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STATUTORY INSTRUMENTS

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**2004 No. 533**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

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

<i>Made</i>	- - - -	<i>1st March 2004</i>
<i>Laid before Parliament</i>		<i>8th March 2004</i>
<i>Coming into force</i>	- -	<i>1st April 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 123(1) and (2), 127(3) and 128(9) of the Local Government Act 2003<sup>(1)</sup>, hereby makes the following Order:

**Citation and commencement**

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

**Interpretation**

2. In this Order—

- “the 1972 Act” means the Local Government Act 1972<sup>(2)</sup>;
- “the 1989 Act” means the Local Government and Housing Act 1989<sup>(3)</sup>;
- “the 2003 Act” means the Local Government Act 2003; and
- “the 1995 Order” means the Local Authorities (Companies) Order 1995<sup>(4)</sup>.

**Initial and subsequent cost of credit arrangements**

3.—(1) Section 49 of the 1989 Act (initial and subsequent cost of credit arrangements), so far as relating to England, shall continue to have effect until but not including 1st October 2004, as if it had not ceased to have effect or been repealed by virtue of the 2003 Act<sup>(5)</sup>, for the purposes

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(1) 2003 c. 26.

(2) 1972 c. 70.

(3) 1989 c. 42.

(4) S.I.1995/849; amended by S.I. 1996/621, 2001/722, 2001/3042, 2001/3649, 2002/2118 and 2002/2298.

(5) See section 127 of, and paragraph 29 of Schedule 7 and Schedule 8 to, the 2003 Act. In relation to Wales, the repeal of section 49 of the 1989 Act is only for the purpose of and in relation to financial years beginning on or after 1st April 2004 (see S.I. 2003/3034 (W.282)).

of calculating the cost, in relation to a financial year beginning before 1st April 2004, of a credit arrangement which came into being before 1st April 2004.

(2) Sections 39 (application of Part IV), 48(7) (credit arrangements), 52 (transitional credit arrangements) and 66 (interpretation of Part IV) of the 1989 Act shall continue to have effect as if those sections had not ceased to have effect or been repealed by virtue of the 2003 Act, for the purposes of the savings in paragraph (1).

### **Keeping of the Housing Revenue Account – debits to the Account**

4. In Part II of Schedule 4 to the 1989 Act (keeping of the Housing Revenue Account – debits to the Account), for item 2 (expenditure for capital purposes) there shall be substituted—

*“Item 2: capital expenditure*

Any expenditure of the authority in respect of houses and other property within the account—

- (a) which is capital expenditure for the year; and
- (b) which the authority decide should be charged to a revenue account for the year.

In this item “capital expenditure” means expenditure which is capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003 (capital finance)(6).”.

### **Levy on disposals**

5. In section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 (levy on disposals)(7)—

- (a) in subsection (3), for the definition of “CR”, there shall be substituted—

“CR = the aggregate of—

- (i) any sums received by the authority in respect of the disposal which are capital receipts for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003 (capital finance etc) and do not fall within a description determined by the Secretary of State; and
- (ii) any capital receipts which the authority is treated as having by virtue of the application, in relation to the disposal, of regulations under section 10 of the Local Government Act 2003 (power to make provision about disposal consideration not received by the person making the disposal or not received in the form of money)(8).”;

- (b) subsections (7), (8) and (9) shall be repealed; and
- (c) in subsection (12), the words “or regulations” shall be omitted.

### **Statement of proposed expenditure etc**

6. In section 86 of the Government of Wales Act 1998 (statement of proposed expenditure etc)(9), for subsection (3) there shall be substituted—

“(3) The statement shall also include such other information as the Assembly considers appropriate.”.

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(6) See section 16 of the 2003 Act and, in relation to England, Part 5 of S.I. 2003/3146 and, in relation to Wales, Part 4 of S.I. 2003/3239 (W. 319).

(7) 1993 c. 28; section 136 was amended by section 109 of the Finance Act 1997 (c. 16).

(8) See, in relation to England, regulation 22 of S.I. 2003/3146 and, in relation to Wales, regulation 15 of S.I. 2003/3239 (W. 319).

(9) 1998 c. 38.

