
STATUTORY INSTRUMENTS

1990 No. 432

The Local Authorities (Capital Finance) Regulations 1990

PART VI

CAPITAL RECEIPTS

Interpretation

10.—(1) In this Part, references to the capital value of a lease are references to the amount which, at the time of the disposal by a local authority of the lease, the authority estimate will be the aggregate of—

- (a) any consideration which has been or falls to be received by the authority in respect of the disposal of the lease in the financial year in which they dispose of the lease or at any time before the beginning of that year; and
- (b) the value of any consideration which falls to be received by the authority in respect of the disposal of the lease in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (1)(b) above, the value of the consideration falling to be received in that year shall be determined by the formula—

$$\frac{x}{\left(1 + \frac{r}{100}\right)^n}$$

where—

“x” is the amount of the consideration which the authority estimate will be received by them in respect of the lease in that financial year;

“r” is the percentage rate of discount prescribed for the financial year in which the authority disposed of the lease by regulations made by the Secretary of State for the purposes of section 49; and

“n” is the financial year in which the consideration falls to be received expressed as a year subsequent to the financial year in which the authority disposed of the lease (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

(3) Regulation 5(3) applies in relation to any consideration in respect of a lease or under a contract for the purposes of this regulation, and the following provisions of this Part, as it applies in relation to any consideration in respect of a lease for the purposes of Part IV of these Regulations.

1980 Act receipts

11. The following sums are specified for the purposes of section 58(4), namely, sums received by a local authority before 1st April 1990 in respect of the disposal of any interest in—

- (a) land held for the purposes of, or in connection with, the Central Criminal Court, the police, probation or magistrates' court services; and

- (b) vehicles or vessels, movable or immovable plant, machinery or apparatus held for the purposes of, or provided in connection with, the Central Criminal Court, the police, probation or magistrates' court services.

Sums to be capital receipts

12. The following sums received by a local authority shall be capital receipts—

- (a) any sums in respect of principal which fall to be paid to the authority by any body by virtue of—
- (i) an order made under section 51(2), 58(2) or 67(4) of, or paragraph 7 or 9 of Schedule 10 to, the Local Government Act 1972(1), regulations made under section 67(1) or (2) of that Act, or an agreement made under section 68 of that Act, in relation to any matter which has been transferred by virtue of the order, regulations or agreement, as the case may be, from the authority to the body;
 - (ii) an order made under section 254(1) or (2)(a) or (d) of the Local Government Act 1972 or under those provisions as extended by section 34(1) of, and paragraph 5(2) (b) of Schedule 6 to, the Water Act 1973(2), in relation to any matter which has been transferred by virtue of the Local Government Act 1972 or the order from the authority to the body; or
 - (iii) an order made under section 23(3) or 84 of the London Government Act 1963(3) in relation to any matter which has been transferred by virtue of the order from the authority to the body; and
- (b) any sums received by the authority (“the designated authority”) in respect of repayments of principal in relation to money which, by virtue of an order made under section 66(1) or 67(3) of the Local Government Act 1985, a local authority are deemed to have borrowed from the designated authority.

Sums not to be capital receipts

13. Any sums received by a local authority in respect of a payment such as is mentioned in section 58(1)(c) shall not be capital receipts unless the payment is made by the person to whom a grant or financial assistance is or was made by the local authority.

Reserved part of capital receipts

14.—(1) In respect of local authorities in England, the reserved part of a capital receipt for the purposes of section 59(3) shall, in the case of capital receipts of a description mentioned in column 1 of Part I of Schedule 1 to these Regulations, be the percentage specified in column 2 of Part I of that Schedule.

(2) In respect of local authorities in Wales, the reserved part of a capital receipt for the purposes of section 59(3) shall, in the case of capital receipts of a description mentioned in column 1 of Parts I and II of Schedule 1, be the percentage specified in column 2 of Parts I and II of that Schedule.

(1) 1972 c. 70.

(2) 1973 c. 37.

(3) 1963 c. 33. Paragraph (a) and part of paragraph (b) of section 23(3) were repealed with savings by Schedule 17 to the Local Government Act 1985 (c. 51).

Capital receipts to be treated as reduced: disposal of recently acquired interest

15.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) to (6) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 16(2), are specified where—

- (a) the disposal takes place either not later than two years after the date on which the local authority disposing of the interest acquired an interest in the land or, if the authority entered into a contract for the disposal within that period, not later than three years after that interest was acquired;
- (b) the acquired interest referred to in sub-paragraph (a) above was either the freehold or a lease which was acquired on or after 1st January 1989;
- (c) if the acquired interest was the freehold, the disposal is of that freehold or is of a lease to which paragraph (3) below applies and which at the time of the disposal is for a term of which 125 years or more are unexpired; and
- (d) if the acquired interest was a lease, the disposal is of—
 - (i) the freehold;
 - (ii) the acquired interest; or
 - (iii) a lease to which paragraph (3) below applies and which at the time of the disposal is for an unexpired term of 125 years or more or for an unexpired term greater than the unexpired term of the acquired interest.

