

15 May 2012

All Chief Executives
English stock holding local authorities

cc Housing Directors

Dear colleague,

RIGHT TO BUY: RE-INVESTING RECEIPTS IN NEW AFFORDABLE RENTED HOMES

1. I am writing to invite your authority to enter into an agreement with the Secretary of State that will enable the authority to retain additional Right to Buy receipts for investment in new affordable rented homes. If you wish to retain receipts for the quarter ending on 30 June 2012, **we must receive your signed copy of the agreement no later than noon on Wednesday, 27 June.**
2. As you know, the Government increased the cap on Right to Buy discounts to £75,000 on 2 April 2012. We expect this to lead to an increase in the number of Right to Buy sales. The Government is committed to ensuring that the additional receipts which result from the increase in sales are reinvested to provide replacement homes.
3. In announcing the final scheme on 12 March, the Government indicated that it would be prepared to enter into an agreement with any local authority which wished to retain receipts to reinvest in new affordable rented housing. Following a technical consultation, Ministers have now agreed the final form of the model agreement which we are offering to authorities.
4. Please find attached:
 - i. an unsigned agreement made under section 11(6) of the Local Government Act 2003;
 - ii. technical guidance for your finance officers;
 - iii. a worked example; and
 - iv. a simple explanation of the process (which you may find useful in sharing with others).
5. In short, the Secretary of State is prepared to agree that your authority should retain additional Right to Buy receipts, on condition that your authority agrees:-

- i. to use those receipts for the provision of affordable rented homes;
 - ii. that those receipts will constitute no more than 30% of total investment in such homes (net of any contribution from another public body);
 - iii. that if, after three years, any of those receipts are not used as set out above, it will pay the un-used sums - plus interest - to the Secretary of State.
6. The agreements are designed to be 'light touch'; there are no conditions on the number of new homes that must be built or acquired, their type, size, location or the rent that must be charged on them. These are decisions for your authority to make.
7. It is current Government policy that any new council homes built since July 2008 are eligible for exclusion from the provisions in the pooling regulations relating to Right to Buy sales; this includes any new homes built or acquired using receipts covered by these agreements. This means that, if these replacement homes were subsequently sold under the Right to Buy, the authority would be able to retain the whole receipt (provided it is spent on affordable housing, regeneration, or paying down housing debt).
8. As soon as you are able clearly to identify such homes, you should contact us to make sure they are excluded.

The 30% benchmark

9. Drawing on evidence from the 2011-2015 Affordable Homes Programme, we are satisfied that it should be possible to fund new homes let at Affordable Rent levels, with *no more than* 30% of the cost of the new homes needing to come from the Right to Buy receipt (the total pot of money, not each individual sale).
10. As in the Affordable Homes Programme, the remainder of the cost will come from borrowing against the net rental income stream from the new property, and cross-subsidy from the landlord's own resources. (However, unlike the Affordable Homes Programme, landlords will not be permitted to generate cross-subsidy by converting existing social rented homes to Affordable Rent.)

Three years

11. The Government wishes to see replacement homes provided as quickly as possible. Our original proposal was that two years was a sufficient timescale in which to invest. However, in response to comments raised in our technical consultation, Ministers have agreed to extend this by a year to maximise the opportunity for local authorities keen to participate.

Interest

12. Interest will be charged at 4% above the base rate compounded with three monthly rests. It is important that these receipts are invested in new homes as quickly as possible. We therefore wish to create a disincentive to hold onto the

receipts until such time as it becomes necessary to pay them over to the Secretary of State. Given the extension to the period within which authorities must re-invest – set out in paragraph 11 above - we are satisfied that authorities should be in a position to avoid having to pay any interest to the Secretary of State.

13. Equally authorities will have the option of re-paying retained receipts early (and therefore incurring less interest) if they decide that they would not be able to incur sufficient investment within the time period.

Other Investment

14. Our intention is to encourage an increase in the supply of new housing: new build should always be the favoured option. However, this does not exclude these receipts being used to buy existing properties for conversion into affordable rent.
15. It is equally acceptable to fund new supply by grant funding another body, such as a housing association - but not a body in which your authority has a controlling interest. There is nothing to prevent you contracting with a subsidiary (for example, your ALMO) to deliver the homes, but such homes must be in the ownership of your local authority and sit within the Housing Revenue Account.

