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The Unofficial Housing Revenue Account Manual

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Contents **Page**

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1 Introduction

The current Housing Revenue Account (**HRA**) Manual was produced for 2006/7. It is therefore very badly out of date and in particular does not reflect the Self-financing regime introduced in 2012.

The Ministry of Housing, Communities and Local Government has recently indicated that it intends to issue a new Manual, but when and in what style/format is not yet clear.

This Unofficial HRA Manual does not seek to reproduce the content of the old Manual, which was lengthy and technical in nature. The intention of this Unofficial Manual is to provide practical assistance for those dealing with the HRA on a day to day basis.

Please note that it does not deal with the technicalities of accounting entries. This is a matter for accountants, not lawyers. We nevertheless believe, from our regular dealings with clients and contacts, that guidance of the kind provided here will be valuable.

The Manual is intended to be, so to speak interactive. It is not intended to be the last word. It has already benefited from comments by Council officers and advisers; but we welcome any suggestions, by way of addition, clarification or correction. Please contact any of those listed at the end of the Manual.

Given the divergence between the English and Welsh regimes, this Manual applies to England only.

Please note the Disclaimer. Before taking any decisions or steps based on the information provided in this Manual please obtain specific guidance and advice from officers or other advisers.

The Manual is set out on an alphabetical basis, addressing issues which regularly arise. Terms are explained in the individual sections; but there is also a Glossary in the **Schedule**.

Bold type indicates a Section dealing with that issue.

2 Accounting Rules

The keeping of the Housing Revenue Account (**HRA**) is governed by Schedule 4 of the Local Government and Housing Act 1989 (the **1989 Act**). Schedule 4 principally lists the credits to the account (Part I) and the debits (Part II). Much of the Schedule has been superseded by the Self-financing regime but the so-called item 8 credits and debits ("sums calculated as determined by the Secretary of State"), previously used for the HRA subsidy arrangements, still provide an important mechanism for potential Government intervention: see the Section on **Accounting Transfers** at sub-Section (b).

Council must follow "proper practices", as defined in Section 21 of the Local Government Act 2003, including Regulations and Guidance made thereunder. Regulation 31 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 stipulates that the accounting practices set out in the Code of Practice on Local Authority Accounting in the United Kingdom published by the Chartered Institute of Public Finance and Accountancy are "proper practices".

The Housing Revenue Account (Accounting Practices) Directions 2016 set out the information to be disclosed in notes to the HRA:

- Balance sheet values of land, houses and other property
- Capital expenditure broken down according to various sources of funding
- Charges for depreciation for both property within the HRA and for other specified assets
- Impairment charges
- Vacant possession and balance sheet values of dwellings, including any charge in respect of revenue expenditure funded from capital under statute

3 **Accounting Transfers**

There are certain prescribed circumstances when accounting transfers into and out of the HRA may be made. Some are actually straightforward entries (rent and charges, for example) and are not included. Some transfers/entries are rehearsed in individual Sections elsewhere in this Manual but they are worth bringing together here

Item 8 of Parts I and II of Schedule 4 to the Local Government and Housing Act 1989 (the **1989 Act**): this requires sums to be credited and debited respectively as the Secretary of State may determine.

(a) The Secretary of State has issued the Item 8 Credit and Item 8 Debit (General) Determination which had effect from 1 April 2017 (the **General Determination**).

The General Determination prescribes how the sums to be credited and debited to the Housing Revenue Account (**HRA**) under Item 8 in Parts I and II of Schedule 4 to the 1989 Act are to be calculated.

Item 8 Credit comprises

- Interest on the HRA Capital Financing Requirement
- Interest on notional cash balance
- Interest on loans for purchase of HRA properties
- Discounts for early repayment of debt
- PFI subsidy payments
- Impairments adjustments for dwellings and non-dwellings
- Revaluation gains adjustments for dwellings and non-dwellings

Item 8 Debit comprises

- Interest on loans
- Depreciation of dwellings and non-dwellings

- Debt repayments
- Charges under credit arrangements
- Interest on notional cash balance
- Debt management expenses
- Premiums for early repayment of debt
- Revenue charged to capital under statute
- Transfer to Major Repairs Reserve
- Impairment charges for dwelling and non-dwellings
- Revaluation gains charges for dwellings and non-dwellings

(b) Item 9 of Part I of Schedule 4 to the 1989 Act: this requires such sums to be transferred from the General Fund to the HRA as the Secretary of State may direct.

(c) Item 10 of Part II of Schedule 4 to the 1989 Act: this requires such sums to be transferred from the HRA to the General Fund as the Secretary of State may direct.

The HRA (Rent Rebate Subsidy Deductions) Direction 2003 provided that, where a deduction was made under Article 20A of the Income-Related Benefits (Subsidy to Authorities) Order 1998 as a result of an authority setting rents above the pre-set limit specified in the table of weekly rent limits in Schedule 4A to the Order (see **Housing Benefit Subsidy**), the authority was required to transfer an equivalent amount from the HRA to the General Fund.

(It is worth noting, if only because of the controversy it caused when it was still believed to be in force, paragraph 2 of Part III of Schedule 4 of the 1989 Act used to allow authorities with no subsidy payable and with HRA surpluses to transfer all or part of those surpluses from the HRA to the General Fund. This power is now only exercisable by Welsh authorities.)

(d) Paragraph 3 of Part III of Schedule 4 to the 1989 Act: where benefits or amenities arising from the exercise of functions under Part II of the Housing Act 1985 and provided to persons housed by the Council are shared by the community as a whole the Council is required to make a contribution from its General Fund, reflecting the wider community's share.

