
WELSH STATUTORY INSTRUMENTS

2003 No. 3239 (W.319)

LOCAL AUTHORITIES, WALES

**The Local Authorities (Capital Finance
and Accounting) (Wales) Regulations 2003**

Made - - - - 9th December 2003

Coming into force

*for the purpose of
regulations 1 and 2*

31st December 2003

for all other purposes

1st April 2004

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 3(5) to (7), 7(2)(b) and (3)(c), 8(3), 9(3), 10, 11, 15(1)(b), 16(2), 21(1) and (2), 23(2), 24, 123(2) and 124 of, and paragraph 4 of Schedule 1 to, the Local Government Act 2003⁽¹⁾, hereby makes the following Regulations:

Name, commencement, application and interpretation

1.—(1) These Regulations are called the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 and shall come into force for the purposes of regulations 1 and 2 on 31st December 2003 and for all other purposes on 1st April 2004.

(2) These Regulations apply only in relation to local authorities in Wales.

(3) In these Regulations any reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, the Local Government Act 2003.

(4) In these Regulations—

“the 1997 Regulations” means the Local Authorities (Capital Finance) Regulations 1997⁽²⁾

“dwelling” means any building or part of a building which is occupied as a dwelling, or is a hostel providing accommodation for persons who, for the purposes of Part 7 of the Housing Act 1996 (Homelessness)⁽³⁾ are homeless, or persons who have a special need for accommodation arising from physical or mental disability, age, infirmity or other special social disability or disadvantage;

(1) 2003 c. 26. See section 124 for definition of “the appropriate person”.

(2) Part 4 of, and Schedule 3 to, the Local Government and Housing Act 1989 (c. 42) are repealed on 1st April 2004 by virtue of the operation of the Local Government Act 2003 and the Local Authorities (Capital Finance) Regulations 1997 (S.I. 1997/319) made under those provisions will accordingly be revoked on that date.

(3) 1996 c. 52.

“housing land” means any land, house or other building in relation to which the local authority is, or has been, subject to the duty under section 74 of the Local Government and Housing Act 1989 (Duty to keep Housing Revenue Account)(4);

“local authority” has the meaning given to it in section 23 of the Local Government Act 2003 in so far as it relates to Wales unless otherwise stated in these Regulations; and

“qualifying disposal” means a disposal of an interest in housing land which is a qualifying disposal for the purposes of section 135 or 136 of the Leasehold Reform, Housing and Urban Development Act 1993 (Disposals of dwelling-houses by local authorities)(5).

PART 1

BORROWING

Code of practice

2. In complying with their duties under section 3(1) (duty to determine affordable borrowing limit), a local authority must have regard to the Prudential Code for Capital Finance in Local Authorities issued by the Chartered Institute of Public Finance and Accountancy(6) as may be amended from time to time.

PART 2

CREDIT ARRANGEMENTS

TRANSACTIONS WHICH ARE NOT CREDIT ARRANGEMENTS

Liabilities that do not arise from capital expenditure

3.—(1) Subject to paragraph (2) liabilities of a local authority that do not arise from the incurring by the authority of capital expenditure are liabilities specified for the purposes of section 7(3)(c) (Exclusion of certain liabilities from definition of “qualifying liabilities”).

(2) Paragraph (1) does not apply where proper practices in accordance with regulation 25 require the recognition of a fixed asset.

Retirement benefits

4.—(1) Liabilities for retirement benefits as represented by an appropriation to a pension reserve in accordance with proper practices in accordance with regulation 25 are liabilities specified for the purposes of section 7(3)(c).

(2) For the purposes of paragraph (1) and regulation 25, “retirement benefits” means benefits payable pursuant to—

- (a) the Local Government Pension Scheme Regulations 1997(7);
- (b) the Firemen’s Pension Scheme Order 1992(8);

(4) 1989 c. 42.

(5) 1993 c. 28; section 135 was amended by section 123 of and Schedule 13 to the Housing Act 1996 (c. 52) and by S.I. 1996/2325 and 1997/74; there are amendments to section 136 which are not relevant to these Regulations.

(6) Published in 2003 ISBN 085299 989 5.

(7) S.I. 1997/1612, to which there are amendments not relevant to these Regulations.

(8) S.I. 1992/129.

