

## **THE RECOVERY OF CAPITAL GRANTS AND RECYCLED CAPITAL GRANT FUND GENERAL DETERMINATION 2017**

1. The Homes and Communities Agency (“the Agency”), in exercise of the powers conferred on it by sections 32, 33 and 34 of the Housing and Regeneration Act 2008, 27, 53 and 54 of the Housing Act 1996, sections 52 and 53 of the Housing Act 1988, as amended by section 28(3) of the Housing Act 1996 and by sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004, and all other powers enabling it in that behalf, with the approval and consent of the Secretary of State and after consultation with such bodies appearing to the Agency to be representative of Registered Providers and (to the extent required) with such persons as it considered appropriate, hereby makes the following General Determination of the events in which it may exercise the powers conferred by such statutory provisions and of the principles with which it must act in accordance in exercising those powers including (but without limitation):

(a) the events upon which the Agency shall Recover from Registered Providers Capital Grants paid under section 19 of the Housing and Regeneration Act 2008, section 18 of the Housing Act 1996, section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985 and grants paid under any enactment replaced by section 41 of the Housing Associations Act 1985;

(b) the manner in which, and time or times at which, Capital Grant is to be Recovered;

(c) the circumstances and manner in which a Registered Provider may apply or appropriate Recoverable Capital Grant or any Uplift Amount to specified purposes, and those purposes;

(d) the method for calculating the amount of Capital Grant and any Uplift Amount to be Recovered;

(e) the circumstances and manner in which the Agency may direct interest to be added to Recovery of Capital Grant or to any Uplift Amount at specified rates; and

(f) the proportion of Capital Grant which, upon a transfer of land or Property to another Registered Provider, shall be deemed to be vested in that other Registered Provider.

2. This General Determination, which has effect in England excluding Greater London, is made without prejudice to the Agency's power to make specific Determinations under the provisions of the Housing Act 1988 and of the Housing and Regeneration Act 2008 and, with the approval of the Secretary of State, under the provisions of the Housing Act 1996.

### **CITATION AND COMMENCEMENT**

3. This Determination may be cited as the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2017.

4. This Determination has effect from 6 April 2017.

5. The Recovery of Capital Grants General Determinations 2006, 2012 and 2015

shall not apply to Relevant Events associated with Capital Grant first given on or after the date of this Determination<sup>1</sup>.

## INTERPRETATION

6. Words and expressions used in this Determination shall, unless the context requires otherwise, have the following meanings:

**"Agency"** means The Homes and Communities Agency or its duly appointed agent (which term includes any statutory predecessor or successor to its Capital Grant giving functions).

**"Capital Funding Guide"** means means the "Capital Funding Guide" published on the Agency's website or any successor guide so published subject to such amendments variations or updates to the same as the Agency (or any successor body) may publish on its website from time to time.

**"Capital Grant"** means Social Housing Assistance paid under section 19 of the Housing and Regeneration Act 2008), Social Housing Grant paid under section 18 of the Housing Act 1996 and/or Housing Association Grant and Grant paid under any enactment replaced by section 41 of the Housing Associations Act 1985 and includes sums drawn from a Registered Provider's Recycled Capital Grant Fund, to defray all or part of the capital expenditure incurred or to be incurred, including any Major Repairs, Miscellaneous Works, and Re-improvements. It includes any Simple Interest which accompanied payment of the principal Capital Grant.

**"Department"** means the Department for Communities and Local Government (and includes any predecessor or successor department).

**"Disposal Proceeds Fund"** has the meaning given by sections 177 and 178 of the Housing and Regeneration Act 2008, as amended by Part 3 of Schedule 4 of the Housing and Planning Act 2016 and regulations in connection to that.

**"Dwelling"** has the meaning given by section 275 of the Housing and Regeneration Act 2008.

**"Equity Percentage Loan"** means an arrangement of the type described in section 70(5) of the Housing and Regeneration Act 2008.