(e) Paragraph 3A of Part III of Schedule 4 to the 1989 Act: where the Council provides welfare services (under Section 11A of the Housing Act 1985: see **Welfare Services etc.**) for HRA tenants the Council "may" credit or debit the HRA with (respectively) income from charges for, and expenditure on, those services.

(f) Paragraph 5 of Part III of Schedule 4 to the 1989 Act: where land is appropriated to or from the HRA, adjustments to the Council's revenue accounts are to be made in accordance with the Secretary of State's direction.

4 Acquisition

Section 9 of the Housing Act 1985 (**the 1985 Act)** is the key power for Councils to provide housing accommodation. It includes two sets of acquisition provisions:

- Sections 9(1)(b) and 9(2) - a local housing authority (**LHA**) may acquire houses – and alter, enlarge, repair or improve a house so acquired;
- Section 9(3) – a LHA can exercise the Section 9 powers to provide housing accommodation "in relation to" land acquired for the purpose of (a) disposing of houses provided, or to be provided, on the land or (b) disposing of the land to a person who intends to provide housing accommodation on it.

Section 17 of the 1985 Act is also important. A LHA may (for the purposes of Section 9 and other provisions in Part II of that Act)

- acquire land to erect houses
- acquire houses, or buildings which may be made suitable as houses, together with associated land
- acquire land to be used to provide facilities connected with housing accommodation
- acquire land to carry out works to alter, enlarge, repair or improve an adjoining house

This power includes power to acquire land for disposal: see the exclusion under Section 74(3) of the Local Government and Housing Act 1989, as rehearsed in **Property within the HRA.**

There are additional powers (including compulsory purchase) exercisable with the consent/authority of the Secretary of State.

5 Amenities

The (then) Department of Environment's Circular 8/95 (**Circular 8/95**) – still not formally superseded – used this term to refer to "play and recreational areas, grassed areas and gardens and community centres". Whether or not these should be provided under Part II of the Housing 1985 Act and charged to the HRA depends on local circumstances. Circular 8/95 unsurprisingly identified the key issues as the purpose of provision and the use made of the facilities by tenants and other people. There can only be a charge to the HRA where the amenities are provided and maintained in connection with Part II housing accommodation". And to the extent that the amenity is shared by the community as a whole a contribution should be made by the General Fund: paragraph 3 of Part III of Schedule 4 to the Local Government and Housing Act 1989.

This has obvious implications for **Estate roads and common areas (including grass).**

6 **Appropriation**

Section 19(1) of the Housing Act 1985 (the **1985 Act**) allows local authorities to appropriate any land vested in them or at their disposal to the Housing Revenue Account (**HRA**).

If a Council wishes to include in the HRA property which is ancillary to Part II housing accommodation but not, up to now, provided under Part II, it is necessary to obtain the Secretary of State's consent under Section 12 of the 1985 Act. Such applications are considered on their individual merits. London Borough Councils have additional powers under Section 15 of the 1985 Act to provide and maintain, in connection with housing accommodation provided by them under Part II of the 1985 Act, buildings or parts of buildings adapted for use for any commercial purposes. Again, the Secretary of State's consent is required (under Section 15(4)).

Land provided under Section 74 of the 1985 Act which no longer fulfils its current purpose can be removed from the HRA under Section 122(1) of the Local Government Act 1972. The decision is for the Council to take, though it will need to be able to explain, if required, the basis of the decision. It is important to note that, before a house or part of a house can be appropriated out of the HRA for another purpose, a local authority needs to obtain the Secretary of State's consent under Section 19(2) of the 1985 Act.

If land is transferred between the HRA and the General Fund, an adjustment to the HRA will be required (paragraph 5, Part III of Schedule 4 to the Local Government and Housing Act 1989).

In its consultation on the "Use of receipts from Right to Buy sales (August 2018)" the Ministry of Housing, Communities and Local Government asked for views on allowing the transfer of land from the General Fund to the HRA at zero cost, in order to encourage the use of General Fund land for housing delivery.

It should be noted that, although property can be transferred for accounting purposes between the HRA and the General Fund (subject to obtaining any necessary Secretary of State consent), in legal terms there is no transfer or lease of the property (and there cannot be so) because the Council's HRA and General Fund are not separate legal entities and, of course, the Council cannot contract with itself.

See also **Accounting Transfers**.

7 **Balanced HRA**

Section 76 of the Local Government and Housing Act 1989 requires that Councils prevent debit balances on their Housing Revenue Accounts.

8 **Borrowing Cap**

The Local Government Act 2003 (the **2003 Act)** imposes limitations on a local authority's statutory power to borrow. Section 3 of the 2003 Act requires a local authority to determine and keep under review how much money it may borrow. In determining this amount, a Council is required to have regard to the 'Prudential Code for Capital Finance in Local Authorities': see Regulation 2 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.

In addition to the requirement for prudential borrowing, Section 171 of the Localism Act 2011 allows the Secretary of State to make a determination providing for the maximum amount of housing debt that each local housing authority in England may hold.

The then Department for Communities and Local Government, on 1 February 2012, published its 'Limit on Indebtedness Determination 2012' which placed a 'cap' on the amount of housing debt each Council may hold in its Housing Revenue Account (**HRA**).

This and subsequent amending Indebtedness Determinations – including a large number of Council-specific ones – were revoked by the Limits on Indebtedness (Revocation) Determination 2018.

There is now no HRA debt cap. Borrowing levels therefore will be those recommended by the section 151 officer in accordance with the Prudential Code. Of course, the power to borrowing is determined not just by the absence or otherwise of legal constraints but also by a Council's ability to service the debt.

