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Statutory guidance

# Guidance on the flexible use of capital receipts (updated)

Updated 4 April 2022

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## **Part 1: Informal commentary on the guidance on flexible use of capital receipts**

[References to the paragraphs in the formal guidance are in square brackets]

### **Power under which the Guidance is issued [1.1]**

1. The Local Government Act 2003 (“the Act”), section 15(1) requires a local authority “... to have regard (a) to such guidance as the Secretary of State may issue, and (b) to such other guidance as the Secretary of State may by regulations specify ...”.
2. The guidance on use of capital receipts flexibility in Part 2 of this document (the Guidance) is issued under section 15(1) of the Act and authorities are therefore required to have regard to it.
3. Two codes of practice issued by the Chartered Institute of Public Finance and Accountancy (CIPFA) contain guidance on capital receipts and local authority accounting that complement the Department for Levelling Up, Housing and Communities (DLUHC) guidance. These publications are:
  - The Prudential Code for Capital Finance in Local Authorities
  - The Code of Practice on Local Authority Accounting
4. Local authorities are required to have regard to the current edition of The Prudential Code for Capital Finance in Local Authorities by regulation 2 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 and to the Local Authority Accounting Code as proper practices for preparing accounts under section 21(2) of the Act.

### **Application [3.1-3.2]**

5. The Guidance should be read alongside the relevant direction issued by the Secretary of State.
6. The Guidance applies to all years that the flexible use of capital receipts direction applies.
7. The direction makes it clear that local authorities cannot borrow to finance the revenue costs of service reform. Local authorities can only use capital receipts from the disposal of property, plant and equipment assets received in the years in which this flexibility is offered.

### **Qualifying expenditure [4.1-4.3]**

8. The Secretary of State believes that individual authorities and groups of authorities are best placed to decide which projects will be most effective for their areas. The key criteria to use when deciding whether expenditure can be funded by the capital receipts flexibility is that it is forecast to generate ongoing savings to an authorities’, or several authorities, and/or to another public sector body’s net service expenditure.
9. A list of types of projects that would qualify for the flexible use of capital receipts is included in the Guidance. This list is not meant to be prescriptive or exhaustive. Individual authorities who have projects that will generate ongoing savings that are not included in the list provided in the Guidance, can apply the flexibility to fund those projects.
10. As set out in the direction, discretionary redundancy payments cannot be qualifying expenditure and must not be capitalised under the direction. An authority may capitalise redundancy payments that are necessarily incurred and limited to the amounts available as statutory redundancy payments, where such costs are otherwise qualifying expenditure Authorities should not use the proceeds from

asset sales to fund redundancy costs in excess of what is required by statute. This restriction does not apply to other severance costs, including pension strain costs; the treatment of these costs remains unchanged from the previous direction.

## **Accountability and transparency [5.1-5.11]**

11. It is important that individual authorities demonstrate the highest standards of accountability and transparency. Each authority should disclose the individual projects that will be funded or part funded through capital receipts flexibility to full council or the equivalent. This requirement can be satisfied as part of the annual budget setting process, through the Medium-Term Financial Plan or equivalent.

12. The Guidance recommends that the council produces a Flexible use of Capital Receipts Strategy (the Strategy) setting out details of projects to be funded through flexible use of capital receipts be prepared prior to the start of each financial year. Failure to meet this requirement does not mean that an authority cannot access the flexibility in that year. However, in this instance, the Strategy should be presented to full council or the equivalent at the earliest possible opportunity. The Guidance allows local authorities to update their Strategy during the year.

13. It is a required condition of the direction that authorities must send details setting out their planned use of the flexibility to the Secretary of State, in advance of its use for each financial year. This is to make sure that the government is adequately sighted on the use of the flexibility and can monitor how it is used. It is not a process of approval and authorities do not require a response in order to use the flexibility. It is important that the information sent to the Secretary of State is accurate and, for that reason, it is also a requirement that authorities do not capitalise expenditure in excess of what was set out in the submitted plans. Authorities may, however, update their plans and resubmit to the Secretary of State during the financial year. Authorities may submit their Strategies to fulfil this requirement, or an equivalent plan. No format is specified, however, the information must contain, as a minimum, the detail specified in the direction and should contain the detail set out in 5.3 and 5.4 of the Guidance.

## **Supplementary**

14. Nothing in the Guidance or in the direction exempts local authorities from any other obligations, for example in relation to Right to Buy receipts.

## **Part 2: Updated guidance on flexible use of capital receipts**

Issued under section 15(1)(a) of the Local Government Act 2003 and effective from 1 April 2022.

### **(1) Power under which the Guidance is issued**

1.1 The following guidance is issued by the Secretary of State under section 15(1)(a) of the Local Government Act 2003.

### **(2) Definition of terms**

2.1 In this guidance, the Act means the Local Government Act 2003.

2.2 Local authority has the meaning given in section 23 of the Act (and in regulations made under that section).

2.3 Capital receipt has the meaning given in section 9 of the Act (and in regulations made under that section).

2.4 Qualifying expenditure means expenditure on a project where incurring up-front costs will generate ongoing savings. The main part of this guidance details the types of projects that will generate qualifying expenditure.

2.5 The direction means a direction made under section 16(2)(b) of the Act, to allow named local authorities to treat qualifying expenditure as being capital expenditure.

2.6 Prudential indicators has the meaning given in the CIPFA code of practice, The Prudential Code for Capital Finance in Local Authorities.