**"Equity Mortgage"** means a mortgage under which, in consideration for an Equity Percentage Loan, the mortgagor agrees that on the loan becoming repayable he or she shall pay to the Registered Provider an amount which is equal to the agreed percentage multiplied by the value of the Dwelling, as determined in accordance with the terms of the mortgage, at the date on which the loan becomes repayable.

**"Estates Renewal Challenge Fund Programme"** means a programme operated by the Department, which approved bids for financial assistance under section 126 of the Housing Grants, Construction and Regeneration Act 1996 and made

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<sup>1</sup> For the avoidance of doubt, except as specified in paragraph 5, this General Determination does not amend or repeal any previous determinations made pursuant to sections 27, 53 and 54 of the Housing Act 1996, sections 52 and 53 of the Housing Act 1988, as amended by section 28(3) of the Housing Act 1996 and by sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004, and sections 32 and 33 of the Housing and Regeneration Act 2008

recommendations to the Agency in relation to financial assistance under section 18 of the Housing Act 1996.

**"Hostel"** means a building comprising accommodation for two or more households (whether self-contained or not and whether or not inclusive of communal living space or facilities for the preparation or provision of food) and which is not (at the point at which any Capital Grant is given) intended to be used as permanent accommodation for such households.<sup>2</sup>

**"Housing Association Grant"** means those capital grants paid out under section 50 of the Housing Act 1988 or under section 41 of the Housing Associations Act 1985 or grant paid under any enactment replaced by section 41 of the Housing Associations Act 1985.

**"Letting"** includes a sub-lease, sub-tenancy or licence and an agreement for a lease, tenancy, licence, sub-lease or sub-tenancy.

**"Local Authority"** has the meaning given by section 106(1) of the Housing Associations Act 1985.

**"Major Repairs"** means those works to a Property owned by a Registered Provider which are necessary to ensure the continued habitability of the Property, excluding re-improvements, and which fall into the following categories.

(a) major works which have become necessary since the original development or rehabilitation work was completed, including those works required by subsequent legislation.

(b) replacement of, or major work on, those components of a Property which have come to the end of their useful lives.

**"Milestone"** means a predefined event during development for which the Agency has requested the Capital Grant holder to forecast a completion date.

**"Miscellaneous Works"** means remedial work to heating systems in existing Properties, energy conservation works, works for the removal of lead in drinking water, for reducing the risk of exposure to asbestos, to upgrade or install fire precautionary measures recommended by a fire authority (within the meaning of section 6 of the Fire and Rescue Services Act 2004), remedial works to Properties contaminated by radon or structural adaptations for people with physical disabilities.

**"Not for profit Registered Provider"** means a body listed on the Register as a non-profit making organisation, as such term is defined in section 115 of the Housing and Regeneration Act 2008.

**"Private Registered Provider"** has the meaning ascribed to it in section 80(3) of the Housing and Regeneration Act 2008.

**"Profit-making Registered Provider"** means a body listed on the Register as a profit-making organisation, as such term is defined in section 115 of the Housing and Regeneration Act 2008.

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<sup>2</sup> For the avoidance of doubt, where Capital Grant is given by the Agency in respect of a such a building, there shall be a presumption that the building is not intended to be used as permanent accommodation.

**"Property"** means a Dwelling, Hostel, Supported Housing, Temporary Social Housing or Traveller Pitch funded by Capital Grant.

**"Recovery"** comprises reduction of any Capital Grant payable, or yet to be paid, by the Agency, suspension or cancellation of any instalment of Capital Grant, the application or appropriation of Capital Grant or (where applicable) any Uplift Amount for such purposes as the Agency may specify or payment to the Agency of such amounts as the Agency may specify, and **"Recover"**, **"Recoverable"** and **"Recovered"** shall be construed accordingly.

**"Recycled Capital Grant Fund" or "RCGF"** means the fund or account referred to in paragraph 12 of this Determination.

**"Register"** means the register maintained by the Regulator of Social Housing pursuant to section 111 of the Housing and Regeneration Act 2008.

**"Registered Provider" or "RP"** means (as appropriate) a local authority entered onto the Register pursuant to 114 of the Housing and Regeneration Act 2008 or a Not for profit Registered Provider or a Profit-making Registered Provider.