9 **Capital**

The Housing Revenue Account (**HRA**) is self-evidently a revenue account and accordingly the statutory ring-fence applies to revenue and not to capital. This means that, if dwellings or other assets are sold or otherwise transferred out of the HRA, any capital thereby released or 'generated' is available to the Council in its corporate (General Fund) capacity, subject to specific rules (for example, pooling: see **Capital Receipts**) which otherwise arise.

10 **Capital Financing Requirement**

The Housing Revenue Account Capital Financing Requirement (**HRA CFR**) is calculated in accordance with the Schedule to the Item 8 Credit and Item 8 Debit (General) Determination (as amended in 2018). The closing HRA CFR for any financial year (and the opening HRA CFR for the subsequent year) is the opening HRA CFR on 1 April for that year plus the aggregate of

- Capital expenditure financed by borrowing or credit arrangements (here and below, excluding PFI schemes)
- The value of housing land (as redefined) freshly accounted for in the HRA, save for acquisitions

less the aggregate of

- Capital receipts from the disposal of housing land used to repay the principal of any Council borrowings or meet any liability in respect of credit arrangements
- Capital receipts from the disposal of housing land used to meet capital expenditure on General Fund assets (save to provide affordable housing or (sc. 'deliver') regeneration projects) or certain specified costs and payments – except for RTB and LSVT receipts
- Payments made by the Secretary of State to the Public Works Loan Board as a result of the disposal of housing land less any part used for early redemption premia

- The value of land, housing or buildings ceasing to be accounted for in the HRA, save for disposals

- Provision for repayment of borrowings or the meeting of any liability in respect of credit arrangements which the Council determined to make from either the HRA or the major repairs reserve

11 **Capital Receipts**

Sections 9–11 of the Local Government Act 2003 and the Local Authority (Capital Finance and Accounting) (England) Regulations 2003 (**2003 Regulations**) restrict a Council's use of its Housing Revenue Account (**HRA**) capital receipts.

There is a basic threshold of £10,000 before the restrictions apply.

Capital receipts arising from right to buy (**RTB**) sales, other sales to secure tenants for less than market value and some shared ownership sales are all subject to pooling (i.e. 75% relinquished, 25% retained) - after various deductions - unless the Council has entered into an agreement with the Secretary of State for (Housing,) Communities and Local Government (**MH(D)CLG**) regarding the use of such receipts for investment in new affordable homes.

See **RTB Receipts** for more details.

Other capital receipts are not subject to pooling and if they are used to meet capital expenditure on General Fund assets they are deducted from the opening HRA **Capital Financing Requirement** (**HRA CFR**) for the ensuing financial year in which the receipts are used (to produce a closing HRA CFR) except for expenditure on affordable housing and regeneration projects.

Regulation 23 of the 2003 Regulations imposes general restrictions on the use of capital receipts. Permitted uses include:

- Meeting capital expenditure

- Repaying debt principal

- Paying a premium charged on an amount borrowed

- Meeting liabilities under credit arrangements (provided these do not have to be charged, in accordance with proper practices, to a revenue account).

It may or may not be worth noting that the then Department of the Environment's Circular 8/95 said that the HRA "extends to any outstanding debts or receipts which arose when a property was so provided [i.e. usually within Part II of the Housing Act 1985] and which are still outstanding following its disposal." This is presumed not to refer to receipts arising from a disposal.

12 **Closure**

Even if a local housing authority does not have property as described in Section 74(1) of the Local Government and Housing Act 1989 (the **1989 Act)** it must still have a Housing Revenue Account (**HRA**) unless the Secretary of State gives consent not to do so. The

then Department for Communities and Local Government (**DCLG**) previously allowed Councils to retain up to 50 properties without requiring a HRA to be maintained by them. The indications are now that 200 are now permitted by DCLG's successor Ministry of Housing, Communities and Local Government. Consent however is still needed: Section 74(4) of the 1989 Act.

See also **Re-opening the HRA**.

13 **Community Alarm Schemes**

These can be provided pursuant to Section 11A of the Housing Act 1985: see **Welfare and Other Services and Amenities.**

The attribution of income and costs to the Housing Revenue Account is governed by paragraph 3A of Part III of Schedule 4 to the Local Government and Housing Act 1989. It follows that the extension of such Schemes to private tenants and owner-occupiers involves the allocation of those costs and that income to the General Fund.

The then Department of the Environment rehearsed these principles in its Circular 8/95.

14 **Corporate Support Costs**

These can cause considerable heart-searching but the principles for attributing them to the Housing Revenue Account are very straightforward. Such costs must relate to a Council's Part II Housing Act 1985 function and must be both fair and proportionate. Councils vary considerably in their approach, but there is merit in establishing a formula – perhaps a broad percentage of some kind - to identify when the basic principles are not being followed.

15 **Core, Core-Plus and Non-Core Costs**

The then Department for Communities and Local Government (**DCLG**) published a so-called "Prospectus" in 2010 for what became Self-financing. This included draft revised guidance on the operation of the Housing Revenue (**HRA**) **Ring-fence** (the **draft Guidance**). While no action was taken to implement this draft Guidance (and some of it would clearly have been altered had it been formalised), its clarification of the management and maintenance services which should be charged to the HRA is worth noting.

The draft Guidance distinguished between what it called Core Services, on the one hand, and Core-Plus and Non-Core Services, on the other, recognising the way Councils were going (well) beyond their traditional housing remit.

Core services, it was clear, should simply be charged to the HRA.