(3) This paragraph applies to any lease where, at the time of the disposal of the lease, the local authority estimate that not less than 90 per cent. of the capital value of the lease has been or is to be received by the authority within one year of the date of the disposal.

(4) For the purposes of paragraph (1) above, the amount of the reduction is the aggregate of—

- (a) if the local authority entered into a credit arrangement for the purpose only of acquiring the interest referred to in paragraph (2)(a) above, the initial cost of the credit arrangement;
- (b) the amount of any consideration given by the authority in respect of the acquisition of that interest other than any consideration taken into account by virtue of sub-paragraph (a) above; and
- (c) the amount of any costs incurred by the authority in connection with that acquisition or the disposal, other than the amount of any costs taken into account by virtue of sub-paragraph (a) above.

(5) Where an authority dispose successively of two or more interests in the relevant land, the amount of the reduction under this regulation may be applied as respects the receipts derived from any of those disposals.

(6) If—

- (a) before the time any receipt is received, an amount falls to be set aside by the authority under section 61(4) or paragraph 7(2) of Schedule 3 to the Act in respect of any disposal of any interest in the relevant land; and
- (b) in accordance with regulation 20(7), the amount of the notional capital receipt is treated as reduced by an amount determined by reference to this regulation;

there shall be deducted from the amount which, apart from this paragraph, would be the amount of the reduction determined in accordance with this regulation, the amount by which the notional capital receipt is so treated as reduced.

Capital receipts to be treated as reduced: disposal of certain dwellings

16.—(1) As respects local authorities in England, capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (3) to (5) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal of an interest in a dwelling are specified where the disposal is of—

- (a) the freehold;
- (b) a lease to which regulation 15(3) applies and which at the time of the disposal is for a term of which 125 years or more are unexpired;
- (c) a shared ownership lease; or
- (d) if at the time of the disposal the authority do not own the freehold of the dwelling or a lease of the dwelling for a term of which 125 years or more are unexpired, the authority's interest in the dwelling;

provided that the authority have not at any time before the disposal granted a lease of the dwelling, other than a shared ownership lease, and that the dwelling has not been occupied under a secure tenancy.

(3) For the purposes of paragraph (1) above, the amount of the reduction is the aggregate of—

- (a) where the dwelling was acquired by the authority, the cost of the acquisition of the interest or interests in the dwelling;
- (b) where the dwelling was constructed by or for the authority,—
 - (i) the cost of its construction; and
 - (ii) if the land on which the dwelling was constructed was acquired by the authority on or after the relevant date, the cost of the acquisition of the land;
- (c) where the dwelling was provided by the conversion by or for the authority of a building or part of a building,—
 - (i) the cost of the conversion; and
 - (ii) if the building or part of the building was acquired by the authority on or after the relevant date, the cost of the acquisition of the building or part of the building;
- (d) the cost of any enhancement of the dwelling after its acquisition, construction or provision, as the case may be, by or for the authority; and
- (e) the amount of any costs incurred by the authority in connection with the disposal.

(4) In paragraph (3) above, the cost of the acquisition, construction, conversion or enhancement, as the case may be, is the aggregate of—

- (a) if the authority entered into a credit arrangement for the purposes only of the acquisition, construction, conversion or enhancement, as the case may be, the initial cost of the credit arrangement; and
- (b) the amount of any consideration given or costs incurred by the authority in respect of the acquisition, construction, conversion or enhancement, as the case may be, other than any consideration taken into account by virtue of sub-paragraph (a) above.

(5) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.

(6) In this regulation,—

“dwelling” and “shared ownership lease” have the meaning given by regulation 6(6);

“relevant date” means the date three years before the date of the disposal or, if there is more than one disposal falling within paragraph (2) above relating to a dwelling, the first such disposal;

“secure tenancy” has the same meaning as in Part IV of the Housing Act 1985.

Capital receipts to be treated as reduced: disposal of recently improved land

17.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (3) and (4) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal by a local authority of an interest in land, other than any 1980 Act receipts and any capital receipts of a description specified, as respects local authorities in England, in regulation 16(2), are specified where—

- (a) the interest is of a description mentioned in sub-paragraph (a), (b), (c) or (d), as the case may be, of regulation 16(2), but, for the purposes of this regulation, the references in sub-paragraph (d) to the dwelling are to be construed as references to the land; and
- (b) the authority have incurred expenditure on the enhancement of the land at any time during the relevant financial years.

