

Changes to the revenue and capital rules for new council housing

**Consultation on excluding new council housing from Housing Revenue Account Subsidy and Pooling**





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## Summary

<b>Topic of this consultation</b>	Proposals for removing revenue and capital disincentives to local authority investment in new council housing.
<b>Geographical scope</b>	England.
<b>Impact Assessment</b>	An assessment of the impact of excluding new council properties from the HRA subsidy system was published with the Housing and Regeneration Bill. It is available at: <a href="http://www.communities.gov.uk/housing/publications/impact-assessments">http://www.communities.gov.uk/housing/publications/impact-assessments</a>
<b>To</b>	All those with an interest in social housing, particularly local authorities, housing organisations and tenants' organisations.
<b>Body/bodies responsible for the consultation</b>	Communities and Local Government.
<b>Duration</b>	Responses should be submitted by 17 April 2009.
<b>Enquiries</b>	Peter Wycherley, Communities and Local Government, 020 7944 3468
<b>How to respond</b>	Responses should be submitted either electronically via email or by post to the address below. It would be helpful if all responses can be annotated with the relevant question number or section to which the comment relates.  Peter Wycherley Decent Homes and Housing Finance Division Communities and Local Government First Floor Eland House Bressenden Place London SW1E 5DU  Email: <a href="mailto:LAnewbuild@communities.gsi.gov.uk">LAnewbuild@communities.gsi.gov.uk</a>
<b>Compliance with the Code of Practice on Consultation</b>	This consultation complies with the Code of Practice.

# Purpose of this consultation

We want local authorities to play a bigger role in securing the supply of new affordable housing. This should include new opportunities for councils to develop housing directly where this offers value for money in comparison with other options.

The purpose of this document is to set out our proposals for removing some disincentives to local authority investment in new council housing within the current financial framework. These include changes to both revenue and capital rules.

At present, the council housing finance system redistributes the revenue (through Housing Revenue Account Subsidy (HRAS)) and capital returns (through pooling) from new and existing housing on the same basis. Neither pooling nor the HRAS distinguishes between homes which were built in the past with a large element of central Government financial support and new homes, which represent a largely local investment.

In July 2007, the Housing green paper, *Homes for the future, more affordable, more sustainable*<sup>1</sup>, said that “Where councils choose to invest their own money in new [housing] supply, we think they should be able to keep the income and capital returns from those additional homes.”

The changes to the treatment of income from new homes can now be made using powers in section 80B of the Local Government and Housing Act 1989, which was inserted by section 313 of the Housing and Regeneration Act 2008<sup>2</sup>. This provides for exclusions of specified properties or descriptions of property, including future properties, from the HRA subsidy system. This would in effect make the properties invisible to the subsidy system whilst leaving them within the Housing Revenue Account.

In taking the provisions through Parliament, we said we intended to use the powers to exclude newly-built or newly acquired dwellings.

The changes to the rules which apply to capital receipts can be made by secondary legislation. This document also seeks views on draft regulations which would achieve this. Our intention is to link the two changes, so that the new capital receipt regulations would apply automatically to properties covered by an exclusion from the HRA subsidy system made under section 80B of the Local Government and Housing Act 1989.

Taken together, these changes would remove two major financial disincentives to local authority investment in new housing. This consultation document sets out how we propose to make these changes and seeks views.

<sup>1</sup> *Homes for the future – more affordable, more sustainable* – Housing Green Paper – <http://www.communities.gov.uk/publications/housing/homesforfuture>

<sup>2</sup> Housing and Regeneration Act 2008 – [http://www.opsi.gov.uk/acts/acts2008/ukpga\\_20080017\\_en\\_1](http://www.opsi.gov.uk/acts/acts2008/ukpga_20080017_en_1)

We welcome comments on any aspects of these proposals. In particular, we invite respondents to comment on some or all of the seven questions in bold in the boxes below.

## Who are we consulting?

We welcome comments from everyone, and in particular from local authorities, housing organisations and tenants' organisations.

The consultation period runs for 12 weeks to 17 April 2009.

This consultation is being run by Communities and Local Government and applies to England only.

## About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business Enterprise and Regulatory Reform.

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

If you have any observations about how we can improve the process please contact:

The Communities and Local Government Consultation Co-ordinator  
Zone 6/H10  
Eland House  
London SW1E 5 DU

or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

## How to respond to the consultation

Consultation responses should be submitted either electronically via email or by post to the address below, by 17 April 2009. It would be helpful if all responses can be annotated with the relevant question number or section to which the comment relates.