Core-Plus and *Non-Core* services, it was explained, might attract funding from a variety of external sources to supplement funding from the HRA, including non-rent service charges, other funding streams and grants and also the General Fund.

The net cost of *Core-Plus* services to the HRA "should be taken into account through locally programmed management and maintenance provision, funded primarily from rental income."

Over time *Non-Core* services should be funded from sources other than rent. The degree to which those services attract alternative sources of income, together with the degree to

which they are taken up by the Council's own tenants, would influence any decision as to where they should be accounted for under the 'Who benefits?' principle. (Note however the clear statement from DCLG (rehearsed below) that these costs should be met from the General Fund.)

Tenants were to be involved in those decisions.

Set out below is how DCLG described *Core, Core Plus* and *Non-Core Services*. It will be appreciated that in certain respects subsequent legislative and policy changes have rendered a few of the entries out of date, but clearly much less so than the still-not-formally-superseded Circular issued by the (then) Department of Environment in 1995.

Core Services:

- Repair and maintenance
    - Responsive
    - Planned and cyclical
    - Rechargeable repairs
- General tenancy management
    - Rent collection and arrears recovery
    - Service charge collection and recovery
    - Void and re-let management
    - Lettings and allocations of HRA properties only – "any work carried out in respect of non-HRA properties should be charged to the General Fund"
    - Management of repairs
    - Anti-Social Behaviour: low level
    - General advice on tenancy matters
- General estate management
    - Communal cleaning
    - Communal heating and lighting
    - Grounds maintenance
    - Community centres
    - Play areas
    - Estate officers and caretakers
    - Neighbourhood Wardens

    - Concierge
    - CCTV
- Policy and management
    - HRA share of strategic management costs
    - Setting of rent levels, service charges, and supporting people charges
    - Administration of the Right to Buy

Core-Plus Services:

- Contribution to corporate Anti-Social Behaviour services. "Where the service is entirely charged to the General Fund, it may be appropriate for the HRA to contribute to these costs."
- Tenancy support
- Supporting people services - HRA housing-related support services only e.g.
    - Sheltered accommodation wardens
    - Alarm services

Non-Core Services:

- Administration of a common housing register – costs should be split between the HRA and General Fund
- Maintenance of tenants' gardens
- Street lighting
- Dog wardens
- Personal care services
- Homeless administration
- Housing advisory service.

Two of these three lists are qualified in two important respects. To *Core* services there is attached a footnote that a General Fund contribution must be made to reflect the general community's share; and notwithstanding the explanatory text on *Non-Core* services the DCLG stated its view that "it is inappropriate to charge these services to the HRA. Their costs should be met from the General Fund."

While MH(D)CLG has given no indication that it does not support the 'Who benefits' principle, it has not signalled any intention to strengthen the HRA ring-fence, preferring instead to allow local authorities to form their own views about the way in which the **Ring-fence** should operate.

16 **Debt Pooling**

Councils can hold Housing Revenue Account (**HRA**) debt either separately or together with its General Fund debt. If the debt is held in one rather than two 'pools' then the HRA is 'charged' with interest – on a consolidated rate of interest basis - to reflect the overall interest cost incurred by the Council.

17 **Disposals**

Disposals of Housing Revenue Account (**HRA**) property out of the Council's ownership, whether on a freehold or a leasehold basis, require consent under Section 32 of the Housing Act 1985 (the **1985 Act**). The current General Consents are 'The General Housing Consents 2013', issued in March of that year (with a Correction in July).

Paragraph A3.1 (i.e. 3.1.l-2 together) of the General Consent allows a local authority to dispose of HRA land at market value. Disposals of the freehold of tenanted properties to private landlords are not covered by the Consent; nor are disposals to a body owned or partly owned by the local authority, unless the local authority has closed its HRA or the disposal is one of (the first) five (only) in a financial year.

Paragraph A3.2 of the General Consent allows a local authority to dispose of vacant land without any conditions. 'Vacant' means land upon which no houses have been built or, where built, the houses are no longer capable of human habitation and are due to be demolished.

There is however still the need to consider whether consent is required under Section 25 of the Local Government Act 1988 (the **LGA 1988 Act**) if a disposal at an undervalue represents financial assistance for the purposes of Section 24 of that Act (or constitutes a gratuitous benefit under Section 25). Section 24 of the LGA 1988 Act gives the Council the power to provide any person with financial assistance for the purposes of, or in connection with, the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management (whether by that person or by another) of any property which is or is intended to be privately let as housing accommodation. However, the Council is only able to exercise its power to give financial assistance under Section 24 (or provide a gratuitous benefit under Section 25) if it obtains the Secretary of State's consent pursuant to Section 25.

The Secretary of State has issued some general consents under Section 25 – 'The General Consents under Section 25 of the Local Government Act 1988 (Local Authority Assistance for Privately Let Housing)' - in both 2010 (revised in 2011) and 2014.

If the Council intends to dispose of HRA land at an under-value then General Consent AA might apply. In summary, this Consent applies to disposals of land for development as rented ('privately let') housing accommodation provided that: (a) any accommodation on that land is vacant and to be demolished; (b) the disposal is freehold or pursuant to a lease of at least 99 years; (c) the development is completed within three years of disposal; and (d) the Council is not entitled under any arrangement made on or before disposal to manage or maintain the completed units.

Disposals, at least to subsidiaries, are sometimes accompanied or facilitated by loans or grants. In those circumstances General Consent C is important: "a local authority may provide any person with any financial assistance (other than the disposal of an interest in land or property) …"

If a General Consent is used or indeed a specific Consent is obtained, further consent for the disposal of HRA land pursuant to Section 32 of the 1985 Act would not be required.

