



Streamlining council housing asset management:  
Disposals and use of receipts

## **Consultation**

## Streamlining council housing asset management: Disposals and use of receipts

- Amendments to the General Consents issued under section 32 of the Housing Act 1985.
- Amendments to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.

### **Consultation**

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## Scope of the consultation

|                                    |   |
|------------------------------------|---|
| <b>Topic of this consultation:</b> | <p>This paper seeks views on two related matters: the disposal of council housing assets and use of the receipt arising from such disposals.</p> <p>First, it seeks views on our proposed reforms to the General Consents, under which local authorities have freedom to dispose of council housing assets without the specific consent of the Secretary of State.</p> <p>Second, it seeks views on our proposed amendments to the regulations governing the use of receipts arising from such disposals.</p> |
| <b>Geographical scope:</b>         | England only.   |
| <b>Impact assessment:</b>          | None required. Our proposals affect only English local housing authorities. They do not impact on businesses or charities.  |

## Basic information

|  |  |
|--|--|
| <b>To:</b>   | The consultation is aimed primarily at English local housing authorities, but will also be of interest to English local authority tenants and those wishing to access home ownership.  |
| <b>Duration:</b>   | The consultation starts on <b>25 August 2011</b> and finishes on <b>17 November 2011</b> .   |
| <b>Enquiries:</b>  | For further information on this consultation document please email <a href="mailto:housingassets_consultation@communities.gsi.gov.uk">housingassets_consultation@communities.gsi.gov.uk</a> or telephone 0303 444 3739 (General Consents) or 0303 444 3728 (use of receipts).  |
| <b>How to respond:</b>                                       | <p>Consultation responses should be submitted preferably by email to:<br/> <a href="mailto:housingassets_consultation@communities.gsi.gov.uk">housingassets_consultation@communities.gsi.gov.uk</a></p> <p>Or otherwise by post to:</p> <p>Council Housing Capital Assets Consultation<br/> Department for Communities and Local Government<br/> Zone 1/H10<br/> Eland House<br/> Bressenden Place<br/> London<br/> SW1E 5DU</p> |
| <b>After the consultation:</b>                               | The Government will publish its response to the consultation, publish the revised General Consents, and lay the revised regulations before Parliament. We expect this in early 2012.   |
| <b>Compliance with the code of practice on consultation:</b> | This consultation document and consultation process have been planned to adhere to the Government code of practice on consultation issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria. The period of consultation will be 12 weeks.  |

# 1 Introduction

- 1.1 The Government is committed to reducing bureaucracy generally and burdens on local government specifically. Its intention is that intervention in local housing affairs by central Government be kept to a minimum and be enacted where it is necessary to protect public finances or the rights of individuals.
- 1.2 The Government is also committed (through measures in the Localism Bill currently before Parliament) to reform radically the way council housing is financed. Through a one-off self-financing settlement (planned for April 2012), local authorities will get the right to retain all the rental income generated from their stock. The settlement will give local authorities far greater control of their assets, allowing them to plan their businesses over much longer periods.
- 1.3 Our policy on self-financing was set out in "Implementing Self-Financing" (February 2011) ([www.communities.gov.uk/publications/housing/implementingselffinancing](http://www.communities.gov.uk/publications/housing/implementingselffinancing)) and "Self-Financing: Planning the Transition" (July 2011) ([www.communities.gov.uk/publications/housing/selffinancetransition](http://www.communities.gov.uk/publications/housing/selffinancetransition)).
- 1.4 It is against this background that this consultation paper should be read.
- 1.5 The paper seeks views on reducing the number of situations where local authorities must first seek the consent of the Secretary of State before disposing of their interest in council housing assets. It also seeks views on our proposed simplification of the regulations governing use of the receipts arising from such disposals (under a system we call "pooling").
- 1.6 The paper poses a number of specific questions. When responding it would be useful if you could identify which questions you are answering. However we would also welcome general comments too.

## 2 The General Consent under Section 32 of the Housing Act 1985 to Dispose of Housing Land

- 2.1 Local authorities hold land for housing purposes under powers provided to them by Part II of the Housing Act 1985. Section 32 of the Act provides powers to dispose of such land, but requires that this can be done only with the consent of the Secretary of State. Section 34 of the Act permits the Secretary of State to grant consent generally: i.e. where certain pre-conditions are met then the local authority is free to dispose without first having to secure the Secretary of State's agreement.
- 2.2 The current General Consents issued under section 32 of the Housing Act 1985 were issued in 2005. They prescribe a limited number of situations where specific consent is not required either to dispose at market value or to dispose at a discount. We feel that the current consent regime now runs counter to the principles of localism and decentralisation and will be less relevant under self-financing.
- 2.3 It is Government policy that local authorities should not be prevented from disposing of housing assets where to do so:
  - assists effective asset management (particularly the disposal of unsuitable stock)
  - allows new investment in social housing
  - aids regeneration
  - helps create mixed communities
  - assists people into sustainable home ownership (especially existing social tenants).

2.4 Our proposed controls on disposals seek to:

- reduce, where possible, the legislative burden on local government
- protect tenants
- protect the Housing Revenue Account and the viability of the Housing Revenue Account business
- help control overall public sector debt
- protect the future supply of social housing.

2.5 A draft revision of the General Consents issued under section 32 of the Housing Act 1985, on which we would welcome your views, is attached at Annex A. Subject to any amendments made as a result of views expressed in this consultation exercise, we intend issuing this revised set to take effect in April 2012.

2.6 The following is a summary. Please note that “disposal” means the outright sale of the local authority’s interest, the sale of part of its interest, or the leasing of the asset.

## Disposals at market value

2.7 We propose that local authorities should require the consent of the Secretary of State to dispose of housing land at market value only where:

(a) the disposal would result in a tenant of the council becoming a tenant of a private landlord

- when a council house subject to a secure tenancy is sold to a private landlord the tenants lose their secure tenancy status. It is for this reason that the local authority must consult all tenants before such disposals, ending with a ballot of them. The role of the Secretary of State in having the final say (should the tenants vote in favour) provides further comfort to tenants and the Government has no plans to change this.

(b) the disposal is to a body wholly or partly owned by the local authority:

- the Secretary of State wishes to ensure that the viability of the Housing Revenue Account business (and the controls on housing borrowing) is not compromised by moving assets out of the Housing Revenue Account whilst retaining arms’ length ownership. Local authorities will have to demonstrate to the Secretary of State that there is a sound business case for any such disposals.

### Consultation Question 1

Do you think there are situations where such disposals *should not* require the consent of the Secretary of State?

If so, what are they?

- 2.8 Our proposal is that local authorities would not have to seek specific consent to dispose at market value to individuals or bodies not wholly or partly owned by them (e.g. registered housing associations) of:
- vacant properties
  - occupied properties to the tenants
  - properties occupied by tenants of other landlords (e.g. where the property has already been leased to a housing association)
  - communal parts of flats
  - garages, drying areas, and other housing assets that are not used as accommodation
  - empty plots of land.

### Consultation Question 2

Do you think there are situations where such disposals *should* require the consent of the Secretary of State?

If so, what are they?

## Disposal of reversionary interests

- 2.9 Local authorities will continue to be free to dispose to the occupants of their reversionary interest in houses and flats at market value.
- 2.10 This consent overlaps the right to enfranchise that the lessee of a house or the leaseholders in a block of flats have under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002). No consent under section 32 of the Housing Act 1985 is required if the statutory right is exercised. However, circumstances may occasionally arise where the statutory right is not exercisable. For example, if the local authority is not the freeholder, the lessee/leaseholders may wish to acquire the authority's leasehold interest but not wish, or be unable, to acquire the freehold.

### Consultation Question 3

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests?

If not, why not?

## Disposals at discounts

2.11 Disposals at market value enable local authorities to pay off the debt associated with such properties, and thereby maintain the viability of the Housing Revenue Account business. Disposals at less than market value put this at risk and the Government wishes to retain some control over such disposals.

