

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (ENGLAND)
(AMENDMENT) REGULATIONS 2015

2015 No. 341

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 This instrument amends The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) (“the 2003 Regulations”) to set out which local authority bodies are subject to, or exempt from, certain accounting practices, in particular with respect to the charging of expenditure to a revenue account. It inserts a reference to the practitioners’ guide for internal drainage boards¹, to be considered as “proper practices in relation to accounts”² for these bodies.

2.2 It also makes amendments to the provisions in the 2003 Regulations which set out the calculation to be followed by local housing authorities who are required to pay to Government a proportion of capital receipts derived from the disposal of housing land (“pooling”).

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

None.

4. Legislative Context

4.1 The Local Audit and Accountability Act 2014 (“the 2014 Act”) makes new provision for the audit of local public bodies (“relevant authorities” as defined in section 2 of and Schedule 2 to that Act) once the Audit Commission for local authorities and the National Health Service in England is abolished in March 2015. The Act imposes a requirement on relevant authorities to appoint an external and independent auditor on the advice of an independent auditor panel. It also creates a regulatory framework for local audit which applies, with modifications, Part 42 of the Companies Act 2006, whereby the Financial Reporting Council and professional accountancy bodies regulate the provision of local audit services.

¹

http://www.ada.org.uk/downloads/other/downloads_page/aud_com/IDBGovernanceandAccountabilityDraftPractitionersGuide2006.pdf

² See section 21 of the Local Government Act 2003 for the definition of ‘proper practices in relation to accounts’.

4.2 Paragraphs 50 and 51 of Schedule 12 to the 2014 Act extend the scope of sections 21 and 22 of the Local Government Act 2003 (“the 2003 Act”) to all relevant authorities as defined in Schedule 2 (apart from health service bodies) to the 2014 Act. This brings a number of authorities within the scope of these provisions (and regulations made under them) which were not previously subject to them (“the new bodies”). The 2003 Regulations make a number of provisions in this regard. These Regulations amend the 2003 Regulations in order to disapply certain of the 2003 Regulations made under section 21 of the 2003 Act to the new bodies. They also make transitional provision in relation to the application of various regulations made under section 21 of the 2003 Act to the new bodies. Section 21(5) of the 2003 Act allows for ambulatory references to documents which represent “proper practices in relation to accounts” for local authorities, and the references to such documents in regulation 31 of the 2003 Regulations (as amended by these Regulations) are drafted to allow for this.

4.3 Regulation 12 of the 2003 Regulations (pooling of receipts from housing land) requires local housing authorities to pay to the Secretary of State a proportion of the receipts from the disposal of housing land in respect of each quarter of a financial year. This is known as “the poolable amount” (see regulation 1(5) of the 2003 Regulations). The main component of the poolable amount is the “sub-liability” (see regulation 1(5)) which is calculated in accordance with the Schedule to the 2003 Regulations. These Regulations make amendments to the Schedule which will ensure that local housing authorities have the necessary figures to feed into their calculations for the next two financial years (2015-16 and 2016-17).

5. Territorial Extent and Application

This instrument applies to England and Wales.

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 These Regulations are consequential to the implementation of the new local audit arrangements set out in the 2014 Act and relate to the accounting framework for relevant authorities (excluding health bodies) under the Audit Commission Act 1998 which the 2014 Act replaces.

7.2 Regulations 2(2) to (10) set out changes to the accounting framework for relevant authorities (apart from health bodies) and the definition of the term ‘proper practices’ which forms part of that framework. The amendments relate to charges to revenue

account in respect of capital expenditure, including charges to finance the repayment of borrowing and other forms of credit used to finance capital expenditure. These charges are designed to support the framework of capital financing set out in other provisions of Part 1 of the 2003 Act which do not apply to the new bodies. In some cases, the charges would be incompatible with statutory provisions requiring a body to make proper charges for depreciation in their accounts. For other bodies it would be inconsistent with the existing capital financing practices that apply to them.

7.3 In more detail, regulation 2(2)(b) inserts into the 2003 Regulations a new regulation 1(3A) which disapplies regulations 27-29 to the new bodies. Regulations 2(4) and (5) make transitional provisions in relation to the application of the premiums and discounts on early redemption of loans in regulations 30B and 30C to these bodies from 2015 onwards. Regulations 2(3) and (6) – (9) make transitional provision to reflect the implementation of the new framework from 2015. Regulation 2(10) updates regulation 31 of the 2003 Regulations to change the description of the National Association of Local Councils / Society for Local Council Clerks guide so that it applies to all Category 2 authorities (as defined in the Accounts and Audit Regulations 2015 (S.I. 2015/234)) other than internal drainage boards and updates a reference to that guide to the latest edition, as well as prescribing which publications represent proper practices in relation to accounts for internal drainage boards³.

