RETAINED RIGHT TO BUY RECEIPTS AND THEIR USE FOR REPLACEMENT SUPPLY: UPDATED GUIDANCE

CONTENTS

INTRODUCTION

1. The Government has committed to ensuring that additional retained Right to Buy receipts are used to replace, on a one-for-one basis, those additional homes sold under the reinvigorated Right to Buy (RTB). This is part of the Government's ongoing commitment to helping councils play their part in building the social and affordable homes that England needs—alongside the removal of the Housing Revenue Account (HRA) borrowing cap and the overhaul of guidance on the HRA.

2. This guidance incorporates major changes to the RTB pooling system that took effect from 1 April 2021. It takes account of the amended terms of the Retention Agreements to be concluded between the Secretary of State and authorities under section 11(6) of the Local Government Act 2003 to enable them to retain RTB receipts, and the amendments to the Local Authorities (Capital Finance and Accounting) Regulations 2003 that came into force on 30 June 2021.

3. It replaces all existing guidance on the calculation and use of receipts arising from RTB sales.

RETAINING ADDITIONAL RECEIPTS

Background

4. In April 2012, the Government raised the maximum cash cap on Right to Buy discounts to £75,000 (later raised to £100,000 for London authorities from 1 April 2013) and confirmed that receipts generated by additional sales resulting from the discount increases (against a baseline of sales forecast before the increases) would be used to fund replacement stock on a one-for-one basis nationally. At the same time, the Government offered to enter into an agreement with any local authorities that wished to retain their own receipts from additional RTB sales so that they could reinvest them in new affordable housing themselves.

5. To retain their "additional receipts", local authorities must enter into an agreement with the Secretary of State under section 11(6) of the Local Government Act 2003 (as substituted by section 174 of the Localism Act 2011). Under this agreement, authorities can retain receipts arising from additional RTB sales provided the authority spends a sufficient level of those receipts on replacement social housing.

6. If an authority cannot spend the required amount within five years (see paragraph 16(ii)), it must send the receipts to MHCLG through a process known as Local Authority Housing Capital Receipts Pooling. The Department's online collections system DELTA will determine how much must be paid each year, through a calculation explained in paragraphs 42 to 49 below.

Entering into and Terminating an Agreement

7. A template agreement is attached, which local authorities can sign and send back to the Secretary of State for agreement.

8. If your authority did not have an agreement in place under the previous arrangements, and wishes now to enter into such an agreement, please contact the Department at the following email address: HRA.PoolingReturns@communities.gov.uk

9. Because the rules around retaining receipts have changed*, authorities will be offered an updated agreement that reflects these new rules*. The Secretary of State will exercise the right to terminate any existing agreement (see paragraph 6 of the General Section of the existing agreement) if an authority does not wish to enter into an updated retention agreement.

10. Should the Secretary of State exercise this right, amounts that had already been retained by a local authority under paragraph 1 of Part 1 of the existing agreement would continue to be retained, subject to the existing conditions of the agreement.

11. Similarly, the Secretary of State will reserve the right to terminate any updated agreement on that basis.

How the level of retainable additional receipts is calculated

12. The level of an authority's additional retainable receipts in any year is the total amount of its receipts arising from RTB sales, net of the following five elements:

    i. **Transaction costs**
    (retained by authority unconditionally)
    a set amount per RTB sale to partially cover the authority's costs of administering the RTB scheme;

    ii. **Allowable debt**
    (retained by authority unconditionally)
    calculated to cover that part of the authority's housing debt it is obliged to pay off that is in excess of the debt its 2012 Self-Financing Payment has allowed for;

    iii. **Local authority share**
    (retained by authority unconditionally)
    calculated to approximate to what authorities would have retained had the pre-2012 pooling system continued when they retained 25% of all net RTB receipts;

    iv. **Treasury share**
    (paid to the Secretary of State)
    calculated to approximate to what authorities would have paid the Secretary of State had the pre-2012 pooling system continued when authorities paid over 75% of all net RTB receipts;

    and

    v. **Buy-back costs**
    (retained by authority unconditionally)
    calculated to cover incrementally half the costs of buying back former council homes.