Receipts passed to the Secretary of State

16. Receipts passed to the Secretary of State will be given to the Homes and Communities Agency or, where receipts have arisen in London, the Greater London Authority for investment by them (further details on the process for accessing such funding will follow in due course). There is nothing to stop a local authority that has entered into an agreement with us from having access to funding from these two bodies as well.

Rent Rebate Subsidy Limitation

17. Where an authority increases its average weekly rent above a limit set in England by the Secretary of State, when it submits its final subsidy claim form to the Department for Work and Pensions (DWP) it will receive subsidy on rebates only up to a limit and will have to fund the cost of the additional rebates above the limit rent itself. However, this does not apply to properties in this Right to Buy Scheme.
18. Up to 80% of market rents may be charged. If your authority can meet the 30% benchmark and still charge social rents, it is free to do so, but charging an Affordable Rent (i.e. up to 80% of market rents) is likely to maximise your investment.
19. My colleague, Peter Ruback, wrote to you in July 2011, setting out a process we had agreed with our colleagues in the Department for Work and Pensions (DWP) for local authorities to charge Affordable Rents: i.e. rents above the Limit Rent.
20. We have agreed with DWP to adopt a similar process for homes built using Right to Buy receipts. In this case, it will be necessary to show your auditor a copy of

this agreement, plus a statement signed by your section 151 officer confirming that the home in question had been built or acquired using Right to Buy receipts in line with the conditions set out in the agreement. (Because the 30% benchmark will ensure a maximum return on the investment of Right to Buy receipts, it will not be necessary to engage with the Homes and Communities Agency or the Greater London Authority.)

Bringing the agreement into effect

21. If your authority wishes to enter into an agreement with the Secretary of State, would you please
 - i. insert the full formal name of your authority at the head of the agreement
 - ii. have it signed by someone in your authority with the appropriate delegated authority to do so (an electronic signature is acceptable)
 - iii. return it (we are happy to accept scanned copies) to the Department.
22. Signed copies should be sent to Henry Boye, 1st Floor, Eland House, Bressenden Place, London SW1E 5DU. Henry.Boye@communities.gsi.gov.uk.
23. If you wish to retain receipts for the quarter ending on 30 June 2012, **we must receive your signed copy no later than noon on Wednesday, 27 June**. If you fail to meet this deadline you will not be able to retain receipts arising in quarter 1 of 2012/13 (i.e. April, May and June). These receipts will immediately be passed on to the Homes and Communities Agency or the Greater London Authority for investment.
24. Once we receive a signed copy, we will arrange to have it signed by a Senior Civil Servant and a copy returned to you.
25. We recognise that your authority may not wish to enter into an agreement at this stage. If this is the case, we would be happy for you to respond to this invitation at a later date, but it would be very helpful to have written confirmation that you do not wish to pursue at this stage.
26. If you have any questions on the detail of this letter please contact stephen.biddulph@communities.gsi.gov.uk or ross.buchanan@communities.gsi.gov.uk.
27. I have copied this letter to your Director of Housing

Yours sincerely,

GRAHAM DUNCAN
Deputy Director – Affordable Housing Regulation and Investment

Agreement – Section 11(6) of the Local Government Act 2003

This agreement is made pursuant to section 11(6) of the Local Government Act 2003.

Parties

The Secretary of State for Communities and Local Government (“the Secretary of State”) and

..... (“the Authority”).

This agreement comprises 10 pages

General

1. In this agreement :

“the due date”, “quarter” and “the relevant quarter” have the same meaning as in the Regulations;

“receipts” means the receipts to which Schedule 1 to the Regulations applies;

“retained amount” means the amount calculated in Part 1;

“the Regulations” mean the Local Authority (Capital Finance and Accounting) (England) Regulations 2003;

“social housing” means low cost rental accommodation as defined by section 68(1)(a) of the Housing and Regeneration Act 2008;

“the sub-liability” means the sub-liability calculated under Schedule 1 to the Regulations;

the terms “A”, “E”, “F”, “G”, “J” and “K” used in this agreement have the same meaning as in Schedule 1 to the Regulations.

