

2004 No. 534

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Capital Finance and Accounting)
(Amendment) (England) Regulations 2004**

<i>Made</i> - - - -	<i>1st March 2004</i>
<i>Laid before Parliament</i>	<i>8th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 11, 16(2) and 123(1) and (2) of the Local Government Act 2003(a), hereby makes the following Order:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance and Accounting) (Amendment) (England) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply only in relation to local authorities in England(b).

(3) In these Regulations, “the Principal Regulations” means the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003(c).

Interpretation

2. In regulation 1(5) of the Principal Regulations (citation, commencement, application and interpretation), after the definition of “housing land”, there shall be inserted—

“ “money market fund” means a collective investment scheme which—

(a) in accordance with the Council Directive 85/611/EEC(d) on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities, is an undertaking for collective investment in transferable securities subject to that Directive; and

(b) is either a unit trust scheme authorised under section 243 of the Financial Services and Markets Act 2000(e) or a collective investment scheme recognised under section 264 of that Act;

“multilateral development bank” means an international financial institution having as one of its objects economic development, either generally or in any region of the world.”.

(a) 2003 c. 26.

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

(c) S.I. 2003/3146.

(d) OJ No L 375, 31.12.1985, p3, amended by 88/220/EEC (OJ No L 100, 19.4.1988, p31) and 2001/108/EC (OJ No L 41, 13.2.2002, p35); there are other amending instruments but none is relevant.

(e) 2000 c. 8.

Pooling of receipts from disposals of housing land

3. In regulation 12 of the Principal Regulations (pooling of receipts from disposals of housing land)—

- (a) in sub-paragraph (c) of paragraph (3), for “30th June in the financial year immediately following the financial year in which the capital receipt was received” there shall be substituted “the balance payment date”;
- (b) for sub-paragraph (d) of paragraph (3), there shall be substituted—
 - “(d) if the balance is negative—
 - (i) subject to paragraph (vi), the local authority may offset the amount it paid in excess of the specified amount, together with the amount of any interest it paid to the Secretary of State in respect of that excess, (“the excess amount”) against any further specified amount, estimated amount or amount of interest payable to the Secretary of State by the local authority under this regulation or regulation 13;
 - (ii) where the local authority offsets the excess amount in accordance with paragraph (i), it shall notify the Secretary of State of this, and the amount of the offset, at the time it pays the further specified amount, estimated amount or interest as the case may be;
 - (iii) where the local authority does not have, or will not have within the relevant 6 month period, any further specified amount, estimated amount or interest against which it can offset the excess amount, it may notify the Secretary of State in writing that it is unable to offset the excess amount;
 - (iv) subject to paragraph (v), where the local authority does not have, or will not have within the relevant 3 month period, any further specified amount, estimated amount or interest against which it can offset the excess amount, and the local authority would, if it could not offset the excess amount within the relevant 3 month period, suffer severe financial problems, it may notify the Secretary of State in writing of the problems and request the Secretary of State to repay the excess amount to it;
 - (v) where the local authority notifies the Secretary of State under paragraph (iv), it shall do so within the period of 14 days immediately following the balance payment date or within such longer period as is agreed by the Secretary of State;
 - (vi) subject to paragraph (ix), where the local authority notifies the Secretary of State under paragraph (iii) or (iv), it may not offset the excess amount against any further specified amount, estimated amount or interest;
 - (vii) as soon as reasonably practicable after the Secretary of State receives written notification from the local authority under paragraph (iii) or, if later, the statement under sub-paragraph (c), he shall repay the excess amount to the local authority;
 - (viii) where the Secretary of State receives written notification from the local authority under paragraph (iv) within the period required by paragraph (v) and is satisfied that the local authority would suffer severe financial problems if he does not repay the excess amount to it, he shall repay the excess amount to the local authority as soon as reasonably practicable after he is so satisfied (whether or not he does so during or after the relevant 3 month period);
 - (ix) where the Secretary of State receives written notification from the local authority under paragraph (iv) within the period required by paragraph (v) and is not satisfied that the local authority would suffer severe financial problems if he does not repay the excess amount to it, he shall notify the local authority, as soon as reasonably practicable, that he is not so satisfied and paragraph (vi) shall not apply.”; and

(c) after paragraph (5), there shall be added—

“(6) In this regulation—

“balance payment date” means the last day of the calendar month immediately following—

- (a) 31st March;
- (b) 30th June;
- (c) 30th September; or
- (d) 31st December,

whichever of those is the earliest date following the due date;

“the relevant 6 month period” means the period beginning on the balance payment date and ending on the last day of the calendar month that is six months after the balance payment date; and

“the relevant 3 month period” means the period beginning on the balance payment date and ending on the last day of the calendar month that is three months after the balance payment date.”.

Interest on late payments

4. For regulation 13 of the Principal Regulations (interest on late payments), there shall be substituted—

“Interest on late payments

13.—(1) The local authority shall use capital receipts, which it has derived from the disposal of housing land, to pay interest to the Secretary of State in accordance with the following provisions of this regulation.