- (c) the Police Pensions Regulations 1987⁽⁹⁾;
- (d) the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000⁽¹⁰⁾;
- (e) the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997⁽¹¹⁾; and
- (f) any other regulations made under section 24 of the Superannuation Act 1972 (Compensation for loss of office etc.)⁽¹²⁾.

CALCULATION OF COST OF CREDIT ARRANGEMENTS AND OTHER CONTROLS

Calculation of cost of credit arrangements

5. For the purposes of section 8(2) (Entry into a credit arrangement or variation to be treated as the borrowing of an amount equal to the cost of the arrangement or variation) the cost of a credit arrangement or variation of a credit arrangement shall be the amount of the liability in respect of that arrangement or variation which is shown, in accordance with proper practices as required by regulation 25, in the authority's accounts.

PART 3

CAPITAL RECEIPTS

SUMS TO BE TREATED AS CAPITAL RECEIPTS

Repayment of loan etc. to a local authority

6.—(1) For the purposes of Chapter 1 of Part 1, the following sums must be treated as capital receipts—

- (a) the repayment to a local authority of, or payment to a local authority in respect of, any grant or other financial assistance given by the local authority of such a description that, if the giving of that financial assistance had been expenditure incurred at the time of the repayment or payment, it would have constituted capital expenditure; and
- (b) the repayment to a local authority of the principal of an advance made by the local authority for such a purpose that, if the making of the advance had been expenditure incurred at the time of the repayment, it would have constituted capital expenditure.

(2) For the purposes of paragraph 1(a), sums received by a local authority in connection with the repayment of any grants or other financial assistance —

- (a) to an officer of the authority pursuant to the terms and conditions of that officer's employment; or
 - (b) in connection with the appointment of a person as an officer of the authority, to that person
- in so far as, apart from this regulation, it would be a receipt for capital purposes, shall not be expenditure for capital purposes.

⁽⁹⁾ S.I. 1987/257, to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ S.I. 2000/1410, to which there are amendments not relevant to these Regulations.

⁽¹¹⁾ S.I. 1997/311, to which there are amendments not relevant to these Regulations.

⁽¹²⁾ 1972 c. 11; section 24 was amended by section 13(1) of, and paragraph 10 of Schedule 2 to the Police Pensions Act 1976 (c. 35).

Disposal of mortgage portfolio

7. For the purposes of Chapter 1 of Part 1, a sum received by a local authority in respect of the disposal of the authority's rights and obligations as mortgagee of any housing land which, apart from this regulation, would not be a capital receipt must be treated as a capital receipt.

Payment made to redeem landlord's share

8. For the purposes of Chapter 1 of Part 1, where an interim or final payment is made to a local authority in accordance with Schedule 6A to the Housing Act 1985(13) (Redemption of landlord's share), the sum received by the authority must be treated as a capital receipt if, apart from this regulation, it would not be a capital receipt.

SUMS NOT TO BE TREATED AS CAPITAL RECEIPTS

Capital receipts not exceeding £10,000

9.—(1) A sum received by a local authority which, apart from this regulation, would be a capital receipt by virtue of section 9(1) must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of an interest in a capital asset, for which the sum is paid, does not exceed £10,000.

(2) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 6, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of—

- (a) the repayment of a grant or other financial assistance;
- (b) the payment made in respect of a grant or other financial assistance; or
- (c) the repayment of the principal of an advance,

as the case may be, in respect of which the sum is paid, does not exceed £10,000.

(3) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 7, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal of the authority's rights and obligations, for which the sum is paid, does not exceed £10,000.

(4) A sum received by a local authority which, apart from this regulation, would be treated as a capital receipt by virtue of regulation 8, must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority in respect of redemption of the landlord's share, for which the sum is paid, does not exceed £10,000.

(5) A notional capital receipt which, apart from this regulation, would be treated as a capital receipt received by a local authority by virtue of regulation 15(5), must not be treated for the purposes of Chapter 1 of Part 1 as a capital receipt if the aggregate of all sums received or to be received by the authority, including the amount of all notional capital receipts determined, in respect of the disposal of the interest in housing land, for which the notional capital receipt is determined, does not exceed £10,000.