(3) For the purposes of paragraph (1) above, the amount of the reduction is the aggregate of—

- (a) if during the relevant financial years the authority entered into a credit arrangement for the purpose only of the enhancement of the land, the initial cost of the credit arrangement; and
- (b) the amount of any expenditure incurred by the authority on the enhancement of the land during the relevant financial years, other than any expenditure taken into account by virtue of sub-paragraph (a) above.

(4) Paragraph (5) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as it applies in relation to the amount of any reduction determined in accordance with regulation 15.

(5) Any reference in this regulation to the enhancement of land does not include—

- (a) the reclamation or laying out of the land; or
- (b) the construction, preparation or replacement of roads, buildings or other structures.

(6) In this regulation, the “relevant financial years” means the financial year in which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, takes place, and the two financial years preceding that year.

Capital receipts to be treated as reduced: replacement of assets

18.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) to (10) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal by a local authority of an interest in land are specified where—

- (a) the interest is of a description mentioned in sub-paragraph (a), (b) or (d), as the case may be, of regulation 16(2) but, for the purposes of this regulation, the references in sub-paragraph (d) to the dwelling are to be construed as references to the land;
- (b) either—

- (i) the land, immediately before its disposal, is used for a purpose mentioned in Part I of Schedule 2 to these Regulations, or is of a description mentioned in column 1 of Part II of that Schedule; or
 - (ii) if the disposal is made pursuant to a compulsory purchase order, the land has been held for the purposes of Part II of the Housing Act 1985 (provision of housing) for a period of two years or more ending at the time of the disposal or the time of entry by the acquiring authority, whichever is the earlier; and
- (c) paragraph (3) below applies.
- (3) This paragraph applies where on or after 1st January 1989 the authority decided, at any time during the period of three years ending at the time of the disposal or, if it is earlier, the time at which the capital receipts are received,—
- (a) to dispose of the interest in the land;
 - (b) either to acquire another interest in land (referred to in this regulation as “the new land”) or to carry out works to a building (referred to in this regulation as “the new building”), or both; and
 - (c) either—
 - (i) in the case of land used for a purpose mentioned in Part I of Schedule 2 to the Regulations, to use the new land or the new building for the same purpose as the land disposed of by the authority; or
 - (ii) in the case of land which is of a description mentioned in column 1 of Part II of Schedule 2 to the Regulations, to use the new land or the new building for the corresponding purpose or one of the corresponding purposes mentioned in column 2 of Part II of that Schedule in respect of land of that description; or
 - (iii) in the case of land of a description mentioned in paragraph 2(b)(ii) above, to use the new land or the new building for the purposes of Part II of the Housing Act 1985.
- (4) For the purposes of paragraph (1) above, the amount of the reduction, is subject to paragraph (9) below, the aggregate of—
- (a) where the local authority acquire an interest in the new land, the cost of the new land; and
 - (b) where—
 - (i) the local authority carry out works to the new building or the whole or part of the consideration received by the authority for the disposal is the carrying out of works to the new building, and
 - (ii) there was a building on the land disposed of by the authority at the time of the disposal,the cost of the new building.
- (5) For the purposes of paragraph (4) above, the cost of the new land or the new building is, subject to paragraphs (7) to (9) below, the aggregate of—
- (a) if the authority, in accordance with their decision referred to in paragraph (3) above, have entered into a credit arrangement for the purposes only of the acquisition of an interest in the new land or the carrying out of works to the new building, the initial cost of the credit arrangement; and
 - (b) the amount of any consideration given or which falls to be given or costs incurred by the authority, in accordance with their decision referred to in paragraph (3) above, in respect of the acquisition of an interest in the new land or the carrying out of works to the new building, other than any consideration taken into account by virtue of sub-paragraph (a) above.

(6) In paragraph (5)(b) above, the amount of any consideration which falls to be given by the authority in any financial year beginning after the time of the disposal shall be determined by the formula in regulation 5(2) as if—

- (a) the references to consideration were references to consideration which falls to be given by the authority; and
- (b) the references to the lease and the financial year in which the authority became the lessees were references to the acquisition of an interest in the new land or the carrying out of works to the new building and to the financial year in which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, took place.

(7) If there is a building on the new land, there shall be excluded from the cost of the new land such part of the cost as is referable to the building unless there was a building on the land disposed of by the authority at the time of the disposal.

(8) If the cost of the new building and such part of the cost of the new land as is referable to an existing building is or will exceed the reasonable cost of an equivalent replacement of a building or buildings (“the former building”) on the land disposed of by the authority at the time of the disposal, the cost of the new land or the new building shall be the aggregate of the amounts described in paragraph (5) above, but calculated on the basis of an estimate of the consideration or costs which would have been given or incurred by the authority if the cost of the new building and such part of the cost of the new land as is referable to an existing building had been equal to the reasonable cost of an equivalent replacement of the former building.