2.12 However the Government wishes to support offering up land and properties for sale at less than market value where this:

- helps social tenants into sustainable home ownership
- helps people find accommodation whom the local authority deem in need of support (e.g. certain key workers or former military personnel)
- helps create mixed communities
- assists the provision of new social housing or wider regeneration.

## Vacant land sold at a discount

2.13 The current General Consents permit the disposal of vacant land at a discount determined by the local authority (which could be 100 per cent), but only where the land is to be used for certain specified purposes. The Government wishes to continue to permit such disposals, but leave it to the local authority to determine that the proposed use of the land will be beneficial to its community.

#### Consultation Question 4

Do you think that a limit should be placed on the amount of discount a local authority can offer on vacant land?

If yes, what should it be?

#### Consultation Question 5

Do you think that such disposals should be limited only to such situations where the land will be used for certain specified purposes?

If yes, what are they?

### Homes sold at discounts

- 2.14 The current General Consents permit a number of discounted sales of council homes. The Government feels that these are overly complicated and that discounts should be more uniform and related to the Right to Buy (as provided by Part V of the Housing Act 1985).
- 2.15 The Secretary of State therefore proposes to give a general consent to the disposal to existing council tenants of:
- vacant houses up to the maximum discount to which the tenant would have been entitled had they had a tenancy of it
  - occupied houses to tenants who do not have the Right to Buy up to a discount equivalent to the discount to which they would have been entitled had they just qualified for the Right to Buy
  - occupied houses to tenants who have the Right to Buy acquiring with others who do not have that right at the relevant discount.
- 2.16 The Secretary of State further proposes to give a general consent to the disposal of vacant houses to people who are not existing council tenants at a discount up to that to which they would have been entitled had they just qualified for the Right to Buy.

2.17 We wish to make clear that (except in the specific case of a tenant seeking to exercise their Right to Buy with someone who does not have that right) it will continue to be the case that the General Consents cannot be used to dispose of a house to someone who would otherwise have the Right to Buy it. This is to ensure that a tenant isn't unwittingly disadvantaged.

### **Consultation Question 6**

Do you think that these discounts are appropriate?

If not, what do you think they should be?

### **Consultation Question 7**

Do you think that there are other situations where local authorities *should* be permitted to dispose of council housing assets at a discount?

If yes, what are they and what should the discount be?

### **Consultation Question 8**

Do you think that there are situations included in the list above where local authorities *should not* be permitted to offer a discount?

If yes, what are they?

2.18 Local authorities will continue to have a general consent to extend or grant long leases on the appropriate terms that apply in accordance with the Leasehold Reform Act 1967 in the case of houses, and the Leasehold Reform, Housing and Urban Development Act 1993 in the case of flats.

### Consultation Question 9

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests?

If not, why not?

- 2.19 Local authorities will also have freedom to grant a lease of a term of less than seven years and grant an assignment of a lease which at the date of the assignment has not more than seven years to run, but not if the lease is to a body wholly or partly owned by it.

### Consultation Question 10

Do you agree that local authorities should be free to grant such leases?

If not, why not?

Should such leases be granted to local authority subsidiaries?

If yes, why?

## Other discounted disposals

- 2.20 Those reading this paper need to keep in mind section 24 of the Local Government Act 1988, which provides powers to local authorities to provide financial assistance for privately let housing accommodation. Such assistance can include the disposal of an asset at less than market value.
- 2.21 These powers cannot be exercised without the consent of the Secretary of State, who, in 2010, issued General Consents under section 25 of the Act. These permit limited disposals of land and housing (including but not exclusively Housing Revenue Account land) at prescribed discounts to registered housing associations or for use as special needs accommodation ([www.communities.gov.uk/publications/housing/consentsprivatelets](http://www.communities.gov.uk/publications/housing/consentsprivatelets)).
- 2.22 A local authority using its powers under section 24 to dispose of a Housing Revenue Account asset obviates the need to seek consent under section 32 of the Housing Act 1985.

## Shared ownership

- 2.23 The revised General Consents permit disposals without specific consent to individuals on shared ownership terms, either at market value or at a discount pro-rated to match discounts permitted regionally under the Right to Buy.
- 2.24 There will be no restrictions on the shares that might be offered. The rent paid on the share retained by the local authority however will have to be set at a pro-rated rate in line with Government policy on social rents. Local authorities will be able to set restrictions on sub-letting where they wish to do so.
- 2.25 These reforms mean that it will no longer be necessary to seek specific consent to offer Social HomeBuy sales.

### **Consultation Question 11**

Do you think that there are situations where a local authority should require the consent of the Secretary of State before entering into a shared ownership arrangement with an individual?

If yes, what are they?

## 3 The Pooling of Housing Capital Receipts

- 3.1 The following paragraphs summarise the intended effect of the draft regulations (attached at Annex B). These are amendments to the Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2003 (“the 2003 Regulations”)<sup>1</sup>
- 3.2 The amendments, being introduced to accompany the introduction of self-financing and the alterations to the general consents on disposals, aim to:
- a. clarify those receipts that must be surrendered to central Government
  - b. simplify and make fairer the treatment of Social HomeBuy and other shared ownership receipts
  - c. simplify the provisions on determining when pooling payments are due
  - d. simplify the incentives for local authorities to buy back dwellings
  - e. rationalise and extend the provisions on capital allowance (including making the paying off of Housing Revenue Account debt permissible expenditure); and
  - f. abolish defunct provisions.
- 3.3 Please note that we are not seeking views on the principle of pooling itself. The Spending Review 2010 concluded that pooling (and in particular the requirement that 75 per cent of the net receipt arising from Right to Buy (and similar) sales be surrendered to central Government) should continue as a necessary part of addressing the deficit in the nation’s finances.
- 3.4 We are, however, amending the 2003 Regulations to make clear that sales similar to the Right to Buy are ones to existing (or recent) council tenants. Under our proposals local authorities will be free to retain the net receipt from sales to other individuals or bodies provided it is spent on affordable housing, regeneration projects or paying off Housing Revenue Account debt. We give more details of this below.
- 3.5 We shall welcome your views on the proposed amendments.

<sup>1</sup>(SI 2003/3146 as amended by SI 2004/534, SI 2004/3055, SI 2006/521, SI 2007/573, SI 2008/414, SI 2009/321, SI 2009/2272, and SI 2010/454), made under the Local Government Act 2003 (“the 2003 Act”).

## Application

3.6 This applies to all England's 326 local housing authorities.

### Consultation Question 12

- a. Does any part of the Proposed Amendment Regulations explained below fail to effect the six aims listed above?
- b. Can any further provisions be introduced that would effect the six aims more successfully?

As far as possible, please arrange your answer in the order of topics as listed below.

## Estimated and specified payments

### Current position

3.7 Currently, one month after the end of each quarter, local authorities have a choice of making an estimated or specified payment. If an authority makes an estimated payment, then it has a further three months to make good any under-payment.

### Intended change and reason

3.8 There are three reasons for altering the current provision:

- a. Inconsistent - Confusion exists as to whether authorities should make estimated or specified payments, so that local authorities risk experiencing inconsistent treatment.
- b. Bureaucratic - Many of the provisions are unnecessarily complicated.
- c. Unnecessary - Most local authorities have been pooling for seven years, and have become much better at calculating their quarterly pooling liabilities by the due date, rendering much of the detailed provision unnecessary.