(13) 1985 c. 68. Schedule 6A was inserted by section 117(2) of, and Schedule 16 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

POOLING OF RECEIPTS

Pooling of receipts from disposals of housing land

10.—(1) This regulation applies to capital receipts, received by a local authority which has a debt-free housing revenue account at the date of the disposal, on or after the date of the coming into force of these Regulations, which a local authority derives from the disposal of an interest in housing land other than a disposal which is a qualifying disposal.

(2) For the purposes of paragraph (1) “debt-free” housing revenue account means a housing revenue account where the opening HRA capital financing requirement as defined in accordance with regulation 22(2) is nil or negative.

(a) (3) (a) Where this regulation applies, the local authority must pay the amount specified in paragraph (4) to the National Assembly for Wales by the end of one calendar month after—

- (i) 31st March;
- (ii) 30th June;
- (iii) 30th September; or
- (iv) 31st December,

whichever is the earliest date following the day on which the authority receives the capital receipt.

(b) Where the date for payment under paragraph (a) would be a working day the amount referred to in that paragraph must be paid before the end of the next working day following that day.

(4) Subject to paragraph (5) and regulations 16 and 17, the specified amount is an amount equal to—

- (a) 75 per cent of the capital receipt in relation to the disposal of a dwelling;
- (b) nil in relation to a disposal in accordance with paragraph (9); or
- (c) 50 per cent of the capital receipt in relation to the disposal of any other interest in housing land.

(5) For the purposes of calculating the amount specified in paragraph (4), the capital receipt must be treated as reduced by—

- (a) so much of the receipt as is applied by the authority in defraying the administrative costs of and incidental to any such disposal; and
- (b) an amount, by which the authority determines that it must be reduced, which may be an amount up to the value of its available capital allowance at the time the amount specified in paragraph (4) is calculated.

(6) Paragraph (5)(b) does not apply to receipts which a local authority derives from the disposal of a dwelling where the disposal is made—

- (a) under Part 5 of the Housing Act 1985(14) (right to buy); or
- (b) with a relevant consent, to a person who, when that person acquires that dwelling, occupies or intends to occupy the dwelling as their only or principal home.

(14) 1985 c. 68. Sections 32 and 43 were amended by paragraphs 38 and 39 of Schedule 17 the Housing Act 1988 (c. 50), section 227 of, and Part 9 of Schedule 19 to, the Housing Act 1996 (c. 52) and S.I. 1997/74. Section 43 was also amended by section 132 of the Housing Act 1988 (c. 50) and section 194(2) of, and Schedule 12 to, the Local Government and Housing Act 1989.

(7) For the purposes of paragraph (6)(b), “relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985.

(8) The total amount of any reductions under paragraph (5), regulation 16 or regulation 17, in relation to a disposal, must not exceed the amount of the capital receipt for that disposal.

9.—(1) Subject to paragraph (4) for the purposes of paragraph (4)(b) a disposal means a disposal of—

- (a) an interest in land where the land is held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation) and if there is a building situated on the land, the building does not, in whole or in part, comprise a dwelling; or
- (b) an interest in a dwelling where the dwelling was normally let, or available for letting, for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation) and the authority make the disposal by granting a shared ownership lease (within the meaning given to that expression in section 622 of the Housing Act 1985), or on condition that the purchaser, for the purpose of repairing or improving the dwelling, will carry out significant works within a specified period; or
- (c) an interest in a lease, other than a shared ownership lease, where the authority estimate that not less than 90 per cent of the capital value of the lease has been, or is to be, received by them within one year after the date of disposal.

(2) Paragraph (1)(c) is only applicable to paragraph(4)(b) where the authority make the disposal by—

- (a) conveying the freehold interest in the dwelling;
- (b) granting a lease for a term of not less than 125 years;
- (c) granting a shared ownership lease; or
- (d) assigning their leasehold interest in the dwelling; and

for the purposes of this paragraph a “shared ownership lease” means a lease of a dwelling granted on payment of a premium which is calculated by reference to a percentage of the value of the dwelling or the cost of providing it, and is not less than 25 per cent of that value or cost.