2. This agreement applies to receipts received on or after 1st April 2012 (“the commencement date”).

3. The Authority is not required to pay to the Secretary of State such portion of the sub-liability calculated in accordance with Part 1 of this agreement provided the Authority complies with the conditions set out in this agreement.
4. The Authority must use the retained amounts for the provision of social housing. Any amounts not used for this purpose must be paid to the Secretary of State and interest will be payable calculated in accordance with paragraph vi of Part 1.
5. The Authority must provide the information set out in Parts 1 and 4 of this agreement to the Secretary of State at the times and in any format the Secretary of State may request.
6. This agreement may be terminated by the Secretary of State by giving notice of one quarter.
7. This agreement may be amended by agreement.

Part 1 - Calculation of the portion of the sub-liability that the Authority may retain.

- i. Where in any quarter –

$$A \text{ is more than } (3.39847729 \times G) + E + F + J$$

the Authority may retain an amount (“the retained amount”) up to–

$$K \text{ less } (2.398347729 \times G).$$

- ii. The Authority must inform the Secretary of State of the following by the due date of the relevant quarter-
 - (a) the value of $K \text{ less } (2.398347729 \times G)$;
 - (b) the retained amount; and

(c) any amount not retained by the Authority.

- iii. Where the Authority has informed the Secretary of State (under paragraph ii(c)) that an amount will not be retained, the Authority must pay that amount to the Secretary of State by the due date of the relevant quarter.
- iv. Where the Authority has informed the Secretary of State that an amount will not be retained and fails to pay that amount on the due date of the relevant quarter, interest is payable and incurred from the due date until the Authority pays that amount to the Secretary of State.
- v. Where the Authority does not inform the Secretary of State of the amount it will not retain by the due date of the relevant quarter, it will be assumed that the retained amount for that quarter is the full amount the Authority may retain and where an amount is not retained and is paid to the Secretary of State, interest will be payable and incurred from the due date until the date the Authority pays that amount to the Secretary of State.
- vi. The Authority may pay any part of the retained amount to the Secretary of State and where it does so, interest is payable and incurred from the due date of the relevant quarter in which the retained amount was retained by the Authority until the date it is paid to the Secretary of State.

Part 2– Return of retained amounts

- i. This Part applies where 13 quarters have expired since the commencement date.
- ii. In this Part :
 - “the reckonable quarter” means the quarter 12 quarters prior to the relevant quarter;

“quarter 1” means the quarter in which the commencement date falls;

A is the total of the retained amounts for all quarters from quarter 1 to the reckonable quarter;

“the total amount spent on the provision of social housing” is the amount spent on the provision of social housing from quarter 1 to the last day of the relevant quarter;

R is the total of the returnable amounts calculated under paragraph iv of this Part and amounts paid to the Secretary of State under paragraph vi of Part 1 for all the quarters from quarter 1 to the reckonable quarter.

- iii. The total retained amount is calculated as follows –

$$A - R.$$

- iv. Where on the last day of the relevant quarter, the total retained amount exceeds 30% of the total amount spent on the provision of social housing, the Authority must pay to the Secretary of State the portion of the total retained amount in excess of 30% of the total amount spent on the provision of social housing (“the returnable amount”).
- v. Where the Authority must pay a returnable amount to the Secretary of State under paragraph iv of this Part, interest is payable, calculated and incurred from the due date of the reckonable quarter until the date the returnable amount is paid to the Secretary of State.

Part 3 - Calculation of interest

Where interest is payable under this agreement, it will be calculated at a rate of 4% above the base rate on a day to day basis compounded with three-monthly rests and “base rate” has the same meaning as in the Regulations.

Part 4 - Provision of information

On the due date of each relevant quarter the Authority must provide to the Secretary of State the details of the number of starts on site since the commencement date.

“Start on site” means the earlier of commencement of the following by the Authority or other body to which the Authority has paid all or part of the retained amount for the purpose of providing social housing:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving; or
- (d) drainage work specific to the buildings forming part of the scheme.

Part 5 – The amount spent on the provision of social housing

- i. The amount spent on the provision of social housing shall not include any expenditure which has been used or which the authority intends to use to-
 - (a) reduce a capital receipt under regulation 15(1)(c) of the Regulations (capital allowance); or
 - (b) buy back a relevant interest defined in paragraph 3(1)(b) of the Schedule to the Regulations and claim buy back allowance in respect of that expenditure under paragraph 3 of the Schedule to the Regulations.

