

2004 No. 2044

LOCAL GOVERNMENT, ENGLAND AND WALES

**The Local Authorities (Capital Finance) (Further Consequential
and Saving Provisions) Order 2004**

<i>Made</i> - - - -	<i>29th July 2004</i>
<i>Laid before Parliament</i>	<i>5th August 2004</i>
<i>Coming into force</i> - -	<i>1st October 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 123(1) and (2) and 127(3) of the Local Government Act 2003(a) hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Local Authorities (Capital Finance) (Further Consequential and Saving Provisions) Order 2004 and shall come into force on 1st October 2004.

Interpretation

2. In this Order—

“the 1995 MRP Regulations” means the Local Government Changes for England (Payments to Designated Authorities) (Minimum Revenue Provision) Regulations 1995(b);

“the 1996 Order” means the Local Authorities (Contracting Out of Investment Functions) Order 1996(c);

“the 2001 Regulations” means the Uncertificated Securities Regulations 2001(d); and

“the 2003 Regulations” means the Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003(e).

The Local Government Changes for England (Capital Finance) Regulations 1995

3. The following provisions shall be revoked—

(a) the Local Government Changes for England (Capital Finance) Regulations 1995(f);

(b) regulation 4 of the Local Government Changes for England (Miscellaneous Provision) Regulations 1995 (amendment of Regulations: capital finance)(g); and

(a) 2003 c.26.

(b) S.I. 1995/2895, amended by S.I. 1998/1937 and 2001/3649.

(c) S.I. 1996/1883, amended by S.I. 2001/3649.

(d) S.I. 2001/3755, amended by S.I. 2003/1398 and 2003/1633.

(e) S.I. 2003/1633.

(f) S.I. 1995/798, amended by S.I. 1995/1748 and 1996/2826.

(g) S.I. 1995/1748.

- (c) the Local Government Changes for England (Capital Finance) (Amendment) Regulations 1996(a).

The Local Government Changes for England (Payments to Designated Authorities) (Minimum Revenue Provision) Regulations 1995

4.—(1) Subject to paragraphs (2) to (4), the following provisions shall be revoked—

- (a) the 1995 MRP Regulations;
- (b) regulation 12(2) of the Local Authorities (Capital Finance) (Amendment No. 3) Regulations 1998 (revocation)(b); and
- (c) article 518 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (meaning of “the reference banks”)(c).

(2) Subject to paragraphs (3) and (4), where, before the date of the coming into force of this Order—

- (a) paragraph (1) of regulation 4 of the 1995 MRP Regulations (liability of participant authorities to make payments to designated authorities) applied; and
- (b) sub-paragraph (a)(i) or (ii), or sub-paragraph (b), of paragraph (2) of that regulation applied,

the 1995 MRP Regulations shall continue to have effect on and after the date of the coming into force of this Order, as if the revocations in paragraph (1) of this article had not been made, for the purposes of any payments to be made by a participant authority to a designated authority by virtue of the 1995 MRP Regulations to the extent not already paid.

(3) In regulation 2 of the 1995 MRP Regulations (interpretation), for sub-paragraph (d) of paragraph (2), there shall be substituted—

“(d)except where the context otherwise requires, any expression which was also used in Part IV of the 1989 Act (revenue accounts and capital finance of local authorities)(d) before 1st April 2004, shall have the same meaning as that expression had in that Part immediately before 1st April 2004.”.

(4) In the Schedule to the 1995 MRP Regulations (calculation of relevant components)—

- (a) in sub-paragraph (1) of paragraph 1 of Part I (interpretation), for the definition of “commutation adjustment”, there shall be substituted—

““the 2003 Regulations” means the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003(e);

“additional amount” has the same meaning as in regulation 28(2) of the 2003 Regulations (calculation of minimum revenue provision);

“commutation adjustment” means an amount calculated for the current year in accordance with the formula in regulation 29(1) of the 2003 Regulations (commutation adjustment);”;

- (b) in paragraph 2 of Part II (component in respect of principal)—

- (i) for the definition of E, there shall be substituted—

“E is that part of the additional amount, calculated by the designated authority for the current year, which is in respect of any relevant housing SCAs or, as the case may be, relevant non-housing SCAs;”;

(a) S.I. 1996/2826.

(b) S.I. 1998/1937.

(c) S.I. 2001/3649.