### Capital finance: parish and community councils and charter trustees

- 7.—(1) Article 13 of the Charter Trustees Order 1974 (borrowing)(**10**) shall be revoked.
- (2) Regulation 14 of the Charter Trustees Regulations 1996 (borrowing)(**11**) shall be revoked.
- (3) Paragraph 1 of Schedule 1 to the Local Government and Housing Act 1989 (Commencement No. 5 and Transitional Provisions) Order 1990 (savings relating to Part IV of the 1989 Act)(**12**) shall be revoked.
- (4) In section 2(3) of the Public Works Loans Act 1965 (new form of local loan and automatic charge for securing it)(**13**) and in section 2(2) of the Public Works Loans Act 1967 (amendments as to local loans and automatic charges under section 2 of the Act of 1965)(**14**), before “the Local Government Act 2003”, in each case where those words appear, there shall be inserted “, or paragraph 2 of Schedule 1 to,”.
- (5) Any approval given to charter trustees, a parish council or a community council by the Secretary of State under paragraph 1 of Schedule 13 to the 1972 Act (borrowing by local authorities)(**15**), which is extant immediately before 1st April 2004, shall be treated, on and after that date, as if it were an approval given to those charter trustees or that council, as the case may be, by the appropriate person under paragraph 2(2) of Schedule 1 to the 2003 Act (borrowing).
- (6) Subject to section 127(4) of the 1972 Act (disposal of land held by parishes and communities), any capital money received by a parish council or a community council before 1st April 2004 on a disposal of land under Part VII of the 1972 Act (miscellaneous powers of local authorities), which, before that date, has not been applied in accordance with section 153(1) of the 1972 Act (application of capital money on disposal of land)(**16**), shall be treated, on and after that date, as if it were a capital receipt for the purposes of Chapter 1 of Part 1 of the 2003 Act (capital finance etc).
- (7) A sum received by a parish council or a community council which, apart from this paragraph, would be treated as a capital receipt by virtue of paragraph (6), shall not be treated for the purposes of Chapter 1 of Part 1 of the 2003 Act as a capital receipt if the aggregate of all sums received or to be received by the council in respect of the disposal of the land, for which the sum is paid, does not exceed £10,000.
- (8) Subject to paragraph (9), section 13(1) and (2) of the 2003 Act (security for money borrowed etc) shall not apply to any mortgage or charge of any property which was effected by charter trustees, a parish council or a community council before 1st April 2004.
- (9) Paragraph (8) shall not apply in relation to any further money borrowed, or otherwise owed, by the council or trustees, as the case may be, by virtue of an extension of the mortgage or charge on or after 1st April 2004.

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(10) S.I. 1974/176.

(11) S.I. 1996/263; there are amendments to these Regulations that are not relevant to this Order.

(12) S.I. 1990/431; amended by S.I. 1990/762. The savings were in respect of repeals, specified in Schedule 12 to the 1989 Act, in section 6 of the Public Works Loans Act 1964 (c. 9), sections 101, 123, 153 and 172 of, and Schedule 13 to, the 1972 Act, Schedule 7 to the Local Government Act 1974 (c. 7), section 28 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57), section 5 of the Local Government Finance Act 1982 (c. 32), section 75 of the Local Government Act 1985 (c. 51) and section 177(4) of the Education Reform Act 1988 (c. 40). There were also savings in respect of amendments, in Schedule 11 to the 1989 Act, to section 2 of the Public Works Loans Act 1965 (c. 63) and section 2 of the Public Works Loans Act 1967 (c. 61).

(13) Section 2(3) was amended by section 194 of, and paragraph 6 of Schedule 11 to, the 1989 Act and by paragraph 2(a) of Schedule 7 to the 2003 Act. There are other amendments to section 2 that are not relevant to this Order.

(14) Section 2(2) was amended by section 194 of, and paragraph 7 of Schedule 11 to, the 1989 Act and by paragraph 3 of Schedule 7 to the 2003 Act.

(15) Paragraph 1 of Schedule 13 was amended by section 190(1) of, and paragraph 43 of Schedule 25 to, the Water Act 1989 (c. 15) and section 102(2) of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

(16) Section 153 was amended by section 132(4) of the Housing Act 1988 (c. 50), section 84 of, and paragraph 17 of Schedule 14 to, the Local Government Act 1985, and section 237 of, and Part I of Schedule 13 to, the Education Reform Act 1988 (c. 40).