(2) Where the local authority—

- (a) does not calculate the estimated amount; and
- (b) does not pay part or all of the specified amount to the Secretary of State by the due date,

the local authority shall pay interest to the Secretary of State on the unpaid amount of the specified amount.

(3) Where the local authority—

- (a) does calculate the estimated amount; and
- (b) does not pay part or all of the estimated amount to the Secretary of State by the due date,

the local authority shall pay interest to the Secretary of State on the unpaid amount of the estimated amount.

(4) Where the local authority does not pay part or all of the amount of the balance, if any, to the Secretary of State by the balance payment date, the local authority shall pay interest to the Secretary of State on the unpaid amount of the balance.

(5) The interest shall be calculated on any unpaid amount at a rate of one per cent. above base rate on a day to day basis compounded with three-monthly rests.

(6) Where interest is payable by virtue of paragraph (2) or (3), the interest on the unpaid amount shall be calculated for the period starting on the day after the due date and ending on the date of payment of the unpaid amount.

(7) Where interest is payable by virtue of paragraph (4), the interest on the unpaid amount shall be calculated for the period starting on the day after the balance payment date and ending on the date of payment of the unpaid amount.

(8) The local authority shall pay to the Secretary of State any interest, payable in respect of any unpaid amount, on the date on which it pays the unpaid amount to him.

(9) In this regulation—

“the balance”, “the balance payment date”, “the due date”, “the estimated amount” and “the specified amount” have the same meaning as those terms have in regulation 12;

“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)(a) 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”)(b)), as shown in the audited end-of-year accounts last published before that time.”.

Expenditure to be capital expenditure

5.—(1) In regulation 25 of the Principal Regulations (expenditure to be capital expenditure)—

- (a) in sub-paragraph (d) of paragraph (1)—
 - (i) before “the acquisition of”, there shall be inserted “subject to paragraph (3),”; and
 - (ii) the word “and” shall be omitted;
- (b) after sub-paragraph (e) of paragraph (1), there shall be added—
 - “; and
 - (f) the payment of any levy by a local authority under section 136 of the Leasehold Reform Housing and Urban Development Act 1993 (levy on disposals)(c); and
- (c) after paragraph (2), there shall be added—
 - “(3) Where the expenditure referred to in paragraph (1)(d) is—
 - (a) an investment in a money market fund; or
 - (b) the acquisition of loan capital in—
 - (i) a multilateral development bank; or
 - (ii) a financial institution that is guaranteed by the United Kingdom Government,it shall not be treated as being capital expenditure by virtue of this regulation.”.

Signed by authority of the First Secretary of State

1st March 2004

Nick Raynsford
Minister of State
Office of the Deputy Prime Minister

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

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

(c) 1993 c. 28; section 136 was amended by section 109 of the Finance Act 1997 (c.16).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (“the Principal Regulations”) and apply only in relation to local authorities in England.

Regulation 2 amends regulation 1(5) of the Principal Regulations by adding definitions of “money market fund” and “multilateral development bank” (these terms are used in regulation 25 of the Principal Regulations, as amended by these Regulations).

Regulation 3 amends the provisions in regulation 12 of the Principal Regulations concerning the pooling of capital receipts from disposals of housing land. Paragraph (3)(c) of regulation 12 is amended so that the statement required by that paragraph must be provided, and any positive balance (where the local authority underestimated how much to pay) must be paid, to the Secretary of State by “the balance payment date”. This is defined in new paragraph (6) that is added to regulation 12.

Regulation 3 also amends the provisions in paragraph (3)(d) of regulation 12 of the Principal Regulations regarding what should happen where the local authority has paid too much to the Secretary of State. In this case the local authority may offset the excess amount paid against further payments that it has to pay to the Secretary of State. However, if the local authority does not have, and will not have within a 6 month period after the balance payment date, any further payments against which it can offset the excess amount, it may notify the Secretary of State of this and the Secretary of State must repay the excess amount. If the local authority does not have, and will not have within a 3 month period after the balance payment date, any further payments against which it can offset the excess amount, and it would suffer severe financial problems, it may request the Secretary of State to refund the excess amount. If the Secretary of State is satisfied that the local authority would suffer severe financial problems if he does not repay the excess amount, he shall repay that amount.

Regulation 4 substitutes a new regulation 13 of the Principal Regulations concerning interest on payments that have not been paid on time under regulation 12. Interest is payable on late payments of the specified amount, the estimated amount or the balance at the same time as the unpaid amount is paid.

Regulation 5 amends regulation 25 of the Principal Regulations so that the payment of a levy on a disposal under the Leasehold Reform, Housing and Urban Development Act 1993 is treated as capital expenditure. Regulation 25 is also amended to exclude expenditure on the acquisition of certain types of share capital and loan capital from being treated as capital expenditure.

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.

STATUTORY INSTRUMENTS

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