

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)
(ENGLAND) (AMENDMENT) (No.4) REGULATIONS 2012

2012 No. 2269

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 To amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (“the 2003 Regulations”).

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

- 3.1 None.

4. **Legislative Context**

- 4.1 These Regulations amend the 2003 Regulations by:

- clarifying the provision for exempting section 80B receipts used for affordable or regeneration projects;
- providing that capital receipts may be used for the payment of any interest due under an agreement made under section 11(6) of the Local Government Act 2003;
- clarifying that one quarter’s available buy back allowance added under paragraph 3(2) of the Schedule to the 2003 Regulations may be carried over indefinitely into future quarters’ buy back allowances;
- providing for an authority’s allowable debt is calculated on a cumulative basis; and
- revising the calculation of North West Leicestershire’s quarterly share caps.

5. **Territorial Extent and Application**

- 5.1 This instrument applies only to England.

6. **European Convention on Human Rights**

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

7. Policy background

7.1 The Schedule to the 2003 Regulations seek to support two Government policies, which both took effect in April 2012:

- self-financing for council housing (whereby local authorities, in exchange for retaining their rental income, took over debt from central Government) and
- the increasing of the caps on Right to Buy discounts to encourage more people into home ownership with the commitment that the additional receipts be used to fund one-for-one replacement stock.

7.2 The 2003 Regulations govern the treatment of receipts arising from the disposal of housing land: i.e. any land, house or other building in relation to which the local authority is, or has been, subject to the duty under section 74 of the Local Government and Housing Act 1989 (duty to keep a Housing Revenue Account). They determine the level of such receipts that each financial quarter must be surrendered to the Secretary of State.

7.3 In order to protect the viability of the self-financing settlement, it was necessary to ensure that a sufficient receipt was left with the authority to pay down debt supported from rental income on that property.

7.4 However under the self-financing settlement the level of debt taken on by local authorities had already been reduced to take account of predicted Right to Buy sales (assumed debt). The Regulations therefore permit each local authority each financial quarter to retain from its Right to Buy receipts a sum equivalent to the attributable debt on each property sold less the assumed debt.

7.5 Because of the short timescale, it was inevitable that further amendment regulations would be issued to ensure the above aims would be implemented correctly. The proposed regulations do this in the following ways:

7.5.1 They clarify that the existing provision continues whereby receipts arising from the disposal of dwellings which were subject to an agreement made under section 80B of the Local Government Act 1989 and used for affordable housing or regeneration projects are exempt from pooling, even if the disposal is made under Right to Buy.

7.5.2 They provide that, if an authority is obliged to pay interest under an agreement made under section 11(6) of the Local Government Act 2003, then it may fund that interest from capital receipts. Authorities which retain receipts for replacement social housing and then failed to spend a sufficient amount will be obliged to repay part or all of those retained receipts with interest. Just as currently, authorities may use capital receipts to finance interest on late “normal” pooling payments, so it is logical to bring in the same provision for this other type of interest.

7.5.3 Currently, a local authority’s buy back allowance can only be carried into the following quarter. With effect from the second quarter of the new

system on pooling, the buy back allowance will be carried over from quarter to quarter indefinitely until it is used up.

7.5.4 For the first quarter of the new system on pooling, it was sufficient to provide that the authority could retain the sum of the attributable debt on each dwelling sold in the quarter minus the assumed debt (see paragraph 7.4 above). From the second quarter onwards a cumulative approach is needed: the authority may retain the sum of all attributable debt on each dwelling sold since 01 April 2012 minus all the assumed debt since the first quarter of the new system and minus all the allowable debt allocated since the beginning of the new system. This will partially eliminate anomalous allocations of allowable debt.

7.5.5 Because of a misreading of historical data, North West Leicestershire's quarterly share caps were over-calculated for all three years. The proposed amendment corrects this and allows for the fact that the first quarter's share cap cannot be re-calculated retrospectively. The re-calculation has been agreed with the authority.

8. Consultation outcome

8.1 Views were informally sought on these amendments from all stock-holding local housing authorities in a letter of 3 August to all Chief Finance Officers copied to relevant policy contacts in those authorities and relevant national bodies.

8.2 In view of the minor nature of the changes, only two responses were received. One local authority sought assurance that the changes to the calculation would not throw up any anomalies. The Chartered Institute of Public Finance Accountancy raised concerns about the complexity of the regulations and the possible difficulties of planned use of housing receipts in view of proposed changes on claw-back. In both cases, we have provided reassurances.

9. Guidance

9.1 We issued guidance on the specific amendments when we consulted. We intend to incorporate this guidance into the more general guidance on pooling which was issued to local authorities on 4 July 2012.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument. An Impact Assessment was prepared for S.I. 2012/711, which amended the 2003 Regulations to include the Schedule.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The regulations will be monitored and the regulations up-dated where necessary to keep abreast of developing Government policy.

13. Contact

Ross Buchanan at the Department for Communities and Local Government
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answer any queries regarding the instrument.