**"Regulator of Social Housing"** means the Homes and Communities Agency acting through the Regulatory Committee established pursuant to Part 2 of the Housing and Regeneration Act 2008 or any similar future authority (including statutory successor) carrying on substantially the same regulatory functions.

**"Relevant Event"** means an event, as referred to in section 32(1) of the Housing and Regeneration Act 2008, section 27(1) of the Housing Act 1996 and section 52(1) of the Housing Act 1988 and as identified in paragraph 7 of this Determination, which may give rise to Recovery of Capital Grant.

**"Right to Acquire"** has the meaning given in section 180 of the Housing and Regeneration Act 2008.

**"Right to Buy"** means the right conferred on tenants to buy Property from a Registered Provider under Part V of the Housing Act 1985 and includes cases in which the right is preserved under section 171A of the Housing Act 1985.

**"Sale and Leaseback"** means a transaction in which a Registered Provider disposes of a freehold or superior leasehold interest in land or Property and acquires simultaneously a long leasehold interest in that land or Property.

**"Shared Ownership Lease"** means a lease of the type described in section 70(4) of the Housing and Regeneration Act 2008.

**"Social HomeBuy"** has the meaning given to it in the Capital Funding Guide.

**"Simple Interest"** means further amounts of Capital Grant added to a payment of Capital Grant in compensation to a Registered Provider for delays in payment of the principal Capital Grant. The further amounts of Capital Grant are calculated in the manner of interest accruing according to the length of delay in payment.

**"Social Housing"** means accommodation of the type described in sections 68 and 77 of the Housing and Regeneration Act 2008.

**“Social Housing Assistance”** has the meaning given to it in section 32(13) of the Housing and Regeneration Act 2008.

**“Social Housing Grant”** means Capital Grants paid under section 18 of the Housing Act 1996.

**“Supported Housing”** has the meaning given to it in the Capital Funding Guide.

**“Temporary Social Housing”** means Properties intended to be kept available for Letting for periods longer than two years but shorter than thirty years. It includes Property which received Capital Grant under procedures that the Agency published for programmes described as "Short Life" housing, "Housing Associations as Managing Agents" and "Temporary Social Housing".

**“Traveller Pitch”** has the meaning given to it in the Capital Funding Guide.

**“Uplift Amount”** means an amount calculated by reference to any increase in market value of any housing or other land acquired, constructed, converted, improved or repaired as a result of Capital Grant.

**“Voluntary Purchase Arrangements”** means the disposal of a Dwelling on voluntary terms by a Registered Provider to an existing tenant at a discount.

**“Voluntary Right to Buy”** means the disposal of a Dwelling on voluntary terms by a Private Registered Provider to an existing tenant at a discount equivalent to the Right to Buy discount.

## **RELEVANT EVENTS GIVING RISE TO RECOVERY OF GRANT**

7. The Agency may exercise its powers of Recovery when any of the following Relevant Events occurs in relation to Property or land located outside of Greater London:

(a) when, during the progress of a project approved for Capital Grant, an instalment of Capital Grant was claimed or paid in anticipation of a Milestone, and that Milestone either does not take place or takes place later than anticipated;

(b) when, after an instalment of Capital Grant has been advanced upon a project approved for Capital Grant, the Agency cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant;

(c) discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required;

(d) failure to use Capital Grant for the purpose for which it was paid;

(e) failure to comply with any condition attached to the making of Capital Grant, including failure to complete a project and for the purposes of this sub-paragraph (e) "condition" includes (but is not limited to) the terms of any agreement pursuant to which Capital Grant is advanced by the Agency to a Registered Provider;

(f) discovery that the Secretary of State, the Agency, or a Local Authority has received incorrect information or made an error in connection with the calculation of Capital Grant payable or Recoverable;

