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OXFORD CITY COUNCIL

Agenda

Delegated Decisions of the Board Member, Housing

Date:	**Friday 22 June 2012**
Time:	**9.00 am**
Place:	**Town Hall, St Aldate's**

For any further information please contact:
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Delegated Decisions of the Board Member, Housing

Board Member	**Portfolio**
Councillor Scott Seamons	**Housing**

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AGENDA

PART ONE
PUBLIC BUSINESS

		Pages
1	**DECLARATIONS OF INTEREST**	
	Guidance on personal and prejudicial interests is attached to these agenda pages.	
2	**PUBLIC ADDRESSES**	
	Members of the public may, if the Board Member agrees, ask a question of the Board Member on any item for decision on this agenda (other than on the minutes). The full text of any question must be notified to the Head of Law and Governance by no later than 9.30 am two clear working days before the meeting. Questions by the public will be taken as read and, at the Board Member's discretion, responded to either orally or in writing at the meeting. No supplementary question or questioning will be permitted. The total time permitted for this item will be 15 minutes.	
3	**COUNCILLOR ADDRESSES**	
	City Councillors may, at the Board Member's discretion, ask a question or address the Board Member on an item for decision on the agenda (other than on the minutes). The full text of any question and the nature of any address must be notified to the Head of Law and Governance by no later than 9.30 am two clear working days before the meeting. Questions by councillors will be taken as read and, at the Board Member's discretion, responded to either orally or in writing at the meeting. No supplementary question or questioning will be permitted. If an address is made, the Board member will either respond or have regard to the points raised in reaching her or his decision. If the address is by the Chair of a Scrutiny Committee or her or his nominee then the Board member will be required to say as part of their decision whether they accept the Scrutiny recommendations made.	
4	**RIGHT TO BUY - RETENTION OF RECEIPTS**	1 - 26
	Report of the Executive Director, City Regeneration, attached. The report seeks permission to enter into an agreement with the Secretary of State for Communities and Local Government which will allow the authority to retain a proportion of receipts from Right to Buy sales of council properties for re-investment in new affordable housing.	

5 MATTERS EXEMPT FROM PUBLICATION

If the Board member wishes to exclude the press and the public from the meeting during consideration of any of the items on the exempt from publication part of the agenda, it will be necessary for the Board member to pass a resolution in accordance with the provisions of Paragraph 21(1)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 on the grounds that their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Schedule I2A of the Local Government Act 1972.
The Board member may maintain the exemption if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

DECLARING INTERESTS

What is a personal interest?

You have a personal interest in a matter if that matter affects the well-being or financial position of you, your relatives or people with whom you have a close personal association more than it would affect the majority of other people in the ward(s) to which the matter relates.

A personal interest can affect you, your relatives or people with whom you have a close personal association positively or negatively. If you or they would stand to lose by the decision, you should also declare it.

You also have a personal interest in a matter if it relates to any interests, which you must register.

What do I need to do if I have a personal interest?

You must declare it when you get to the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you. You may still speak and vote unless it is a prejudicial interest.

If a matter affects a body to which you have been appointed by the authority, or a body exercising functions of a public nature, you only need declare the interest if you are going to speak on the matter.

What is a prejudicial interest?

You have a prejudicial interest in a matter if;

a) a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgment of the public interest; and

b) the matter affects your financial interests or relates to a licensing or regulatory matter; and

c) the interest does not fall within one of the exempt categories at paragraph 10(2)(c) of the Code of Conduct.

What do I need to do if I have a prejudicial interest?

If you have a prejudicial interest you must withdraw from the meeting. However, under paragraph 12(2) of the Code of Conduct, if members of the public are allowed to make representations, give evidence or answer questions about that matter, you may also make representations as if you were a member of the public. However, you must withdraw from the meeting once you have made your representations and before any debate starts.

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To: Single Member Decision – Board Member, Housing

Date: 2 2nd June 2012

Report of: Executive Director, Regeneration and Housing

Title of Report: RIGHT TO BUY – RETENTION OF RECEIPTS

Summary and Recommendations

Purpose of report: The report seeks permission to enter into an agreement with The Secretary of State for Communities & Local Government which will allow the Authority to retain a proportion of receipts from Right to Buy Sales of council properties for re-investment in new affordable housing.