## Details of Proposed Changes (All contained in Proposed Amendment Regulation 7)

3.9 Regulation 12(3) is radically reduced:

- a. Current regulations 12(3)(a) and (b) both relate solely to estimated payments. Both paragraphs are revoked, since there is no more need for an estimated payment. Authorities need to make only a specified payment within one month of the last day of the quarter, as defined in regulation (2).
- b. Current regulation 12(3)(c)(i) is also revoked, because there will be no distinction between estimated and specified payments.
- c. Current regulation 12(3)(d) gives detailed provision in nine long sub-paragraphs on what to do if the authority has overpaid. This is reduced to one small proposed new regulation 12(3)(b). The current provision requires local authorities to sort out overpayments quickly and therefore sets out detailed deadlines. In practice, we have found these deadlines unnecessary. In general, local authorities have become more efficient in identifying over-payments, and, in the few cases where the process has taken longer, there has been good reason. While the Secretary of State retains the right to re-impose detailed statutory provision should the need arise, our proposal seeks to minimise the regulation in accordance with the Government's commitment to de-regulation.
- d. A further point to note about regulation 12(3)(d) is that the Proposed Amendment Regulation removes the provision for the Secretary of State to make a payment to an authority in those very rare instances where an authority's overpayment cannot be offset against its future pooling payments. The Department believes that, if necessary, those payments can be made without such explicit regulatory provision.

3.10 As a consequence of the above changes, current regulation 12(2) is altered by:

- a. omitting "subject to paragraph 3" since there is now only one deadline by which local authorities make their pooling payments without interest, the due date; and
- b. incorporating the definition of "due date" into this regulation, which had formerly been in regulation 12(3), thus making it clearer.

3.11 Current regulation 12(6) is revoked since the elimination of the distinction between estimated and specified payments renders all three definitions in that regulation redundant.

3.12 Current regulations 13(2)(a), 13(3) and 13(4) are all revoked. Currently, there are three possible circumstances in which the local authority could start to pay interest. The elimination of the distinction between estimated and specified payments means that for all authorities, in respect of every quarter, only one date, the due date (one month after the end of the quarter), is to be used as the start-date for calculating interest on unpaid amounts.

- 3.13 As a consequence of the change in the above paragraph, the reference to paragraph (3) in current regulation 13(6) is omitted and current regulation 13(7) is revoked completely, since interest is now payable only by virtue of regulation 13(2).
- 3.14 Current regulation 13(9) (among other things) applies to regulation 13 definitions outlined in current regulation 12(6). Since these are being revoked (see paragraph 3.11 above), then the references to them in this regulation can be omitted as well.

### Implications of change

- 3.15 The cells in the quarterly LOGASNet Returns determining whether payments are estimated or specified can be omitted. More importantly, it will be clearer to authorities when they are required to calculate and make a pooling payment.

## Social HomeBuy and Shared Ownership

### Current provision

- 3.16 Receipts arising from all disposals of dwellings to owner-occupiers, whether a full disposal or on shared ownership terms, are treated in the same way as Right to Buy receipts, unless they are disposed of under a specific consent. The one exception is receipts arising from Social HomeBuy disposals, which are subject to special provision.

### Intended change and reason

- 3.17 There are four reasons for altering the current provision:
- a. Complex - The current provision on Social HomeBuy receipts is complex and long-winded. This is especially difficult to justify when we estimate these receipts totalled less than £1m in 2010-11, less than 0.25 per cent of local authorities' total housing receipts.
  - b. Unfair - Receipts arising from shared ownership disposals are subject to the same restrictions as Right to Buy receipts. This is difficult to justify when an authority, having bought back an equity share, re-sells it thereby incurring a second pooling liability for effectively the same receipt.
  - c. Inconsistent - The current provision goes against the Government's proposals to make it easier for authorities to help their tenants to get a foot on the housing ladder.
  - d. Out of date - The General Consent 2005, which is the "relevant consent" referred to in regulation 14(3) and used for determining how receipts are treated, is being replaced (see Chapter 2 above). It is therefore appropriate to review what disposals to owner-occupiers should generate poolable receipts.

## Details of proposed changes

- 3.18 Proposed Amendment Regulation 4 abolishes the definition of “Social HomeBuy disposal” and “available Social HomeBuy allowance” in regulation 1(5) (proposed sub-paragraphs (a)(i) and (ii)) and replaces them with the definition of a “shared ownership lease” (proposed paragraph (c)), which is based on the definition currently in regulation 19(4).
- 3.19 Proposed Amendment Regulation 5 revokes regulation 9A and Proposed Amendment Regulation 6 revokes current regulation 10(7) and the references to regulation 10(7) throughout the rest of regulation 10. The concept of a “premium” does not appear in the accounting treatment of income arising from a lease, and where such a sum is required for the purchase of a shared ownership lease (including a Social HomeBuy lease), then the sum is automatically a capital receipt.
- 3.20 Proposed Amendment Regulation 7 makes the following changes:
- a. Current regulation 12(4)(ab) is revoked.
  - b. Current regulation 14(1)(d) provides that an authority’s Social HomeBuy receipts may be reduced by any amount up to the value of its available Social HomeBuy allowance. The abolition of this allowance means that this provision is no longer needed. However, the creation of the buy-back allowance (see below) means that an equivalent provision is needed, hence the simple substitution of “Social HomeBuy” with “buy-back”.
  - c. Current regulations 14(2) to 14(2C), which disapply receipts arising from Right to Buy and Social HomeBuy, are reduced from three provisions to one, since there is no longer any need to deal with Social HomeBuy receipts as a separate category. The new regulation 14(2) disapplies receipts arising from any sale to a secure tenant or to one who was a secure tenant up to twelve months before the disposal, except sales of equity shares under 50 per cent of market value where there will be no further sales of equity shares beyond 50 per cent ownership for at least two years.
  - d. Current regulation 14(3), which defines “relevant consent” is revoked, since the proposed overhaul of the consent regime renders the term redundant.
  - e. Current regulations 16(3) and 16(4) ensure that the same expenditure does not count towards both Social HomeBuy allowance and capital allowance. An equivalent provision is needed for buy-back allowance, hence the proposed regulation 16(4), which replaces them both (see below).
  - f. Current regulations 16A and 16B define the expenditure that calculates both the total Social HomeBuy allowance and the available Social HomeBuy allowance. These are both revoked.

- 3.21 Proposed Amendment Regulation 8 revokes current regulation 23(g), which allows an authority to use capital receipts arising from Social HomeBuy sales for any of the expenditure that can make up the total Social HomeBuy allowance, even if it is revenue.
- 3.22 Proposed Amendment Regulation 9 revokes the Schedule to the 2003 Regulations, which defines a Social HomeBuy disposal.

## Capital allowance

### Current provision

- 3.23 Local authorities may retain all receipts arising from sales that are neither Right to Buy nor equivalent to Right to Buy, provided those receipts are used for affordable housing or regeneration projects.

### Intended change and reason

- 3.24 The provision needs updating and rationalising. Also, we propose allowing authorities to count additionally any set-aside for the payment of housing debt towards capital allowance.

### Details of proposed changes

- 3.25 In order to eliminate references in the 2003 Regulations to archaic legislation, Proposed Amendment Regulation 3 defines the new concept of “notifiable allowance”, which is the total of a local authority’s available capital allowance (as defined in current regulation 15) and available Social HomeBuy allowance (as defined in current regulation 16A) on 31 March 2012, the last day before the proposed amendment of the Regulations. Proposed Amendment Regulation 3 also requires a local authority to notify the Secretary of State of the level of its notifiable allowance by 31 July 2012, the due date of its Q1(2012-13) pooling payment.
- 3.26 Proposed Amendment Regulation 4 inserts the definition of “notifiable allowance” into regulation 1(5) of the 2003 Regulations themselves, ie what the local authority has notified the Secretary of State in accordance with Proposed Amendment Regulation 3.
- 3.27 Proposed Amendment Regulation 7 makes the following changes:
- a. Current regulation 16(1)(a) is revoked. This incorporates into the total capital allowance certain expenditure incurred before the 2003 Regulations came into force. In the unlikely event that an authority’s available capital allowance still contains such expenditure on 31 March 2012, this expenditure will be included in the notifiable allowance, which in turn will be included in the total capital allowance (see paragraph 3.25 above). This provision is therefore redundant.