### **(3) Application**

#### **Effective date**

3.1 This guidance applies with effect from 1 April 2022, for the period for which flexible use of capital receipts will apply, which will be set out in the direction.

#### **Local authorities**

3.2 This guidance applies to all local authorities in England named in the directions issued by the Secretary of State.

### **(4) Qualifying expenditure**

#### **Types of qualifying expenditure**

4.1 Qualifying expenditure is expenditure on any project that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery to reduce costs and/or transform service delivery in a way that reduces costs or demand for services in future years for any of the public sector delivery partners. Within this definition, it is for individual local authorities to decide whether or not a project qualifies for the flexibility.

4.2 Set up and implementation costs of any new processes or arrangements can be classified as qualifying expenditure. The ongoing revenue costs of the new processes or arrangements cannot be classified as qualifying expenditure. In addition, one off costs, such as banking savings against temporary increases in costs/pay cannot be classified as qualifying expenditure. Under the direction the in force from April 2022, with respect to redundancy payments, qualifying expenditure will be limited to those amounts that are necessarily incurred as statutory redundancy payments provided the other requirements of qualifying expenditure are met. This restriction does not apply to other severance costs, including pension strain costs; the treatment of these costs remains unchanged from the previous direction.

#### **Examples of qualifying expenditure**

4.3 There are a wide range of projects that could generate qualifying expenditure and the list below is not prescriptive. Examples of projects include:

- Sharing back-office and administrative services with one or more other council or public sector bodies;
- Investment in service reform feasibility work, e.g. setting up pilot schemes;
- Collaboration between local authorities and central government departments to free up land for economic use;

- Funding the cost of service reconfiguration, restructuring or rationalisation where this leads to ongoing efficiency savings or service transformation;
- Driving a digital approach to the delivery of more efficient public services and how the public interacts with constituent authorities where possible;
- Aggregating procurement on common goods and services where possible, either as part of local arrangements or using Crown Commercial Services or regional procurement hubs or Professional Buying Organisations;
- Improving systems and processes to tackle fraud and corruption in line with the Local Government Fraud and Corruption Strategy – this could include an element of staff training;
- Setting up commercial or alternative delivery models to deliver services more efficiently and bring in revenue (for example, through selling services to others); and
- Integrating public facing services across two or more public sector bodies (for example children's social care or trading standards) to generate savings or to transform service delivery.

## **(5) Accountability and transparency**

### **Preparation**

5.1 For each financial year, a local authority should ensure it prepares at least one Flexible use of Capital Receipts Strategy ("the Strategy") in accordance with the timetable in paragraphs 5.6 and 5.7.

5.2 This Strategy does not need to be a separate document, and the requirement can be satisfied by including relevant documents within the Annual Budget documents or as part of the Mid-Term Financial Plan (or equivalent). Content

5.3 As a minimum, the Strategy should list each project that plans to make use of the capital receipts flexibility and that on a project-by-project basis details of the expected savings/service transformation are provided. The Strategy should report the impact on the local authority's Prudential Indicators for the forthcoming year and subsequent years.

5.4 For the 2022-23 Strategy and in each future year, the Strategy should contain details on projects approved in previous years, including a commentary on whether the planned savings or service transformation have been/are being realised in line with the initial analysis.

5.5 The Strategy may also include any other matters considered to be relevant. Approval

5.6 The Strategy should be presented to full council. For authorities without a full council, the Strategy should be tabled at the closest equivalent level.

### **Timing**

5.7 For any financial year the Strategy ("the initial Strategy") should be prepared before the start of the year. 5.8 The initial Strategy may be replaced by another Strategy ("the revised Strategy") at any time during the year, on one or more occasions. The initial Strategy should specify the circumstances in which a revised Strategy is to be prepared, but a revised Strategy may be prepared in other circumstances, if at any time it is considered to be appropriate. When setting a revised Strategy its impact on the local authority's Prudential Indicators shall be considered and whether it is necessary to amend the Prudential Indicators at the same time. Where an authority presents a revised Strategy during the year this should be submitted DLUHC via [DELTA \(https://delta.communities.gov.uk/login\)](https://delta.communities.gov.uk/login) or to [capitalreceiptsflexibility@levellingup.gov.uk](mailto:capitalreceiptsflexibility@levellingup.gov.uk).

## Publication and disclosure

5.9 The initial Strategy and any revised Strategy should, once approved, be made available online to the public free of charge.

5.10 It is a required condition of the direction that the authority submit to the Secretary of State the details of its planned use of the flexibility for each year in which the flexibility is used. This must be sent as soon as is practicable following disclosure to full Council or equivalent, and must be sent in advance of the flexibility being used. Providing a copy of the Strategy will fulfil this requirement, but an equivalent document is acceptable provided it is fully consistent with the Strategy and presents accurately the authority's planned use of the flexibility. The information provided in the plan should contain, as a minimum, the detail set out in paras 5.3 - 5.5. of this guidance and must contain the detail required in the direction.

5.11 The amount capitalised in the financial year must not exceed the amount set out in the plan provided to the Secretary of State, however, an authority may revise its plans and send an update at any time in the financial year. All information should be provided to DLUHC by submitting via DELTA (<https://delta.communities.gov.uk/login>) or to DLUHC at [capitalreceiptsflexibility@levellingup.gov.uk](mailto:capitalreceiptsflexibility@levellingup.gov.uk).

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