
EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Local Government Act 2003 (“the 2003 Act”) allows the National Assembly for Wales to make provision for a new system of local government capital finance to replace the existing regime set out in Part IV of the Local Government and Housing Act 1989. These regulations are made under the provisions in Part I of the 2003 Act.

Regulation 2 specifies the Prudential Code for Capital Finance in Local Authorities (issued by the Chartered Institute of Public Finance and Accountancy), as may be amended from time to time, as the code of practice to which local authorities in Wales must have regard in setting and reviewing their affordable borrowing limits under sections 3(1) and (5) of the 2003 Act.

Regulation 3 excludes from the definition of “qualifying liabilities”, for the purposes of section 7(3)(c) of the 2003 Act, liabilities of a local authority that do not arise from the incurring of capital expenditure where proper practices require the recognition of a fixed asset.

Regulation 4 relies on section 7(3)(c) of the 2003 Act to exclude any liability from the definition of “credit arrangements”. The liabilities in respect of local government pensions, firemen’s pensions, police pensions, teachers compensation for redundancy and premature retirement and compensation for loss of office (in accordance with section 24 of the Superannuation Act 1972) are excluded by regulation 4 and not to be treated as credit arrangements.

Regulation 5 provides how, for the purposes of section 8(2) of the 2003 Act, credit arrangements are to be treated for the purposes of applying the affordable borrowing limit (section 3(1) of the 2003 Act) and any limits imposed under section 4 (Imposition of borrowing limits) of the 2003 Act.

Regulation 6 sets out what must be treated as a capital receipt. Regulation 6 extends the definition of capital receipts in sections 9(1) and (2) (“Capital receipt”) of the 2003 Act to cover repayments to an authority of loans and grants which they have made to other bodies or person for capital expenditure by them.

Regulation 7 provides that where an authority disposes of its council housing mortgage portfolio a sum received must be treated as a capital receipt.

Regulation 8 provides that where an interim or final payment is made to a local authority in accordance with Schedule 6A to the Housing Act 1985, the sum received by the authority must be treated as a capital receipt.

Regulation 9 varies the definition of a capital receipt so that sums which would otherwise be capital receipts are not to be treated as such where they do not exceed £10,000. The regulation also includes an aggregation provision. Where aggregated receipts exceed £10,000 regulation 9 does not apply. Regulation 9 also applies to notional capital receipts under £10,000 which otherwise would be treated capital receipts for the purposes of regulation 15(5).

Regulation 10 requires all or part of a capital receipt from a disposal of an interest in housing land to be paid to the National Assembly for Wales by a local authority on the date specified in regulation 10(3) which has a debt free housing revenue account at the date of disposal. This “pooling” requirement is stipulated as 75% of the capital receipt in relation to sales of “right to buy” dwellings, nil in relation to disposals in accordance with regulation 10(9) and 50% of the capital receipt in respect of other disposals of housing land.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulations 11 and 12 set out the calculation of the deemed reduction in the housing receipts under regulation 10(5)(b), where “the capital allowance” is the total of past or planned expenditure on affordable housing and regeneration projects as specified in regulations 13 and 14.

Regulation 13 specifies “provision of affordable housing” as expenditure for the purposes of the capital allowance in regulations 11 and 12. Regulation 14 makes a similar specification in respect of “regeneration projects” which relate to vacant, unused, under-used, ineffectively used, contaminated or derelict land or buildings where the authority undertakes works to secure that such land or buildings will be brought into effective use.

Regulation 15 sets out how a local authority must determine the amount of a “notional capital receipt” (which would have been the capital receipt if the consideration for the disposal had been wholly in money) where the authority disposes of certain interests in housing land.

Regulation 16 specifies the reductions which local authorities may make to capital receipts where they incur any costs in buying back dwellings.

Regulation 17 specifies the reductions that may be made where in addition to the cost of buying back dwellings an authority incurs expenditure on improving those dwellings prior to resale.

Regulation 18 sets out how capital receipts, other than those to which regulation 10 applies and the balance of certain regulation 10 capital receipts after certain deductions have been made, must be used. In particular a capital receipt in respect of a housing revenue account is only to be used for the purposes in regulation 18(2) in so far as it relates to functions of the local authority associated with its housing revenue account. Regulation 18(6) provides that where a local authority receives any capital receipt in respect of certain disposals in accordance with the Housing Act 1985 that capital receipt may be applied in defraying administrative costs associated with the disposal.

Regulation 19 requires that a local authority must have regard to the Chartered Institute of Public Finance and Accountancy document called “Treasury Management in the Public Services: Code of Practice and Cross Sectoral Guidance Notes ”(Published 2001: ISBN 085299 9437) as may be amended from time to time in carrying out functions under Chapter 1 of Part 1 of the 2003 Act.

Regulation 20 adds items of expenditure to those to be considered as capital expenditure for the purposes of Chapter 1 of Part 1 of the 2003 Act. These are expenditure in relation to acquisition or preparation of a computer program, financial assistance (by way of grant or otherwise) to any person, towards expenditure which would, if incurred by the authority, be capital expenditure and the making of a “relevant payment” in accordance with regulation 10(4).

Regulation 21 obliges a local authority to make a minimum revenue provision i.e. a charge of a minimum amount, to a revenue account. This requirement does not apply to a housing revenue account by virtue of these regulations. Regulation 21(b) permits an authority to make additional charges to revenue account if the authority so wishes. Again this does not apply to a housing revenue account.

Regulation 22 sets out how an authority must calculate its minimum revenue provision for any financial year.

Regulation 23 sets out how an authority is required to adjust any minimum revenue provision made in accordance with regulation 22 to allow for the effects of any commuted payment made to or for the benefit of a local authority in the financial year beginning 1st April 1992. For the purposes of making the adjustment the term “commuted payment” has the same meaning as it had in accordance with section 157 of the Local Government and Housing Act 1989 (Commutation of, and interest on, periodic payments of grants etc.) on 31st March 2004.

Regulation 24 provides that expenditure on liabilities for retirement benefits which a local authority has appropriated to a pension reserve as required by proper accounting practices need not be charged to a revenue account. This regulation applies to local authorities as defined in regulation 1(4) and town and community councils.

Regulation 25 specifies that for the purposes of section 21(2) (Accounting practices) of the 2003 Act “A Statement of Recommended Practice; Code of Practice on Local Authority Accounting in the United Kingdom”, as may be amended from time to time, issued jointly by CIPFA and the Local Authority (Scotland) Accounts Advisory Committee (published in 2003 ISBN 085299 981 X) and “Best Value Accounting Code of Practice”, as may be amended from time to time, issued by the Chartered Institute of Public Finance and Accounting (published in 2003 ISBN 085299 975 5) are proper practices.

Regulation 26 specifies National Park authorities for the purposes of section 23(1)(o) (Authorities to which Part 1 applies) of the 2003 Act so that such authorities are obliged to comply with these regulations.

Regulation 27 specifies the qualifying local government bodies to which loans can be made by community councils and charter trustees i.e. any local authority which is a local authority for the purposes of Part 1 of or Schedule 1 to the 2003 Act.