- b. A new regulation 16(1)(a) is proposed, which simply includes the notifiable allowance (the calculation of which is described above) into the total capital allowance.
- c. Current regulation 16(1)(b) is revoked. The expenditure listed is covered by current regulation 16(1)(c) (which we propose becomes regulation 16(1)(b)) and we are not aware of any authority that currently relies on this regulation.
- d. A new regulation 16(1)(c) is proposed (together with a new regulation 16(3)), which would allow any amount used to reduce a local authority's housing debt to count towards the capital allowance. The definition of housing debt, set out in proposed regulation 16(3), is based on clause 158 of the Localism Bill. It assumes, of course, that the Bill will pass into law in its current form by 1 April 2012. Any deviation from that will have to be reflected in the amendment regulation.
- e. A new regulation 16(5) is proposed, which prevents any expenditure from being included in the total capital allowance more than once (and hence being netted off a receipt under regulation 14(1)(c) more than once).

(i) Regulation 16(5)(a) refers to expenditure that by 31 March 2012 the authority:

shall have decided to incur but has not yet incurred, and

has not been used to reduce a capital receipt under regulation 14(1)(c).

Such expenditure would be included in the notifiable allowance and hence in the total capital allowance. Were it not for this regulation, then it is possible that at the point it is actually incurred the expenditure would be included in the total capital allowance a second time.

(ii) Regulation 16(5)(b) refers to expenditure that by 31 March 2012 the authority:

shall have decided to incur but has not yet incurred, and

has been used to reduce a capital receipt under regulation 14(1)(c).

Again, were it not for this regulation, then it is possible that at the point it is actually incurred, the expenditure would be included in the total capital allowance, even though it has already been used to reduce a capital receipt under regulation 14(1)(c).

## Buy-Back allowance

### Current provision

3.28 There are currently two provisions:

- a. Where an authority sells a dwelling no more than three years after its repurchase of it, a repurchase which in turn was no more than five years after the authority sold the dwelling for the first time, then regulation 19 currently allows an authority to deduct the *full* buy-back costs from the receipt of the second disposal for the purpose of calculating the poolable amount.
- b. Regulation 20 currently allows an authority to deduct a proportion of all the costs of buying back dwellings it once owned (after making adjustments for any costs already deducted under regulation 19) from certain receipts received in the following financial year for the purpose of calculating the poolable amount.

### Intended change and reason

3.29 While the intention behind the two regulations is sound, the actual provision is difficult to understand and gives rise to some anomalies. The two regulations have the same policy intention (to support local authorities to buy back dwellings from owner-occupiers who run into financial difficulties), but they are currently written as if they are completely separate provisions.

### Details of proposed amendment

3.30 Proposed regulation 20 replaces current regulations 19 and 20. Paragraph (1) defines what expenditure may count towards the total buy-back allowance. This consists of two parts:

- a. fifty per cent of the buy-back costs of any repurchase of a dwelling (subject to the same conditions as currently set out in regulation 20); plus
- b. the remaining 50 per cent of the buy-back costs if that dwelling is sold again within three years, provided the repurchase took place no more than five years after the original disposal.

3.31 Proposed regulation 19 provides that the available buy-back allowance consists of the total buy-back allowance less any amounts by which housing receipts have been reduced by virtue of proposed regulation 14(1)(d), which in turn allows an authority to reduce any housing receipt, by any amount up to the value of the available allowance, for the purposes of calculating the poolable amount.

- 3.32 The provision works in a very similar way to the capital allowance and the current Social HomeBuy allowance. Eligible expenditure is “banked”, ie added to the allowance. The authority may then withdraw the available allowance as and when the need arises.
- 3.33 To prevent authorities from adding the same expenditure to both the capital allowance and the buy-back allowance we propose that:
- a. any amount that has already been included in the buy-back allowance (and eligible expenditure, subject to what is said immediately below, is automatically included at the time it is incurred) cannot subsequently be included in the capital allowance (proposed regulation 16(4)); and
  - b. any amount of expenditure yet to be incurred that has been included in the total capital allowance cannot be included in the buy-back allowance at the time it is incurred (proposed definition of “relevant costs” in regulation 20(2)).

### Implications of change

- 3.34 There are five immediate changes all of which should be beneficial to local authorities:
- a. The separate provisions of regulation 19 and 20 are amalgamated into one, so that it is clearer how one provision dovetails into the other.
  - b. The expenditure may be netted off *any* housing receipt, not just those receipts arising from sales of dwellings that fit the criteria set out in the current regulation 20(2).
  - c. The proportion of expenditure that is currently deductible under regulation 20 has been increased from 47 per cent (after an initial deduction of £50,000 from all eligible expenditure in the year) to 50 per cent with no initial deduction.
  - d. Expenditure deductible under regulation 20 can currently be deducted only in the following financial year, whereas the proposed provision allows the authority to deduct the expenditure from a housing receipt in the same quarter as the expenditure is incurred.
  - e. Currently, if the authority has insufficient housing receipts in the year following that in which deductible buy-back costs have been incurred, such that some of those costs cannot be deducted in that year, then there is no opportunity in subsequent years to make any further deduction; some buy-back costs are thereby “wasted”. The proposed provision allows an authority to retain its eligible buy back expenditure indefinitely.

## Transitional provision

3.35 Because the current regulation 20 does not allow buy-back costs to be deducted from a receipt for the purpose of calculating the poolable amount until the following financial year, then, by itself, proposed regulation 20 would allow eligible buy-back expenditure incurred in the financial year 2011-12 to be “lost”. Proposed regulation 21 therefore allows 50 per cent of any of this expenditure (minus any that has already been deducted from a receipt for the purpose of calculating the specified amount) to be added to the total buy-back allowance on the first day that the Proposed Amendment Regulations come into effect.

## Consideration for former New Town assets

3.36 This provision, which currently applies to only two authorities, compensates for the arrangement whereby land originally handed over to these authorities by the Commission for New Towns is held on the proviso that, should the authority sell the land, at least part of the receipt must be handed over to the Commission for New Towns or its successor. This arrangement will end with effect from 1 April 2012 rendering the compensating provision, currently in regulation 20A, redundant.

## Transitional reductions for debt-free authorities

3.37 The current regulation 21, which contained the provision for transitional reductions in poolable amounts for authorities debt-free on 31 March 2004, ceased to have effect from 1 April 2007. The provision is therefore revoked.

## Annex A

# The General Consents issued under section 32 of the Housing Act 1985 2012 (draft)

## A. The general consent for the disposal of Land held for the purposes of Part II of the Housing Act 1985 - 2012

The Secretary of State for Communities and Local Government (“the Secretary of State”), in exercise of powers under sections 32(2), 33(2) and 34 of the Housing Act 1985, section 133(1) of the Housing Act 1988, section 75 of the Housing and Regeneration Act 2008 and of all other powers enabling him in that behalf, hereby gives to all local authorities in England the following general consent:

### Citation, commencement, extent and revocation

- A1.1 This consent may be cited as *The General Consent for the Disposal of Land held for the purposes of Part II of the Housing Act 1985 - 2012* and shall come into force on XXXX 2012.
- A1.2 This consent does not apply to a disposal of a dwelling-house to a tenant (whether alone or with someone else) who has the right to buy it given by section 118 of the Housing Act 1985 except where the tenant is acquiring a shared ownership lease.
- A1.3 *The General Consent for the Disposal of Part II Dwelling-houses 2005* given on 21 March 2005 is revoked.