Key decision: No

Executive lead member: Councillor Scott Seamons

Policy Framework: No

Recommendation(s): That delegated authority be given to the S151 Officer (Head of Finance) to enter into an agreement with the Secretary of State for Communities & Local Government, such agreement being pursuant to Section 11 (6) of the Local Government Act 2003.

Appendix 1: The Right to Buy Agreement
Appendix 2: Guidance Note from CLG relating to the Agreement.
Appendix 3: Risk Register

Background

1. Oxford City Council recently contributed to government consultation on proposed changes to the Right to Buy system, giving a critical response highlighting the negative effects of Right to Buy on our communities and on the availability of social housing in the city. The Council's response also pointed out the hypocrisy of forcing stock-retaining authorities to take on massive debt to free themselves from the necessity for government subsidy, whilst simultaneously requiring those authorities to give up receipts from Right to Buy sales and encouraging such sales through massive public subsidy. Many other stock retaining councils also

participated in the consultation exercise, with the vast majority giving responses that echoed the concerns voiced by OCC.

2. However, despite the overwhelmingly negative feedback, 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

3. In order for the council 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. Such an agreement would be made under powers provided by section 11(6) of the Local Government Act 2003 (as inserted by section 174 of the Localism Act 2011).

4. There are a number of conditions which the Agreement places on the council in relation to the retention of these additional receipts.

   (i) They must be used for the provision or acquisition of new affordable housing; they could not be used to buy existing social stock from another social landlord.

   (ii) The receipts must be spent within a rolling three year period starting from the beginning of the 2012/13 financial year.

   (iii) Funding from this source must comprise no more than 30% of the total investment in the new housing, net of any contribution from any other public body, and net of any capital contribution generated by selling HRA assets other than through the Right to Buy (sale of land, or disposal of properties on the open market, for example). This condition raises the question of where the other 70% of funding can be sourced. Whilst there is currently a significant amount of funding set aside for this purpose in the HRA Business Plan, it is possible that in the medium to long-term it might prove necessary to supplement any investment by setting higher (so-called "affordable") rents on council properties, something which members have made clear they do not consider in the best interests of the city and our tenants.

5. There are two ways in which the council could use the additional funding; by investing it in new-build council housing, or by giving grants to other social landlords. Officers anticipate that, given the council's commitment to provision of new-build council housing as part of the Affordable Housing Programme part-funded by the Homes & Communities Agency, and the potential for council ownership and management of properties on the new Barton development that has arisen as a result of the new HRA funding arrangements, there will be ample scope for investing all retained receipts in new council-owned stock in the foreseeable future.

6. Should the Council decide that direct investment in new build council properties is not in principle desirable because of the risks posed by the potential for a high level of Right to Buy applications on those properties, the problem of how to spend the retained receipts might well arise, given the limited number of development sites that are within the council's control. For this reason the option of grant-aiding other social landlords to provide social housing in city should not be ruled out in the first instance. Members may also wish to consider in this context whether or not they might wish to support the development of social rented homes outside the city boundaries on condition that they be made available to Oxford residents via the Choice Based lettings system.

7. It should be noted, however, that council properties built or acquired post 1st April 2012 are excluded from the receipt pooling arrangements (so that the Council would retain the whole receipt from any sale with no restrictions on how that must be spent), and attract "Cost Floor" limitations in the first ten years which would, at least initially, make Right to Buy much less attractive, and this may allay fears that direct investment in new-build properties is a hostage to fortune in terms of Right to Buy applications.

Financial Implications.

8. The summary of proposals includes:

    - Abolish maximum capped discounts and replace with one maximum amount to be applied nationally set at £75k
    - Re-invest additional sales receipts generated through the new policy in new affordable housing after setting aside an amount for debt and an assumed amount of pooled receipt under HRA self-financing settlement has been paid over to the Govt.
    - Allow local authorities to retain additional receipts to invest locally provided these receipts amount to no more than 30% of development costs.
    - Target one-for-one replacement at a national level.
    - Continue the RTB buy back scheme where authorities can offset the cost of buying back RTB properties by up to 50% against pooled receipts.
    - Allow authorities to retain 100% of RTB receipts from new build disposals.
    - Allow administration costs due to increased RTB activity.

How will the re-investment work?