- ii. The amount spent on the provision of social housing shall not include any expenditure on dwellings which are social housing at the time of the expenditure.
- iii. The amount spent on the provision of social housing is the amount spent by the Authority or by a body to which the Authority has paid some or all of the retained amounts (such body must not be a body in which the Authority holds a controlling interest) on the development costs associated with the provision of social housing for the benefit of the Authority's area.
- iv. Where the Authority has paid all or some of the retained amounts to a body for the purpose of contributing towards the cost of providing social housing, the Authority must ensure that only retained amounts provided by the Authority have been used by such body for the provision of social housing for the benefit of the Authority.
- v. Social housing is provided for the benefit of the Authority where it is situated in the area of the Authority or the Authority has nomination rights in respect of the social housing.
- vi. The amount spent on social housing includes the following:
 - (a) the development costs associated with the acquisition of dwellings to be used as social housing;
 - (b) the development costs associated with the acquisition of land for the construction of dwellings to be used as social housing;
 - (c) the development costs of the construction of dwellings to be used as social housing.
- vii. In this Part "development costs" means the costs set out in Part 6.

Part 6 – Development costs

Development costs means the costs relating to the development of social housing in respect to the heads of expenditure set out below.

Heads of expenditure

1 Acquisition

1.1 *Purchase price of land/site.*

1.2 *Stamp Duty Land Tax on the purchase price of land/site.*

2 Works

2.1 *Main works contract costs (excluding any costs defined as on costs).*

2.2 *Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.*

2.3 *statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.*

2.4 *Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.*

2.5 *Irrecoverable VAT on the above (where applicable).*

3 On costs

3.1 *Legal fees and disbursements.*

3.2 *Net gains/losses via interest charges on development period loans.*

3.3 *Building society or other valuation and administration fees.*

3.4 *Fees for building control and planning permission.*

3.5 *Fees and charges associated with compliance with European Community directives, and any requirements relating to energy rating of dwellings, Eco-Homes certification and Housing Quality Indicators.*

- 3.6 *In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note 1 below).*
- 3.7 *Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).*
- 3.8 *Contract performance bond premiums.*
- 3.9 *Borrowing administration charges (including associated legal and valuation fees).*
- 3.10 *An appropriate proportion of the development and administration costs of the Authority or the body in receipt of funding from the Authority.*
- 3.11 *Irrecoverable VAT on the above.*

Note 1

Where the development contract is a design and build contract, the on-costs are deemed to include the builder's design fee element of the contract sum. The amount included by the builder for design fees should be deducted from the works cost element referred to above, as should other non-works costs that may be submitted by the builder such as fees for building and planning permission, building warranty, defects liability insurance, contract performance bond and energy rating of dwellings.

Note 2

Some items will not qualify as development costs unless the Authority can clearly demonstrate that such costs are properly chargeable to the social housing, i.e. for the sole use of the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

- *works to any roads which do not exclusively serve the social housing;*

- *landscaping to areas of land which lie outside the boundaries of the land on which the social housing is situated;*
- *district heating systems;*
- *trunk sewers and sewage disposal works;*
- *special refuse treatment buildings;*
- *public conveniences;*
- *community halls, club rooms, recreation rooms.*

Note 3

Subject to the above, where any cost incurred or to be incurred by the Authority or a body in receipt of funding from the Authority is common both to the development of the social housing and to any other activity, asset or property of the Authority or a body in receipt of funding from the Authority, only such part of that cost as is attributable to the development of the social housing may be treated as a cost in respect of which the retained amount may be paid.

Signed on behalf of the Authority by

(insert name and position in capitals)

..... (add signature and date)

Signed on behalf of the Secretary of State by Graham Duncan – Deputy Director – Affordable Housing Regulation and Investment

.....(add signature and date)

RIGHT TO BUY AND ONE-FOR-ONE REPLACEMENT: INFORMATION FOR LOCAL AUTHORITIES ON HOW THE “LOCAL WITH AGREEMENT” DELIVERY MODEL WORKS

