

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)
(AMENDMENT) (ENGLAND) REGULATIONS 2006

2006 No. 521

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Local Authorities (Capital Finance and Accounting) (Amendment) (England) Regulations 2006 (“these Regulations”) amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146, amended by S.I. 2004/534 and 2004/3055) (“the Principal Regulations”). They make various provisions in relation to the use of capital receipts received by local authorities in England, in particular from a Social HomeBuy disposal (defined in these Regulations) and from the disposal of an authority’s rights and obligations as mortgagee of housing land, including provisions in respect of payments of certain capital receipts to the Secretary of State (known as pooling). These Regulations also make amendments to the calculation of the minimum revenue provision that an authority is required to make.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The Principal Regulations are made under Part 1 of the Local Government Act 2003 (c.26) (“the 2003 Act”). Part 1 contains provisions regarding capital finance and accounts of local authorities. These Regulations amend the Principal Regulations.

4.2 A capital receipt is defined in section 9 of the 2003 Act as a sum received by a local authority in respect of the disposal by the authority of an interest in a capital asset. The Secretary of State may also make provision in regulations for sums to be treated as, or not to be treated as, capital receipts. The Principal Regulations include provisions requiring local authorities in England to pay some of the capital receipts, which they receive from certain disposals of housing land, to the Secretary of State (this is known as “pooling”). When calculating the amount of the capital receipts that has to be pooled (75% in relation to dwellings and 50% in relation to other housing land), an authority may treat the capital receipts as reduced by various amounts. For example, under regulation 14(1)(b) it may treat the capital receipts as reduced by the costs of the expenditure incurred by the local authority in improving the housing land during the three years before the disposal of it. The amount to be pooled is therefore reduced.

4.3 The amendments made by these Regulations include provisions in relation to the pooling of receipts received when an authority makes a Social HomeBuy disposal. A Social HomeBuy disposal is defined in a new Schedule inserted in the Principal Regulations. This is a grant of a long lease of a dwelling by a local authority to a tenant who pays an initial premium for it. The local authority may make one or more

subsequent disposals of interests in the dwelling to the tenant in return for further premiums. Any such subsequent disposal is also a Social HomeBuy disposal. In effect, the purchaser buys a share in the dwelling and may subsequently buy further shares.

4.4 The premiums received by the authority are either capital receipts or, if not, these Regulations provide (in new regulation 9A of the Principal Regulations) that they are treated as capital receipts. This is so even if the premium does not exceed £10,000, as these Regulations exclude Social HomeBuy premiums from the usual de minimis provisions. The premiums are subject to pooling at the rate of 75%.

4.5 Regulations 14 to 21 of the Principal Regulations which provide for capital receipts to be treated as reduced, for the purposes of calculating the amount to be pooled, are disapplied by these Regulations in relation to receipts from a Social HomeBuy disposal. Instead, regulation 14 of the Principal Regulations is amended to provide that, for the purposes of calculating the amount to be pooled, the capital receipt derived from a Social HomeBuy disposal is treated as reduced by an amount, determined by the authority, which may be up to the value of its “available Social HomeBuy allowance” (defined in new regulation 16A of the Principal Regulations).

4.6 The value of an authority’s available Social HomeBuy allowance at a particular time is the value of its total Social HomeBuy allowance at that time less the total of any amounts by which Social HomeBuy capital receipts have been treated as reduced previously by virtue of the amount of the authority’s Social HomeBuy allowance that was available previously.

4.7 An authority’s total Social HomeBuy allowance includes the total value of certain contributions which the authority has made, or has decided to make but not yet made, towards the costs of the provision of affordable housing. The provision of affordable housing is defined in regulation 17 of the Principal Regulations as 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.

4.8 Also included in the total Social HomeBuy allowance is the total value of the amount of expenditure which the authority has incurred, or has decided to incur but has not yet incurred, by making a grant (under section 129 of the Housing Act 1988) to assist a tenant or licensee to move out of a dwelling which is to be used for affordable housing, or by meeting the administrative costs of or incidental to (i) a Social HomeBuy disposal, (ii) running a scheme to make Social HomeBuy disposals or (iii) collecting rent in relation to the authority’s remaining interest in a Social HomeBuy dwelling. The contributions or expenditure only count towards the authority’s total Social HomeBuy allowance if the authority uses capital receipts, or has decided to use capital receipts, derived from Social HomeBuy disposals to make those contributions or incur that expenditure. Regulation 23 of the Principal Regulations is amended to ensure that Social HomeBuy capital receipts can be used for such contributions and expenditure.

4.9 As well as Social HomeBuy, these Regulations deal with a few other matters. Regulation 12(4) of the Principal Regulations is amended to provide that the rate of pooling, for capital receipts received in relation to the disposal of an authority’s rights and obligations as mortgagee of certain dwellings, is 75%. Regulation 14 is amended to provide that an authority cannot treat capital receipts, derived from the disposal of

its rights and obligations as mortgagee of certain dwellings, as reduced by virtue of its available capital allowance. The authority's available capital allowance works in a similar way to an authority's available Social HomeBuy allowance and is defined in regulation 15 of the Principal Regulations. It includes, among other things, certain contributions towards the costs of the provision of affordable housing and regeneration projects (defined in regulation 18 of the Principal Regulations).