- The guidance states that 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 the authority concerned – i.e. the funding may be used to fund homes at social rents.

- There will be no need to demonstrate one-for-one replacement locally as long as no more than 30% of the scheme costs are financed by additional receipts.
- There will be no requirement to pay off debt with the debt element to be set aside.
- Authorities need to make significant contributions to replacement locally from borrowing headroom, other receipts, revenue contributions or reserves built up for the purpose.

Below is an analysis of how the new RTB system will work for OCC under the one-for-one scenario.

Analysis of RTB Receipts

Projected sales under Self-Financing			**10**
Estimated sales price after discount		**£**	**100,000.00**
Total assumed capital receipt from sales	10*100k	**£**	**1,000,000.00**
Authority proportion	25%*£1m	**£**	**250,000.00**
Govt proportion	75%*£1m	**£**	**750,000.00**

Actual sales			**25**
Estimated sales price after NEW discount		**£**	**80,000.00**
Total assumed capital receipt from sales	25* £80k	**£**	**2,000,000.00**
Attributable debt per property		**£**	**30,000.00**
Attributable debt on additional sales	£30k*(25-10)	**£**	**450,000.00**
Allowable transaction costs per property		**£**	**1,320.00**
Total allowable transaction costs		**£**	**33,000.00**
Total deductible by authority	Total	**£**	**483,000.00**

How much for re-investment?

Total assumed capital receipt from sales	As above on 25	**£**	**2,000,000.00**
Total deductible by authority	on > 10	**-£**	**(483,000.00)**
Govt proportion under Self-financing	On first 10	**-£**	**(750,000.00)**
Authority proportion under Self-financing	On first 10	**-£**	**(250,000.00)**

Remaining for re-investment	Balance	£	**517,000.00**
Total programme if above figure represents 30%	517/0.3*100	£	**1,723,333.33**
DCLG assume £100k/property so re-provision is			**17**
Net loss in HRA properties			**8**

Funding

Total programme if above figure represents 30%	As above	£	**1,723,333.33**
Remaining for re-investment	As above	£	**(517,000.00)**
Total deductible by authority	Not used to redeem debt	£	**(483,000.00)**
Balance to be financed	Total	£	**723,333.33**

9. It is possible that significantly greater numbers of properties will be subject to Right to Buy sales than detailed in the above example, at least in the first few years of the HRA Business Plan period, and that possibility raises the question as to whether or not the council will have sufficient capacity to use the volume of funds generated by retention of receipts within the allotted timescale. This is important, as any unused receipts would have to be paid back to the Secretary of State, with interest payable at 4% above base rate, compounded.

10. The guidance issued by Communities and Local Government makes clear that the funding may only be used where it totals no more than 30% of the cost of the schemes involved, net of contributions from other public bodies (notably, grant provided by the Homes & Communities Agency), and net of any capital investment derived from the sale of other HRA assets, outside of the Right to Buy Scheme.

11. There are two major house-building programmes in the pipeline that will take place over the first 6 years of the HRA BP period – firstly the partially HCA funded Affordable Housing Programme (AHP), and secondly the potential council purchase of the 40% social housing component of the Barton development.

12. In the case of the AHP programme, the estimated total cost of development is £20,920,000, of which £2,420,000 is expected to be provided as HCA grant, and £18,500,000 from HRA revenue sources. The council will therefore be in a position to use up to £5,550,000 of retained Right to Buy funding as a contribution to this programme (£18.5M x 30%). Using the model above as an indicative estimate, generating this amount would require sales in the region of 150 dwellings. The Barton development, which will complete in 2016, will generate 40% social rented housing. Whilst no figures are yet available as to the cost of purchasing those units, it is not unreasonable to suggest a price in the region of

£50,000,000 for 350 units. This would mean that up to £15,000,000 of right to buy retained receipts could be used towards the purchase costs, which would require sales of approximately 450 dwellings to generate.

13. Officers cannot as yet predict with any accuracy the number of successful Right to Buy applications over the next 5 years, but it is obvious from the foregoing that the current development programmes alone do give the council scope to utilise over £20,000,000 of retained receipts during the first five years of the HRA Business Plan period, should that amount actually be generated from successful Right to Buy sales in the region of 600 units, though it should be noted that no contract for the purchase of the Barton dwellings is yet in place.

