

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)
(ENGLAND) (AMENDMENT) (No.2) REGULATIONS 2012

2012 No. 711

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 These Regulations amend the Local Authorities (Capital Finance and Accounting) Regulations 2003 (“the 2003 Regulations”) in respect of provisions relating to the pooling (payment to the Secretary of State) of capital receipts derived from the disposal of housing land.

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

3.1 None

4. **Legislative Context**

4.1 These Regulations amend the provisions dealing with the treatment of receipts from disposals made pursuant to Part V of the Housing Act 1985. The receipts derived from disposals under the right to buy (“RTB”) and disposals made to secure tenants at a discount are now dealt with separately from the provisions dealing with the treatment of receipts of other housing land and are contained in a schedule, which sets out a formula and table for the calculation of this amount.

4.2 In particular these Regulations amend the 2003 Regulations by -

- removing redundant and out-dated provisions and the provision that improvement costs be deducted before calculating the net receipt,
- making the paying down of housing debt a permissible use of receipts (inserted regulation 17),
- amending the calculation by which receipts due to the Secretary of State arising from disposals made under Part V of the Housing Act 1985 (the Right to Buy) might be reduced (the Schedule) clarifying

the definition of receipts not derived from Right to Buy disposals but nonetheless treated the same (the Schedule paragraph 1)

- setting a fixed deductible sum for administrative costs in respect of RTB receipts (the Schedule paragraph 2); and
- setting a cap on those receipts that might be retained to cover part of the cost of re-purchasing former council homes (the Schedule paragraph 3).

4.3 These Regulations make these changes by omitting provisions and then replacing them, rather than making amendments to individual regulations that would have been difficult to follow. These Regulations also contain transitional provisions to enable amounts calculated under the 2003 Regulations to be used after the amendments take effect.

5. Territorial Extent and Application

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

7.1 These Regulation help fulfil the Government's commitment in the Housing Strategy published on 21 November 2011, to increase the caps on Right to Buy discounts to help more people realise their aspiration for home ownership and to deliver one for one replacement homes from the additional income generated. The Housing Strategy is available at: www.communities.gov.uk/publications/housing/housingstrategy2011

7.2 The 2003 Regulations require that a proportion of all receipts derived by a local authority from a disposal of its interest in housing land¹ must be surrendered to the Secretary of State: 75% of the net receipt from the disposal of a dwelling, and 50% of the net receipt from the disposal of other housing assets (e.g. vacant land, garages etc.). The retained receipt may be used by the local authority for any capital purpose. The Regulations draw a distinction between receipts derived from the disposal of homes under the Right to Buy (and similar sales²) and other disposals.

7.3 In the case of the former, receipts may be reduced by the cost of administering the sale and the cost of improvements to the property before calculation of the net receipt. The net receipt may be used to cover up to 50%

¹ Land held under powers provided by Part II of the Housing Act 1985 and for which it has a duty to keep a Housing Revenue Account as provided by section 74 of the Local Government and Housing Act 1989

² Where the disposal is made with a relevant consent (i.e. where the Secretary of State has given a general consent under section 32 or 43 of the Housing Act 1985) to a person who, when he acquires that dwelling, occupies or intends to occupy the dwelling as his only or principal home.

(in some specified cases 100%) of the cost of re-purchasing former council homes. What is left must be surrendered to central Government. In the case of the latter, the whole receipt may be retained by the local authority provided it is spent on affordable housing, regeneration projects or (as a result of amendments introduced by these Regulations) the paying down of housing debt. The Government will be consulting local housing authorities and relevant professional bodies on proposals for changes to the Limits on Indebtedness Determination 2012 that will ensure that the Housing Revenue Account benefits from the proportion of the receipt that is held back to pay down debt.

7.4 These changes are being made primarily to help deliver its proposals to re-invigorate the Right to Buy and provide one for one replacement homes. To achieve this it is necessary to ensure that additional receipts are properly captured so that they are available to invest in new supply. However at the same time the Regulations need to ensure that a sufficient proportion of the receipt is held back to pay down debt associated with any property sold and that income anticipated by both local authorities and central Government is protected. The Regulations therefore set out a formula for calculating the sum owed to central Government.

7.5 To ensure that maximum sums are available to support new supply the Regulations introduce a cap of 6.5% on the amount of net Right to Buy receipts that might be used to re-purchase former council homes. For similar reasons the provision that any costs incurred in the three years leading up to disposal might be deducted from the net receipt is revoked on the grounds that most of these costs were covered by central Government in the first place. The Regulations also encourage efficiency by setting fixed rates (£2,850 for London, and £1,300 for elsewhere) for the cost of administering Right to Buy sales (under the current Regulations actual costs may be deducted).

7.6 The Government was conscious that the current wording defining sales similar to the Right to Buy acts as a disincentive to local authorities selling homes for owner-occupation in favour of sales to developers and private landlords. Limiting the potential number of purchasers of such properties also reduces the potential receipt. For this reason, the Government has amended the definition to bring it more closely in line with actual Right to Buy sales: i.e. sales to secure tenants at a discount.

8. Consultation outcome

8.1 Views were sought on these amendments in two consultation papers: “Streamlining council housing management: disposal and use of receipts” (August 2011) and “Re-invigorating the Right to Buy and one for one replacement” (December 2011). Both consultation papers also covered matters not the subject of these Regulations. A draft of these Regulations was subject to an informal consultation in February 2012.

8.2 The Department consulted a range of bodies including local authorities, Registered Providers, the Local Government Association, the

National Housing Federation, tenant organisations, and other interested organisations.

8.3 336 responses were received to both consultations. The vast majority responding agreed with the policy direction of our proposals. We received some comments on our proposed revised definition of sales similar to the Right to Buy and having considered them Ministers have agreed they be amended and this is reflected in the Regulations.

9. Guidance

9.1 The Regulations will be accompanied by explanatory text, which we hope will aid local authorities' (and others') understanding.

10. Impact

10.1 There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is that local authorities will have to take time to adjust to quite different Regulations. There is also a slight loss to some local authorities who will no longer be able to retain improvement costs that they themselves funded.

10.3 An Impact Assessment was published relating to the re-invigorated Right to Buy scheme as a whole and will be published alongside the Explanatory Memorandum accompanying the regulations amending the Right to Buy discount caps at: <http://www.legislation.gov.uk/uksi>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The increase in the Right to Buy discount will allow more eligible social tenants to take up the opportunity to own their home if they wish to do so and therefore increase receipts flowing to local and central Government. The extent to which Right to Buy is taken up depends on a large number of mainly external factors such as the general economic climate. The Department for Communities and Local Government will therefore continue to collect and publish figures annually on the numbers of Right to Buy sales and receipts. There will be a continuous ongoing review to assess the impact of these Regulations.

13. Contact

Ross Buchanan at the Department for Communities and Local Government, tel: 0303 444 3725 or email: Ross.Buchanan@communities.gsi.gov.uk, can answer any queries regarding the Regulations.