### Interpretation

- A2.1 References in this consent to a section, Part or Schedule are, except where the contrary appears, references to the Housing Act 1985.
- A2.2 In this consent:
- “disposal”, in the case of a disposal by the local authority, means (except where the contrary appears):
- a. a conveyance of a freehold interest;
  - b. an assignment of a lease;
  - c. the grant of a lease for a term of at least 99 years;
  - d. where the interest held by the local authority is leasehold, the grant of a lease for a term equal to the unexpired term of the lease less not more than one year;

- e. where a building contains two or more dwelling-houses and the local authority has granted such a lease as described in sub-paragraph (c) or (d) of one of them after 11 June 1981, the grant of a lease of another of the dwelling-houses expiring either:
  - (i) where one such lease has been granted, at the end of the term of that lease; or
  - (ii) where more than one such lease has been granted, at the end of the term of the last to expire;
- f. the grant of an option to purchase the freehold of, or other interest in, land; and
- g. the grant of a shared ownership lease;

and “dispose” shall be construed accordingly;

“dwelling-house” means a house or flat or part of a building occupied or intended to be occupied as a separate dwelling, including any yard, garden, out-houses and appurtenances belonging to or usually enjoyed with it, held for the purposes of Part II;

“flat” and “house” have the same meanings as in section 183;

“long lease” has the meaning given in section 7 of the Leasehold Reform, Housing and Urban Development Act 1993;

“land” includes buildings and other structures, land covered with water and any estate, interest, easement or right over land;

“market value” means the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than three months before the buyer applies or agrees to an offer in writing;

“registered provider of social housing” has the same meaning given in section 80 of the Housing and Regeneration Act 2008;

“secure tenancy” and “secure tenant” have the same meanings as in Part IV;

“shared ownership lease” means a lease of a house granted on payment of a premium calculated by reference to a percentage of the market value of the house;

“social housing” has the same meaning given in section 68 of the Housing and Regeneration Act 2008;

“tenancy” includes a licence to occupy and related expressions are to be construed accordingly;

“the right of pre-emption” means a condition precluding the disposal of the land by the transferee unless:

- a. he first notifies the local authority of the proposed disposal and offers to dispose of the land to the authority; and
- b. the authority refuses the offer or fails to accept it within one month of it being made; and

“vacant”, in relation to land means land on which:

- a. no houses have been built or
- b. where houses have been built, such houses are no longer capable of human habitation and are due be demolished;

“unoccupied” in relation to a house means a house which is not the subject of a tenancy to occupy granted by the local authority.

## Disposal of land

A3.1.1 A local authority may, subject to paragraph 3.1.2, dispose of land for a consideration equal to its market value.

A3.1.2 Paragraph 3.1.1 does not apply to

- a. a disposal of land which is subject to a tenancy to occupy from the local authority to a landlord who is not another local authority; or
- b. a disposal of land to a body wholly or partly owned by the local authority.

A3.2 A local authority may dispose of vacant land.

A3.3.1 A local authority may dispose of an unoccupied house to a person who intends to use it as their only or principal home subject to paragraphs 3.3.2 to 3.3.4.

A3.3.2 Subject to paragraph 3.3.4, where the person is a secure tenant and has the right to buy (under section 118) in respect of their current home, the local authority may dispose of the unoccupied house at a price which is not less than that which would have been payable were the tenant to acquire it under that right.

A3.3.3 Subject to paragraph 3.3.4, where the person:

- a. is not a secure tenant; or
- b. is a secure tenant but has not acquired the right to buy (under section 118)

the local authority may dispose of the unoccupied house at a price which is not less than an amount equal to the purchase price defined in section 126 (right to buy purchase price) to which the minimum discount, calculated in accordance with section 129, has been applied.

A3.3.4 The right to buy discounts applied in paragraphs 3.3.2 and 3.3.3 must not reduce the price of the unoccupied house to an amount less than the amount set or prescribed in section 131.

A3.4 Subject to paragraph 3.3.4, where a secure tenant occupies a house but has not accrued the qualifying period for the right to buy (under Part V), the local authority may dispose of the house to the secure tenant at a price which is not less than that which would have been payable were the tenant to acquire it under that right.

## Other disposals

A4.1 A local authority may:

- a. in the case of houses, extend a long lease or grant a long lease to a tenant who has held a long lease of the house for a period of at least two years, for a premium calculated in accordance with section 9 of the Leasehold Reform Act 1967; and
- b. in the case of flats, extend a long lease or grant a new long lease to a qualifying tenant who has held a long lease of the flat for a period of at least two years, for a premium calculated in accordance with Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993.

A4.2.1 Subject to paragraph 4.2.2, a local authority may:

- a. grant a lease of a term of less than seven years; and
- b. grant an assignment of a lease which at the date of the assignment has not more than seven years to run.

A4.2.2 Paragraph 4.2.1 does not apply to the grant or assignment of a lease to a body wholly or partly owned by the local authority.

## National Parks etc.

- A5 Where land is situated in a National Park or one of the areas mentioned in section 37(1) and a covenant of the kind mentioned in section 37(1) is not imposed, the local authority may impose a condition reserving the right of pre-emption, provided the right is exercisable:
- a. within ten years of the date of the disposal; and
  - b. at the market value of the dwelling-house at the date the right is exercised less any repayment of discount demanded by the authority under the covenant mentioned in section 35(2).

## Dwelling-houses for the elderly etc

- A6 Where a dwelling-house is within paragraph 7, 9 or 10 of Schedule 5 (or would be within one of those paragraphs if it were one of a group which it was the practice of the local authority to let for occupation by a person of one of the descriptions mentioned in those paragraphs) or is within paragraph 11 of that Schedule, the authority may impose a condition reserving the right of pre-emption, provided the right is exercisable:
- a. within twenty one years of the date of disposal; and
  - b. at the market value of the dwelling-house at the date the right is exercised less any repayment of discount demanded by the authority under the covenant mentioned in section 35(2).

## Shared Ownership leases

- A7 The authority may include in a shared ownership lease a condition which:
- a. precludes the lessee from granting a sub-lease of the whole or part of the dwelling-house; or
  - b. requires the authority's consent to a grant by the lessee of a sub-lease of the whole or part of the dwelling-house.

## Limitation on pre-emption

- A8 No disposal under this consent shall reserve a right of pre-emption to the local authority except one:
- a. permitted under this part of the consent; or
  - b. required by section 36A.

## Joint purchasers

- A9 If a local authority may dispose of a dwelling-house under this consent to an individual it may dispose of it to that individual together with one or more other individuals on the same terms as it would have disposed of it to the individual.

## Subsequent disposals

- A10 The further consent of the Secretary of State shall not be required under section 133 of the Housing Act 1988 to the subsequent disposal of a dwelling-house which has been disposed of in accordance with this consent.

## Disposals to registered providers of social housing

- A11 Any disposal of a dwelling-house which was social housing made pursuant to this consent to a registered provider of social housing must remain as social housing for the period it is owned by the registered provider of social housing until it ceases to be social housing under the provisions of sections 72 to 76 of the Housing and Regeneration Act 2008.

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XXXXXX Division  
Department for Communities and Local Government  
XXXXXX 2012

## **B. The general consent for the disposal of dwelling-houses to tenants who have the right to buy acquiring with others 2012**

The Secretary of State for Communities and Local Government (“the Secretary of State”), in exercise of his powers under sections 123(2) and 128(1) of the Local Government Act 1972, sections 32(2), 33(2), 34 and 43 of the Housing Act 1985 and section 133(1) of the Housing Act 1988 and of all other powers enabling him in that behalf, hereby gives to all local authorities in England the following general consent:

### Citation, commencement and revocation

- B1.1 This consent may be cited as *The General Consent for the Disposal of Dwelling-houses to Tenants who have the Right to Buy acquiring with others 2012* and shall come into force on XXXXX 2012.
- B1.2 *The General Consent for the Disposal of Dwelling-houses to Tenants who have the Right to Buy acquiring with others 2005* given on 21 March 2005 is revoked.

## Interpretation

B2 In this consent:

“principal consent” means *The General Consent for the Disposal of Land held for the Purposes of Part II of the Housing Act 1985 - 2012* or such consent that replaces it;

and otherwise expressions have the same meaning as in the principal consent except where the contrary appears.