- (g) disposal of Capital Grant funded land acquired for the development of Social Housing, or designated for a further phase or phases of Social Housing, when the development or further phase or phases was, or were, not completed at the time of disposal;
- (h) redemption of the outstanding indebtedness on a Property owned by a co-ownership (equity sharing) housing society and funded by Capital Grant;
- (i) de-registration of a Registered Provider by the Regulator of Social Housing, under section 118 or section 119 of the Housing and Regeneration Act 2008;
- (j) a change in the status of a Private Registered Provider from an unincorporated body to an incorporated body by whatever means;
- (k) all or some of the assets of a Registered Provider become vested in a third party;
- (l) a change of use of land or Property to one which would not qualify in principle for Social Housing Assistance, or change to a use which might receive a significantly lower grant (for example a change from supported to general needs housing;)
- (m) cessation of use of Property or land funded by Capital Grant;
- (n) demolition of Property or other buildings funded by Capital Grant;
- (o) disposal of Property or land funded by Capital Grant except:
  - (i) to a Registered Provider (taking the property or land subject to liability for the Capital Grant within it pursuant to section 33 of the Housing and Regeneration Act 2008, Section 27(6) of the Housing Act 1996 or any other predecessor legislation with equivalent effect) with the prior approval of the Agency;
  - (ii) the sale of the first share of a Dwelling under a Shared Ownership Lease where the Dwelling is specifically provided for sale on shared ownership terms;
  - (iii) the sale of a Dwelling acquired for the purpose of outright sale after repair, improvement or conversion;
  - (iv) Sale and Leaseback provided that the Agency has given prior approval to the terms and objectives of the transaction;
  - (v) Lease and sub lease arrangements under which a Registered Provider disposes of a superior interest in a Property and there is the simultaneous grant of a sub lease to another Registered Provider where the purpose of the lease and sublease arrangement is to raise private finance, the Property remains controlled and let by a Registered Provider as Social Housing and the Agency approves in advance the terms of the transaction;
  - (vi) when the legal ownership of Property or land is transferred to a developer for the period during which a development, redevelopment or re-improvement is carried out, and either the freehold or a leasehold interest is returned to the Registered Provider on terms acceptable to the Agency;
  - (vii) when Property included in an Estates Renewal Challenge Fund Programme is disposed of under the Right to Buy;

(viii) when Property included in an Estates Renewal Challenge Fund Programme is disposed of outright on the open market or by private sale provided that either of the following conditions is fulfilled:

(1) the disposal without Recovery of Capital Grant was part of a programme of sales included in the valuation and business that formed the basis on which the Department for gave consent to the transfer of the stock; or

(2) the Agency agrees in advance to disposal without Recovery of Capital Grant either as an amendment to the delivery plan or after the delivery plan is complete;

(ix) the disposal of an adaptation provided to assist a resident with a physical disability;

(x) when the consideration is broadly equivalent replacement Property or Properties or land, or the money to provide broadly equivalent replacement Property or Properties or land;

(xi) disposal of small plots of surplus land, where that plot is not suitable to provide any further Social Housing;

(xii) upon disposal of certain freehold reversions, as defined in published guidance and updated from time to time;

(p) a disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under section 155 of the Housing Act 1985;

(q) a disposal of Property or land funded by Capital Grant that would give rise to a repayment of discount under sections 11 and 12 of the Housing Act 1996 as modified by section 179 of the Housing and Regeneration Act 2008;

(r) a disposal of Property or land funded by Capital Grant that would give rise to the repayment of a payment made to a tenant as an incentive to vacate a Dwelling owned by a Registered Provider under the terms of the mortgage deed requiring repayment of the original payment;

(s) the redemption, or a disposal of Property or land funded by Capital Grant giving rise to the redemption, of an Equity Percentage Loan secured by an Equity Mortgage;

(t) the sale of a Dwelling under the Voluntary Right to Buy or the Right to Acquire.

8. A Registered Provider must notify the Agency of the occurrence, or in specified circumstances, anticipated occurrence of a Relevant Event in accordance with a timetable specified by the Agency. When a Relevant Event occurs, a Registered Provider must either notify the Agency according to a timetable specified by the Agency or must apply or appropriate the Capital Grant Recoverable in ways determined or directed by the Agency.