18 **District Heating**

Section 9(2) of the Housing Act 1985 (the **1985 Act**), as already noted, provides that a Council may alter or repair houses acquired or built by it for the purpose of providing housing accommodation. Under Section 10 of the 1985 Act a Council may "fit out, furnish and supply a house provided by them under Part [2] with all requisite ,,, fittings and conveniences". There is also a broad power under Section 25 of the 1985 Act vesting the general management, regulation and control of Housing Revenue Account (**HRA**) properties in a local housing authority. These powers together appear to justify the introduction of a district heating system. If so, expenditure incurred for these purposes must be accounted for within the HRA pursuant to Section 74 of the Local Government and Housing Act 1989 to the extent that where the heating system services HRA properties; and HRA surpluses could be used for these purposes.

19 **DLO profits (or losses?)**

In its Circular 8/95 (the **Circular**) the then Department of Environment considered the treatment of surpluses earned by a Direct Service (or Labour) Organisation (**DLO**) on work related to property accounted for in the Housing Revenue Account (**HRA**). The Circular explained that in order to credit surpluses to the HRA a Council required consent from the Secretary of State under paragraph 9 of Part I of Schedule 4 to the Local Government and Housing Act 1989 (the **1989 Act**). In essence consent would only be given to a reasonable and proportionate allocation, endorsed by the external auditor. (In theory the same applied to deficits but consent was unlikely to be granted.)

Now it is more likely that a Council will be looking to establish how much it is entitled to debit the HRA, not in order to share deficits but rather to 'generate' surpluses for the benefit of the General Fund. This approach is questionable on two bases: either the charge is simply unreasonable (i.e. it is an artificially high surplus) or the total surplus has to be shared with the HRA as described in the Circular and is subject anyway to Secretary of State consent.

There is often a view that the General Fund 'charges' the HRA, on the basis that the DLO is 'employed' by the General Fund or it is simply a business 'owned' the General Fund. Of course, the General Fund and the HRA are not corporate entities. The DLO staff are employed by the Council itself and income/costs of the DLO business must simply be accounted for, on a reasonable and proportionate basis, between the General Fund and the HRA. Seen in this way there are no profits to be earned and the issue of a fair or unfair 'return' from the HRA to the General Fund should not arise.

See also **Accounting Transfers.**

20 **Dog Wardens**

Dog Wardens are regarded as essentially a General Fund service in both Circular 8/95 issued by the then Department of Environment and the draft Guidance issued by the Department for Communities and Local Government in its Prospectus for Council housing in 2010.

21 **Estate roads and common areas (including grass)**

The general principle applies here as elsewhere. Where services are regarded as provided for the community generally and not simply as part of a local authority's housing function, the costs should be met from the General Fund.

The reverse is also the case. Costs incurred on estate roads and amenity areas provided under Part II of the Housing Act 1985 and used exclusively by Housing Revenue Account (HRA) tenants and their visitors should be charged only to the HRA.

In many instances however such facilities – for example, open amenity areas - may be provided as part of the Housing service within the HRA but the community as a whole benefits. In those circumstances, the costs (for example, of grass cutting) and any income should 'go' to the HRA and the General Fund pro rata: see paragraph 3, Part III, Schedule 4 to the Local Government and Housing Act 1989.

Circular 8/95 issued many years by the then Department of the Environment included a section on Road Sweeping and Cleaning, stating that these services (and snow clearance) were provided to the community at large and were not considered to be part of the housing function (and therefore out-with the HRA). Costs incurred on estate roads could "exceptionally" be charged to the HRA where those roads were provided under Part II of the Housing Act 1985 and used "almost exclusively" by HRA tenants and their visitors.

22 **Garages**

Whether garages (and garage sites) should be accounted for in the Housing Revenue Account (**HRA**) depends on how they are let. The principles set out long ago in Circular 8/95 (**Circular 8/95**) by the then Department of Environment are probably too straightforward to match the usual reality: "where [HRA] tenants do not have the opportunity to rent the garages in a block, the provision of those garages does not form part of an authority's housing function". This 'works' for entirely privately let blocks and presumably also applies to sites where anyone, including HRA tenants, can erect their own garages on sites owned by the Council; it is presumably implicit that 'mixed' income should be apportioned between the HRA and General Fund.

23 **Grants**

The Council has the power under Section 129 of the Housing Act 1988 (the **HA 1988 Act**) to set up a scheme to make grants to or for the benefit of qualifying tenants or licensees of the authority to assist them to obtain accommodation (other than Council accommodation), by (a) acquiring an interest in a dwelling, (b) carrying out works to a dwelling to provide additional accommodation, or (c) both. By virtue of Section 129(2) of the HA 1988 Act, the scheme can contain such provisions as the Council considers appropriate.

Section 129(5)(b) of the HA 1988 Act used to provide that any grant made pursuant to a scheme under this Section was to be regarded as expenditure on management of HRA properties and should therefore be debited from the Housing Revenue Account (**HRA**). However, sub-Section (5) has been repealed and there is no obvious replacement mechanism for debiting the HRA under Schedule 4 to the Local Government and Housing Act 1989.

The removal of Section 129(5)(b) suggests that such schemes may no longer be deemed to be for the management of HRA properties and, if so, HRA surpluses could not be used to fund the schemes. Some Councils however have evidently taken a different view.

Even if there is scope to use HRA resources for these schemes, it would be difficult for Councils to justify extending the arrangements to enable/allow tenants' children to leave the properties.