1. On 2 April 2012 Ministers raised the cap on Right to Buy discounts to £75,000, and confirmed that receipts from the additional sales this would generate would be used to fund replacement stock on a one-for-one basis. At the same time Ministers confirmed that their favoured option of delivering these new homes would be through local authorities retaining receipts to spend in their areas.
2. In order for your authority to keep these additional receipts it will be necessary for it to enter into an agreement with the Secretary of State for Communities and Local Government.
3. This paper seeks to give a simple overview of how such agreements work. As such it is not a substitute for the agreements themselves nor the more detailed guidance we have provided to your finance officers.
4. The agreements are made under powers provided by section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011).
5. In short the Secretary of State agrees to
 - i. allow your authority to retain additional Right to Buy receipts to fund the provision of replacement stock, and
 - ii. allow your authority three years (from commencement of the agreement) to invest those receipts before asking for the money to be returned.
6. It is worth emphasising that the agreement does not require a local authority to complete the building of any home within three years; rather the authority should have incurred expenditure sufficient that Right to Buy receipts form no more than 30% of it.
7. In return your authority agrees
 - i. that Right to Buy receipts will not make up more than 30% of total spend on replacement stock, and
 - ii. to return any used receipts to the Secretary of State with interest.

The process

8. Our main aim was to make the process as light touch as possible with minimal inspection or interference in your business activities. The agreements are concerned therefore solely with the flow of money in from receipts and out in investment in replacement stock.
9. Under the capital finance regulations that came into effect on 31st March 2012 your authority will (having deducted certain permissible amounts)

have to surrender Right to Buy receipts to the Secretary of State. This sum comprises two elements:

- i. HM Treasury's share (i.e. the funding HM Treasury was expecting to receive had the policy on Right to Buy not changed) and
- ii. funds available to invest in replacement stock (if receipts are sufficiently high).

10. However the Secretary of State is willing to enter into agreements with those local authorities wishing to invest in replacement stock to retain receipts above HM Treasury's share.

11. It will be entirely the decision of your authority whether to enter into such agreements and entirely its decision as to how much of the surplus receipt it retains.

12. Should your authority not wish to enter into an agreement then any surplus receipts arising in your area will be surrendered to the Secretary of State and passed to the Homes and Communities Agency (or, in London, the Greater London Authority) for them to invest in replacement stock.

13. As set out above, the only condition in the agreement is that the retained Right to Buy receipts must not constitute more than 30% of the total amount invested in replacement stock (which could mean newly built council homes, newly acquired council homes (i.e. existing homes bought on the open market) or social housing provided through local authority grants to housing associations).

14. The 30% cap is necessary to ensure that we get maximum value for money from the Right to Buy receipts and enable the building of as many new homes as possible (indeed, more than one-for-one if that is feasible). Your authority (or the housing association you are grant funding) will be expected to fund the remaining 70% from its own reserves or through borrowing serviced by the anticipated rental income from the new homes built. To maximise borrowing it may be necessary to charge an Affordable Rent (i.e. up to 80% of market rent), but, in the case of new council homes, that is a decision for your authority.

15. Our intention is to encourage additional investment in new social housing. It is not therefore permissible to use receipts arising from non-Right to Buy sales¹ towards the local authority's 70% contribution to scheme costs nor use funding already deducted from the Right to Buy receipts to cover the buying back of former council homes.

16. We have considered historic data, which confirms that 30% is realistic and achievable.

¹ Sales of housing assets other than those made under the Right to Buy or voluntary sales at less than market value to existing council tenants.

17. Where retained receipts exceed 30%, then your authority will agree to return the additional receipt (i.e. the receipt above 30%) to the Secretary of State with interest.

How does this work?

18. Each financial quarter your authority will report to the Department the cumulative sum it has *retained* for replacement stock and the cumulative amount it has *spent* on replacement stock.

19. There will be no requirement to return receipts in the first three years of the agreement, but in Quarter 1 of 2015/16² your authority will have to compare

- the total amount spent on replacement stock from the start of the agreement to the end of that quarter, with
- the total amount it has retained from Right to Buy receipts in Quarter 1 of 2012/13 (i.e. receipts it has had three years to spend).

Where the latter is 30% or less than the former then no further action is necessary.

20. In Quarter 2 of 2015/16 the comparison will be between the total spent on replacement stock since the agreement began with the total it retained in Quarters 1 and 2 in 2012/13. And so forth for each subsequent quarter.

Grants to Housing Associations

21. Your authority may choose not to build itself, but instead to grant fund another body. Where this is the case, we would encourage your authority not to pay grant until scheme completion. This will mean that your authority will be able to demonstrate clearly to your auditors your contribution (and the contribution of other public bodies) did not constitute more than 30% of total scheme costs.

22. You may decide to gift land to your partner housing association. Where this is the case the value of the land cannot be counted towards the housing association's 70% contribution. This is in line with the grant allocation process managed by the Homes and Communities Agency.