## **PRINCIPLES FOR THE RECOVERY OF CAPITAL GRANT**

9. Upon notification of the occurrence or discovery of a Relevant Event to which this Determination applies, the Agency may Recover Capital Grant.

10. When a Relevant Event to which this Determination applies occurs on only part of the Property or land on which Capital Grant was paid, the Agency may Recover a proportionate amount of Capital Grant. The Agency may specify methods of apportionment in accordance with published guidance.

11. To the extent that Recovery events and principles for the purposes of sections 32 and 33 of the Housing and Regeneration Act 2008, sections 27, 53 and 54 of the Housing Act 1996, sections 52 and 53 of the Housing Act 1988, as amended by Section 28(3) of the Housing Act 1996 and Sections 218 and 266, Schedule 11 paragraphs 2 and 4 and Schedule 16 of the Housing Act 2004 (including any specifically determined contractual arrangements in relation to Uplift Amounts) are contained in contractual arrangements for the provision of Capital Grant, those events and principles and contractual arrangements shall have effect or continue to have effect after the date of this Determination save that any reference therein to a determination shall in respect of Capital Grant given after the date of this Determination be interpreted so as to give effect to paragraph 5.

### **CIRCUMSTANCES IN WHICH REGISTERED PROVIDERS MAY APPLY OR APPROPRIATE CAPITAL GRANT TO SPECIFIED PURPOSES OUTSIDE OF GREATER LONDON**

12. Subject to paragraphs 17, 18 and 19 below, Registered Providers may choose between repaying the Capital Grant Recoverable to the Agency, or placing it in a fund, or, in the case of a Registered Provider that is a local authority, separately accounting for the Capital Grant Recoverable.

13. Permissible uses of the Recycled Capital Grant Fund, based on policy priorities for Social Housing, will be published by the Agency, and may be amended from time to time. The permissible uses will include those for which the Agency would make Social Housing Assistance available, unless a specific restriction is stated, and other specified purposes. The Agency may further publish specific permissible uses for receipts generated from land or Property receiving grant through a specific funding programme. The permissible uses are referred to hereafter as "Permissible Purposes." Receipts generated from land or Property located outside of Greater London which are placed in a Registered Provider's Recycled Capital Grant Fund may only be used for Permissible Purposes in relation to land or Property located outside of Greater London. The Agency's prior written approval is required for any application of sums credited to the Registered Provider's Recycled Capital Grant Fund for any Permissible Purpose that is not a priority use as published by the Agency from time to time. Recycled Capital Grant Fund sums and Uplift Amounts when applied or appropriated by any Registered Provider will be Social Housing Assistance and will be subject to the current conditions (whether contractual or otherwise) relating to the provision of Social Housing Assistance.

14. The Agency may direct that notional interest accruing on Capital Grant in the Recycled Capital Grant Fund (together with any Uplift Amount and associated interest (calculated in accordance with paragraphs 26 and/or 27) placed in the Recycled Capital Grant Fund) may also be applied or appropriated to Permissible Purposes. The notional interest shall be calculated according to the principles in paragraph 24 below.

15. In circumstances specified by the Agency, a Registered Provider may transfer all or part of its Recycled Capital Grant Fund to another Registered Provider so that the other Registered Provider may apply or appropriate it to the published Permissible



Purposes (subject to the Agency's prior written approval of such application or appropriation). For amounts generated outside of Greater London, Registered Providers may transfer balances to other Registered Providers for Permissible Purposes for reinvestment outside of Greater London only.

16. The Agency may set time limits within which it expects a Registered Provider to apply or appropriate Capital Grant, notional interest or Uplift Amounts and any interest on such Uplift Amounts as appropriate, to these Permissible Purposes. For the avoidance of doubt, a transfer of Recycled Capital Grant Fund to another Registered Provider will not re-set the time limits set by the Agency.