4.10 An authority's minimum revenue provision ("MRP"), as defined in regulation 27 of the Principal Regulations, is the minimum amount that an authority must charge to a revenue account for a financial year in respect of financing capital expenditure incurred in that year or earlier years. The purpose of MRP is to ensure that a reasonable level of provision is made for meeting liabilities in respect of principal payments arising from borrowing or from credit arrangements (credit arrangements are defined in section 7 of the 2003 Act and, in broad terms, arise in certain cases where a transaction made by a local authority enables the authority to receive a benefit at least a year before having to pay for it). These Regulations amend regulation 28 of the Principal Regulations, which sets out a formula for how the MRP is to be calculated.

4.11 Regulation 4 of the Local Authorities (Capital Finance and Accounting) (Amendment) (England) (No. 2) Regulations 2004 (S.I. 2004/3055) inserted a new regulation 20A in the Principal Regulations with effect from 16th December 2004. Some local authorities acquired land from the Commission for New Towns (now known as English Partnerships) or a development corporation on the basis that the whole or part of the consideration for the land was to be given by the local authority when it subsequently disposed of the land. Regulation 20A provided that, for the purposes of pooling, capital receipts may be treated as reduced by an amount equal to the value of the consideration that a local authority is required to give English Partnerships or a development corporation on making the disposal. Regulation 21 of the Principal Regulations contains transitional provisions to enable authorities, which were debt-free on 31st March 2004, to treat capital receipts as reduced for the purposes of pooling. The reductions are made after capital receipts have been treated as reduced for pooling purposes by virtue of other regulations, which were referred to as "regulations 14 to 20". This is amended to refer to "regulations 14 to 20A".

4.12 These Regulations apply to local authorities, which are defined in section 23 of the 2003 Act, in England. Regulation 1(3) provides that they do not apply to parish councils or charter trustees (without this regulation, they would apply to parish councils and charter trustees by virtue of section 19 or 21(6)). This is consistent with the Principal Regulations in which most of the regulations, including those relating to capital receipts, pooling and minimum revenue provision, apply to local authorities in England but not to parish councils or charter trustees (by virtue of regulation 1(2) and (3) of the Principal Regulations).

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Social HomeBuy

7.1 The Principal Regulations set out the arrangements under which local authorities may retain a specified proportion of receipts from the sale of housing land, while paying the rest to the Secretary of State for recycling as investment in housing. These pooling arrangements relate to receipts from sales of local authority properties to tenants, and other sales of housing land. The Principal Regulations contain various provisions which enable local authorities to keep some or all of the capital receipts which would otherwise have to be pooled. One of the ways in which a reduction to the amount to be pooled may be made is by means of a capital allowance. The amount of an authority's capital allowance is determined by, among other things, how much the authority has spent on affordable housing and regeneration projects.

7.2 These Regulations amend the Principal Regulations to reflect the Government's new Social HomeBuy scheme. In September 2005, the Government published its Response to Consultation on its proposals for a new HomeBuy shared ownership scheme. The scheme will be available from 1 April 2006 to social tenants, key workers, and first time buyers identified by Regional Housing Boards. There are three elements to the scheme: Social HomeBuy, New Build HomeBuy, and Open Market HomeBuy.

7.3 Social HomeBuy is the element of the scheme that will be available to local authority tenants. Under Social HomeBuy, tenants of participating local authorities may buy at a discount a share in the home they currently occupy. The initial share purchased may not be less than 25% of the market value of the property or the cost of providing it. They may subsequently buy further shares in their home up to a maximum of 100%. Any further share may not be less than 10% of the market value of the property or the cost of providing it.

7.4 The Government's policy is that local authorities will be able to retain all receipts from Social HomeBuy sales (ie, of both initial shares and further shares) rather than pooling part of them, provided that they invest all such receipts in affordable housing or use them to cover the costs of running the Social HomeBuy scheme.

7.5 These Regulations introduce a new Social HomeBuy allowance, which is an alternative to the local authority's capital allowance and is used to reduce the amount of capital receipts from Social HomeBuy disposals that has to be pooled. The kinds of expenditure on affordable housing that are relevant when ascertaining the amount of an authority's Social HomeBuy allowance are listed in new regulation 16B; ie, expenditure on:

- 7.5.1 acquiring buildings or other land;
- 7.5.2 preparing land for development;
- 7.5.3 constructing, improving or repairing dwellings;
- 7.5.4 providing dwellings by converting all or part of a building;
- 7.5.5 paying a contribution, grant or subsidy towards the provision of affordable housing;
- 7.5.6 giving consideration for any benefit received by the authority from providing affordable housing;

7.5.7 paying grants under statutory Cash Incentive Schemes to help tenants to buy other properties and thus to vacate properties that are to be used for affordable housing.