More obviously useful are Sections 24-5 of the Local Government Act 1988, described in **Disposals.** Note in particular the potential availability of General Consent C.

24 **Gypsies and travellers**

Site and pitches provided to gypsies and travellers do not fall within the definition of housing accommodation for the purposes of Part 2 of the Housing Act 1985. This means that rent/income from, and expenditure on, such property must be accounted for in the General Fund, not the Housing Revenue Account.

25 **Homelessness etc.**

A local authority's duties in respect of homelessness (contained in Part VII of the Housing Act 1996) fall outside the scope of the HRA.

The so-called *Ealing* judgement confirmed this and gave rise to specific changes in Housing Act 1985: see the **Ring-fence** Section.

The then Department of the Environment's Circular 8/95 (**Circular 8/95**) merely said that the case decided that "not all [homelessness administration] costs …. should be charged to the HRA;" but the Department for Communities and Local Government, in the draft revised guidance on the operation of the HRA which was included in the so-called Prospectus entitled "Council Housing: a real future" (2010), stated that it would be inappropriate to charge homeless administration services to the HRA; those costs should be met from the General Fund.

The *Ealing* case also covered housing advisory services. Circular 8/95 simply advised Councils to have regard to the decision when considering the apportionment of these costs.

Further, the Housing Revenue Account (Exclusion of Leases) Direction 1997 stipulates that all leases for dwellings for a period of 10 years or less acquired by a Council for the purpose of providing accommodation under its homelessness functions are not to be included in the HRA.

26 **Hostels**

A hostel qualifies as housing accommodation: see section 56 of the Housing Act 1985 (**the 1985 Act).** This means it may be provided by a Council under section 9 of the 1985 Act 1985 and if it is it must be accounted for in the Housing Revenue Account (the **HRA**).

The generation-old guidance by the then Department of the Environment (**Circular 8/95**) seemed to distinguish between the hostel itself and the services supplied to tenants (*recte* residents). Certain "essential" care services cannot be charged to the HRA**;** other services can be, provided they have sufficient connection with a Council's landlord functions. See **Welfare Services etc.**

27 **Housing Benefits and subsidy**

A key consideration for local housing authorities has been the limit on how much Housing Benefit they can recover (known as Housing Benefit rebate).

Although the rules do not limit the 'eligible rent' for the purpose of Council tenants claiming Housing Benefit, if a local authority were to increase its average weekly rent above the 'weekly limit rent' set by the Secretary of State for each authority it would only receive subsidy on the Housing Benefit up to that limit and would itself have to fund the cost of additional Housing Benefit (i.e. above the limit). NB the required transfer from the Housing Revenue Account (**HRA**) to the General Fund, as described in the section on **Accounting Transfers**, where the weekly rent limit is exceeded.

The weekly limit rent for each authority is set each year and can be found in an annual Amendment Order which follows the publication of a Department for Work and Pensions **(DWP**) Circular setting out the latest table of updated weekly limit rents specified under Schedule 4A to the Income-Related Benefits (Subsidy to Authorities) Order 1998.

If a Council's rent increase policy places it at risk of exceeding the weekly limit rent, any difference between the Housing Benefit subsidy received and the amount of Housing Benefit paid out to tenants would need to be covered by the Council; and of course the potential financial implications for the HRA business plan would need to be considered.

This is the basic position for the Council's general needs housing stock. There are circumstances when limit rent does not apply.

Affordable rent charged on social housing (which can only be charged when a landlord enters into a housing supply agreement with the Secretary of State, Homes England or Greater London Authority) is not subject to the limit rent provisions, due to the provisions of the Income Related Benefits (Subsidy to Authorities) Amendment Order 2013. This policy reflects the fact that affordable rents are linked to fluctuating market rents.

Temporary Housing Benefit subsidy also differs from general needs housing subsidy. The subsidy level will depend on the claimant's circumstances, but in summary will be limited on a weekly basis to the lowest of:

(a) the claimant's entitlement to Housing Benefit that week;

(b) a designated maximum weekly subsidy (which is tied to Local Housing Allowance rates for the area);

(c) a weekly cap limit outside the seven London broad rental market areas, and a higher limit within them.

These arrangements will change with the introduction of Universal Credit.

Universal Credit is being rolled out across the country, initially introducing the full service for new claims (and thereafter moving tenants still claiming 'traditional' Housing Benefit across to the Universal Credit service). Universal Credit differs from traditional Housing Benefit as it is claimed directly by tenants from the DWP.

This means that the so-called Limit Rent system described above will no longer be available to control welfare costs in Universal Credit claims. This is why the Government is applying the new Rent Standard to local housing authorities as well as private registered providers (i.e. housing associations): see **Rents.** When Universal Credit is rolled out in relation to claims, the Rent Standard will apply to limit the rents charged, tenants will be paid their Housing Benefit direct, and the old subsidy system will cease.

Whether however the subsidy system is removed entirely seems unlikely, as Housing Benefit in relation to 'exempt' accommodation (such as qualifying specialised supported housing) is currently given an exemption from the Universal Credit housing benefit system, and retains instead the 'traditional' Housing Benefit method of assessment. There is no indication that this arrangement is to change, as Universal Credit continues to be rolled out.

It is worth emphasising that for some years now – and since before Self-financing – transactions concerning rent rebates and Housing Benefit are matters for the General Fund, not the HRA. Since Universal Credit is paid to tenants themselves the HRA will be directly credited with those payments (i,e. as rent).

28 **Leases**

The effect of Sections 74(3)(a) and (5)(b) of the Local Government and Housing Act 1989 and the associated definition in Section 115 of the Housing Act 1985 is that leases for more than 21 years are not to be accounted for in the Housing Revenue Account (**HRA**). This has obvious relevance for disposals of flats under the Right to Buy.