#### **CIRCUMSTANCES IN WHICH REGISTERED PROVIDERS WOULD NORMALLY REPAY CAPITAL GRANT TO THE AGENCY**

17. The Agency will normally demand repayment of Capital Grant Recoverable, without the option of placing it in a Recycled Capital Grant Fund, when Recovery arises from any of the Relevant Events (a) to (k) in paragraph 7 above. In relation to relevant events (i), (j) and (k) of paragraph 7 such Recovery may be deferred with the prior approval of the Agency until the occurrence of any other Relevant Event.

#### **CIRCUMSTANCES IN WHICH THE AGENCY MAY WITHDRAW THE OPTION OF APPLYING OR APPROPRIATING CAPITAL GRANTS THROUGH THE RECYCLED CAPITAL GRANT FUND**

18. The Agency will publish, and may amend from time to time, a description of those circumstances in which the option of applying or appropriating Capital Grants through the Recycled Capital Grant Fund, established in paragraph 12 above, will be withdrawn, and repayment made in total or in part. These will relate to: risks to the contents or future contents of a Recycled Capital Grant Fund revealed by the Agency's exercise of its financial supervisory responsibilities or by the Regulator of Social Housing's exercise of its regulatory responsibilities; discovery that the administration or operation of a Recycled Capital Grant Fund, or application of its contents, has been or is in breach of the principles determined here or the requirements specified in related guidance; the breach, or expectation of a breach, of time limits for applying Recycled Capital Grant specified by the Agency; deregistration or other specified changes of status by a Registered Provider, the requirements of the relevant funding programme require repayment of Capital Grant; and any other circumstances considered appropriate by the Agency.

#### **THE ADMINISTRATION OF RECYCLED CAPITAL GRANT FUNDS**

19. Registered Providers shall administer Recycled Capital Grant Funds according to the requirements which the Agency may from time to time publish with a view to ensuring, inter alia, that the Recycled Capital Grants Fund is used to support national housing policy objectives, helps to build and maintain sustainable communities and supports regional, sub-regional and local programme priorities. Such requirements will furthermore seek to ensure that the Recycled Capital Grant Fund is easy to operate, transparent, accountable and promotes efficiency.

#### **THE METHOD OF CALCULATING THE AMOUNT OF GRANT RECOVERABLE ON RELEVANT EVENTS**

20. The Agency will publish, and may amend from time to time, methods for calculating the amount of Grant recoverable should the Relevant Events at

paragraph 7 occur. These methods will take into account, according to the interpretation of the Agency:

(a) for Grant paid in error or in excess of requirements, an intention to recover Grant or excess Grant in full; and

(b) for disposals or other Relevant Events, an intention to recover Grant in full, but with allowance (i) for costs, fees and expenses incurred by the Registered Provider in direct relation to the Relevant Event (ii) for the deferral or reduction of Grant recovered where disposal proceeds are less than the amount recoverable and (iii) for any other circumstances which the Agency may specify in its published procedures and amend from time to time.

21. The Agency may agree a temporary change of use, without Recovery, to one not qualifying in principle for Social Housing Assistance.

22. Where Recovery of Capital Grant calculated in accordance with the provisions of this Determination would place a Registered Provider in financial difficulty, the Agency may at its discretion:

(a) defer the Recovery to a future date, or

(b) accept Recovery by agreed instalments, or

(c) reduce part or all of the Recovery.

### **INTEREST ON RECOVERY OF CAPITAL GRANT AND ON RECYCLED CAPITAL GRANT FUNDS**

23. The Agency may direct a Registered Provider to add interest to an amount of Capital Grant repayable upon a Relevant Event, if there is a failure or delay by the Registered Provider in notification of the Relevant Event to the Agency or in grant repayment, or in other circumstances leading to a potential loss to the Agency. The Agency will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

24. The Agency requires Registered Providers to add notional interest to the Recycled Capital Grant Fund at rates specified by the Agency which shall not exceed the rates which a Registered Provider might reasonably expect to earn on the deposit of the cash comprising its Recycled Capital Grant Fund.