## Consent

B3.1 A local authority may, subject to the provisions of this consent, dispose of a dwelling-house to a secure tenant or tenants of that dwelling-house, who have the right to buy it given by section 118, and who are acquiring the dwelling-house with an individual who is not, or individuals all of whom are not, qualified to share the right to buy under section 123.

B3.2 Before the purchasers enter into an obligation to acquire a leasehold interest, the authority shall give them the estimates and information specified in sections 125A to 125C amended so that:

- a. for the statements of the effects of paragraphs 16B and 16C of Schedule 6, there shall be substituted a statement of the effects of the provisions in the lease described in paragraph B3.3(c)(ii); and
- b. no reference to section 450A and regulations under it need be included.

B3.3 The disposal shall be:

- a. at the price which would be payable if the tenant or tenants were acquiring the dwelling-house under Part V;
- b. in the case of a house where the authority owns the freehold, by way of a conveyance which conforms with Parts I and II of Schedule 6; and
- c. in the case of a house where the authority does not own the freehold and in the case of a flat, by way of the grant of a lease which:
  - (i) conforms with Parts I and III of Schedule 6; and
  - (ii) contains provisions restricting the liability of the tenant or tenants to service charges and improvement contributions as described in paragraphs 16B and 16C respectively of Schedule 6.

B3.4 Paragraphs A7 to A9 (rights of pre-emption) of the principal consent shall apply for the purposes of this consent.

## Subsequent disposals

- B4 The further consent of the Secretary of State shall not be required under section 133 of the Housing Act 1988 to the subsequent disposal of a dwelling-house which has been disposed of in accordance with this consent.

XXXXXX

XXXXXX Division

Department for Communities and Local Government

XXXXXX 2012

## C. The general consent for the disposal of non-Part II dwelling-houses 2012

The Secretary of State for Communities and Local Government (“the Secretary of State”), in exercise of his powers under sections 123(2) and 128(1) of the Local Government Act 1972, section 43 of the Housing Act 1985 and section 133(1) of the Housing Act 1988 and of all other powers enabling him in that behalf hereby gives to all relevant authorities in England the following general consent:

### Citation, commencement and revocation

- C1.1 This consent may be cited as *The General Consent for the Disposal of Non-Part II Dwelling-houses 2012* and shall come into force on XXXXX 2012.
- C1.2 *The General Consent for the Disposal of Non-Part II Dwelling-houses 2005* given on 21 March 2005 is revoked.

### Interpretation

- C2 In this consent:

“dwelling-house” means a house or flat which is held by a relevant authority other than under Part II of which the authority may dispose under section 123 of the Local Government Act 1972;

“relevant authority” means a county, district or London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a police authority within the meaning of section 3 of the Police Act 1964 or any other authority which is a council for the purposes of section 123 of the Local Government Act 1972; and

otherwise expressions have the same meaning as in *The General Consent for the Disposal of Part II of the Housing Act 1985 - 2012*.

## Disposal of a dwelling-house at a discount

- C3 A relevant authority may dispose of a dwelling-house to an individual or individuals if it could make the disposal under *The General Consent for the Disposal of Land held for the Purposes of Part I of the Housing Act 1985* were the dwelling-house and the authority ones to which the consent applied.
- C4 The disposal shall be subject to a covenant of the kind specified in section 35.

## Subsequent disposals

- C5 The further consent of the Secretary of State shall not be required under section 133 of the Housing Act 1988 to the subsequent disposal of a dwelling-house which has been disposed of in accordance with this consent.

XXXXXX

XXXXXX Division  
Department for Communities and Local Government  
XXXXXX 2012

## D. The general consent for the disposal of reversionary interests in houses and flats 2012

The First Secretary of State (“the Secretary of State”), in exercise of his powers under sections 32(2) and 34 of the Housing Act 1985 and section 133(1) of the Housing Act 1988 and of all other powers enabling him in that behalf, hereby gives to all local authorities in England the following general consent:

### Citation, commencement and revocation

- D1.1 This consent may be cited as *The General Consent for the Disposal of Reversionary Interests in Houses and Flats 2012* and shall come into force on XXXX 2012.
- D1.2 *The General Consent for the Disposal of Reversionary Interests in Houses and Flats 1999* given on 11 February 1999 is hereby revoked.

### Interpretation

- D2 In this consent:
- “building” includes any yard, garden, outhouses and appurtenances belonging to or usually enjoyed with it or any part of it;

“flat” and “house” have the same meanings as in section 183 of the Housing Act 1985; and

“long lease” has the meaning given to “long tenancy” in section 115 of that Act;

“qualifying tenant” has the same meaning as in section 5 of the Leasehold Reform, Housing and Urban Development Act 1993.

## Disposal of a house

- D3 Where a local authority is the landlord of a house, which is occupied as housing accommodation under a long lease, the authority may dispose of its interest to the leaseholder for the best consideration that can reasonably be obtained.

## Disposal of a building divided into flats

- D4 Where the conditions specified in paragraph D5 apply, a local authority may dispose of its interest in a building to the leaseholders of the flats in that building or to a company of which the shareholders are those leaseholders.

- D5 The conditions are that:

- a. the building contains only flats and common parts;
- b. all the flats are occupied as housing accommodation by tenants who have been qualifying tenants for the purposes of section 5 of the Leasehold Reform, Housing and Urban Development Act 1993;
- c. where the disposal is to the leaseholders, the leaseholder of each flat (or leaseholders, if more than one, taken together) shall acquire an interest equal to that of the leaseholder (or leaseholders, taken together) of each other flat; and where the disposal is to a company, the leaseholder of each flat (or leaseholders, if more than one, taken together) shall have an interest in the company equal to that of the leaseholder (or leaseholders, taken together) of each other flat; and
- d. the consideration for the disposal is the best that can reasonably be obtained.

## Subsequent disposals

- D6 The further consent of the Secretary of State shall not be required under section 133 of the Housing Act 1988 to the subsequent disposal of land which has been disposed of in accordance with this consent.

XXXXXX

XXXXXXXXXXXXX Division  
Department for Communities and Local Government  
XXXXXXXXXX 2012

## Commentary

- 1 This commentary provides some further explanation of the general consents. It is not intended to be comprehensive nor provide explanation where we believe the general consents are clear in themselves. Similarly it does not relieve authorities of the onus of satisfying themselves that any action they take is in accordance with the consents and the principal legislation.
- 2 For the sake of brevity the expression “dwelling” is used in these notes instead of “dwelling-house” and the expression “sale” includes any form of disposal permitted by the consent.
- 3 Section 44 of the Housing Act 1985 provides that a disposal of a house without consent is void, unless the disposal is of a single house to an individual. Section 32 Consent cannot be given retrospectively. Therefore, where a disposal is void by virtue of section 44 the remedy is to make the disposal again with the consent.
- 4 If a proposed transaction falls outside the terms of the general consents an application for special consent may be made to the Department for Communities and Local Government, Housing Revenue Account Reform and Decent Homes Division, Floor 1/H10, Eland House, Bressenden Place, London SW1E 5DU.

## General Consent A

- 5 This is the principal consent.
- 6 Paragraph 3.1 permits local authorities to dispose of any dwelling at market value. Disposals to a body owned or partly owned by the local authority are not permitted and neither are disposals that would result in a local authority tenant becoming the tenant of a private landlord.
- 7 Paragraph 3.2 permits local authorities to dispose of vacant land, and this includes assets that are not dwellings (e.g. garages, drying areas etc), at any price determined by the local authority.
- 8 Paragraph 3.3 permits local authorities to dispose of dwellings at discounts equivalent to the right to buy discount to existing council tenants and others whom the local authority has decided need help accessing home ownership in the area (this latter group could include key workers or ex-military personnel, although that is for the local authority to decide).
- 9 The consent includes freedom for local authorities to dispose of unoccupied dwellings to registered housing associations at market value. Paragraph A10 provides that any disposal of a dwelling, which qualifies as social housing, pursuant to this consent must remain as social housing and will do so until it is sold by the registered housing association.<sup>2</sup>

<sup>2</sup> Section 75 of the Housing and Regeneration Act 2008 (as amended by Schedule 1 of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010)

- 10 You will wish to note that General Consent A also applies to disposals on shared-ownership terms, including disposals under the Social HomeBuy scheme.