The then Department of the Environment's Circular 8/95 (**the Circular**) advised that this treatment is confined to income from and expenditure on a flat only. Common parts in a block are treated separately: revenue expenditure on them (and revenue contributions to that expenditure from leaseholders) that should be accounted for in the HRA.

The HRA should also be debited with provision for bad debts.

Leasehold enfranchisement, involving the disposal of the freehold, clearly requires special treatment. The receipt is subject to the rules on **Capital Receipt**s, while the ongoing contributions – service charges payable to the new freeholder and rent and service charges from tenants of any leased-back flats – must be accounted in the HRA.

Leases for 21 years or less (not just less than 21 years, as the Circular stated) remain within the HRA.

29 **Lending HRA surpluses**

Councils can use their General Power of Competence under Section 1 of the Localism Act 2011 to lend Housing Revenue Account (**HRA**) surpluses to a registered provider or developer provided the loan is to be used for HRA purposes. The provision of the loan would be treated as capital expenditure where it is to be used by the recipient towards expenditure which would, if incurred by the Council, be capital expenditure: see Regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. Expenditure in respect of HRA land which is capital expenditure and which the Council has decided should be charged to a revenue account falls to be debited from the HRA pursuant to Part II, Schedule 4 to the Local Government and Housing Act 1989 (the **1989 Act**).

There is a good argument that the Council's General Power of Competence under the Localism Act 2011 (in respect of General Fund land) or its power to provide financial assistance for privately let accommodation under Sections 24-5 of the Local Government Act 1988 (in respect of third party land) could be used to lend HRA surpluses to a third party. The counter argument is that, though these powers enable the Council to provide financial assistance, there is no power under the 1989 Act to debit the HRA for the amount which is to be lent.

There was a specific provision within Schedule 4 to the 1989 Act (paragraph 2, Part III) for local authorities to dispose of HRA surpluses where there was no subsidy payable. However, this provision was dis-applied for England on the introduction of Self-financing. See also **Accounting Transfers**.

30 **Minimum Revenue Provision**

Councils are required to set aside revenue as provision for 'debt' – technically, capital expenditure financed by borrowing or credit arrangements. This is termed Minimum Revenue Provision (**MRP).** Statutory MRP Guidance was issued in February 2012. It sets out four options. Paragraph 21 of the Guidance states that the duty to make MRP does not extend to cover 'debt' on housing assets (i.e. property which must be accounted for in the Housing Revenue Account: see **Property within the HRA**). Two of the Options achieve this by invoking former provisions of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003; the other two options do so (it appears) by authorities discharging their duty to have regard to the Guidance. See paragraph 41 of the accompanying Commentary.

31 **Mortgages**

Under Sections 435-6 of the Housing Act 1985 (the **1985 Act**) a local authority may grant a mortgage to a person for the purpose of acquiring a house. The terms of the loan must comply with Schedule 16 to the 1985 Act. This Schedule requires the interest rates to be variable and, at any time, to be the higher of (a) the standard national rate and (b) the applicable local average rate. The standard national rate is decided by the Secretary of State, taking into account interest rates charged by Building Societies. The local average rate is decided by the Council and declared every 6 months, calculated in such manner as the Secretary of State may determine.

Councils therefore have power to grant mortgages (albeit not at a preferential rate), but the question here is whether they are able to do so from Housing Revenue Account (**HRA**) resources. Given that the mortgage would not be granted in respect of housing provided under Part II of the 1985 Act, i.e. HRA properties, the grant of a mortgage would not obviously fall within the items to be credited or debited to the HRA pursuant to Section 74(1) of the Local Government and Housing Act 1989 and on that basis HRA resources cannot be used.

32 **Offices**

Basic principles will 'lead' to the guidance in the (then) Department of Environment's Circular 8/95 many years ago, i.e. that if and to the extent that office premises are used for Part II Housing Act 1985 purposes then the cost should be debited to the Housing Revenue Account. This obviously might involve a credit from or to the General Fund, depending on where the premises, so to speak, 'sit'. The use of the term "appropriate" for the apportioning of rent and service charges has general application to 'split' assets.

33 **Property within the HRA**

Property has to be accounted for within the Housing Revenue Account (**HRA**) if it comprises houses and other buildings provided under Part II of the Housing Act 1985 (the **1985 Act**) or any of the other powers specified under Section 74(1) of the Local Government and Housing Act 1989 (the **1989 Act**).

Property within the HRA includes an authority's principal housing stock and (with the Secretary of State's consent) could extend beyond the units of accommodation to include also shops, recreation grounds and other buildings or land: see Section 12 of the 1985 Act. (Section 15 gives London Councils additional powers to provide and maintain buildings adapted for commercial use.)

The other principal category of HRA property comprises land which has been acquired or appropriated for the purposes of Part II of the 1985 Act. See **Acquisition** and **Appropriation**.

If property is not provided under the powers listed in Section 74(1) of the 1989 Act, or in directions made under that Section, the Council must not account for it in the HRA.

Section 74(3) of the 1989 Act specifically excludes certain property from the HRA:

- land, houses or other buildings disposed of by sale of the freehold or by assignment or grant of a lease (not for shared ownership) for a term exceeding 21 years
- land acquired for the purpose of disposing of houses provided, or to be provided on the land, or of disposing of the land to a person who intends to provide housing accommodation on it (or related facilities)
- houses provided on the land so acquired
- such land, houses or buildings as the Secretary of State may direct.

