

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)**  
**(ENGLAND) (AMENDMENT) REGULATIONS 2013**

**2013 No. 476**

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.
2. **Purpose of the instrument**
  - 2.1 The Regulations serve two distinct purposes: to help authorities manage liabilities for equal pay compensation payments; and to amend the provisions that require local housing authorities to pay to Government a proportion of capital receipts derived from the sale of housing land (“pooling”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 These Regulations amend the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (“the 2003 Regulations”).
  - 4.2 Part 1 of the Local Government Act 2003 (“the 2003 Act”) (known informally as the “prudential” capital finance system) serves mainly to control borrowing by local authorities for non-housing purposes. It requires them to determine how much they can afford to borrow and not to borrow in excess of that amount. In determining what is affordable, they are required to have regard to a code published by CIPFA (the Chartered Institute of Public Finance and Accountancy).
  - 4.3 Subject to those constraints, authorities are free to decide how much to borrow for non-housing purposes without seeking the Government’s consent. Long-term borrowing can however normally be used only to fund capital expenditure, as defined in the 2003 Act and in the 2003 Regulations. Government consent is required for borrowing for revenue purposes and this is granted only exceptionally, because borrowing to support revenue expenditure impacts adversely on the budget deficit reduction programme.
  - 4.4 The 2003 Regulations contain the more detailed provisions of the system, including rules on the use of capital receipts and what is to be treated as capital expenditure. They also modify accounting practice in various ways to prevent adverse impacts on authorities’ revenue resources.

4.5 Regulations 5 and 6 amend the 2003 Regulations to:

- provide that capital receipts received on or after 1st April 2012 may be used to make back payments of equal pay costs; and
- extend the ability of local authorities to defer charging liabilities for back payments following unequal pay to a revenue account until the date on which a back payment must actually be paid.

4.6 Regulations 3, 4 and 7 amend:

- the requirements in the 2003 Regulations to pool capital receipts related to the disposal of housing land which is not subject to Part V of the Housing Act 1985 (housing subject to the right to buy) so that only the receipts listed in amended regulation 14 (regulation 3 of these Regulations) must be pooled; and
- Schedule 1 to the 2003 Regulations, which calculates the poolable amount of capital receipts derived from the disposal of houses subject to the right to buy, to provide that:
  - calculations of amounts retained by authorities for repayment of debt reflect more accurately any over-allocation in previous quarters; and
  - calculations of both amounts retained for general use and those to be paid to the Government reflect any low level of receipts received in the previous year.

4.7 With the exception of the amendments made by regulation 5, which apply to the financial year ending 31st March 2013, the amendments will apply to the local authority financial year which begins on 1st April 2013 and to subsequent years.

## **5. Territorial Extent and Application**

5.1 This instrument applies 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**

- What is being done and why

### **EQUAL PAY (Regulations 5 and 6)**

7.1 The background is that, over the past few years, many authorities have become liable for large back-pay awards in relation to historical pay

inequalities. Until recently it seemed that most affected authorities had either already discharged their commitments or were well on course to do so and the level of continuing liabilities was falling. However, it is now clear that new and significant liabilities could materialise in the near future for a number of authorities. The Regulations address two associated problems.

7.2 The first problem is one of **funding**. Equal pay awards would normally need to be funded out of authorities' *revenue* resources; but for many authorities that could be unaffordable. So the Government considered whether authorities should be allowed to meet these payments out of *capital* resources – in other words, by borrowing or by using their “capital receipts” (property sales proceeds). Given concerns about public sector debt, borrowing would not be appropriate. However, we are prepared to permit the costs to be met out of capital receipts. This is subject to the condition that the only receipts to be used in this way are those *obtained on or after 1 April 2012*. Using existing stocks of receipts would increase the public sector deficit and, in any event, the authorities affected by the equal pay problem do not have large stocks of receipts. Regulation 5 achieves this result. Also, by coming into force on 31 March 2013, this concession applies to any payments made during 2012-13.

7.3 The second problem relates to **accounting practice**. Financial provision for probable future liabilities has to be made in the financial year when the liability is first identified, rather than in the year when the actual payment falls due. In the case of equal pay, authorities are likely to have identified a potential liability significantly in advance of having to make the payment (for example, allowing for the progress of Employment Tribunal cases or undertaking negotiation with key parties on settlements). Scoring liabilities when first identified could cause authorities serious budgetary difficulties. To protect authorities, Regulation 30A was introduced into the 2003 Regulations. It offered authorities a breathing space, allowing them not to charge back-pay awards to their revenues until they made the payments. Originally due to expire in 2011, the regulation was extended until 2013. Because of the new liabilities being identified, the expiry date is again deferred, until 1 April 2018.

### **POOLING (Regulations 3, 4 and 7)**

7.4 The most substantial amendment is the removal from the pooling system of all receipts other than those which derive from the disposal of a dwelling to a tenant exercising his or her Right to Buy (or equivalent disposals). Currently, local authorities may retain these non-RTB receipts provided they are used for paying down housing debt, affordable housing or regeneration. We propose that these receipts remain with the local authority, although where the receipt is used to construct, acquire, or improve a non-housing asset, we may adjust the authority's HRA Capital Financing Requirement (the amount the authority is deemed to require in order to service HRA related debt). This will be achieved by amending the Item 8 determination (under Parts 1 and 2 of Schedule 4 to the Local Government and Housing Act 1989).

7.5 All the other amendments are of a technical nature and simply ensure that there is no financial advantage to any local authority of delaying an RTB sale.

- Consolidation

7.6 Further amendments are envisaged in the near future and consolidation at this stage would not be appropriate.

## **8. Consultation outcome**

8.1 All authorities and other interested parties were consulted on the equal pay amendments (regulations 5 and 6). Given the urgency, it was not possible to allow more than about five weeks for comments (the norm for technical amendments of this kind is six weeks). All respondents supported the changes, but one improvement was suggested and accepted. The consultation proposal on regulation 30A (see paragraph 7.3 above) was to extend it to 1 April 2016. Responses indicated that some authorities might find a slightly longer extension helpful. The regulation postpones the expiry until 1 April 2018, thus allowing an extension of two years more than originally proposed.

8.2 All 167 authorities with housing stock (together with non-stock-holding authorities which still receive housing receipts) were consulted on the amendments to regulations on pooling of housing receipts (regulations 3, 4 and 7). 12 responded (all but one were stock-holding authorities). None have expressed disagreement with the amendments.

## **9. Guidance**

9.1 No formal guidance is proposed. An informal commentary on the equal pay measures will be published on the DCLG website before the Regulations come into force. We will issue guidance on pooling directly to pooling contacts.

## **10. Impact**

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

10.2 The impact on the public sector of the equal pay amendments is wholly beneficial.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The effect of the amendments will be kept under review by DCLG in liaison with the local authority associations, CIPFA and private-sector advisers to local government.

### 13. Contact

**Equal Pay** (Regulations 5 and 6). Miss Suzanne Clarke at the Department for Communities and Local Government [telephone number 030344 42169; e-mail [suzanne.clarke@communities.gsi.gov.uk](mailto:suzanne.clarke@communities.gsi.gov.uk) ] can answer any queries.

**Pooling** (Regulations 3, 4 and 7) Ross Buchanan at the Department for Communities and Local Government [telephone number 0303 4443725; e-mail [ross.buchanan@communities.gsi.gov.uk](mailto:ross.buchanan@communities.gsi.gov.uk)] can answer any queries.