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(**2**) Part 4 of, and Schedule 3 to, the Local Government and Housing Act 1989 (c. 42) are repealed on 1st April 2004 by virtue of the operation of the Local Government Act 2003 and the LocaAuthorities (Capital Finance) Regulations 1997 (S.I. 1997/319) made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; sectiion 24 was amended by section 13(1) of, and paragraph 10 of Schedule 2 to the Police Pensiions 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.

(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.

(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.

(**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.