Returning receipts to the Secretary of State

23. Where in Quarter 1 of 2015/16 retained receipts in Quarter 1 of 2012/13 are more than 30% of total spend then the surplus (i.e. the amount above 30%) must be surrendered to the Secretary of State. Your authority's retained amount for Quarter 1 of 2012/13 will be reduced by the amount surrendered and interest calculated back to that Quarter.

² This example assumes the agreement began in Quarter 1 of 2012/13

24. Any surplus identified in Quarter 2 of 2015/16 will result in Quarter 2 of 2012/13 being reduced and interest calculated back to that Quarter. And so on.

The early return of receipts

25. Your authority will be free to make payments to the Department whenever it wishes. In so doing it will identify the Quarter it wishes to adjust and interest will be calculated back to that Quarter.
26. This will be useful where your authority may recognise that it will be compelled to return receipts after two years and so wish to reduce the amount of interest it must pay by paying it back early.
27. Returned receipts will be given to the Homes and Communities Agency or the Greater London Authority (as appropriate) for investment into Affordable Rented Housing. Further detail on how the allocation process will work will follow (which could be to local authorities that have entered into these agreements too).

Interest

28. We will charge interest at 4% above the base rate on a day to day basis compounded with three-monthly rests: i.e. at the end of each three monthly period interest will start to accrue interest.
29. We have set a rate of interest deliberately, we hope, high enough to encourage local authorities to invest more in replacement stock. The rate is specifically designed to discourage local authorities from retaining receipts until such time that they are required to surrender them. The means to avoid paying interest will be in your control and it should therefore be possible to avoid having to pay interest at all.
30. It is our intention that any interest returned to the Department will be used to support the provision of new affordable rented homes.

Reporting and Monitoring

31. Local authorities who enter into an agreement will be expected to complete quarterly returns on Right to Buy sales, replacement starts and completions. This is consistent with the quarterly pooling return. In the longer term we may consider moving to a six monthly or annual reporting cycle, but in the initial years of the scheme quarterly monitoring is needed to assess how the scheme is progressing.

Terminating Agreements

32. The Secretary of State can terminate an agreement at any time, but would expect to do so only in extreme circumstances (for example, where there was absolutely no evidence that a local authority was commencing

activity). The effect of termination would mean that your authority could, from that point, no longer retain any receipts but would still have the three years from the start of the agreement to invest the receipts it had already retained (or have to return them).

33. Equally your authority can terminate an agreement either by voluntarily returning all future receipts (and paying back what it had already retained) or by requesting the Secretary of State to terminate as set out above.

Entering into Agreements

34. We have invited all stock holding local authorities to enter into agreements with us, with a requirement that they be returned signed to the Department before noon on Wednesday 27th June. This will enable us to send signed copies back to local authorities before July. The agreements are not valid until signed by both parties.

35. You will wish to note that local authorities that enter agreements after Quarter 1 in 2012/13 will not be able to claim back receipts already surrendered. Similarly where a local authority decides in any quarter not to retain the full amount, but instead decides to return some or all of it, it cannot subsequently claim that money back.

36. This is because the receipts will already have been allocated to the Homes and Communities Agency or Greater London Authority as appropriate for investment.

37. If you have any questions on this paper please e-mail us at the Department for Communities and Local Government at housingassets_consultation@communities.gsi.gov.uk.

May 2012

Department for Communities and Local Government

REINVIGORATING RIGHT TO BUY (RTB): RETAINMENT OF RECEIPTS FOR REPLACEMENT HOUSING

INFORMATION FOR LOCAL AUTHORITY FINANCE OFFICERS

Introduction

1. On 12 March, the Department announced that it would allow a local housing authority to retain some Right to Buy (RTB) receipts, provided that it could demonstrate that it had spent a sufficient amount on replacement affordable housing. This paper, together with the attached template agreement, demonstrates how this is to be done.
2. In order to benefit from this provision, a local authority will have to sign an agreement (template attached) under section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011). Under this, the authority would be able to retain any one-for-one receipts, provided that it ensures that a sufficient amount of resources are spent on the provision of social housing within a set period of time (see commentary on Part 6).
3. Where the Secretary of State requires information from a local authority, it is likely to be required as an entry in LOGASNet which is already used by authorities to make pooling returns (see paragraph 5 of the draft agreement).
4. The Secretary of State reserves the right to terminate the agreement (see paragraph 6 of the General Section of the template). He does not foresee this happening. If he did exercise this right, the amounts that were already retained by the local authority under paragraph i of Part 1 would continue to be retained, subject to the existing conditions of the agreement.