Retaining additional receipts

13. By entering into a retention agreement, a local authority does not commit itself to retaining its additional receipts. Rather, it commits itself to informing the Department, through the DELTA returns (see paragraphs 56 to 60 below), how much, if any, it decides to retain and the amount that it is payable to the Department. If it is late in providing that information, then DELTA will calculate by default the authority's maximum retained amount. If, after the due date for the annual DELTA financial return (usually 30th April in the relevant year, unless notified otherwise), the authority determines that it will pay some of that amount to the Secretary of State, then interest will be payable. See paragraphs 47 to 49 below for how interest will be calculated.

Returning additional receipts

14. Any additional receipts returned by a local authority, (see below), will, after being returned to the Secretary of State, be passed to HE or, for London boroughs, the GLA for them to invest in replacement stock.

15. Like other registered providers of social housing, local authorities can bid for these returned receipts. You should contact HE or GLA for information on how your authority can do this.

SPENDING RETAINED RECEIPTS

Headline changes to the system from 1 April 2021

16. From 1 April 2021 the rules on spending retained additional receipts have changed:

    i. Pooling of RTB receipts will take place annually, replacing the former quarterly system. Deadlines for spending retained receipts will also be calculated on an annual basis. A minimal amount of non-financial management information will still be collected quarterly.

    ii. The timeframe local authorities have to spend new and existing Right to Buy receipts is extended from 3 years to 5 years. This will make it easier for local authorities to undertake longer-term planning, including remediation of larger plots of land.

    iii. The percentage cost of a new home that local authorities can fund using Right to Buy receipts increases from 30% to 40%. This will make it easier for authorities to fund replacement homes using Right to Buy receipts, as well as making it easier to build homes for social rent.

    iv. Authorities can use receipts to supply shared ownership and First Homes, as well as housing at affordable and social rent, to help them build the types of home most needed in their communities.

    v. A cap is introduced on the use of Right to Buy receipts for acquisitions to help drive new supply with effect from 1 April 2022 and phased in over 2022-23 to 2024-25.

17. These changes take effect from 1 April 2021, except for the acquisition cap, which will be introduced from 1 April 2022, on a phased basis. They are in response to a consultation on the Use of Right to Buy Receipts. The full consultation response can be found at: https://www.gov.uk/government/consultations/use-of-receipts-from-right-to-buy-sales

What retained additional receipts can be spent on

18. We know that local authorities are best placed to understand the affordable homes their communities need and to deliver them, but there are some restrictions on how authorities can spend their receipts.

19. Retained receipts can be used to supply:
    - Homes for social or affordable rent[1]
    - Homes for shared ownership sale[2]
    - Homes for sale as First Homes[3]

20. To avoid double counting of new homes, the 60% of eligible spend on replacement housing not made up of retained receipts (see paragraph 16(iii) above) cannot include other forms of grant and certain other funding sources (see paragraph 32(a–d)).

21. There is no requirement or replacement homes to be of the same type, size, location, or tenure as the homes they replace. These are decisions for an authority to make in accordance with local need.

22. While the Government wants to encourage an increase in the supply of new housing, and so new build should always be the favoured option, receipts may be used to buy existing properties for conversion into eligible housing (but from 1 April 2022, acquisitions will be limited by the Acquisition cap: see paragraphs 33 to 39 below).

23. The Agreement requires eligible expenditure to be on homes "for the benefit of the authority's area". This does not mean that the homes must be physically in the authority's area or owned by the authority, but if they are not in its area, then the Authority must either own the properties or have nomination rights over them (see paragraph v of Part 5 of the Agreement).

24. Where an authority grant funds a private registered provider (see paragraphs 28 to 30 below), we would encourage it not to pay grant until scheme completion. This will enable the authority to demonstrate clearly to its auditors that its contribution did not constitute more than 40% of the total scheme's costs.

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[1] The Agreement permits "low cost rental accommodation" that is *not* accommodation to which the Rent Policy Statement (see Chapter 5 of the Statement) does *not* apply.

[2] Defined as "The construction or acquisition of a dwelling for the purposes of granting a shared ownership lease to a person whose needs are not adequately served by the commercial housing market where the premium (which is a portion value of the market value of that dwelling) does not exceed 75% of the market value of the dwelling".

[3] "First Home" means a dwelling which is disposed of as a freehold or (in the case of a flat only) as a leasehold property:
(a) to a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003,
(b) at a sale price that is at least 30% below open market value,
(c) at a sale price that does not exceed £420,000 if it is situated in Greater London or £250,000 if situated elsewhere or such other amount as may be published from time to time by the Secretary of State, and
(d) subject to a condition restricting resale other than as a First Home.

