



Department for  
Communities and  
Local Government

# Changes to the Capital Finance System

An informal commentary by DCLG on The Local Authorities  
(Capital Finance and Accounting) (England) (Amendment) Regulations 2013  
[Statutory Instrument 2013 No. 476]

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# CHANGES TO THE CAPITAL FINANCE SYSTEM

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[Statutory Instrument 2013 No. 476]

*This is a purely informal commentary and not an authoritative interpretation of the law. Authorities are recommended to take their own legal advice on the meaning of the Regulations.*

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## 1. INTRODUCTION

1.1 The following informal commentary explains changes to the law made by the *Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2013 [Statutory Instrument 2013 No. 476]*. The regulations being amended are the *Local Authorities (Capital Finance & Accounting) (England) Regulations 2003 [SI 2003/3146]* (referred to below as “the 2003 Regulations”). **Links to the new Regulations and the earlier legislation are at the end of this document.**

1.2 This commentary describes the effects of the two amendments (in Regulations 5 and 6) which help authorities manage **liabilities for equal pay compensation payments**. It does not cover Regulations 3, 4 and 7, relating to the **pooling of housing capital receipts**, on which DCLG is issuing guidance directly to the authorities affected.

## 2. EQUAL PAY AWARDS: FUNDING

### Amendment Regulation 5

2.1 Over the past few years, many authorities have become liable for large back-pay awards in relation to historical pay inequalities. Until very recently it seemed that most affected authorities had either already discharged their commitments or were well on course to do so and the level of continuing liabilities was falling. However, it appears that

some authorities have still to fully address their equal pay liabilities and are still seeking to manage resulting costs. To assist such authorities, the Regulations address two associated problems, the first of which relates to the *funding* of awards.

2.2 Equal pay awards count as revenue spending for local authorities and would need to be funded out of authorities' revenue resources. The local government finance systems do not of course allow capital resources (borrowed money and capital receipts) to be used to finance revenue expenditure, since this would increase the public sector deficit.

2.3 As an exceptional measure, the Government is relaxing the rules to allow back-pay awards to be met out of capital receipts. However, to avoid an unacceptable national economic impact, this is subject to the capital receipts having been obtained on 1 April 2012 or at any time after that date.

2.4 The lawful uses of capital receipts are set out in the 2003 Regulations (existing Regulation 23). So another permitted use is being added to that list.

**2.5 Amendment Regulation 5 therefore says that expenditure on back pay awards is a permitted use of capital receipts obtained on or after 1 April 2012.**

2.6 This amendment came into force on 31 March 2013, so the relevant receipts could be applied to any back-pay awards made during 2012-13, as well as to those made in subsequent financial years.

### **3. EQUAL PAY AWARDS: ACCOUNTING**

#### **Amendment Regulation 6**

3.1 The second problem relates to *accounting practice*. Financial provision for probable future liabilities, including equal pay back-pay awards, has to be made in the financial year when the liability is first *identified*, rather than in the year when the actual payment falls due. In the case of equal pay, authorities are likely to have identified a potential liability significantly in advance of having to make the payment. Scoring liabilities when first identified could therefore cause authorities serious budgetary difficulties.

3.2 To protect authorities, Regulation 30A was introduced into the 2003 Regulations (by S.I. 2007/573). This offered authorities a breathing space, allowing them not to charge back-pay awards to their revenues until they made the payments. Originally due to expire in 2011, it was extended until 2013 (by S.I. 2010/454). However, as some authorities have still to fully address their equal pay liabilities, it has been decided to extend this flexibility.

3.3 That extension is now achieved by Amendment Regulation 6, which came into force on 1 April 2013. **It provides that Regulation 30A will expire on 1 April 2018, protecting authorities for an additional five years** (a longer period than that proposed when we first announced the change).

3.4 This provision continues to apply until the date when the payment is actually made, even if that is *after* 1 April 2018 [see Regulation 30A(6)].

3.5 Authorities should not assume that Regulation 30A will again be extended and should take this into account when managing any outstanding equal pay liabilities.

## 4. CONTACTS

Queries about the policies outlined above should be made to:

[suzanne.clarke@communities.gsi.gov.uk](mailto:suzanne.clarke@communities.gsi.gov.uk)

Queries of a technical nature about the Regulations should be made to:

[trevor.emmott@communities.gsi.gov.uk](mailto:trevor.emmott@communities.gsi.gov.uk)

## 5. LINKS

Links to online versions of the relevant legislation are as follows.

### The new amendment regulations

The new regulations described in this commentary are the *Local Authorities (Capital Finance & Accounting) (England) (Amendment) Regulations 2013*:

SI 2013/476 <http://www.legislation.gov.uk/uksi/2013/476/contents/made>

The ***Explanatory Memorandum*** submitted to Parliament with the regulations is at:

<http://www.legislation.gov.uk/uksi/2013/476/memorandum/contents>.

### The original regulations being amended

*Local Authorities (Capital Finance & Accounting) (England) Regulations 2003*

SI 2003/3146: <http://www.legislation.gov.uk/uksi/2003/3146/contents/made>

### Earlier amendment regulations

SI 2004/534 <http://www.legislation.gov.uk/uksi/2004/534/contents/made>

SI 2004/3055 <http://www.legislation.gov.uk/uksi/2004/3055/contents/made>

SI 2006/521 <http://www.legislation.gov.uk/uksi/2006/521/contents/made>

SI 2007/573 <http://www.legislation.gov.uk/uksi/2007/573/contents/made>

SI 2008/414 <http://www.legislation.gov.uk/uksi/2008/414/contents/made>

SI 2009/321 <http://www.legislation.gov.uk/uksi/2009/321/contents/made>

SI 2009/2272 <http://www.legislation.gov.uk/uksi/2009/2272/contents/made>

SI 2010/454 <http://www.legislation.gov.uk/uksi/2010/454/contents/made>

SI 2012/265 <http://www.legislation.gov.uk/uksi/2012/265/contents/made>

SI 2012/711 <http://www.legislation.gov.uk/uksi/2012/711/contents/made>

SI 2012/1324 <http://www.legislation.gov.uk/uksi/2012/1324/contents/made>

SI 2012/2269 <http://www.legislation.gov.uk/uksi/2012/2269/contents/made>

### Primary legislation under which all these regulations were made

*Local Government Act 2003*: <http://www.legislation.gov.uk/ukpga/2003/26/contents>