7.6 These Regulations make provision in relation to receipts from Social HomeBuy sales that are £10,000 or less. Under the Principal Regulations, receipts of £10,000 or less are not treated as capital receipts for pooling purposes. But under Social HomeBuy, purchasers may buy further shares in their homes which, in some areas (ie, those where local residential property prices are relatively low), may be less than £10,000. It would be inconsistent to treat receipts arising from further shares in such areas as being different from those arising from purchases of further shares in areas where local residential property prices are generally higher, given that both arise from sales under the same Social HomeBuy scheme.

Mortgage portfolios

7.7 Regulations 5 and 6 of these Regulations amend the pooling provisions, in regulations 12 and 14 of the Principal Regulations, in relation to mortgage portfolios. The amendments are relevant where authorities, which have granted mortgages to individuals to purchase local authority dwellings, decide to sell the outstanding mortgage debts to a bank or other financial institution.

7.8 The aim of the amendments is to put beyond doubt the pooling rate that applies to the capital receipt generated in such circumstances. As the Principal Regulations stand, there may be room for uncertainty. The amendments make clear that 75% of the capital receipt from the disposal of a mortgage portfolio, where the mortgage is in respect of a dwelling, must be pooled. The change will bring the Principal Regulations explicitly into line with the understanding of the majority of authorities. Capital receipts from disposals of mortgage portfolios, where the mortgages are in respect of dwellings, are pooled at the same rate as disposals of dwellings.

7.9 The amendments also prevent a local authority from using its capital allowance to reduce the amount of a capital receipt, from the disposal of a mortgage portfolio, which has to be pooled. This is in respect of mortgages of dwellings, where the dwellings were disposed of under the right to buy provisions in Part V of the Housing Act 1985 or in accordance with consents given by the Secretary of State under section 32 or 43 of that Act. Regulation 14(2) of the Principal Regulations already provides that a local authority cannot use its capital allowance to reduce the amount of a capital receipt, from the disposal of a dwelling, that has to be pooled, where the disposal was made under Part V of the Housing Act 1985 or in accordance with a consent under section 32 or 43 of that Act.

Minimum Revenue Provision

7.10 Regulation 15 of these Regulations changes the provisions relating to minimum revenue provision (“MRP”), as defined in regulation 27 of the Principal Regulations. The policy aim of MRP is that authorities should make annual provision out of revenue to repay debts and other credit liabilities. The Principal Regulations ensure that, whenever *non-housing* expenditure is financed by borrowing or credit, there is an appropriate increase in the MRP. The incurring of *housing* debt is not meant to change MRP liability and that is the normal effect of the Principal Regulations. However, in unusual circumstances affecting a small number of authorities, housing debt may (contrary to the policy intention) increase MRP liability. The amendments made by regulation 15 resolve that problem. By coming into force on

31 March 2006, the amendments apply to the MRP due for the current financial year, as well as future years. The authorities affected will have had sufficient advance notice to ensure they are ready to calculate this year's MRP on 31 March 2006 itself.

Consultation

7.11 The consultation paper was published on 20 January 2006 and comments were requested by 17 February. Sixteen responses were received. Fourteen local authorities responded, and one representative body (Association of London Government). There was one other response from Butlers (accountancy firm).

7.12 The amendments were, generally, well received with the proposals being welcomed. Two local authorities offered no comment, and a third welcomed all the amendments. Of the remaining respondents:

- Five commented on the proposals in respect of Social Homebuy. One response welcomed the proposals, but one commented that the proposals seemed complex. One response made a technical point about the pooling rate when a property is not held within the Housing Revenue Account (HRA). One respondent asked whether homes sold under Social Homebuy will remain within the Housing Revenue Account (HRA) subsidy system (the answer is that they will). Two responses commented on the proposal to allow local authorities to use Social Homebuy receipts to meet the administrative costs of running the scheme. In response to one of these, the Government has added new Regulation 16B(1)(b)(iv) to make it clear that the administrative costs for which Social Homebuy receipts can be used include those of collecting the rental charge payable on the share of the property retained by the landlord.
- Four commented on the proposed clarification in respect of the sale of mortgage portfolios. One respondent was happy with the policy intention. One saw no justification for the pooling rate for mortgage portfolio disposals to be 75%. One respondent was concerned that if the clarification went ahead it would remove resources that could be used for other local housing initiatives. The last respondent thought that this was a change in policy rather than confirmation of the current one.
- Nine commented on the proposals in respect of Minimum Revenue Provision. There was full support for the amendment. Proposals were received for other changes in this area which will be considered later in liaison with local government representatives.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies, and any costs to the public sector are negligible.

9. Contact

9.1 Trevor Emmott at the Office of the Deputy Prime Minister Tel: 020 7944 4226 or e-mail: Trevor.emmott@odpm.gsi.gov.uk can answer any queries regarding the instrument.