(3) Paragraph (1)(c) shall not apply to a disposal (“the current disposal”) of an interest in a dwelling which has at any time been occupied under a relevant lease granted by the authority, unless—

- (a) since the last date on which the dwelling was so occupied, the authority have disposed of an interest in it under Part V of the Housing Act 1985 (The right to buy), or Chapter 1 of Part 1 of the Housing Act 1980 (The right to buy), or with a relevant consent, to a person who, when that person acquired that interest, occupied, or intended to occupy, the dwelling as that person’s only or principal home;
- (b) that disposal was made more than five years before the current disposal;
- (c) at any time within that period the authority acquired a further interest in the dwelling; and
- (d) the dwelling is a house within the meaning which that expression has in section 44 of the Housing Act 1985.

(4) In paragraph (3)—

“relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985(15), section 22 of the Housing and Building Control Act 1984(16) or section 104 of the Housing Act 1957(17);

“relevant lease” means—

- (a) a secure tenancy within the meaning which that expression has in Part IV of the Housing Act 1985 (Secure tenancies and rights of secure tenants);
- (b) an introductory tenancy within the meaning which that expression has in Chapter 1 of part V of the Housing Act 1996; or
- (c) any other lease, other than a shared ownership lease within the meaning given to it in paragraph (2).

(10) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday, a day appointed for thanksgiving or public mourning, or a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971⁽¹⁸⁾.

Available capital allowance

11. For the purposes of regulation 10(5)(b), the value of a local authority’s available capital allowance at a particular time is the value of its total capital allowance at that time, as determined by the authority in accordance with regulation 12, less the total value of any amounts by which capital receipts have been treated as reduced by virtue of regulation 10(5)(b) prior to that time.

Total capital allowance

12.—(1) For the purposes of regulation 11, a local authority’s total capital allowance is the total value of—

- (a) the costs of expenditure incurred by the authority in enhancing the value of an interest in housing land where—
 - (i) the authority subsequently makes a disposal of that interest;
 - (ii) the capital receipts derived from that disposal are capital receipts to which regulation 10 applies; and
 - (iii) those costs are incurred within the period of three years ending on the date of the disposal;
- (b) to the extent not included in sub-paragraph (a), the costs of expenditure incurred by the authority, for the purpose of facilitating the disposal of an interest in land, on—
 - (i) obtaining planning permission for the development of the land, or taking any other steps required to facilitate such development;
 - (ii) preparing the land for development;
 - (iii) acquiring an interest, easement, servitude or right in or over the land or adjoining land; or
 - (iv) obtaining the release of a restrictive covenant affecting the land,

where capital receipts derived from the disposal are capital receipts to which regulation 10 applies;

- (c) to the extent not included in sub-paragraph (a) or (b), the amount of the contributions which the authority has made, or has decided to make but has not yet made, on or after the date of the coming into force of these Regulations, towards the costs of the projects specified in regulations 13 to 14 by —

⁽¹⁶⁾ 1984 c. 29.

⁽¹⁷⁾ 1957 c. 56.

⁽¹⁸⁾ 1971 c. 80.

- (i) constructing or enhancing the value of dwellings, or providing dwellings by the conversion of a building or a part of a building;
- (ii) making a gift of land;
- (iii) paying a contribution, grant or subsidy under any power conferred on the authority under any enactment; or
- (iv) giving consideration for any benefit which the authority has received, or shall receive, by virtue of the project.

(2) For the purposes of paragraph (1), the authority makes a gift of land where it transfers an interest in land and either —

- (a) no consideration falls to be given for the transfer; or
- (b) the value of the consideration which falls to be given for the transfer is less than the price which the interest transferred would realise at the date of the valuation if sold by the authority on the open market.

Provision of affordable housing

13.—(1) In this regulation “provision of affordable housing” means the provision of dwellings to meet the housing needs, as identified by the local authority, of persons on low incomes, whether provided by the authority or a social landlord registered under section 1 of the Housing Act 1996(19).

(2) For the purposes of regulation 12(1)(c), the provision of affordable housing is a specified project.

Regeneration projects

14.—(1) In this regulation —

“regeneration project” means any project for the carrying out of works or activities on any land where —

- (a) the land, or a building on the land, is vacant, unused, under-used, ineffectively used, contaminated or derelict; and
- (b) the works or activities are carried out in order to secure that the land or the building shall be brought into effective use.

