EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CAPITAL FINANCE AND ACCOUNTING) (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 2272

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend regulation 14 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (S.I. 2003/3146).

2.2 The purpose of the amendment is to allow local authorities to retain the capital receipts arising from the sales of dwellings (in most cases under the Right to Buy), where those dwellings are the subject of agreements under section 80B of the Local Government and Housing Act 1989 (inserted by section 313 of the Housing and Regeneration Act 2008) and the capital receipts are used for the provision of affordable housing or on regeneration projects.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 11(2)(d) of the Local Government Act 2003 gives the Secretary of State power to make regulations governing how much of each local authority's housing receipts are paid over to him by a process known as "pooling".

4.2 Regulation 12 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 ("the 2003 Regulations") provides for the pooling of capital receipts obtained from the sale of housing land. "Housing land" is defined in regulation 1(5) of the 2003 Regulations. Subject to regulations 14 to 21, local authorities must pay to the Secretary of State the "specified amount" (regulation 12(4)) which, as regards the capital receipt arising on the disposal of a dwelling, is 75%.

4.3 Regulation 14(1)(c) of the 2003 Regulations allows a local authority to reduce the amount of the capital receipt that would otherwise be "pooled" by an amount up to the value of the "available capital allowance" (defined in regulation 15). The "available capital allowance" is defined as the "total capital allowance" less any amounts that the local authority has already deducted in reliance on regulation 14(1)(c). The "total capital allowance" (defined in regulation 16) includes contributions that the local authority has made or has decided to make towards the provision of affordable housing (regulation 17) or regeneration projects (regulation 18).

4.4 But regulation 14(2) provides that a local authority cannot reduce the capital receipt by the available capital allowance where the receipt comes from the sale of a dwelling (a) brought about by the exercise of the Right to Buy provisions or (b) for which a general consent by the Secretary of State has been given and where the dwelling is to be used as the buyer's only or principal home.

4.5 The new paragraph (2D) inserted into regulation 14 of the 2003 Regulations disapplies regulation 14(2), thus enabling a local authority to retain capital receipts arising from Right to Buy and certain other sales where the dwellings sold are the subject of agreements under section 80B of the Local Government and Housing Act 1989 (c.42). Section 80B was inserted by section 313 of the Housing and Regeneration Act 2008 (c.17). It enables local authorities to enter into agreements with the Secretary of State to exclude houses within the Housing Revenue Account from the Housing Revenue Account Subsidy System. (See also paragraphs 7.1 and 7.2.)

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The level of social housing being built or acquired by local authorities has fallen to just a few hundred a year. Until the current £100 million programme, no central government resources have been available for councils to invest in new housing stock. So an authority has had to use its own resources and then been effectively penalised, because it has been unable to be assured it can retain all of the rental income arising from the dwelling, and because 75% of its receipts have had to be paid to the Secretary of State if the tenant exercises their Right to Buy. The first disincentive is being removed by another legislative route (see paragraph 7.2). This amendment to the 2003 Regulations removes the second disincentive.

7.2 Section 80B of the Local Government and Housing Act 1989 enables the Secretary of State and a local authority to enter into an agreement excluding the houses specified in the agreement from the housing revenue account subsidy calculation. This enables the local authority to retain the rents paid in respect of those houses. Local authorities disposing of housing subject to such an agreement may benefit from the amendment to the 2003 Regulations by being able to retain the capital receipt arising from the disposal. They may only do so, however, where the receipt is used for affordable housing (regulation 17 of the 2003 Regulations) or regeneration projects (regulation 18 of the 2003 Regulations). Guidance will be published on the procedure to be adopted by local authorities in seeking agreement under section 80B of the Local Government and Housing Act 1989.

- ***Consolidation***

7.3 There are no plans to publish any consolidation of the legislation, since the amendment is very small. All local authorities will be informed when it comes into force, and the Amendment Regulations will be published on the Department's website.

8. Consultation outcome

8.1 Local authorities and other interested parties were consulted over a twelve-week period from January to April of this year. 77 authorities responded plus 23 other organisations and 3 private individuals. Weblink to consultation paper is attached: http://www.communities.gov.uk/publications/housing/capitalruleschanges

8.2 The majority of respondents welcomed the proposal to exempt excluded properties from capital receipts pooling. A number argued that authorities should keep proceeds from all Right to Buy sales. Most respondents agreed that receipts should be used for affordable housing and regeneration projects to ensure that the capital receipt would be used to regenerate the existing stock or build new homes. However, a majority of respondents called for a wider definition of "regeneration project", and some suggested that it would be inappropriate to place limitations on the way receipts were used at a time when the Government was promoting the concept of local accountability. Regulation 18 of the 2003 Regulations defines "regeneration project" as any project for the carrying out of works or activities on any land where—

(a) the land, or a building on the land, is vacant, unused, under-used, ineffectively used, contaminated or derelict; and

(b) the works or activities are carried out in order to secure that the land or the building will be brought into effective use.

9. Guidance

9.1 When local authorities are informed of the provision, there will also be guidance on how they can apply for the necessary agreement (see paragraph 7.2).

10. Impact

10.1 No direct impact on business, charities or voluntary bodies is expected.

10.2 The impact on the public sector is expected to be a limited rise in the number of dwellings built and acquired by local authorities.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The number of authorities seeking agreements under section 80B of the Local Government and Housing Act 1989 should give an early indication of the impact of the amendment to regulation 14 of the 2003 Regulations. The number of dwellings built or acquired by local authorities is collected annually by the Department.

13. Contact

13.1 Ross Buchanan at Communities and Local Government (Tel: 020 7944 3572 or email: ross.buchanan@communities.gsi.gov.uk) can answer any queries regarding the instrument.