(d) 1989 c. 42; relevant provisions in Part IV were repealed on 1st April 2004 by section 127 of, and paragraphs 28 and 29 of Schedule 7 and Part 1 of Schedule 8 to, the Local Government Act 2003.

(e) S.I. 2003/3146; amended by S.I. 2004/534.

- (ii) in paragraph (i) of the definition of F, “relevant housing advances or, as the case may be,” shall be omitted; and
- (iii) in paragraph (ii) of the definition of F, “relevant non-housing advances or, as the case may be,” shall be omitted;
- (c) for paragraph 3 of Part II, there shall be substituted—
 - “3. Where, for the current year, the amount calculated by the designated authority as the minimum revenue provision, in accordance with the formula in regulation 28(1) of the 2003 Regulations, is reduced by the designated authority’s commutation adjustment, the amount of the component in respect of principal calculated for that year, in accordance with paragraph 2, shall be reduced by such amount in respect of that commutation adjustment as the designated authority and the participant authority may agree or, in default of such agreement, as the designated authority may determine.”; and
- (d) in paragraph 5 of Part III (component in respect of interest)—
 - (i) for the definition of L, there shall be substituted—
 - “L is the total of those parts of the additional amounts, calculated by the designated authority for the current year and for subsequent financial years, which are in respect of any relevant housing SCAs or, as the case may be, relevant non-housing SCAs;”;
 - (ii) in paragraph (i) of the definition of M, “relevant housing advances or, as the case may be,” shall be omitted; and
 - (iii) in paragraph (ii) of the definition of M, “relevant non-housing advances or, as the case may be,” shall be omitted.

The Local Authorities (Contracting Out of Investment Functions) Order 1996

- 5.—**(1) In article 2 of the 1996 Order (interpretation of Part), the definition of “the 1989 Act” shall be omitted.
- (2) In article 4 of the 1996 Order (scope of authorisation)—
- (a) in paragraph (1), the definition of “approved investment” shall be omitted;
 - (b) in paragraph (2)—
 - (i) at the beginning, there shall be inserted “Subject to paragraph (2A),”;
 - (ii) “in an approved investment” shall be omitted; and
 - (iii) sub-paragraphs (b) and (c) shall be revoked;
 - (c) after paragraph (2), there shall be inserted—
 - “(2A) The investment referred to in paragraph (2) must be an investment which, if made by the local authority, would be permitted by virtue of section 12 of the Local Government Act 2003 (power to invest).”;
 - (d) in paragraph (4)—
 - (i) at the beginning, there shall be inserted “Subject to paragraph (4A),”;
 - (ii) “in securities” and “, apart from any sum which is held on trust for any beneficiaries or any purposes” shall be omitted;

and
 - (e) after paragraph (4), there shall be inserted—

“(4A) The investment referred to in paragraph (4) must be an investment which, if made by the parish or community council, would be permitted by virtue of section 12 of the Local Government Act 2003 (power to invest)(a).”.

Uncertificated Securities Regulations 2001

6.—(1) In regulation 3 of the 2001 Regulations (interpretation)—

- (a) the definitions of “the 1989 Act”, “the 1990 Regulations” and “dematerialised loan instrument” shall be omitted;
- (b) in the definition of “local authority”, for paragraph (b), there shall be substituted—
 - “(b)in relation to a security referred to in paragraph (b) of the definition of “local authority security”, has the same meaning as in section 23 of the Local Government Act 2003 (“local authority”);”;
- (c) in the definition of “local authority security”, sub-paragraph (ii) of paragraph (a) shall be revoked; and
- (d) in paragraph (3)(a)—
 - (i) at the end of paragraph (ii), “; or” shall be omitted; and
 - (ii) paragraph (iii) shall be revoked.

(2) In regulation 21 of the 2001 Regulations (entries on registers and records in respect of general public sector securities)—

- (a) in paragraph (3)—
 - (i) at the end of sub-paragraph (b), “; or” shall be omitted; and
 - (ii) sub-paragraph (c) shall be revoked;and
- (b) paragraph (6) shall be revoked.

(3) In paragraph 19 of Schedule 4 to the 2001 Regulations (keeping of registers and records of participating securities), sub-paragraph (2A) shall be revoked.

Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003

7.—(1) In the 2003 Regulations—

- (a) paragraphs (b), (e) and (g) of regulation 3 and paragraph (1)(b) of regulation 4 (eligible debt securities - interpretation);
- (b) paragraphs (1)(b), (3) and (4)(c) of regulation 8 (entries on registers and records in respect of general local authority securities);
- (c) paragraphs (5) and (6) of regulation 14 (eligible Treasury bills etc);
- (d) Part 3 of Schedule 1 (dematerialised loan instruments); and
- (e) paragraph 2(f) (eligible Treasury bills), paragraph 4 (dematerialised loan instruments) and paragraph 17 (modification of Local Government Act 1972) of Schedule 2,

shall be revoked.

(2) Paragraphs 2(f) and 4(b) of Schedule 2 to the 2003 Regulations shall continue to have effect on and after the date of the coming into force of this Order, as if those paragraphs had not been revoked by virtue of paragraph (1)(e), for the purposes of the definition of “approved investments”

(a) Section 12 of the Local Government Act 2003 applies to parish and community councils by virtue of section 19 of that Act.

in section 66(1) of the Local Government and Housing Act 1989 (interpretation of Part IV)(a).

(3) Paragraph 4(a) of Schedule 2 to the 2003 Regulations shall continue to have effect on and after the date of the coming into force of this Order, as if that paragraph had not been revoked by virtue of paragraph (1)(c), for the purposes of section 40 of the Local Government and Housing Act 1989 (capital purposes)(b).

Signed by authority of the First Secretary of State

29th July 2004

Keith Hill
Minister of State
Office of the Deputy Prime Minister

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- (a) Section 66 continues to have effect, for the purposes of certain transitional provisions and savings, by virtue of paragraph 1 of the Schedule to the Local Government Act 2003 (Commencement No. 1 and Transitional Provisions and Savings) Order 2003 (S.I. 2003/2938 (C. 107)) and paragraph 2 of Schedule 2 to the Local Government Act 2003 (Commencement) (Wales) Order 2003 (S.I. 2003/3034 (W. 282) (C. 113)).
- (b) Section 40 continues to have effect in relation to expenditure incurred by a local authority before 1st April 2004 by virtue of paragraph 2 of the Schedule to S.I. 2003/2938 (C. 107) and paragraph 2 of Schedule 2 to S.I. 2003/3034 (W. 282) (C. 113).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on Part 1 of the Local Government Act 2003 (capital finance etc and accounts) (“the 2003 Act”) and related provisions in that Act. Part 1 of the 2003 Act replaces the old capital finance system under Part IV of the Local Government and Housing Act 1989 (“the 1989 Act”) that was repealed on 1st April 2004. This Order extends to England and Wales.

Article 3 revokes the Local Government Changes for England (Capital Finance) Regulations 1995, and provisions that amended those Regulations. They made provision of general application, for the purposes or in consequence of orders effecting local government changes in England (under Part II of the Local Government Act 1992), with respect to the application of Part IV of the 1989 Act and regulations made under Part IV.

Article 4 revokes the Local Government Changes for England (Payments to Designated Authorities) (Minimum Revenue Provision) Regulations 1995, and provisions that amended those Regulations. This is subject to savings for the purposes of any outstanding payments to be made by a participant authority to a designated authority under those Regulations. The Regulations, to the extent saved, are amended to take into account the new provisions in and under Part 1 of the 2003 Act.

Article 5 amends the Local Authorities (Contracting Out of Investment Functions) Order 1996 to take into account the new provisions in and under Part 1 of the 2003 Act. In particular, references to approved investments are omitted and there is a requirement for investments to be those that a local authority is permitted to make under section 12 of the 2003 Act.

Articles 6 and 7 amend the Uncertificated Securities Regulations 2001 and the Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003. These Regulations make provision for various financial instruments to be held and transferred by electronic means rather than in paper form. References in these Regulations to the 1989 Act and secondary legislation made under the 1989 Act, in particular those regarding loan instruments which had to be registered under the 1989 Act, are revoked.

In article 7, savings are made in relation to the definition of “approved investments”, so that it continues to include uncertificated units of eligible Treasury bills and uncertificated units of a dematerialised loan instrument, for the purposes of transitional provisions and savings in respect of Part IV of the 1989 Act. There is also a saving so that a reference to a loan instrument includes a reference to uncertificated units of a dematerialised loan instrument. This saving is for the purposes of the meaning of expenditure for capital purposes (which includes expenditure of a local authority that is incidental to the issue of a loan instrument) under section 40 of the 1989 Act. Section 40 still has effect in relation to expenditure incurred before 1st April 2004.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of businesses, charities or voluntary bodies.

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