(2) For the purposes of regulation 12(1)(c), the undertaking of a regeneration project on land situated within the area of the local authority is a specified project.

Non-money receipts

15.—(1) Subject to paragraphs (2) to (4), where on or after the date of the coming into force of these Regulations a local authority makes a disposal, other than a qualifying disposal, of an interest in housing land—

- (a) which is a disposal of the kind mentioned in section 9(1) and the consideration for the disposal does not consist wholly of money payable to the authority; or
- (b) in respect of which the authority receives otherwise than in the form of money any consideration which, if received in that form, would be a capital receipt under section 9,

the authority shall determine the amount (the “notional capital receipt”) which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(2) Subject to paragraphs (3) and (4), where money is payable to the authority in respect of the disposal, the notional capital receipt shall be determined by deducting the amount of that money from the amount which would have been the capital receipt if the consideration for the disposal had been wholly in money payable to the authority.

(3) Where the consideration for the disposal, or the part of the consideration which does not consist of money payable to the authority, consists of —

- (a) the grant of a right to the local authority to nominate a person either to occupy any dwelling or to acquire the freehold of, or a leasehold interest in, any dwelling; or
- (b) an undertaking given to the local authority to allow only a person of a particular description to occupy any dwelling or acquire the freehold of, or a leasehold interest in, any dwelling,

the amount of the notional capital receipt for the disposal shall be treated as nil.

(4) For the purposes of determining the notional capital receipt for a disposal, the consideration for the disposal shall be deemed to be received by the authority at the time that the authority makes the disposal.

(5) For the purposes of Chapter 1 of Part 1, a notional capital receipt shall be treated as a capital receipt and the amount specified in regulation 10(4) shall be calculated accordingly.

Capital receipts reduced by costs of buying back dwellings

16.—(1) In this regulation and regulation 17—

“current year”, in relation to any capital receipts, means the financial year in which the capital receipts are received;

“new town corporation”, “housing action trust” and “urban development corporation” have the same meaning as in section 4 of the Housing Act 1985 (other descriptions of authority)(**20**);

“preceding year”, in relation to any capital receipts, means the financial year immediately preceding the current year; and

“shared ownership lease” means a lease of a dwelling granted on payment to a local authority of a premium which is calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and is not less than 25 per cent of that value or cost.

(2) In this regulation and regulation 17, an interest in land is a relevant interest if—

- (a) it is the freehold interest or a leasehold interest in a dwelling and is not acquired pursuant to a compulsory purchase order;
- (b) the freehold interest or a leasehold interest in the dwelling has previously been disposed of by the authority, another local authority, a new town corporation, a housing action trust or an urban development corporation; and
- (c) the person from whom it is acquired is not a body of persons corporate or unincorporate.

(3) For the purposes of calculating the amount specified in regulation 10(4)(a), capital receipts derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (4) must be reduced by —

$$X \mid Y$$

where—

X is the amount of expenditure incurred by the authority on the repurchase; and

Y is the amount of the administrative costs of and incidental to the repurchase.

(20) 1985 c. 68; section 4 was amended by section 62(7) of the Housing Act 1988 (c. 50). There are other amendments to section 4 which are not relevant to these Regulations.

(4) For the purposes of paragraph (3), a disposal meets the conditions specified in this paragraph if—

- (a) the authority makes the disposal by—
 - (i) conveying the freehold interest in the dwelling;
 - (ii) granting a lease of the dwelling for a term of not less than 125 years;
 - (iii) assigning its entire leasehold interest in the dwelling; or
 - (iv) granting a shared ownership lease; and
- (b) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates that not less than 90 per cent of the capital value of the lease has been, or is to be, received by them within one year of the date of the disposal.

