



Department for  
Communities and  
Local Government

# **Housing Capital Receipts: exemptions from regulations**

**Guidance for local authorities**

© Crown copyright, 2012

*Copyright in the typographical arrangement rests with the Crown.*

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at [www.gov.uk/dclg](http://www.gov.uk/dclg)

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 030 3444 0000

November, 2012

ISBN: 978-1-4098- 3699-5

## **Housing Capital Receipts: exemptions from regulations (November 2012)**

This note provides guidance to local authorities wishing to apply to the Secretary of State to use receipts arising from the disposal of council housing assets in ways other than that prescribed in regulations.

It replaces earlier guidance on what were previously known as section 80B agreements (i.e. agreements made under section 80B of the Local Government and Housing Act 1989 (as inserted by section 313 of the Housing and Regeneration Act 2008)).

## Introduction

Use of receipts arising from the disposal of housing assets (i.e. assets held under Part II of the Housing Act 1985 and for which account is made in the Housing Revenue Account (HRA)) is governed by the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (as amended)<sup>1</sup> (“the regulations”).

The regulations require that, in short:

- receipts arising from Right to Buy (and similar<sup>2</sup>) sales may be retained to cover the cost of transacting the sales and to cover the debt on the properties sold, but a proportion of the remainder must be surrendered to central Government;
- receipts arising from all other disposals may be retained in full provided they are spent on affordable housing, regeneration or the paying down of housing debt (each of which is defined in the regulations).

However, section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011) permits the Secretary of State to enter into agreements with local authorities with the effect that any requirement imposed by the regulations does not apply, or is modified in its application.

To enter into such an agreement it is necessary for any interested authority to make an application to the Secretary of State. The following guidance sets out the Department for Communities and Local Government’s (DCLG) policy on such exemptions. It is divided into three categories.

---

<sup>1</sup> This does not however include receipts arising from Large and Small Scale Voluntary Transfers: i.e. disposals including tenanted homes to registered housing associations. These receipts may be used for any capital purpose.

<sup>2</sup> Similar sales are voluntary disposals at discounts to existing council tenants and shared-ownership sales where the purchaser buys more than a 50% share in the property.

## **1 - Receipts used to build homes to replace additional homes sold under the renewed Right to Buy**

In April 2012, the Government increased the caps on the discounts available under the Right to Buy, with a commitment that the additional money this would raise (i.e. money above that likely to have been generated had the policy not changed) would be spent on new affordable homes for rent.

The regulations therefore require that these additional receipts be surrendered to central Government to be passed on to the Homes and Communities Agency (HCA) or the Greater London Authority (GLA) (as appropriate) for investment in new affordable homes for rent.

The Secretary of State is however prepared to enter into agreements with local authorities that would allow these additional receipts to be retained and invested by local authorities themselves.

Our policy is that these receipts must be invested within three years of receipt and must not total more than 30% of total investment in new affordable homes for rent. Investment can be by the local authority themselves or the additional receipts can be used to grant fund registered providers. Where receipts make up more than 30% of total investment then the difference must be surrendered to central Government plus interest at 4% above the base rate calculated back to when the receipt first arose.

At the time of writing this guidance over 90% of English stock holding authorities had entered into such agreements with the Secretary of State. The remaining 10% are free to approach us at any time, but will not be able to claim back receipts already surrendered (as these will already have been allocated).

Applications should be sent to DCLG - ([henry.boyce@communities.gsi.gov.uk](mailto:henry.boyce@communities.gsi.gov.uk)). There is no application form.

## **2 - Newly built (or otherwise newly acquired) council homes**

Where a property is sold under the Right to Buy a substantial proportion of the receipt must be surrendered to HM Treasury (this is in addition to the additional receipts that must be surrendered referred to in the preceding section).

This deters some local authorities from investing in new council housing because, were the eventual tenant to exercise their Right to Buy, it is possible that the local authority could not recoup its investment.

The Secretary of State is therefore prepared to enter into agreements that would enable Right to Buy receipts from certain specified properties to be treated as if they were non-Right to Buy receipts: i.e. the authority would be able to retain the full receipt provided it was spent on affordable housing, regeneration or the paying down of housing debt (each of which is defined in the regulations).

