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Creating sustainable communities

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8 March 2004

Chief Executives
Directors of Finance
Directors of Housing

Local Authorities in England

Dear Colleague

LOCAL GOVERNMENT CAPITAL FINANCE SYSTEM
AMENDMENTS TO PRIMARY AND SECONDARY LEGISLATION

Accompanying this letter are three Statutory Instruments which make changes to capital finance and related legislation. They are:

The Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004 [SI 533]

The Local Authorities (Capital Finance and Accounting) (Amendment) (England) Regulations 2004 [SI 534]

The Local Authorities (Capital Finance) (Amendment) (England) Regulations 2004 [SI 459]

The first two instruments will be of interest to housing directors.

Also attached is an informal commentary on all three instruments.

Any enquiries should be addressed to my colleague Ross Buchanan here at: **ross.buchanan@odpm.gsi.gov.uk**

Yours sincerely

Trevor Emmott

LOCAL GOVERNMENT CAPITAL FINANCE SYSTEM
AMENDMENTS TO PRIMARY AND SECONDARY LEGISLATION

Informal commentary by the Office of the Deputy Prime Minister

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THE LOCAL AUTHORITIES (CAPITAL FINANCE) (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2004 [SI 533]

1. This Order assists the transition from the present local government capital finance regime (under Part 4 of the *Local Government and Housing Act 1989*) to the new Prudential system (under Part 1 of the *Local Government Act 2003*) on 1 April 2004. It implements no new policies.

2. One function is to preserve temporarily certain 1989 Act provisions after the repeal of that Act on 1 April 2004. For example, if an authority has entered into a credit arrangement in 2003-04, it has until 30 September 2004 to determine how credit cover is to be provided, so the provisions on credit cover must remain operative until that date. That is the effect of **Article 3. Articles 8, 9 and 10** work in a broadly similar way.

3. Another function is to update references in legislation which rely on 1989 Act definitions. For example, provisions referring to "capital expenditure" as defined in the 1989 now need to quote the 2003 Act definition. **Articles 4, 5,11 and 12** work like this.

4. **Articles 6, 7 and 13** are tidying up measures to deal with superseded legislation.

THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (AMENDMENT) (ENGLAND) REGULATIONS 2004 [SI 534]

5. The secondary legislation to implement the new Prudential system is contained in the *Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 [SI 3146]*, which comes into force on 1 April 2004.

6. Since the making of the latter regulations last December after extensive consultation, they have continued to receive detailed scrutiny both by ODPM and local government. That work has identified the need for amendments, some of which need to be in place at the very start of the new system. Accordingly, amendment regulations have been prepared, also to come into force on 1 April. Other less urgent changes remain under consideration.

Pooling of housing capital receipts [Regulations 3 and 4]

7. These two regulations make amendments to the pooling provisions in the light of ongoing work on the arrangements to be put in place from 1 April 2004. They are designed to ensure that the pooling arrangements can be made as simple and efficient as possible. ODPM will be writing to authorities with further details shortly.

LSVT Levy [Regulation 5(1)(b)]

8. This regulation defines as capital expenditure the payment of the Large Scale Voluntary Transfer levy under section 136 of the *Leasehold Reform Housing and Urban Development Act 1993*. That will allow the levy (as now) to be paid out of the capital

receipt. At present, the levy is defined as capital expenditure in section 136 itself. Article 5 of the *Local Authorities (Capital Finance) (Consequential, Transitional and Saving Provisions) Order 2004* amends that section to remove the definition. The present regulations then reinstate the definition within the Capital Finance Regulations. These two changes make no practical difference to the present arrangements, but they improve transparency by bringing together all modifications of the definition of capital expenditure.

Investments [Regulation 5(1)(c)]

9. At present, local government investments are subject to the *Local Authorities (Capital Finance) (Approved Investments) Regulations 1990 [SI 426 as amended]*. From 1 April 2004, this regime is replaced by one based upon guidance, giving authorities greater freedom to devise their own investment strategies. However, it remains the policy to discourage authorities from resorting to more speculative investments.

10. Regulation 25(1)(d) in the *Local Authorities (Capital Finance and Accounting) (Amendment) (England) Regulations 2004* accordingly defines the **acquisition of share and loan capital** as capital expenditure. That acts as a disincentive, since it means that making such investments would consume the authority's capital resources.

11. However, two kinds of investments would thereby be included within the definition of capital expenditure, whereas at present they are excluded from it under the 1990 regulations. These are ***money market funds*** (defined in regulation 1 of the 1990 Regulations) and ***multilateral development banks*** (a number of which are listed in Part 1 of the Schedule to the 1990 regulations). There is no intention to deter authorities from considering these investments. Therefore, this amendment provides that the definition of capital expenditure in regulation 25(1)(d) does ***not*** include these two forms of investment.

THE LOCAL AUTHORITIES (CAPITAL FINANCE) (AMENDMENT) (ENGLAND) REGULATIONS 2004 [SI 459]

12. These regulations, which come into force on 25 March 2004, are made in connection with the full application of the new accounting standard on retirement benefits (FRS 17) to local authorities as from the financial year 2003/04. Amendment regulations made last year (SI 2003/515) inserted regulation12B into the *Local Authorities (Capital Finance) Regulations 1997 [SI 319 as amended]*. The purpose of this was to ensure, for the pension and benefit schemes listed in the regulation, that the application of FRS 17 resulted in no extra expenditure having to be recognised for the purpose of calculating an authority's call on council tax.

13. This set of regulations adds two further schemes to the list in regulation 12B of the 1997 regulations. It is unlikely that any authority outside Greater London will have awarded pensions or benefits under either scheme.

14. These amending regulations will not apply for any financial year beginning on or after 1 April 2004, when the new Prudential capital finance system comes into operation. From that date similar protection against increases in council tax is provided by regulation 30 of the *Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 [SI 3146]*. The list of schemes covered by the latter regulation already includes the two schemes which are the subject of these amending regulations.