14. Utilising receipts in this way has the added benefit of freeing up equivalent sums in HRA revenue funding, which could be used for further development, improvements to existing stock, or provision of enhanced levels of service to tenants.

15. Should a situation arise in which the council becomes aware that receipts are likely to be considerably higher than any planned development programme, it is possible to withdraw from the agreement and simply channel the receipts to central government at the point of sale, though officers would consider this to be a last resort and would actively seek ways of encouraging further development either by the council or by Housing Association partners.

Legal Implications

16. The Housing Act 1985 allows secure tenants to buy their homes from their Local Housing Authority at a discount. The Localism Act 2012 abolishes the Housing Revenue Account and allows local authorities to retain receipts to spend in their areas.

17. No changes have been made to the qualifying criteria for Right to Buy. The changes to the financial arrangements as set out in the report are allowed for reasons of the changes to the legislative framework. Any deviations from the Agreement as set out in Appendix 1 should be referred to Law & Governance before finalising.

18. Should the Council decide not to enter into the agreement with the Secretary of State, the net receipt will be transferred to CLG and redistributed for new affordable rented housing.

Equalities Impact

19. The purpose of signing the proposed agreement with central government is to enable the local retention of receipts from Right to Buy sales. The funding will be used in the development of social and other forms of affordable housing in the city of Oxford. Such housing will be made available via the Choice Based Lettings system on the basis of housing

need. The provision of affordable housing by this route will help to ameliorate the negative effects of the Right to Buy on the availability of affordable housing in the city, and will thereby contribute to the well being of those members of the community in the greatest housing need. It is likely to assist in the prevention of homelessness, and in reducing both overcrowding and under-occupation in existing social stock, and as such will not have a deleterious effect on any vulnerable groups in the city

Risk

20. A Risk register may be found at Appendix 3.

Climate Change

21. New council properties will be built to the highest affordable environmental standards, and wherever possible will incorporate energy saving and recycling technology aimed at reducing both carbon emissions and energy costs for tenants. The planning process ensures that issues around drainage, renewable energy, car parking and encouragement of cycle use are addressed in the most effective way possible.

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List of background papers: None
Version number: 1.1

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Appendix 1.

SMD 21st June 2012 – Retention of Right to Buy Receipts

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 is more than (3.39847729 x G) + E + F + J

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

K less (2.398347729 x 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 less (2.398347729 x 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)

Appendix 2.

SMD 21st June 2012 – Retention of Right to Buy Receipts

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.

<u>The process</u>

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 sales[1] 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.

[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.

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

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 2015/16 [2] 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

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

retained amount for Quarter 1 of 2012/13 will be reduced by the amount surrendered and interest calculated back to that Quarter.

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.

<u>Entering into Agreements</u>

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

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Appendix 3: SMD Risk Register – Right to Buy Retention Agreement

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk	
Risk Score **Impact Score**: 1 =Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic **Probability Score:** 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain															
1.	Liability to repay unspent retained receipts with significant compound interest.	4	3	Failure to develop sufficient volume of new affordable housing.	Ongoing development programme, plans for future developments, ability to grant aid Housing Association developments as appropriate.	2	2	Action: Reduce. Action Owner. Executive Director Housing & Regeneration Mitigating Control: Planning for use of council owned redevelopment sites as part of Estate Regeneration Programme Control Owner: Head of Corporate Assets.	Outcome required: development programme to match available retained receipts . Milestone Date: 1st April 2013	Q 1	Q 2	Q 3	Q 4	I 2	P 2
2.	Inability to source additional funding required to "top up" retained receipts	3	2	Unpredictably high levels of successful Right to Buy applications on current stock, leading to unexpectedly high level of receipts.	Ability to grant aid developments by Housing Associations. Potential for developing/purchasing affordable housing outside city boundaries. Availability of HRA Revenue funding as per HRA Business Plan.	2	2	Action: Reduce. Action Owner. Executive Director Housing & Regeneration Mitigating Control: Planning for use of funding in grant to HA partners on schemes within & outside the city. Control owner: Head of Corporate Assets	Outcome required: Forward planning for HA owned sites in the city. Initial discussions with Has re sites outside city boundaries. Milestone Date: 1st April 2013					2	2

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