### **Passenger Transport Executives (Capital Finance) Order 1990**

8. The Passenger Transport Executives (Capital Finance) Order 1990(17) shall continue to have effect on and after 1st April 2004, as if it had not been revoked on that date by virtue of the repeal of section 39 of the 1989 Act (application of Part IV)(18), for the purposes of any financial year beginning before that date.

### **Local Authorities (Companies) Order 1995**

9.—(1) Subject to paragraphs (2) to (5), article 8 (provision of financial information to authority) and Part V (capital finance) of the 1995 Order shall be revoked on 1st April 2004 to the extent not already revoked by virtue of the repeal of section 39(5) to (7) of the 1989 Act (application of Part IV) on that date(19).

(2) Article 8 of the 1995 Order shall continue to have effect on and after 1st April 2004, as if it had not been revoked on that date, for the purposes of any information required by an authority in so far as it relates to any financial year beginning before 1st April 2004.

(3) Any sum, consideration, credit transaction, variation, liabilities or reduction in liabilities which is or are treated by virtue of paragraph (1) of article 13 of the 1995 Order (receipts, contracts and liabilities of regulated companies) as having been received, entered into, agreed, incurred or, as the case may be, made by the relevant authority during a financial year beginning before 1st April 2004 shall cease to be so treated for the purposes of any financial year beginning on or after that date.

(4) Article 14 (application of Part IV: requirement for credit cover) shall continue to have effect until but not including 1st October 2004, as if it had not been revoked on 1st April 2004, for the purposes of—

- (a) any determination made under paragraph (5) in relation to the current year(20) beginning on 1st April 2002; and
- (b) any designation made under paragraph (8) in relation to credit cover provision having effect for a financial year beginning before 1st April 2004.

(5) Article 15 (increase in credit approval) of the 1995 Order shall continue to have effect until but not including 1st October 2004, as if it had not been revoked on 1st April 2004, in relation to a relevant credit approval having effect for a financial year beginning before 1st April 2004.

(6) Part V of the 1995 Order shall continue to have effect until but not including 1st October 2004, as if it had not been revoked on 1st April 2004, for the purposes of the savings in paragraphs (4) and (5) above.

(7) Part IV of the 1989 Act (revenue accounts and capital finance of local authorities) shall continue to have effect until but not including 1st October 2004, as if it had not ceased to have effect or been repealed by virtue of the 2003 Act(21), for the purposes of the savings in paragraphs (4) and (5) above.

### **Public Airport Companies (Capital Finance) Order 1996**

10. The Public Airport Companies (Capital Finance) Order 1996(22) shall continue to have effect on and after 1st April 2004, as if it had not been revoked on that date by virtue of the repeal of section 39 of the 1989 Act (application of Part IV), for the purposes of any financial year beginning before that date.

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(17) S.I. 1990/720, as amended by S.I. 1992/396, 1995/1431, 1996/3058, 1997/253, and 1999/3310.

(18) See section 127 of, and paragraph 29 of Schedule 7 and Schedule 8 to, the 2003 Act.

(19) The 1995 Order is made under sections 39(5) to (7), 67(4), 70(1) and (5) and 71(1)(b) of the 1989 Act.

(20) See paragraph (1) of article 14 of the 1995 Order for the meaning of “current year”.

(21) See section 127 of, and paragraph 29 of Schedule 7 and Schedule 8 to, the 2003 Act.

(22) S.I. 1996/604, as amended by S.I. 1999/554, 1999/2125 and 2003/1035.

### **Meaning of private finance transaction**

11. Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 (meaning of private finance transaction)(**23**) shall continue to have effect on and after 1st April 2004, as if it had not been revoked on that date by virtue of the repeal of Part IV of the 1989 Act, for the purposes of any definition of “private finance transaction”, defined by reference to that regulation 16, in any enactment or any instrument made under an enactment.

### **Principles of the scheme in respect of income from the charges**

12. In paragraph (1) of regulation 5 of the Building (Local Authority Charges) Regulations 1998 (principles of the scheme in respect of income from the charges)(**24**), for “proper accounting practices, as defined by section 66(4) and (5) of the Local Government and Housing Act 1989” there shall be substituted “proper practices (in relation to accounts of a local authority)(**25**)”.