25. A detailed listing of what items may be included in the development cost is set out in Part 6 of the Agreement. It is based on the definition used by HE in its allocation of equivalent grants to registered providers. For instance, while the purchasing of land for the purpose of providing a site for social housing may be included, the provision for this purpose of land (i.e. the value of land) already owned by the local authority may not.

26. By "spent", the Agreement means more than a contracted commitment to spend the resources. The works or services for which the money has been (or is about to be) paid must have actually been carried out. Otherwise, the money cannot be included in the total. This follows programme management practices of HE.

27. That means that, where an authority has agreed that a housing association will spend the retained receipts and provide the replacement social housing, the simple grant of the retained receipts will not in itself amount to a spending of those receipts. Again, the authority will have to demonstrate to its auditors that the necessary work has been carried out. Local authorities should take careful note of this when planning a project, so that the work is carried out and paid for within the permitted period for spending receipts (see paragraph 16(ii) above) or face the possibility that the funds will have to be sourced from other resources that do not come from retained RTB receipts.

How retained additional receipts can be spent

28. The authority may choose not to build or acquire itself, but instead to grant fund another body, such as a housing association—but not a body in which the authority has a controlling interest.

29. An authority can contract with a subsidiary (for example, its ALMO) to deliver the homes, but such homes must be in the ownership of the local authority and be accounted for in its HRA.

30. Where an authority decides to gift land to its partner housing association, the value of that land cannot be counted towards the housing association's 60% contribution. This is in line with the grant allocation process managed by Homes England.

Retained receipts can comprise up to 40% of eligible spending on social housing

31. In order to maximise the supply of replacement social housing, the condition for the retention of additional receipts is that the level of such retained receipts must constitute no more than 40% of "the total amount spent on the provision of social housing" for the purposes of this calculation.

32. Not all expenditure can count towards the remaining 60%. Part 7 of the Agreement explicitly excludes the following four categories:

    a. Expenditure funded by other housing receipts (paragraphs 4(a) & 4(c)): The provision in the Capital Finance Regulations which exempts local authorities from pooling their non-RTB housing receipts is in place to ensure that the receipts are used to provide additional affordable housing or regeneration projects. To include such expenditure within the 60% that was to be levered would undermine this aim.

b. Expenditure used in the calculation of the Authority's buy back allowance (paragraph 4(b)): This provision is primarily directed at authorities who wish to buy back properties in order to clear an area for regeneration purposes. If an authority buys back a dwelling for the purposes of re-letting it out at social or affordable rent, then it may decide it would be more advantageous for it to include it in the "amount spent on the provision of social housing", rather than in the buy back allowance (as defined in paragraph 3 of the Schedule to the Capital Finance Regulations). However, it cannot be included in both.

c. Expenditure on homes which are already social housing (paragraph 4(e)): The Government wants additions to the social housing stock, not changes of ownership of existing social housing stock. Consequently, this provision excludes the acquisition of homes by the authority of homes owned by a housing association or another housing authority. It also excludes improvements or conversions of existing social housing stock.

d. Expenditure partially or wholly funded by grant from HE or the GLA (paragraph 4(f)): The policy intention is that the Right to Buy replacement programme levers in new money. To allow resources to be levered in, that were funded by grant from HE or the GLA or were already levered in as a condition of that grant, would undermine that aim. Consequently, expenditure funded from those sources cannot be included in "the amount spent on the provision of social housing".

Acquisition cap

33. The Government is keen for homes supplied using retained additional receipts to represent the best value for money, and to add to overall housing supply as much as possible. We are therefore introducing a cap on acquisitions. This will be set as a percentage of the number of homes that a local authority starts or acquires using RTB receipts each year, rather than as a restriction on the cost of individual acquisitions.

34. We understand that it will take time for local authorities to prepare for the introduction of this cap and to ramp up their build programmes. There will therefore be a phased approach to the introduction of the cap.

35. The cap will come into effect from 1 April 2022. From that point it will prohibit more than 50% of RTB replacements being delivered as acquisitions in financial year 2022-2023. That threshold will reduce progressively over the following two years from 50% to 30%, as set out below:

2021-2022	No cap
2022-2023	50% cap
2023-2024	40% cap
2024-2025 onwards	30% cap

36. We are aware that some local authorities receive low levels of receipts from RTB sales and may find it more difficult to deliver replacement properties through new build. *The first 20 units of delivery in each year will therefore be excluded from the cap for all local authorities.*

37. Local authorities will still be allowed to acquire properties above the cap, but they will not be able to use retained additional receipts to do so.