Part 1 – Calculation of the Portion of the Sub-Liability that the Authority may retain

Paragraph i: The agreement applies only to an authority's receipts in a quarter if there are any RTB receipts left after the following amounts have been netted off:

- transaction costs (£2,850 per RTB sale for London authorities; and £1,300 for other authorities);
- allowable attributable debt (Variable F as calculated in paragraph 6 of the Schedule to the Regulations);
- adjusted local authority share cap (Variable G as calculated in paragraph 7 of the Schedule to the Regulations);
- Treasury share cap (2.398347729 multiplied by G) which is the amount that, subject to there being sufficient RTB receipts, the local authority must net off;
- any deductible buy-back allowance (Variable J as calculated in paragraph 8 of the Schedule to the Regulations).

Where there are still such receipts remaining, then the authority may retain any amount up to the level of its sub-liability minus its Treasury share cap.

Paragraph ii: By the due date of the quarter, we shall ask the authority to provide us through LOGASNet:

- the amount it may retain;
- the amount it decides to retain; and
- the amount it decides not to retain.

Paragraphs iii & iv: If the authority decides it will not retain a certain amount, then it must pay that amount by the due date of the quarter. Any late payment of that amount will incur interest calculated at four per cent above the base rate (see commentary on Part 4)

Paragraph v: By entering into the agreement, an authority commits itself to informing the Department by the due date of each quarter of the amount that it will retain and the amount that it will pay to the Department. If it is late in providing that information, then the Department will have to assume that it is retaining the maximum amount. If, after that, the authority determines that it will pay some of that amount to the Secretary of State, then interest will be payable at the same rate as that paid under paragraph iv above.

Paragraph vi: Should the authority decide before the deadline for spending the retained amount that it will be unable to ensure that the required amount is spent on providing social housing (see commentary on paragraph iv of Part 3), then it may pay part or all of the retained amount to the Secretary of State. For instance, a local authority retains £300,000 in a quarter which means that it has to ensure that £1 million is spent on providing social housing (see again commentary on paragraph iv of Part 3). It subsequently decides that it can only spend half that amount (£500,000) on social housing, which means that it should pay back half the retained amount (£150,000). Interest is payable at the same rate as that paid under paragraph iv above. The advantage of paying earlier, of course, is that the amount of interest payable would be less.

Part 2 – Return of Retained Amounts

Paragraph i: Legally, this Part becomes effective only three years after the agreement is signed. However, a local authority should pay close attention to the provisions of this Part, both while considering whether to sign the agreement and in monitoring its level of actual and predicted expenditure on social housing during those three years

Paragraphs ii to iv: The local authority must ensure that sufficient amounts are spent on social housing such that the retained amounts constitute no more than **30%** of the amount spent.

For example, in the first quarter in which the agreement becomes effective, an authority retains under the agreement **£300,000** of receipts. This £300,000 is net of any amount which it has returned in the three years. This net figure is known as “the total retained amount” for the thirteenth quarter (paragraph iii). The first quarter is known as the reckonable quarter in Part 3 (paragraph ii), having been known as the relevant quarter in Part 1 (paragraph ii). The thirteenth quarter is now known as the relevant quarter in Part 2.

The authority must therefore ensure that **£1 million** is spent on the provision of social housing between the first day of that first quarter three years after the final day of that same quarter (ie the final day of the thirteenth quarter in which the agreement becomes effective). This expenditure is defined as “the total amount spent on the provision of social housing” (paragraph ii). There are two ways in which an authority may ensure that the receipts are spent on the provision of social housing. (See commentary on Part 5)

For the fourteenth and subsequent quarters, the “total retained amount” and the “total amount spent on the provision of social housing” would be calculated on a cumulative basis. To take the example further, the authority retained a further £300,000 in the second quarter in addition to the £300,000 it had already retained in the first quarter. This means that by the end of the fourteenth quarter, it should have ensured that £2 million has been spent on providing social housing.