Capital receipts reduced by costs of buying back and improving dwellings

17.—(1) For the purposes of calculating the amount specified in regulation 10(4)(a), capital receipts derived from a disposal by a local authority of an interest in a dwelling, which meets the conditions specified in paragraph (2), must be treated as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), the disposal meets the conditions specified in this paragraph if—

- (a) prior to the disposal, an interest in the dwelling was disposed of by the local authority under Part 5 of the Housing Act 1985 (right to buy) (“the initial sale”);
- (b) within the period of five years beginning on the date of the initial sale, the local authority reacquired that interest in the dwelling (“the repurchase”);
- (c) the disposal is made by the authority within the period of three years beginning on the date of the repurchase;
- (d) the authority makes the initial sale and the disposal by, in each case—
 - (i) conveying the freehold interest in the dwelling;
 - (ii) granting a lease of the dwelling for a term of not less than 125 years;
 - (iii) assigning its entire leasehold interest in the dwelling; or
 - (iv) granting a shared ownership lease; and
- (e) where the interest disposed of is a lease other than a shared ownership lease, the authority estimates that not less than 90 per cent of the capital value of the lease has been, or is to be, received by it within one year of the date of the disposal.

(3) The amount of the reduction, for the purposes of paragraph (1) is—

$$X - Y + Z$$

where—

X and Y have the same meaning as in Regulation 17(3); and

Z is the amount of expenditure incurred by the authority in enhancing the value of the interest in the dwelling between the date of the repurchase and the date of the disposal.

MISCELLANEOUS

Use of capital receipts

18.—(1) This regulation applies to —

- (a) a capital receipt other than a capital receipt to which regulation 10 applies; and

- (b) the balance of a capital receipt to which regulation 10 applies after the amount specified in regulation 10(4) has been deducted.
- (2) Subject to paragraphs (3) and (6) a capital receipt, or the balance of a capital receipt, to which this regulation applies may only be used for one or more of the following purposes—
 - (a) to meet capital expenditure;
 - (b) to repay the principal of any amount borrowed; or
 - (c) to meet any liability in respect of credit arrangements, other than any liability which, in accordance with proper practices, must be charged to a revenue account.
- (3) Subject to paragraphs (4) and (6) a capital receipt received after 31st March 2004 in respect of a housing revenue account must only be used for the purposes in paragraph (2) in so far as those purposes relate to the housing revenue account functions of the authority in accordance with section 74 of the Local Government and Housing Act 1989.
- (4) Any residual capital receipts from a qualifying disposal are excluded from the requirements of paragraph (3).
- (5) For the purposes of paragraph (4) “residual capital receipts” means those receipts remaining after a local authority has extinguished the debts in respect of its housing revenue account functions.
- (6) Where a local authority receive a capital receipt in respect of—
 - (a) a disposal of land held for the purposes of Part II of the Housing Act 1985, or
 - (b) any other disposal of land made by virtue of Part V (the right to buy) of that Act,the capital receipt may be applied by the local authorities in defraying the administrative costs of and incidental to any such disposal.

PART 4

SUPPLEMENTARY

Guidance

19. In carrying out its functions under Chapter 1 of Part 1, a local authority must have regard to the document entitled “Treasury Management in the Public Services: Code of Practice and Cross-Sectoral Guidance Notes” published by the Chartered Institute of Public Finance and Accountancy⁽²¹⁾ as may be amended from time to time.

Expenditure to be capital expenditure

- 20.**—(1) For the purposes of Chapter 1 of Part 1 the following expenditure of a local authority must be treated as being capital expenditure insofar as it is not capital expenditure by virtue of section 16(1) —
- (a) expenditure incurred on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, if the authority acquire or prepare the program for use for a period of at least one year for any purpose relevant to its functions;
 - (b) the making of an advance or the giving of a grant or other financial assistance to any person, whether for use by that person or by a third party, towards expenditure which would, if incurred by the authority, be capital expenditure;

(21) Published in London in 2001. ISBN 0 85299 943 7.

(c) the making of a relevant payment.

(2) For the purposes of paragraph 1(b), expenditure incurred by a local authority on the making of advances, grants or other financial assistance—

(a) to an officer of the authority pursuant to the terms and conditions of that officers employment; or

(b) in connection with the appointment of a person as an officer of the authority, to that person in so far as, apart from this regulation, it would be expenditure for capital purposes, shall not be expenditure for capital purposes.

(3) For the purposes of paragraph (1)(c), “relevant payment” means the payment made to the National Assembly for Wales under regulation 10(4), or that part of it, which is in respect of the relevant notional capital receipt, where—

(a) “relevant notional capital receipt” means the notional capital receipt, or that part of it, which is in respect of consideration R;

(b) “consideration R” means the consideration N, or that part of it, in respect of which there would be relevant capital expenditure;

(c) “consideration N” means the consideration for a disposal, or the non-money part of it, in respect of which the authority determines a notional capital receipt under regulation 15; and

(d) “relevant capital expenditure” means any expenditure that, if the authority were to incur expenditure on whatever the consideration N consists of, would be capital expenditure.