(9) Paragraphs (4)(b)(ii), (7) and (8) above shall not apply in the case of capital receipts derived from the disposal of an interest in land where the land is used immediately before its disposal for the purpose mentioned in paragraph 9 of Part I of Schedule 2 to these Regulations.

(10) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.

(11) For the purposes of this regulation,—

- (a) any reference to the carrying out of works to a building includes the construction of the building; and
- (b) land or a building is not used for the same or a corresponding purpose unless it is used for the benefit of the inhabitants of all or part of the same area as the land disposed of by the local authority.

(12) In this regulation, the “time of the disposal” means the time at which the disposal of the interest in the land, or if there is more than one disposal falling within paragraph (2) above relating to the land, the first such disposal, takes place.

Capital receipts to be treated as reduced: disposal of former new town assets

19.—(1) Capital receipts of a description specified in paragraph (2) below shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraphs (4) and (5) below.

(2) For the purposes of paragraph (1) above, capital receipts derived from a disposal by a local authority of any dwelling are specified where—

- (a) the dwelling was acquired by the authority from a new town corporation;

- (b) the dwelling was disposed of by the new town corporation to the authority by virtue of section 36 of the New Towns Act 1981(4) or in pursuance of any regulations made under section 172(1); and
- (c) the whole or part of the consideration falling to be given by the authority to the new town corporation in respect of the acquisition falls to be given on the disposal by the authority of the dwelling.

(3) In paragraph (2) above, “new town corporation” and “dwelling” have the same meaning as in section 172.

(4) For the purposes of paragraph (1) above, the amount of the reduction in the case of capital receipts derived from any disposal shall be the amount of any consideration which falls to be given by the authority as mentioned in paragraph (2)(c) above.

(5) Paragraphs (5) and (6) of regulation 15 shall apply in relation to the amount of any reduction determined in accordance with this regulation as they apply in relation to the amount of any reduction determined in accordance with regulation 15.

Capital receipts not wholly in money paid to the authority

20.—(1) In this regulation, subject to paragraphs (7) and (8) below, “the notional capital receipt” means—

- (a) in relation to any consideration to which section 61 applies, the amount of the notional capital receipt determined in accordance with subsection (2) of that section; and
- (b) in relation to any consideration falling within paragraph 6 of Schedule 3 to the Act, the amount of the capital receipt referred to in paragraph 7(3) of that Schedule.

(2) Where a local authority receive consideration to which section 61 applies or which falls within paragraph 6 of Schedule 3 to the Act (referred to in this regulation as “non-monetary consideration”), the authority shall set aside an amount which, subject to paragraphs (3), (4) and (6) below, is equal to the amount which, under section 59, would be the reserved part of the notional capital receipt.

(3) In the case of non-monetary consideration which is—

- (a) received by a local authority in respect of a disposal of land which immediately before the disposal had not been used for a period of two years for the purpose for which it was held by the authority; and
- (b) consists of land which immediately before it is received is land on which there are no buildings or other structures;

the reserved part of the notional capital receipt shall be nil.

(4) In the case of non-monetary consideration which is received by a local authority in respect of the disposal of an area of land and which consists of—

- (a) the grant of a right to nominate persons either to acquire the freehold of or a leasehold interest in dwellings on land within that area or to occupy such dwellings; or
- (b) an obligation to restrict the acquisition of the freehold of or a leasehold interest in dwellings on land within that area or the occupation of such dwellings to persons of a particular description;

the reserved part of the notional capital receipt shall be nil.

(5) In paragraph (4) above, “dwelling” has the meaning given by regulation 6(6).

(6) In the case of non-monetary consideration which is received by a local authority in respect of the assignment or surrender of a leasehold interest in any land and which consists of a promise

not to sue for breach of a repairing covenant in the lease, the reserved part of the notional capital receipt shall be nil.

(7) The amount of the notional capital receipt shall be treated as reduced for the purposes of section 61(4) or, as the case may be, paragraph 7(3) of Schedule 3 to the Act by an amount which, subject to paragraph (8) below is the amount which, if the consideration had been wholly in money paid to the authority, would be determined in accordance with regulation 15, 16, 18 or 19, as the case may be, as the amount of any reduction of the capital receipt.

(8) Where the reserved part of a capital receipt falls to be set aside in respect of a disposal under section 59(1) at or before the time at which an amount falls to be set aside in respect of that disposal under section 61(4) or, as the case may be, paragraph 7(2) of Schedule 3 to the Act, there shall be deducted from the amount which, apart from this paragraph, would be the amount of the reduction in accordance with paragraph (7) above, the amount of any reduction determined in accordance with regulation 15, 16, 18 or 19, as the case may be, in relation to that capital receipt.