How to calculate compliance with the cap

38. Each financial year, LAs will need to plan how they intend to spend their receipts, to ensure that a max of 30% of units (from 1st April 2024) are acquisitions—based on number of homes, not amount of receipts, and measuring starts in each financial year. The first 20 units are excluded.

39. Example: it is financial year 2024-25, and an LA plans 50 replacements. The first 20 are exempt from the cap, leaving 30. 30 x 0.3 (because of the 30% cap) is 9 (this number is rounded to the nearest whole number if needed). So, this LA can deliver a maximum of 9 acquisitions, plus the first 20 exempt units. This means a maximum of 29 acquisitions out of the 50 replacement units.

Types of acquisitions not captured by the cap

40. Some types of acquisitions which still result in the authority contributing to net supply are exempt from the cap. Acquisitions of new build from a local authority's own housing company or arm's-length management organisation (ALMO) or from regeneration projects that contribute to net supply are exempt. Acquisitions of new build from a private developer are not exempt.

What to do if you are at risk of breaching the cap

41. If an authority breaches the cap, it will be in violation of its Retention Agreement. If your authority finds itself at risk of doing this, you should contact MHCLG at HRA.PoolingReturns@communities.gov.uk.

RETURNING UNSPENT RETAINED RECEIPTS

How the retained receipts are compared with "the total amount spent on the provision of social housing"

42. Every year in which it receives additional receipts, the authority is given five years to spend those receipts on replacement social housing and lever in the required amount of additional funding.

43. For the first five years from entering an agreement, there is no requirement to return any retained receipts—although an authority might conclude that it is in its financial interests to do so before then (see below). At the end of the fifth year, Part 2 of the Agreement becomes effective and unused retained receipts from the first year must be returned. Where an authority has retained additional receipts under an earlier agreement, there will be no requirement to return any of the retained receipts for two years (until 31st March 2023) to allow for those retained receipts already on hand to be held for a total of five years.

44. This means that in the fifth year, the Department’s online collection system (DELTA) will:

    a) determine the level of retained receipts that the authority chose to retain in the first year of the agreement (Variable A).
    b) subtract from that amount any of those receipts which it has subsequently chosen to return to the Secretary of State (see below) (Variable R); and finally
    c) divide the net result by 0.4
    d) The result of this calculation is added to the cumulative required expenditure for the previous year.

45. To avoid the calculation of a ‘mandatory return’ of unused receipts, the cumulative eligible expenditure at the target date must be equal to, or greater than the cumulative required expenditure at the target date. In other words, the net retained receipts from year 1 must constitute no more than 40% of the total amount spent by year 5 (see paragraphs 16(ii) and (iii), paragraph 42 above). These calculations are automatically undertaken on the DELTA system, using the data provided by authorities when completing returns.

46. In the first year ending 31st March 2022, there will be no mandatory returns of retained additional receipts. Those unspent receipts already held from 2017-18 and later will also be subject to the further retention period up to a total of five years from the date of the initial receipt (see paragraph 42 above). Receipts retained earlier than 2017-18 will already have been spent or returned to the Department.

How interest is calculated on the returnable amount

47. Interest is incurred from the due date of the reckonable financial year until the day the returnable amount is actually paid back. It is calculated at four percent above base rate on a day-to-day basis; it is compounded quarterly up to 30th April 2021 and annually after that date. The calculation is identical to the calculation for interest on late payment of the Treasury share, except that the rate is 4% above base rate, not 1%.

48. We want to see retained receipts invested in new homes as quickly as possible. It is therefore to an authority’s advantage to repay retained receipts early (and thereby incur less interest) if it realises that it would not be able to make sufficient investment within the five-year time period. Please note, however, that retained amounts which the authority repays cannot be given back to the authority.

49. Any interest paid to the Department will be used to support the provision of new affordable homes.

REPORTING AND MONITORING

Requirement to provide management information and statistical data

50. A local authority that enters into an agreement will be expected to supply light-touch management information on a quarterly basis in July, October and January, and to complete an Annual Pooling Form using DELTA following the end of the financial year.

51. Each quarter's form will be released on the first day of the month following the end of the quarter to which it pertains. Authorities will have until the end of that calendar month to provide the required data.