It must be emphasised that, in the three years after the receiving by the authority of the receipt in the reckonable quarter, the authority has to have incurred only a sufficient amount of expenditure towards the provision of social housing. It does not necessarily have to have completed the provision of the housing itself. So, to take the example one more time, the authority may have incurred £1 million in providing social housing, but it may not yet have completed the building of all the new dwellings

Paragraph v: If the authority has failed to ensure that a sufficient amount has been spent on providing social housing by the end of the relevant quarter, then the paying back of part or all of that amount is compulsory (unlike a payment under paragraph vi of Part 1 which is voluntary). Interest is payable at the same rate (see commentary on Part 4).

Part 3 – Calculation of Interest

When interest is payable under either paragraphs iv to vi of Part 1 or paragraph v of Part 2, the rate will be the same as that for a routine late pooling payment (see regulation 13) except that it will be set at four per cent above the base rate, rather than one per cent. The higher rate is to ensure that authorities retain their receipts only when they have clear plans to spend a sufficient amount on providing social housing.

Part 4 - Provision of Information

As well as the information required under paragraph ii of Part 1, the Department will also require the number of starts on site since the beginning of the agreement. (The definition that appears here is that used by the Homes and Communities Agency in

determining whether a grant-supported project has begun and consequently able to attract the release of allocated grant.) This will enable the Department to assess, before the thirteen quarters have elapsed after the commencement date, how effective the agreement has been in enabling one-for-one replacement.

Part 5 – The amount spent on the provision of social housing

Paragraph i: In order to prevent double counting, the agreement will provide that expenditure which the authority has used or intends to use to make deductions under regulation 15(1)(c) (as capital allowance) or the Schedule to the Regulations (as buy back allowance) is excluded from the amount spent on the provision of social housing for the purposes of determining whether the retained amount may continue to be retained.

Paragraph ii: In order to ensure that the retention of RTB receipts results in the provision of genuinely new social housing, any expenditure incurred on the acquisition of existing social housing is also excluded from the amount spent on the provision of social housing for the same purposes.

Paragraphs iii & iv: As mentioned in the commentary on paragraph ii to iv of Part 2 above, there are two ways in which an authority may ensure that the receipts are spent “on the provision of social housing”. The more obvious way is, of course, to spend the money itself. However, for some authorities, this option may not be practicable: for instance, it may be near its housing debt cap, yet it does not have sufficient alternative revenue and capital resources. In that situation, an authority may wish to consider transferring the retained amounts to another provider, with a condition that that provider brings in the requisite amount of funding. So, to continue the example quoted in the commentary on Part 2 above, the authority, having retained **£300,000** of RTB receipts and transferred those receipts to a provider, must ensure that the provider brings in **£700,000** of its own resources to ensure that the RTB receipts constitute no more than 30% of the total spend.

The agreement allows an authority to be flexible. So, in the cited example, it may choose to spend **£500,000** on social housing and transfer half (**£150,000**) of its retained amount to the provider, on the condition that it also spends a total of **£500,000** on social housing. Alternatively, the authority may transfer the full **£300,000** of the retained amount and then transfer an additional **£100,000** to the provider meaning that the provider has to bring in only **£600,000** of receipts.

Part 6 – Development Costs

The definition of “development costs” is based on the definition used by the Homes and Communities Agency (HCA) in its allocation of equivalent grants to registered providers. For instance, the purchasing of a land in order to provide a site for social housing is included. However, the provision of any land already owned by the authority will not count.

Any queries on this note should be referred to Ross Buchanan
Ross.Buchanan@communities.gsi.gov.uk

RtB agreements - worked example

	2012/13				2013/14				2014/15				2015/16			
	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16
Receipts	100	100	100	100	100	100	0	0	0	0	0	0	0	0	0	0
Cumulative Receipts	100	200	300	400	500	600	600	600	600	600	600	600	600	600	600	600
Spend	0	0	50	100	100	50	50	40	40	40	30	30	30	30	30	30
Cumulative Spend	0	0	50	150	250	300	350	390	430	470	500	530	560	590	620	620
Total of all retained amounts from Q1 to the reckonable quarter													100	200	277	
30% of total amount spent on provision of social housing													168	177	186	
Returnable Amount (R)													0	23	91	

Adjusted to take account of money surrendered in the previous quarter

Receipts in Q1 are less than 30% of total spend up to the end of Q13, therefore nothing to surrender to central Govt

Receipts in Q1 and Q2 are more than 30% of total spend up to the end of Q14, therefore £23k (ie the difference) must be surrendered to central Govt and receipts received in Q2 will be reduced by £23k