### **Types of properties eligible for exemption**

The principle is to support the provision of additional local authority housing. DCLG will therefore assess each application against this principle, but most applications are likely to be one of the following types:

1. New build schemes started since July 2008. For the purposes of the agreements, the “start” of a scheme is the date when the building contractor takes possession of the site or property and the local authority and builder have both signed the building contract.
2. Remodelling schemes started since July 2008. Remodelling is the adaptation of existing structures and includes conversion of ‘difficult to let’ properties, or the creation of sheltered housing to meet the needs of elderly people, combining adjacent units to provide larger accommodation to meet the needs of extra-care housing, or to provide self-contained units in multi-occupied accommodation. Remodelling should lead to an increase in a *type* of social housing in the area: it does not include simple refurbishment to replace like for like.
3. Properties purchased or otherwise newly acquired since July 2008: i.e. properties that immediately before acquisition were not held by the local authority under powers granted to them under Part II of the Housing Act 1985.

### **Information to be included in the application**

Applications for such agreements should be submitted on the appropriate form available from [henry.boyce@communities.gsi.gov.uk](mailto:henry.boyce@communities.gsi.gov.uk)

An application should contain the following information:

1. Details and location of the properties to be developed / acquired.
2. Confirmation that, for newly built or remodelled properties, the homes will meet at least Level 3 of the Code for Sustainable Homes (or an explanation as to why this isn't possible).
3. Confirmation that the local authority will set rent in line with government policies for council housing rents.
4. Details of how the scheme will be funded and the sums involved.
5. Confirmation that the scheme has planning permission (or an explanation as to why planning permission has not yet been sought).
6. Details of when the local authority expects to complete or acquire the homes that are the subject of the application (which we would expect to be within at least 5 years).

### **When and how to apply**

Applications can be made at any time.

An agreement can provide 'in principle' approval for subsequent schemes or acquisitions over the term of the agreement. Authorities may therefore propose a maximum number of homes and a range of dwelling sizes to be built on their land.

As schemes are subject to change up to the point of delivery, agreements can allow for a small degree of variation in delivery, for example in the number and types of properties to be covered.

### **How applications will be handled**

DCLG will consider whether the application will deliver additional council housing.

Where the Secretary of State is minded to agree to a proposal to exempt, DCLG will issue an agreement on his behalf containing the details in the application and standard conditions as the basis for exemption.

### **Action on completion**

It is essential that properties are identified before they can be specified under an agreement. Final details of the properties will be associated with the agreement and recorded by the auditors of the HRA.

An appropriate officer of the local authority should confirm with DCLG that the properties once built or otherwise acquired comply with the conditions of the agreement. (Completion is defined in Annex A (attached)). In particular, the authority should provide addresses of the properties, and confirmation that they have been built or acquired within 5 years from their initial application in respect of those properties.

The properties will then be identified by DCLG in a schedule of the agreement. DCLG will confirm with the authority that the properties have been specified under the agreement.

Authorities should follow this process for subsequent schemes or acquisitions.

### **Social Housing Grant**

Where homes sold were built with social housing grant, the balance of the initial grant will be returned to the HCA or GLA to be reinvested to enable more affordable rented homes to be built. Where the homes were built or acquired without such grant, the local authority will retain the full receipt, provided it is used as detailed above.



### **3 – Receipts to aid growth and regeneration**

The Government is keen to assist local authorities help deliver growth and regeneration in their areas, but recognises that the definition of regeneration in the regulations may be preventing use of non-Right to Buy receipts to deliver innovative schemes.

DCLG is currently considering the wording of the regulations and will, of course, consult on any proposed amendments, but in the meantime the Secretary of State is willing to enter into agreements with local authorities that wish to use non-Right to Buy receipts to aid growth and regeneration.

Such agreements would specify the precise use to which receipts arising from the voluntary disposal of specified properties or groups of properties would be put. In making an application to the Secretary of State local authorities will need to set out:

- a) the growth / regeneration schemes in which they wish to invest
- b) the properties they intend selling to generate receipts for investment in such schemes
- c) the amount of receipts needed, expressed as either an exact figure or as a maximum, which would serve as a cap
- d) precise details of how the receipts will be spent
- e) the expected outcome (i.e. how many jobs, houses etc will be delivered).

Applications setting out these details should be sent to DCLG – ([henry.boyce@communities.gsi.gov.uk](mailto:henry.boyce@communities.gsi.gov.uk)). There is no application form.

## Annex A

**Practical Completion** means that stage in the execution of a scheme when the scheme has been completed in accordance with the terms of the relevant building contract and / or the terms of the Agreement being fit for beneficial occupation as a residential development in accordance with National House Building Council (NHBC), or equivalent requirements current at the date of inspection, subject only to the existence of minor defects, and / or minor omissions at the time of inspection, which are capable of being made good, or carried out without materially interfering with the beneficial use and enjoyment of the scheme, and which would be reasonable to include in a snagging list, and 'practically complete' shall be construed accordingly.