7.4 Regulation 2(11) and the Schedule to the Regulations continue Government policy regarding the requirement on local authorities to pay to Government a proportion of capital receipts derived from the sale of housing land – this is known as “pooling”. At present the 2003 Regulations set out the detail of certain key elements of the calculation for each authority - the assumed debt and share caps – up to the end of the 2014-15 financial year only. These amendments add to those figures with revised details covering both 2015-16 and 2016-17. It has been necessary to bring forward the existing figures into the new tables as these figures still need to be fed into the calculation during the forthcoming financial year. The amendments also reflect the fact that two local housing authorities are in the process of transferring all their housing stock which should be complete by the start of the next financial year (i.e. 2015-16) and will therefore be taken out of the pooling system. Some further technical amendments are also built into both Tables A and B in the Schedule which make adjustments for one authority which is making a partial transfer of its stock and three authorities whose share caps have been over calculated in the previous years.

³ “Governance and Accountability for Local Councils: A Practitioners’ Guide (England) March 2014” is available for download from the Society of Local Council Clerks at <http://www.slcc.co.uk/bookstore/category/slcc-publications/1/>. A hard copy can be purchased from the same address. “Governance and Accountability in Internal Drainage Boards in England: a Practitioners’ Guide 2006” is available for download from the Association of Drainage Authorities at http://www.ada.org.uk/downloads/other/downloads_page/aud_com/IDBGovernanceandAccountabilityDraftPractitionersGuide2006.pdf. A hard copy can be requested by contacting the Association of Drainage Authorities at <http://www.ada.org.uk>.

8. Consultation outcome

8.1 Prior to the introduction of the 2014 Act into Parliament, the Government consulted twice, both on the broad policy approach and in more depth on the proposed new framework through publication of the draft Bill. Provisions detailing these proposed changes were included in the draft bill. Officials have also written to the bodies affected and, where appropriate, their relevant Associations to advise them of the forthcoming changes in order to ensure that they understand what the changes will mean to them and to give them an opportunity to comment.

8.2 Of the 88 individual bodies and/or their representatives contacted, only 1 comment was received in response. The key concern expressed by the respondent was whether it might be possible to future proof the Regulations so that they would not require amendment should changes be made to the practitioners guides in future. In response to this concern, Government has provided for future versions of existing guides to be considered as proper practice but considers that it would not be possible to provide for any new or combined guides to be so considered without an amendment to insert reference to such a guide.

8.3 Consultation, primarily targeted at local housing authority finance officers, took place on the proposed amendments to the pooling of housing receipts between 17 November 2014 and 19 December 2014 with 22 responses from local housing authorities and one from a local government representative body. Whilst some of the responses made general comments on the Right to Buy⁴ policy and the pooling system, the majority of the responses were content with the proposed changes. As a result the Government proposes to take forward the changes in the consultation document with some small additional amendments to reflect the fact that one of the stock transfer authorities will be retaining housing stock whilst three authorities – and not one - will have amendments to their share caps to reflect over-calculation of their caps in previous years. The consultation document and Government response can be found at: <https://www.gov.uk/government/consultations/proposals-to-amend-regulations-relating-to-the-use-of-capital-receipts>

9. Guidance

No formal guidance is proposed. However local bodies to whom these Regulations apply were contacted to advise them of the forthcoming changes as set out in Part 8 above. With regard to the pooling changes no formal guidance is proposed. In accordance with our normal practice, local authorities are given updated guidance on pooling each quarter when the next pooling payments are due.

10. Impact

⁴ Almost all pooled receipts arise from sales to secure tenants of council dwellings exercising their Right to Buy the property they occupy.

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

10.2 The impact on the public sector in complying with the requirements of this instrument are minimal. However, the impact of the new local audit arrangements in total is estimated to range from £2.98million per annum to £4.48million per annum, a best estimate of £3.73million per annum, which equates to roughly £4,800 per body per year in compliance costs (see Annex 2 of impact assessment for the 2014 Act – footnoted link in 10.3 below).

10.3 A revised Impact Assessment was published in September 2014⁵ following Royal Assent of the Local Audit and Accountability Act which provides an updated assessment of the overall cost and impact of the new regime.

11. Regulating small business

This legislation does not apply to small business.

12. Monitoring & review

12.1 As part of the Government's commitment to review the implementation of new legislation within three to five years of receiving Royal Assent, Government has set out some general principles towards developing a possible approach to such a review and assessing the impacts/outcomes associated with the Government's reforms to local audit. An overriding objective for the final approach would be to ensure that any proposed measurement is both proportionate and cost effective.

12.2 The aims and success criteria of the local audit reforms are to:

- Deliver greater localism, decentralisation and transparency;
- Maintain competitive audit fees; and
- Uphold high standards of auditing.

The post implementation review will provide Government, Parliament and the public with the evidence to demonstrate that the local audit framework is achieving its anticipated outcomes and that the assumptions about costs and benefits identified are supported by the evidence.

12.3 Government also intends to keep the effect of the pooling amendments under review in liaison with local housing authorities; local authority associations, CIPFA and

⁵https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349418/2014_FINAL_Local_Audit_IA.pdf

other interested bodies.

13. Contact

Gareth Caller at the Department for Communities and Local Government. Tel: 0303 444 4300 or email: gareth.caller@communities.gsi.gov.uk, who can answer queries regarding regulations 2(1) to (10) of this instrument and Ross Buchanan Tel 0303 4443725 email ross.buchanan@communities.gsi.gov.uk who can answer queries regarding regulation 2(11) of and the Schedule to, this instrument.