

**EXPLANATORY MEMORANDUM TO**  
**THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING)**  
**(ENGLAND) (AMENDMENT) REGULATIONS 2017**

**2017 No. 536**

**1. Introduction**

- 1.1 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 These Regulations make amendments to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146) (“the 2003 Regulations”). First, they amend regulation 23 of the 2003 Regulations to provide that in the case of a Mayoral development corporation a capital receipt may be used to meet any liability to pay corporation tax. Second, they make amendments to the calculation of the sub-liability that forms part of an amount (“the poolable amount”) that must be paid by a local authority to the Secretary of State out of capital receipts arising from the disposal of housing land (see regulations 1(5) and 12 of the 2003 Regulations).

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Part 1 of the Local Government Act 2003 sets the legal framework within which local government may undertake capital expenditure and central Government may regulate that activity. Section 23 of the Act defines “local authority” for the purposes of Part 1 and includes a functional body within the meaning of the Greater London Authority Act 1999. A mayoral development corporation is established under Part 8 of the Localism Act 2011 in relation to a designated area of land in Greater London. It is a functional body of the Greater London Authority (see section 424(1) of the Greater London Authority Act 1999).
- 4.2 Sections 9 to 11 of the Local Government Act 2003 concern the treatment of capital receipts. These are defined in section 9 broadly as the proceeds of property sales. They are treated as received when they become payable to the authority, rather than when actually paid, in line with accounting practice. There is power to vary this definition by regulations (section 9(3)) allowing, for example, the repayment of certain loans made for capital expenditure to be defined as capital receipts.

- 4.3 Section 11 provides power to make regulations about the use of capital receipts, in particular, to allow them to be used for capital expenditure or to meet debts or other liabilities and to require an amount equal to the whole or any part of a capital receipt arising from the disposal of housing land to be paid to the Secretary of State. The 2003 Regulations are made under this power.
- 4.4 Regulation 12 makes provision for a local authority to pay an amount to the Secretary of State (the “poolable amount” as defined in regulation 1(5)). The Schedule to the 2003 Regulations then makes provision for the calculation of part of the “poolable amount” (namely the “sub-liability”).
- 4.5 Regulation 23 provides that capital receipts may only be used for one or more of the specified purposes, including to meet capital expenditure and to repay the principal of any amount borrowed.

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

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies in relation to England only.

## **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**

### *What is being done and why*

#### *Mayoral development corporations*

- 7.1 The 2003 Regulations set the rules for the operation of the prudential framework of local authority borrowing and investment. This includes the uses to which capital receipts can be put. The general rule is that capital receipts can only be reinvested in future capital projects. However, the Regulations contain a number of specific exceptions to mitigate the risk of perverse outcomes.
- 7.2 The London Legacy Development Corporation (LLDC) was set up following the 2012 Olympics to redevelop the Olympic Park and to sell off those parts no longer used for sports for commercial and residential use. This activity generates capital receipts. Because the LLDC is a limited company it is required to pay corporation tax, which is a revenue cost. As a functional body of the Greater London Authority the LLDC is also bound by the prudential code. This has created a mismatch, whereby the LLDC cannot use the source of its profits to pay the associated tax liability. The issue is made more acute by accounting rules, which require the LLDC to recognise a ‘deferred tax liability’ on the profit it expects to make as land is improved, even if it is not yet ready for sale. As the LLDC has no other business activities, it has no source of revenue income to meet its tax liability.
- 7.3 This mismatch will also affect other mayoral development corporations set up by the Greater London Authority. Mayoral development corporations set up by other mayoral combined authorities are not currently within the scope of Part 1 of the Local Government Act 2003.

- 7.4 Accounting periods for mayoral development corporations run from 1st April to 31st March in the following year. Each mayoral development corporation is required to produce a set of statutory accounts covering the accounting period. Statutory accounts are subject to external audit. The external auditors are required to form an opinion as to whether the accounts are true and fair and whether they are properly prepared in accordance with generally accepted accounting practice and with the relevant statutory provisions.
- 7.5 Once the external auditor has completed their work they certify the accounts. Until the auditor has certified the accounts it is possible and indeed not uncommon to make changes (known as audit adjustments). The statutory deadline for certifying the 2016-17 accounts is 30th September 2017, so that changes made to the 2003 Regulations after 1st April 2016 but before 30th September 2017 can be taken into account in relation to the financial year commencing on 1st April 2016 without being retrospective.
- 7.6 Once the auditor has certified the accounts they are final and changes can only be made through what is known as a prior period adjustment. A change of legislation would not meet the conditions for making a prior period adjustment, so this amendment could not be used to reverse out any corporation tax liabilities recognised in the 2015-16 accounts.

#### *Pooling of capital receipts from housing land*

- 7.7 Regulations 2(3) and 2(4) 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 financial year for 2016-17 only. These amendments add to those figures with revised values covering four more years up to the end of the 2020-21 financial year. A minor amendment has also been made in respect of one authority, Cambridge, whose share cap has been over calculated in a previous year.

#### *Consolidation*

- 7.8 There are no current plans to consolidate the 2003 Regulations.

### **8. Consultation outcome**

#### *Mayoral development corporations*

- 8.1 There has not been a formal public consultation on the change. The proposed change has been raised at meetings of the relevant sector bodies and is included in their publicly available papers. No comments were made on the proposed change.

#### *Pooling of capital receipts from housing land*

- 8.2 Consultation, primarily targeted at local housing authority finance officers, took place on the proposed amendments to the pooling of housing receipts between 09 February and 03 March 2017 with 20 responses from local housing authorities and four from local government representative and professional bodies. Whilst some of the responses made general comments on the Right to Buy 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. The consultation document can be found at: <https://www.gov.uk/government/consultations/local-authorities-capital-finance-regulations>.. The Government response will be published shortly on the Government website.

## **9. Guidance**

9.1 There is no intention to issue additional guidance in respect of these changes.

## **10. Impact**

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

10.2 The impact on the public sector is to allow mayoral development corporations set up by the Greater London Authority to meet their corporation tax liabilities through capital receipts. There is no impact on any other public sector bodies.

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

## **11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

12.1 The operation of the amendments made by this instrument will be kept under review by the Department in liaison with the Greater London Authority and the Chartered Institute of Public Finance and Accountancy (CIPFA).

## **13. Contacts**

13.1 Gareth Caller at the Department of Communities and Local Government Telephone: 0303 4444300 or email: [Gareth.caller@communities.gsi.gov.uk](mailto:Gareth.caller@communities.gsi.gov.uk) can answer any queries regarding the provisions in relation to Mayoral development corporations and Ross Buchanan at the Department of Communities and Local Government Telephone: 0303 4443725 or email: [Ross.Buchanan@communities.gsi.gov.uk](mailto:Ross.Buchanan@communities.gsi.gov.uk) can answer any queries regarding the provisions in relation to pooling of capital receipts.