52. Correct data must be provided by the end of that month. This is essential for our forecasting and to assess the impact of these policy changes to local authorities' housebuilding. Correct completion of the Annual Pooling Return itself is essential to making sure you are returning the right amount to the Department and not more or less.

53. The quarterly management information form in quarters 1–3 will continue to ask for the following information:

- Number of properties sold this quarter
- Number of new-build starts this quarter funded by retained Right to Buy receipts
- Number of acquisitions this quarter funded by retained Right to Buy receipts

54. The Annual Pooling Form on DELTA will require all the above information, as well as breakdowns of the type of sales, breakdowns of the size and tenure of replacements, breakdowns of the types of acquisitions, and a forward look on planned supply.

55. All annual statistical data except the forward look on planned supply will be published as official statistics and will need to be audited and signed off by a senior official such as a s151 Officer. The forward look will be kept as internal management information and not published unless requested under the Freedom of Information (FOI) Act.

Completing the Annual Pooling Return

56. Local authorities will enter the number of properties sold, and the amount of receipts raised by those sales. Full guidance on this will be included in the help text that accompanies the annual pooling return.

57. The DELTA return automatically makes all necessary calculations, including Transaction Costs, Allowable Debt, Local Authority Share, Treasury Share, Deductible Buy Back Allowance, Additional Receipts, required expenditure on replacement social housing, and any mandatory repayments of unspent retained receipts.

58. The authority also has the opportunity on the Annual Return to:

    a. Enter "Initially Returned Additional Receipts": This is the level of additional receipts that the authority decides before the due date it will not retain. If this amount is also paid before the due date, no interest is incurred. This information will be calculated by the DELTA return based upon the information entered by the authority.

    b. The local authority's statement of eligible expenditure by the relevant target date: The authority enters here its statement of the amount spent on the provision of social housing (as defined in the Agreement) between 01 April and 31 March. The DELTA return automatically calculates the amount that the authority is required to have spent to keep within the terms of the Agreement.

59. Where an authority wishes to adjust a previous year's returned amount upwards, then it is required to make an amendment to that year's DELTA Return which automatically is incorporated into the Payment Total of the current year's Return.

60. Interest on returned payments must be entered in the relevant cell on the DELTA return.

ADDITIONAL INFORMATION: POOLABLE STATUS OF REPLACEMENT HOMES

61. 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 with no conditions. (Any receipts from sales of properties built since July 2008 can be spent on any eligible capital purpose). Replacements delivered using these retained funds do not count towards the national one-for-one replacement target. As soon as you are able clearly to identify such homes, you should contact the Department to make sure they are excluded.

QUERIES

62. If you have any queries about 1-4-1 receipts, please contact the Department at HRA.PoolingReturns@communities.gov.uk. We intend to update this guidance regularly, so answers to queries may be incorporated into future updates.

MHCLG June 2021

GLOSSARY

Additional receipts	Receipts generated by additional sales resulting from the 2012 Right to Buy discount increases (against a baseline of sales forecast before the increases) that can be retained by councils to fund replacement homes
Agreement	The formal agreement between the local authority and the Secretary of State, under section 11(6) of the Local Government Act 2003 (as substituted by section 174 of the Localism Act 2011), permitting the retention of additional receipts
Allowance(s)	Permissible deductions from the Right to Buy Receipt prior to the Pooling Calculation (see paragraph 12)
ALMO	Arm's Length Management Organisation
Annual statistical data	Certified data provided by authorities in the Annual Pooling Return. This may be published in official statistics.
Annual Pooling Return	The annually released DELTA form which calculates an authority's Pooling requirement for the year.
DELTA	The Department's online finance and data collection application
GLA	Greater London Authority
HE	Homes England
HRA	Housing Revenue Account
Pooling	The process of managing Right to Buy receipts nationally, and specifically the process of calculating and collecting the amount of these receipts that should be returned to the Department.
Quarterly Management Information	Tracking information collected in quarters 1-3. Not for publication.
Receipts	Income from the sale of properties under the Right to Buy, or Shared-Ownership programmes.
Retained amount	That portion of additional receipts retained by the authority, instead of returned to the Department
Retained Receipts	Additional receipts retained by the local authority from Right to Buy sales to provide replacement homes
Returned amount	That portion of additional receipts that the authority has decided to return to the Department
RTB	Right to Buy