25. When the Agency directs repayment of Recoverable Capital Grant placed in a Recycled Capital Grant Fund, it may direct the Registered Provider to calculate and add interest attributable to the amount repaid. The interest shall be calculated according to paragraph 24 above.

### **THE METHOD OF CALCULATING THE AMOUNT OF UPLIFT AND INTEREST ON RECOVERY OR RECYCLING OF CAPITAL GRANT**

26. The Agency may direct a Profit-making Registered Provider to add an Uplift Amount to any amount of Capital Grant Recoverable upon a Relevant Event and such direction may require the Uplift Amount to be repaid to the Agency or placed in the Recycled Capital Grant Fund. The Agency will publish, and may amend from

time to time, the method for calculating the Uplift Amount concerned together with the circumstances in which the Uplift Amount will be required to be added.

27. The Agency may direct a Profit-making Registered Provider to add interest to the Uplift Amount, described in paragraph 26, if there is failure or delay by such Profit-making Registered Provider in the notification of the Relevant Event to the Agency or in grant repayment, or in other circumstances leading to potential loss to the Agency. The Agency will publish, and may amend from time to time, details of these circumstances, the rates of interest to be charged, and the mechanism for its application.

**THE APPROPRIATE PROPORTION OF CAPITAL GRANT DEEMED TO BE TRANSFERRED BETWEEN REGISTERED PROVIDERS, FOR PURPOSES OF RECOVERY**

28. When land or Property on which Capital Grant has been paid becomes vested in, or is leased for a term of years to, or reverts to, another Registered Provider, and a Relevant Event subsequently occurs, this Determination shall apply to the entire Capital Grant paid on the land or Property as if the Capital Grant had been made to that other Registered Provider.

BY ORDER OF the Homes and Communities Agency this 6 April 2017.

**NICK WALKLEY**

Chief Executive

## EXPLANATORY NOTES

1. Legislation provides for the Agency to set out, in a statutory determination, the occasions when it will recover capital Grants from Registered Providers and the principles which it will apply to the recovery process.
2. Where this Determination states that the Agency will publish or specify detail this will be done within the Capital Funding Guide or within the terms of any grant agreement relating to the provision of Capital Grant.
3. This Determination:
  - (a) covers all property or land funded with Housing Association Grant, Social Housing Grant and Social Housing Assistance (paid after the date of this Determination), through the Agency or a Local Authority, from 1974 onwards
  - (b) takes effect without prejudice to the terms of any grant agreement between the Agency and any Registered Provider save that any reference to a particular "Determination" within such agreement shall be deemed to be a reference to:
    - (i) this Determination insofar as it relates to historical grant (meaning grant paid pursuant to section 18 of the Housing Act 1996, section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985 and grants paid under any enactment replaced by section 41 of the Housing Associations Act 1985) and Social Housing Assistance paid (in full) after the date of this Determination;
    - (ii) the Determination in force at the time at which the first instalment of Capital Grant was given in relation to Social Housing Assistance paid prior to the date of this Determination;
  - (c) entitles Registered Providers who were not previously permitted to operate a Recycled Capital Grant Fund (i.e. local authority RPs and registered providers classified to the private sector registered after 1 April 2010) to do so. The right to operate a Recycled Capital Grant Fund applies only to grant, the first instalment of which is paid, after the date of this Determination.
4. Where grant is paid in instalments, the Determination in force at the time of the payment of the first instalment will be deemed to apply to the whole of the grant paid in relation to project funded by that grant.
5. The Agency will publish from time to time its requirements and operation arrangements for monitoring and reporting in the Capital Funding Guide.
6. The Housing and Planning [Act 2016] has [repealed] (amongst other provisions) Section 177 of the Housing and Regeneration Act 2008. As a result, [section 32 of the Housing and Regeneration Act 2008, section 27 of the Housing Act 1996 and section 52 of the Housing Act 1988] are re-applied to the proceeds arising out of disposals of Property or land funded by Capital Grant. This means, for example, that Capital Grant given to develop homes which are disposed of under the Right to Acquire, Social HomeBuy or Voluntary Purchase arrangements is subject to Recovery.