PART 5

MINIMUM REVENUE PROVISION

Duty to make Minimum Revenue Provision

21. During the financial year beginning on 1st April 2004 and every subsequent financial year, a local authority—

(a) must charge to a revenue account a minimum amount (“minimum revenue provision”) for that financial year; and

(b) may charge to a revenue account any amount in addition to the minimum revenue provision,

in respect of the financing of capital expenditure incurred in that year or in any financial year prior to that year.

Calculation of minimum revenue provision

22.—(1) Subject to paragraph (4) and regulation 23, the minimum revenue provision for the current year must be calculated by the local authority in accordance with the following formula—

$$\frac{4[\text{CFR} - (\text{A} \times 11\text{C})]}{100}$$

where —

CFR is the capital financing requirement at the end of the preceding year;

A is an adjustment (which may be a positive, nil or negative amount) to be calculated in accordance with the following formula—

$$\frac{[CFR - ACC]}{2} + \left(\frac{[HA - HB]}{2} \right)$$

where—

CFR is the capital financing requirement on 31st March 2004;

ACC is the adjusted credit ceiling on 31st March 2004;

HA is the housing amount on 31st March 2004; and

HB is the opening HRA capital financing requirement for the financial year beginning on 1st April 2004; and

HC is the opening HRA capital financing requirement for the current year.

(2) For the purposes of this regulation and regulation 23—

“adjusted credit ceiling” has the same meaning as that term had on 31st March 2004 in paragraph 18 of Schedule 3 to the Local Government and Housing Act 1989(22);

“capital financing requirement” has the same meaning as in the CIPFA Prudential Code for Capital Finance in Local Authorities;

“current year” means any financial year for which the local authority is determining the amount of its minimum revenue provision;

“housing amount” has the same meaning as that term had on 31st March 2004 in Part XII of the 1997 Regulations (Minimum revenue provision);

“Housing Revenue Account”, also referred to as “HRA”, has the same meaning as in section 74 of the Local Government and Housing Act 1989;

“opening HRA capital financing requirement” means for the financial year beginning on 1st April 2004 and any subsequent financial year, the amount calculated in accordance with paragraph (3);

“preceding year” means the financial year immediately preceding the current year.

(3) The amount referred to in the definition of “opening HRA capital financing requirement” in paragraph (2) has the same meaning as the “opening HRA capital financing requirement” for the current year in the (Wales) General Determination of the Item 8 Credit and Item 8 Debit made under section 75 of and Schedule 4 to the Local Government and Housing Act 1989 for that year.

(4) Where the amount calculated in accordance with the formula for the minimum revenue provision in paragraph (1) is a negative amount, that amount must be treated as nil.

Commutation adjustments to minimum revenue provision

23.—(1) Subject to paragraph (2), where—

(a) any debt of the local authority to the Public Works Loan Commissioners was reduced or extinguished by a commuted payment (within the meaning which that expression has in section 157 of the Local Government and Housing Act 1989(23)) paid by the Secretary of State to the Commissioners in the financial year beginning on 1st April 1992; or

(b) the Secretary of State paid a commuted payment to that authority in that financial year,

(22) Part 4 of, and Schedule 3 to, the Local Government and Housing Act 1989 (c. 42) are repealed on 1st April 2004, and the Local Authorities (Capital Finance) Regulations 1997 (S.I. 1997/319) made under those provisions will accordingly be revoked on that date.

(23) 1989 c. 42.

the authority must determine the amount by which it will reduce the amount of its minimum revenue provision for the current year calculated in accordance with regulation 22, in accordance with the formula—

$$G - (I \mid M)$$

Where —

G is the total amount of contributions, grants and subsidies which would have been payable to the local authority by the National Assembly for Wales for the current year but for commutation;

I is the amount by which interest, payable by the local authority in the current year on loans, is reduced by virtue of commutation determined in accordance with paragraph (3) where I may be nil but not a negative amount;

M is the amount of minimum revenue provision for the current year which would have been calculated by the local authority in accordance with regulation 22 but for commutation, less the amount of minimum revenue provision for the current year actually calculated in accordance with regulation 22 determined in accordance with paragraph (5) where M may be nil but not a negative amount.

