STATUTORY INSTRUMENTS

1988 No. 434

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Government (Prescribed Expenditure) (Amendment) Regulations 1988

Made - - - -	*9th March 1988*
Laid before Parliament	*9th March 1988*
Coming into force	*10th March 1988*

The Secretary of State for the Environment and the Secretary of State for Transport(a), as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 75(5) and 84 of, and paragraph 4 of Schedule 12 to, the Local Government, Planning and Land Act 1980(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1.—(1) These Regulations may be cited as the Local Government (Prescribed Expenditure) (Amendment) Regulations 1988.

(2) These Regulations shall come into force on 10th March 1988.

(3) These Regulations shall cease to have effect on 1st October 1988.

2. The Local Government (Prescribed Expenditure) (Consolidation and Amendment) Regulations 1987(c) are amended as follows –

(a) in regulation 2, after the definition of "housing association" insert –

" "land", except where the context otherwise requires, includes buildings and structures on land;";

(b) after regulation 4(1)(d) insert –

"(e) land, vehicles, vessels, movable and immovable plant, machinery and apparatus if the authority disposing of the asset had no interest in it immediately before 1st April 1981 and the subsequent acquisition of an interest –

(i) did not involve the authority in prescribed expenditure; or

(ii) involved expenditure the amount of which was, for the purposes of Part VIII of the Act, nil;

(f) land, vehicles, vessels, movable and immovable plant, machinery and apparatus where, if the authority were the party acquiring the asset under the transaction instead of the party disposing of it, the acquisition –

(i) would not involve the authority in prescribed expenditure; or

(ii) would involve expenditure the amount of which was, for the purposes of Part VIII, nil.";

(a) The functions of the Minister of Transport under section 84(5) of the Local Government, Planning and Land Act 1980 (c.65) were transferred to the Secretary of State for Transport by article 2(1)(b) of the Transfer of Functions (Transport) Order 1981 (S.I. 1981/238). (b) 1980 c.65. (c) S.I. 1987/2186.

(c) for paragraph 3 of Part I of Schedule 3 substitute –

"**3.**—(1) Expenditure on the acquisition of a leasehold interest in land to which this subparagraph applies except where –

(a) it is intended at the time of acquisition that some person shall erect a building on the land for the authority; or

(b) at the time of the acquisition the authority already owns the freehold of the land or has a leasehold interest in the land the term of which is greater than the term which is being acquired; or

(c) there is in force at the time of acquisition or has been in force at any time during the five years immediately preceding the acquisition, a development agreement.

In this subparagraph, "development agreement" means an agreement to which the acquiring authority is party and which requires or entitles –

(i) another person to develop all or any part of the land in question; or

(ii) that authority to acquire an interest in (or a right to use) the whole or any part of that land once specified conditions are satisfied.

(2) Subparagraph (1) applies to an interest for a period not exceeding three years, other than a second lease, unless –

(a) it is a lease which creates a tenancy to which Part II of the Landlord and Tenant Act 1954(a) (security for business and professional tenants) applies; or

(b) the term of the lease, when added to the length of any period before the commencement of the lease (but after 1st April 1980) for which the authority was entitled to the rents and profits of the land or during which it occupied the land, exceeds three years.

(3) Subparagraph (1) applies to a second lease if it is such a lease as is mentioned in subparagraph (4)(a) and the earlier interest was a lease acquired by the authority before 1st April 1980, the length of which does not exceed 20 years.

(4) For the purposes of this paragraph, "second lease" means a lease (or assignment) by which –

(a) an interest is granted to the authority to commence on the expiry of an earlier interest of the authority in the land in question; or

(b) an interest is granted in land the whole or part of which has been occupied by the authority, or to the rents and profits of which the authority has been entitled, at any time less than twelve months before the date on which the lease commences (or the assignment takes effect), or, if earlier, the date on which the lease is granted (or assigned).

(5) For the purposes of this paragraph the length of any interest shall be taken to be the maximum period for which any tenancy it creates can be enjoyed on the assumption that any right or option to renew it or to extend its term is exercised:

Provided that any tenancy to which Part II of the Landlord and Tenant Act 1954 applies shall be deemed to be capable of continuing for a maximum of 21 years irrespective of its length.".

Nicholas Ridley
9th March 1988 — Secretary of State for the Environment

Paul Channon
9th March 1988 — Secretary of State for Transport

Peter Walker
9th March 1988 — Secretary of State for Wales

(a) 1954 c.56.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 72(3) of the Local Government, Planning and Land Act 1980 limits the prescribed expenditure of a local authority, and other bodies to whom Part VIII of the Act applies, to the aggregate of various amounts including its net capital receipts. "Prescribed expenditure" is expenditure, essentially of a capital nature, described in Schedule 12 to the Act.

The disposal of assets mentioned in section 75(2) of the Act gives rise to capital receipts, from which net capital receipts are derived. The Secretary of State may by regulations provide that the disposal of specified classes of assets does not give rise to capital receipts or gives rise to such receipts only to the extent specified in the regulations. Regulations may also provide that particular expenditure is not to be prescribed expenditure.

Regulation 4 of the Local Government (Prescribed Expenditure) (Consolidation and Amendment) Regulations 1987 lists certain classes of assets on the disposal of which no capital receipt arises. These Regulations, which will cease to have effect on 1st October 1988, make further additions to the list. They relate to situations where no prescribed expenditure was incurred on acquiring the asset.

Regulation 6 and paragraph 3 of Part I of Schedule 3 to the 1987 Regulations provide that, except in the case of a building lease, expenditure on the acquisition of leases of less than twenty years does not constitute prescribed expenditure. These Regulations provide that, in future, only expenditure on leases of three years or less and leases which succeed certain other interests will not constitute prescribed expenditure; and then only in the circumstances specified in these Regulations.