a revenue account any amount in respect of the financing of capital expenditure (**regulation 27(2)**).

**Regulation 30** requires a local authority to charge to a revenue account for a financial year an amount equal to retirement benefits payments and contributions to pension funds payable for that year.

For the purposes of the definition of “proper practices” in section 21 of the 2003 Act, **regulation 31** identifies certain documents that contain accounting practices.

**Regulation 32** specifies certain levying bodies that are to be local authorities for the purposes of Part 1 of the 2003 Act.

Under **regulation 33**, a debt-free local authority with a negative credit ceiling on 31st March 2004, may use the amount, which on that date was the amount it set aside as provision to meet credit liabilities under the Local Government and Housing Act 1989, as if it were a capital receipt to which regulation 23 applies. The amount may not exceed the amount by which the authority's credit ceiling was less than nil.

Any local authority which is a local authority for the purposes of Part 1 of, or Schedule 1 to, the 2003 Act is specified by **regulation 34** as a qualifying local government body for the purposes of paragraph 4 of Schedule 1 (loans by parish councils and charter trustees).

The following documents may be obtained either by post from CIPFA, 3 Robert Street, London WC2N 6RL or from their website at [www.cipfa.org.uk/shop](http://www.cipfa.org.uk/shop):

- (a) The "Prudential Code for Capital Finance in Local Authorities";
- (b) The "Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes";
- (c) "A Statement of Recommended Practice: Code of Practice on Local Authority Accounting in the United Kingdom"; and
- (d) "Best Value Accounting Code of Practice".

"Governance and Accountability in Local Councils in England and Wales: A Practitioners' Guide 2003 Edition" may be obtained by post from the Society of Local Council Clerks, 1 The Crescent, Taunton, Somerset TA1 4EA.

The Item 8 Credit and Item 8 Debit (General) Determination 2003-2004 may be obtained by post from ODPM, Local Housing Authority Division, Zone 2/J3, Eland House, Bressenden Place, London SW1E 5DU.

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.