Peter Wycherley  
Decent Homes and Housing Finance Division  
Communities and Local Government  
First Floor  
Eland House  
Bressenden Place  
London SW1E 5DU

email: [LAnewbuild@communities.gsi.gov.uk](mailto:LAnewbuild@communities.gsi.gov.uk)

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

## The provisions in section 80B of the Local Government and Housing Act 1989

Section 80B of the Local Government and Housing Act 1989 (as inserted by Section 313 of the Housing and Regeneration Act 2008) provides for agreements between the Secretary of State and a local authority which would have the effect of excluding either a local authority's whole housing stock or specified properties (including future properties) from the operation of the Housing Revenue Account subsidy system.

Agreements under this section would not have any impact on the operation of the Housing Revenue Account itself. The rules requiring councils to maintain a ring-fenced landlord account – the Housing Revenue Account – would continue, and the homes excluded from the subsidy system would remain within the Housing Revenue Account.

## The effect of the proposed changes

The HRA subsidy system is a 'notional' system, based on assumptions in national formulae about what each council needs to spend and what income it should raise from rents. Notional surpluses generated in some authorities are used to meet notional shortfalls in others.

The subsidy formulae include allowances to meet the cost of financing prescribed kinds of debt within the Housing Revenue Account. However, no provision is made within these formulae for financing the capital costs of new council housing (other than through PFI).

As a result, if a local authority builds or acquires a new dwelling, the allowances for that council increase only by the running costs associated with the new property – principally the allowances for management, maintenance and major repairs. If, as is likely with newly-built dwellings, the assumed rental income for those properties exceeds the assumed need to spend as prescribed by these allowances, the difference is deemed to be a surplus. Where such surpluses accumulate across an authority's Housing Revenue Account there will be an equivalent reduction in net subsidy, even where the council's subsidy position as a whole is in deficit.

If the provisions were used to exclude new council homes from the HRA subsidy system, this would increase a council's retained rental income by the difference in the subsidy formulae between the allowances and the assumed rents for those properties.

The impact of the provisions would depend on the allowances that a particular property attracts and its guideline rent. In aggregate nationally, management, maintenance and major repairs allowances are equivalent to around 72 per cent of assumed rental income this year. (Most of the remainder is used to meet the costs of servicing HRA debt.) For a dwelling with a similar profile of rent and allowances, the provisions would therefore allow the council to retain the remaining 28 per cent of assumed rent from each new home.

The value to a council of the provisions would be the same, whether or not it sets the actual rent in line with the notional rent used in the HRA subsidy formulae. It would also be the same regardless of whether a council was a net contributor or beneficiary of the HRA subsidy system.

# Properties to be covered by the agreements

New build within the HRA is the most likely source of new supply. However, we propose that section 80B agreements should also be offered for some other properties acquired by councils for social rent within the HRA.

We propose that the following types of properties should qualify to be held outside of the HRA subsidy system:

- new build properties
- properties purchased or otherwise acquired
- derelict or uninhabitable properties brought back into use as a result of significant council investment

The intention is to allow a council to retain the return from its own investment in new housing. This is why we propose that the exclusions should cover properties which have required a large local investment to bring back into use. For the same reason we think that the following types of properties should not qualify for exclusion from the subsidy system:

- properties which are temporarily vacated to allow refurbishment or remodelling work to take place
- properties which are vacant whilst awaiting minor works to make them suitable for occupation
- social housing transferred from one social landlord to another.

**QUESTION 1: Given the objectives of the policy, what types of properties should qualify to be excluded from the HRA subsidy system and pooling requirements?**

**QUESTION 2: In your view, what types of properties should not qualify to be held outside the HRA subsidy system and pooling requirements?**

## The process for securing a section 80B agreement

We aim to minimise the burden of securing an exclusion from the HRA subsidy system as far as possible, commensurate with ensuring the powers are used properly and effectively. We therefore propose that councils should apply for an exclusion for schemes or bundles of schemes, wherever possible, rather than for individual properties. Where authorities acquire properties one by one or a few at a time, we propose that they bundle them together when seeking a section 80B agreement.

As schemes are subject to change up to delivery, we also propose that agreements allow for a reasonable level of variation in delivery, for example in the number and types of properties to be covered and the timing of starts and completions. We would not however expect to enter into agreements based on early speculative outlines of schemes; applications should contain sufficient information about the properties to establish that they will meet the criteria for exclusion.

We propose that a letter from the Secretary of State agreeing to an exclusion is short and as standardised as far as possible, referring to detail in the application as the basis for the terms and extent of the exclusion.

## Criteria against which an application would be considered

How a local authority chooses to invest its own resources is essentially a local matter. However, in granting an exclusion from the HRA subsidy system, we would expect to see evidence that appropriate local decision-making processes have been applied, including a robust options appraisal, and that the option chosen offered value for money.