### **Metropolitan Police (Capital Finance) Order 2000**

13. The Metropolitan Police (Capital Finance) Order 2000(**26**) shall be revoked.

Signed by authority of the First Secretary of State

1st March 2004

*Nick Raynsford*  
Minister of State,  
Office of the Deputy Prime Minister

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(23) S.I. [1997/319](#); regulation 16 was amended by S.I. [1998/371](#), [1999/1852](#) and [2003/515](#).

(24) S.I. [1998/3129](#).

(25) See section 21 of the 2003 Act for the definition of “proper practices”, which applies to subordinate legislation whenever made.

(26) S.I. [2000/1474](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## 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) and related provisions in that Act. Part 1 of that Act replaces the old capital finance system under Part IV of the Local Government and Housing Act 1989 (“the 1989 Act”) that is being repealed on 1st April 2004.

**Article 3** provides for a saving of section 49 of the 1989 Act for the purposes of calculating the cost of a credit arrangement that came into being before 1st April 2004.

**Article 4** amends the definition of item 2 in Part II of Schedule 4 to the 1989 Act, which concerns the debiting of certain capital expenditure to a local authority’s Housing Revenue Account.

**Article 5** amends the provisions, for payment of a levy on certain disposals, in section 136 of the Leasehold Reform, Housing and Urban Development Act 1993.

**Article 6** amends section 86 of the Government of Wales Act 1998 so that there is no longer a requirement to include information about credit approvals in the National Assembly for Wales’s statement of proposed expenditure.

On and after 1st April 2004, parish and community councils and charter trustees will be subject to the capital finance provisions in Part 1 of, and Schedule 1 to, the Local Government Act 2003 that apply to them by virtue of section 19 of that Act. **Article 7** revokes the provisions in the Charter Trustees Order 1974 and the Charter Trustees Regulations 1996 that applied the borrowing provisions in Schedule 13 to the Local Government Act 1972 to charter trustees. The Local Government and Housing Act 1989 (Commencement No. 5 and Transitional Provisions) Order 1990 commenced the repeals of Schedule 13 to the 1972 Act and a number of other capital finance provisions specified in Schedule 12 to the 1989 Act and commenced the amendments to section 2 of the Public Works Loans Act 1965 and section 2 of the Public Works Loans Act 1967 in Schedule 11 to the 1989 Act. Those repeals and amendments were subject to savings for bodies such as parish councils and community councils. **Article 7** revokes those savings so that Schedule 13 and those other capital finance provisions no longer apply to parish councils or community councils.

**Article 7** includes savings and transitional provisions for parish councils, community councils and charter trustees concerning approvals given under Schedule 13 to the Local Government Act 1972 before 1st April 2004 and mortgages and charges effected before 1st April 2004 and, for those councils, concerning capital receipts arising from the disposal of land.

**Article 8** saves the capital finance provisions that apply to Passenger Transport Executives in the Passenger Transport Executives (Capital Finance) Order 1990 for the purposes of any financial year beginning before 1st April 2004.

**Article 9** revokes the capital finance provisions in the Local Authorities (Companies) Order 1995 to the extent not already revoked. It also makes savings in relation to financial years beginning before 1st April 2004.

**Article 10** saves capital finance provisions that apply to public airport companies in the Public Airport Companies (Capital Finance) Order 1996 for the purposes of any financial year beginning before 1st April 2004.

**Article 11** saves regulation 16 of the Local Authorities (Capital Finance) Regulations 1997 for the purposes of any definitions of “private finance transaction”, in or under any enactment, that are defined by reference to regulation 16.

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**Article 12** amends regulation 5 of the Building (Local Authority Charges) Regulations 1998 so that it refers to “proper practices” within the meaning of section 21 of the Local Government Act 2003 instead of “proper accounting practices” as defined in the 1989 Act.

**Article 13** revokes the Metropolitan Police (Capital Finance) Order 2000, which modified Schedule 3 to the 1989 Act (provisions supplementing Part IV) and amended the Local Authorities (Capital Finance) Regulations 1997.

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.