## General Consent B

- 11 This consent relaxes the restriction in paragraph A1.2 by permitting an authority to make a voluntary sale to a sitting tenant, who has the right to buy and wishes to share it with someone who is not qualified under section 123: for example, a member of his family who does not reside in the dwelling or someone who is not a family member.
- 12 If the dwelling is a house, of which the authority is the freeholder, the authority must sell the freehold. In other cases, the authority must grant a lease of the same duration as it would do if the sale were under the statutory right to buy. The provisions restricting the recovery of service charges for the first five years also apply.

## General Consent C

- 13 This consent permits dwellings held by police authorities, and by county councils and housing authorities under powers other than Part II of the 1985 Act, to be sold in accordance with general consent A. Paragraph A1.2 (bar on sales to sitting tenants who have the right to buy) applies to general consent C.

## General Consent D

- 14 This consent overlaps the right to enfranchise which the lessee of a house or the leaseholders in a block of flats have under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993 (as amended by the Commonhold and Leasehold Reform Act 2002). No consent under section 32 of the Housing Act 1985 is required if the statutory right is exercised. However, circumstances may occasionally arise where the statutory right is not exercisable. For example, if the local authority is not the freeholder, the lessee/leaseholders may wish to acquire the authority's leasehold interest but not wish, or be unable, to acquire the freehold.

Annex B  
The Local Authorities (Capital Finance and  
Accounting) (England) (Amendment) XXX  
Regulations 2012 (draft)

STATUTORY INSTRUMENTS

2012 No. xxxx

LOCAL GOVERNMENT, ENGLAND

**Local Authorities (Capital Finance and Accounting) (England)  
(Amendment) XXXX Regulations 2012**

*Made* .....xxxx

*Laid before Parliament*.....xxxx

*Coming into force* .....xxxx

The Secretary of State, in exercise of the powers conferred by sections 9(3) and 11 of the Local Government Act 2003<sup>3</sup>, makes the following Regulations:

**Citation, commencement and application**

- 1 (1) These Regulations may be cited as the Local Authorities (Capital Finance and Accounting) (England) (Amendment) XXX Regulations 2012.
- (2) Regulations 1 to 3 shall come into force on 30 March 2012 and the remaining regulations shall come into force on 1 April 2012.
- (3) These Regulations apply only in relation to local authorities in England.

**Amendment of Regulations**

- 2 The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003<sup>4</sup> are amended as specified in regulations 3 to 8.

<sup>3</sup>2003 c.26.

<sup>4</sup>S.I. 2003/3146 as amended by S.I. 2006/521, S.I. 2007/573 and S.I. 2009/2272. There are other amending instruments but none is relevant to these Regulations.

### **Calculation of the notifiable allowance**

- 3 a. On 31 March 2012, authorities shall calculate the notifiable allowance which shall be the total of:
  - (i) the available capital allowance under regulation 16; and
  - (ii) the available Social HomeBuy allowance under regulation 16A.
- b. Authorities shall notify the Secretary of State of the notifiable allowance by 31 July 2012.

### **Citation, commencement, application and interpretation**

- 4 In regulation 1(5):
  - a. omit the definition of:
    - (i) "available Social HomeBuy allowance"; and
    - (ii) "Social HomeBuy disposal";
  - b. after the definition of "the National Association of Local Councils" insert:
    - (i) "notifiable allowance" means the amount notified by the authority to the Secretary of State in compliance with regulation 3 of the Local Authorities (Capital Finance and Accounting) (England) (Amendment) xxxx Regulations 2012<sup>5</sup>;
  - c. after the definition of "secure tenant" insert:
    - (i) "shared ownership" lease means a lease of a dwelling granted on payment of a premium calculated by reference to a percentage of the market value of the dwelling.

### **Social HomeBuy receipts**

- 5 Omit regulation 9A.

### **Capital receipts not exceeding £10,000**

- 6 In regulation 10:
  - a. in paragraphs (1) and (5), omit the words "Subject to paragraph (7)"; and
  - b. omit paragraph (7).

<sup>5</sup>S.I. 2012/XXXX.

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

7 Omit regulations 12 to 21 and insert:

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

**12** (1) This regulation applies to capital receipts which:

- a. a local authority derives from the disposal of an interest in housing land other than a disposal which is a qualifying disposal or a small scale disposal; and
- b. on or after 1 April 2004, have been received by the local authority.

(2) Where this regulation applies, the local authority shall use capital receipts to pay the amount specified in paragraph (4) ("the specified amount") to the Secretary of State on or before the following dates ("the due date"):

a. the last day of the calendar month immediately following:

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

whichever of those is the earliest date following the day on which the authority receives the capital receipt; or

b. if later, such date as is notified to the local authority by the Secretary of State.

(3) Where the specified amount paid to the Secretary of State is found to be incorrect, the local authority shall:

- a. pay any outstanding amount to the Secretary of State; or
- b. offset any amount paid in excess of the specified amount against any further specified amount payable to the Secretary of State under this regulation.

(4) Subject to reductions made under regulations 14 to 21, the specified amount is an amount equal to:

- a. 75% of the capital receipt in relation to the disposal of a dwelling;

- b. to the extent not included in sub-paragraph (a), 75% of the capital receipt received by a local authority on or after 1 April 2006, in relation to the disposal of the authority's rights and obligations as mortgagee of any dwelling; and
  - c. 50% of the capital receipt in relation to the disposal of any other interest in housing land.
- (5) The total amount of any reductions made to the capital receipt for a disposal under regulations 14 to 21 shall not exceed the amount of that capital receipt.

### **Interest on late payments**

**13** (1) The local authority shall use capital receipts, which it derived from the disposal of housing land, to pay interest to the Secretary of State in accordance with the following provisions of this regulation.

- (2) Where the local authority does not pay part or all of the specified amount to the Secretary of State by the due date, the local authority shall pay interest to the Secretary of State on the unpaid amount of the specified amount.
- (3) The interest shall be calculated on any unpaid amount at a rate of 1% above base rate on a day-to-day basis compounded with three-monthly rests.
- (4) Where interest is payable by virtue of paragraph (2), the interest on the unpaid amount shall be calculated for the period starting on the day after the due date and ending on the date of the payment of the unpaid amount.
- (5) The local authority shall pay to the Secretary of State any interest, payable in respect of any unpaid amount, on the date on which it pays the unpaid amount.
- (6) In this regulation:

“base rate” means the base rate for the time being quoted by the reference banks or, where there is for the time being more than one such rate, the rate which, when the base rate quoted by each bank is ranked in descending sequence of seven, is fourth in the sequence; and

“reference banks” means the seven largest persons for the time being who:

- (i) have permission under Part IV of the Financial Services and Markets Act 2000 (permission to carry on regulated activities) to accept deposits;
- (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits; and
- (iii) quote a base rate in sterling,

and for the purpose of this definition the size of any person at any time is to be determined by reference to the gross assets denominated in sterling by that person, together with any subsidiary (as defined in section 736 of the Companies Act 1985 (“subsidiary”, “holding company” and “wholly owned subsidiary”)), as shown in the audited end-of-year accounts last published at that time.