(2) Where the amount calculated in accordance with the formula in paragraph (1) is a negative amount, that amount must be treated as nil in the current and all subsequent financial years.

(3) For the purposes of paragraph (1), the amount by which interest, payable by the local authority in the current year on loans, is reduced by virtue of commutation, will be determined in accordance with the formula—

$$(D - MC) \times \frac{DI}{D}$$

Where —

“D” is the total amount of the authority’s relevant debts where “relevant debt” means the amount by which any debt of the authority to the Public Works Loan Commissioners was reduced by a commuted payment or where such a debt was extinguished by a commuted payment, the amount of the debt;

“MC” is an amount equal to the aggregate of—

- (a) the authority’s cumulative total of minimum revenue provision savings determined in accordance with Part 3 of Schedule 2 to the 1997 Regulations for the financial years beginning before 31st March 2004;
- (b) where the current year is a financial year beginning after 31st March 2004, the authority’s cumulative total of minimum revenue provision savings determined in accordance with this regulation for the financial years beginning after 31st March 2004;
- (c) the authority’s cumulative total of commutation adjustments determined in accordance with Part 2 of Schedule 2 to the 1997 Regulations for the financial years beginning before 31st March 2004;
- (d) where the current year is a financial year beginning after 31st March 2004, the authority’s cumulative total of commutation adjustments determined in accordance with this regulation for the financial years beginning after 31 March 2004

“DI” is the aggregate of the amounts calculated in accordance with paragraph 4.

(4) In calculating item “DI” in accordance with paragraph 3, the authority must calculate for each relevant debt an amount equal to the percentage of the debt which was chargeable by way of interest on the debt on the date on which the debt was reduced or extinguished by a commuted payment.

(5) Where the authority's adjusted capital financing requirement on the last day of the last year was nil or a positive amount, the authority's minimum revenue provision savings for the current year must be determined in accordance with the formula—

$$\left(\frac{4[D-MC]}{100} \right) - H$$

Where —

“D”, and “MC” have the same meanings as in paragraph (3);

“H” is a percentage of the amount, if any, by which the authority's housing capital finance requirement for the current year is reduced in consequence of any reduction in the authority's capital financing requirement by virtue of the making of a commuted payment to the Public Works Loan Commissioners. The percentage rate to be used is as specified in the current year (Wales) General Determination of the Item 8 Credit and Item 8 Debit made under section 75 of and Schedule 4 to the Local Government and Housing Act 1989 made by the National Assembly for Wales.

PART 6

ACCOUNTS

Retirement benefits

24.—(1) For a financial year beginning on or after 1st April 2004, a local authority must charge to a revenue account an amount equal to the retirement benefits contributions and payments which it makes for that financial year in accordance with the legislation specified in sub-paragraphs (a) to (f) of regulation 4(2) as appropriate.

(2) For the purpose of this regulation the term local authority includes a town and community council in Wales.

Proper practices

25. For the purposes of section 21(2) (accounting practices) the accounting practices contained in the following codes of practice are proper practices—

- (a) “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 the Chartered Institute of Public Finance and Accountancy and the Local Authority (Scotland) Accounts Advisory Committee(24); and
- (b) “Best Value Accounting Code of Practice” as may be amended from time to time issued by the Chartered Institute of Public Finance and Accountancy(25).

(24) Published in 2003. ISBN 0 85299 981 X.

(25) Published in 2003. ISBN 0 85299 975 5.

PART 7

MISCELLANEOUS PROVISIONS

Application of Local Government Act 2003 to National Park authorities

26. National Park authorities are specified for the purposes of section 23(1)(o) (Authorities to which Part 1 applies)

Loans to qualifying local government bodies

27. For the purposes of paragraph 4 of Schedule 1 (Loans by community councils and charter trustees) any local authority which is a local authority for the purposes of Part 1 or Schedule 1 is specified as a qualifying local government body.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(**26**).

9th December 2003

D. Elis-Thomas
The Presiding Officer of the National Assembly

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.

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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.

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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.