The powers in the Act provide for agreements to contain terms and conditions. We propose that applications should include details about the scheme, including design and quality standards, rents and allocations policies. We would only expect to exclude properties which conform to all Government policies regarding council housing, including rents and allocations policies, and would expect the application to include such commitments.

In considering whether to enter into agreements to exclude council properties from the HRA subsidy system, Government must also consider the overall impact on government's fiscal policies. Local authority spending and borrowing are part of overall public expenditure. Increases in spending and borrowing made possible by exclusions must therefore be affordable within national as well as local spending plans and policies.

We propose to ask the Homes and Communities Agency to review all applications for a section 80B agreement, and to advise the Secretary of State as to whether applications meet the criteria for exclusion. Decisions will be made by the Secretary of State.

**QUESTION 3: Do you think that that the proposed process for applying for a section 80B exclusion is the right one to adopt? If not, what would be a better alternative?**

**QUESTION 4: What factors should be taken into account by the Secretary of State in considering whether to enter into an agreement to exclude properties?**

**QUESTION 5: What terms and conditions do you think should be included in exclusion agreements?**

## Rules on capital receipts

The 2007 Housing green paper, *Homes for the future: more affordable, more sustainable*, also proposed that councils should keep the full capital receipt of new build properties subsequently sold under Right to Buy. At present, 75 per cent of those net receipts are paid to Government and pooled centrally. This figure was set roughly to reflect the historic split between national and local investment in council housing.

This is perceived as unfair for new local authority properties which are financed wholly locally. A council currently risks losing most of its own capital investment if a tenant exercises their statutory Right to Buy, but would of course still retain the debt associated with the investment.

We are therefore also seeking views on proposed changes to the *Local Government (Capital Finance and Accounting) (England) Regulations 2003*. These changes would allow councils to retain all of the receipts from a subsequent sale of a property covered by an exclusion from the HRA subsidy system made under section 80B, provided that the receipts were used for affordable housing and regeneration projects. This would effectively extend the existing provision for receipts arising from the sale of vacant housing land and other housing assets that are not dwellings.

A draft of the Regulation is attached at the end of this document.

**QUESTION 6: Do you agree that properties excluded from the HRA subsidy system under section 80B should also be exempted from the requirements to pool capital receipts?**

**QUESTION 7: Do you agree with the proposed conditions attached to the exemption from pooling, which require receipts to be used for affordable housing and regeneration?**

## Impact assessment

An assessment of the impact of excluding new council properties from the HRA subsidy system was published with the Housing and Regeneration Bill. It is available at the following link (see pages 56 – 66 of the Housing and Regeneration Act Impact Assessment document):

**<http://www.communities.gov.uk/housing/publications/impact-assessments>**

# Draft regulation on capital receipts

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## STATUTORY INSTRUMENTS

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2009 No.

### LOCAL GOVERNMENT, ENGLAND

#### The Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2009

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	XXX 2009

The Secretary of State, in exercise of the powers conferred by sections 9 and 11 of the Local Government Act 2003<sup>(3)</sup>, makes the following Regulations:

#### Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance and Accounting) (England) (Amendment) Regulations 2009 and shall come into force on XXX 2009.

(2) These Regulations apply in relation to local authorities in England only.

#### Amendments

2. The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003<sup>(4)</sup> are amended as specified in regulation 3.

#### Capital receipts treated as reduced

3. In regulation 14, after paragraph (2C), insert—

“(2D) Paragraph (2) shall not apply to capital receipts arising from the disposal of an interest in housing land which is the subject of an agreement made under section 80B of the Local Government and Housing Act 1989<sup>(5)</sup>”.

Signed by authority of the Secretary of State for Communities and Local Government

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<sup>(3)</sup> 2003 c.26.

<sup>(4)</sup> S.I.2003/3146 amended by S.I. 2006/521, there are other amending instruments but none are relevant.

<sup>(5)</sup> 1989 c.42. Section 80B was inserted by section 313 of the Housing and Regeneration Act 2008 (c.17).

Minister of State for Housing  
Department for Communities and Local Government

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Local Government (Capital Finance and Accounting) Regulations 2003 (“the 2003 Regulations”).

Regulation 3 inserts paragraph (2D) into regulation 14 of the 2003 Regulations. This provides that where housing land is the subject of an agreement made under section 80B of the Local Government and Housing Act 1989, the disposal of such land by a local housing authority may be regarded as a capital receipt that may be treated as reduced by the provisions in regulation 14(1)(c) of the 2003 Regulations.

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