### Capital receipt treated as reduced

- 14** (1) Subject to regulation 12(5) and paragraph 2, for the purposes of calculating the specified amount, the capital receipt, in relation to the disposal of the interest in housing land shall be treated as reduced by:
- a. so much of the capital receipt as is applied by the local authority in meeting the administrative costs of and incidental to the disposal;
  - b. the costs of expenditure incurred by the local authority in improving the housing land within the period of three years ending on the date of the disposal;
  - c. an amount, by which the authority determines that it shall be reduced, which may be any amount up to the value of its available capital allowance at the time the specified amount is calculated; and
  - d. an amount, by which the authority determines that it shall be reduced, which may be any amount up to the value of its available buy-back allowance at the time the specified amount is calculated.
- (2) Paragraph (1)(c) shall not apply to capital receipts which a local authority receives from the disposal of a dwelling or (on or after 1 April 2006) the authority’s rights and obligations as mortgagee of any dwelling, where that dwelling (“the disposed dwelling”) was disposed of by the authority:
- a. to a secure tenant under Part IV of the Housing Act 1985<sup>6</sup> (secure tenancies and rights of secure tenants);
  - b. to a person who was secure tenant under Part IV of the Housing Act 1985 during the period of 12 months prior to the disposal of the disposed dwelling; or
  - c. by the grant of a shared ownership lease where:
    - (i) a premium (which is a portion of the market value of the disposed dwelling) was paid and that portion exceeded 50% of the market value of the disposed dwelling; or
    - (ii) within two years of the grant of the shared ownership lease, a premium is paid to acquire a further portion of the disposed dwelling so that the total portion of the market value of the disposed dwelling owned by the person is more than 50%.

<sup>6</sup> 1985 c. 68.

## Available capital allowance

- 15** For the purpose of regulation 14(1)(c), the value of the local authority's available capital allowance at a particular time is the value of the total capital allowance at that time, as determined by the authority in accordance with regulation 16, less the total value of any amounts by which the capital receipts have been treated as reduced by virtue of regulation 14(1)(c) since 1 April 2012.

## Total capital allowance

- 16** (1) Subject to paragraphs (4) and (5), for the purposes of regulation 15, a local authority's total capital allowance is the total value of:
- a. the notifiable allowance;
  - b. the amount of the contributions which the authority has made, or has decided to make but has not yet made, on or after 1 April 2012, towards the costs of the projects specified in regulations 17 and 18 by:
    - (i) constructing or improving dwellings, or providing dwellings by the conversion of a building or 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 that the authority has received, or will receive, by virtue of the project; and
  - c. any amount of capital receipt to which regulation 12 applies used to reduce the housing debt of the local authority.
- (2) For the purposes of paragraph (1)(b)(ii), 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 that falls to be given for the transfer is less than the price that the interest transferred would realise at the date of the valuation if sold by the authority on the open market.
- (3) For the purposes of paragraph (1)(b), the housing debt of a local authority means the housing debt calculated in a determination made under section [158] of the Localism Act [2011]<sup>7</sup>.

- (4) A local authority's total capital allowance at a particular time shall not include the value of any amount which is included in the local authority's total buy back allowance, as determined by the authority at that time in accordance with regulation 20.
- (5) The total capital allowance shall not include any expenditure
- a. already included in the calculation of the total capital allowance; or
  - b. by which a capital receipt has been treated as reduced under regulation 14(1)(c).

### **Provision of affordable housing**

- 17** (1) In these Regulations, "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 private registered provider of social housing.
- (2) For the purposes of regulation 16(1)(b), the provision of affordable housing is a specified project.

### **Regeneration projects**

- 18** (1) In these Regulations, "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 will be brought into effective use.
- (2) For the purposes of regulation 16(1)(b), the undertaking of a regeneration project on land situated within the area of the local authority is a specified project.

### **Available buy back allowance**

- 19** For the purpose of regulation 14(1)(d), the available buy-back allowance at a particular time is the total buy-back allowance at that time less any amounts by which the capital receipts have been treated as reduced by virtue of regulation 14(1)(d) prior to that time.

## Total buy-back allowance

**20** (1) The total buy-back allowance is the total value of the following:

- a. 50% of the relevant costs of buying back a relevant interest in a dwelling; and
- b. the remaining 50% of the relevant costs of buying back a relevant interest in a dwelling where:
  - (i) within the period of five years from the date of the initial disposal of the relevant interest, the authority buys back the relevant interest; and
  - (ii) within three years of the date of buying back the relevant interest the authority disposes of the dwelling.

(2) In this regulation:

“initial disposal” means the disposal of the relevant interest by the authority, another local authority, new town corporation, housing action trust or urban development corporation to a person which was bought back by the authority;

“relevant costs” means the expenditure incurred by the authority on a dwelling on or after 1 April 2012 including administrative and incidental costs but not costs already included in the capital allowance; and

“relevant interest” means:

- (i) a freehold or leasehold interest in a dwelling that was not acquired pursuant to a compulsory purchase order;
- (ii) a freehold or leasehold interest in the dwelling that 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
- (iii) the person from whom the interest was acquired was not a body of persons corporate or unincorporated.

### **Transitional provision for buying back a dwelling**

**21** (1) On 1 April 2012, an authority may treat the following amount as part of the total buy back allowance:

50% of (A-B) where:

A is the total expenditure incurred by the authority buying a relevant interest in a dwelling between 1 April 2011 and 31 March 2012; and

B is that part of A that has already been used in any preceding financial year to reduce the specified amount in any preceding financial year;

(2) In this regulation “relevant interest” has the same meaning as in regulation 20.

### **Use of capital receipts**

8 Omit regulation 23(g).

### **Schedule – Social HomeBuy Disposal**

9 Omit the Schedule.

Signed by authority of the  
Secretary of State for Communities and Local Government

date Minister of State  
Department for Communities and Local Government

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

# Annex C

## Consultation criteria

### The seven consultation criteria and this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Better Regulation Executive (BRE) in the Department for Business, Innovation and Skills (BIS) and is in line with the seven consultation criteria, which are:

- 1 Formal consultation should take place at a stage when there is scope to influence the policy outcome;
- 2 Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- 3 Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- 4 Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- 5 Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- 6 Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
- 7 Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Please note that section 197(8)(b) of the 2008 Act requires the Secretary of State to publish each response to this consultation. Information provided in response to this consultation, including personal information, may also be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please inform the DCLG Consultation Co-ordinator.

The postal address is:

Zone 4/J2  
Eland House  
London  
SW1E 5DU

The email address is [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

## Annex D

### List of consultation questions

#### **Consultation Question 1**

Do you think there are situations where such disposals *should not* require the consent of the Secretary of State?

If so, what are they?

#### **Consultation Question 2**

Do you think there are situations where such disposals *should* require the consent of the Secretary of State?

If so, what are they?

#### **Consultation Question 3**

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests?

If not, why not?

#### **Consultation Question 4**

Do you think that a limit should be placed on the amount of discount a local authority can offer on vacant land?

If yes, what should it be?

#### **Consultation Question 5**

Do you think that such disposals should be limited only to such situations where the land will be used for certain specified purposes?

If yes, what are they?

### **Consultation Question 6**

Do you think that these discounts are appropriate?

If not, what do you think they should be?

### **Consultation Question 7**

Do you think that there are other situations where local authorities *should* be permitted to dispose of council housing assets at a discount?

If yes, what are they and what should the discount be?

### **Consultation Question 8**

Do you think that there are situations included in the list above where local authorities *should not* be permitted to offer a discount?

If yes, what are they?

### **Consultation Question 9**

Do you agree that local authorities should not require the consent of the Secretary of State to dispose of such interests?

If not, why not?

### **Consultation Question 10**

Do you agree that local authorities should be free to grant such leases?

If not, why not?

Should such leases be granted to local authority subsidiaries?

If yes, why?

### **Consultation Question 11**

Do you think that there are situations where a local authority should require the consent of the Secretary of State before entering into a shared ownership arrangement with an individual?

If yes, what are they?

### **Consultation Question 12**

- a. Does any part of the Proposed Amendment Regulations explained below fail to effect the six aims listed above?
- b. Can any further provisions be introduced that would effect the six aims more successfully?

As far as possible, please arrange your answer in the order of topics as listed below.

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