The Housing Revenue Account (Exclusion of Leases) Direction 1997 requires that leases for dwellings for 10 years or less acquired for the purpose of its homelessness functions must not be included in the HRA: see also **Homelessness**.

34 **RCCOs**

"RCCOs" are revenue contributions to capital outlay, i.e. the use of Housing Revenue Account (**HRA**) income for capital purposes. Their treatment in HRA accounts – to support capital programmes - demonstrates that the HRA **Ring fence** is indeed a revenue ring fence.

35 **Registered Provider Status**

As a local housing authority, a Council is 'automatically' a registered provider but not a private registered provider. It falls within the powers of the Regulator of Social Housing (**RSH**) but intervention by the RSH and its predecessors in local housing authorities' work has been rare and, specifically, the Governance and Financial Viability Standard does not apply to Councils. This may however change when the new Rent Standard is introduced: see **Rents.**

36 **Rents**

A Council's power to set rents for its HRA properties is set out in Section 24 of the Housing Act 1985 (the **1985 Act**). Section 24(1) provides that local housing authorities "may make such reasonable charges as they may determine for the tenancy or occupation of their houses" and they "shall from time to time review rents and make such changes, either of rents generally or of particular rents, as circumstances may require."

Both under Section 24(1) of the 1985 Act and as a general duty, the Council is under a duty to act reasonably in determining rent levels. It must take into account all relevant considerations and record the rationale for any rent increase determination so that it can demonstrate that it has acted reasonably in reaching its decision. An important consideration will be to set rents at a level which will enable the Council to meet its 30-year HRA business plan requirements.

Section 9 of the 1985 Act provides the Council with the power to provide housing accommodation (without therefore any stipulation as to affordability). This in principle gives rise to the possibility of a range of rent levels for HRA properties.

Section 24(5) of the 1985 Act provides that in setting rents local housing authorities must have regard in particular to any relevant standards set for them under Section 193 of the Housing and Regeneration Act 2008 (the **2008 Act**). Under Section 193 the Regulator of Social Housing (**RSH**) may set standards with which registered providers (including local housing authorities) must comply. Further, under Section 197 of the 2008 Act the Secretary of State may direct the RSH to set a standard under Section 193, including one relating to rents.

The Rent Standard did not initially apply to local authorities and therefore, in the absence of a direction issued by the Secretary of State to the RSH, the general legal position was that local authorities had a basic power to set any rent for their HRA properties.

Legislative provisions could of course always over-ride that position; and in the Welfare Reform and Work Act 2016 the Government imposed 1% reductions for four years from 1 April 2016 on Councils as well as private registered providers (**PRPs)**.

There is now intended to be a revised Rent Standard, applicable to Councils as well as PRPs, dealing with low cost rental accommodation. The draft "Direction on the Rent Standard 2018" (now likely to come into effect in 2019) requires the RSH to set a rent Standard which effectively 'permits' Councils to increase social rents from 2020-1 (i.e. after the rent reduction period) by *no more than* CPI + 1%. These increases are planned to last for 5 years. The base rent for these yearly increases is the average weekly rent for 2019-20.

Before automatically applying this increase Council should bear in mind the accompanying Policy Statement which currently 'encourages' providers to consider the local market context and the levels of **Housing Benefit** and **Universal Credit** available.

It is relevant to note that the Government is applying the Rent Standard to local authorities because the **Housing Benefit** subsidy limits will be superseded by the direct payment mechanism of Universal Credit.

For *new* tenants – i.e. on initial lettings and re-lettings (only) - formula rent levels (subject to overall rent caps) apply.

Details on all this and other matters (including rent flexibility and service charges) are given in the social rent chapter in the Policy Statement.

The new Rent Standard will make separate provision for affordable rents, i.e. usually grant-funded housing.

The Rent Standard will not apply to accommodation let to high income social tenants (i.e. where household income is £60,000 or more) or accommodation categorised as exempt in the accompanying Policy Statement. The exempt categories are

- Shared ownership low cost rental accommodation
- Intermediate rent accommodation
- Specialised supported housing
- Relevant local authority accommodation
- Student accommodation
- PFI social housing
- Temporary social housing
- Care homes

"Relevant local authority accommodation" so qualifies if the Secretary of State agrees that to apply the rent policy would cause the authority unavoidable and serious financial difficulty.

37 **Re-opening the HRA**

The Secretary of State can direct that certain land, houses or other buildings, which would otherwise require the maintenance of a Housing Revenue Account (**HRA**), do not necessitate a Council re-opening its HRA. The Ministry of Housing, Communities and Local Government (**MHCLG**) has indicated that a Council can secure such a direction for up to 200 (new) properties (it was previously 50). This is designed to encourage local authorities which have closed their HRA to develop new homes. Any direction of this kind would be given under Section 74(3)(d) of the Local Government and Housing Act 1989. Some 20 Councils have received directions since 2012, most for dwellings but a few for temporary accommodation, garages and so on. Some Councils may take MHCLG's encouragement to mean that they can ignore the legal requirement and not obtain a direction. A general direction would be desirable.

See also **Closure**.

38 **Reserves**

A Council must ensure that there are adequate reserves in the HRA; but subject to the adequacy of those reserves a Council will wish to consider whether the reserves are too high as well as too low. It is one thing to provide financial contingencies but (arguably) another to ensure that the HRA has the resources to address unwelcome legislative or Government policy pressures.

39 **Ring-fence**

The Housing Revenue Account (**HRA**) Is, so to speak, governed by Schedule 4 to the Local Government and Housing Act 1989 (the **1989 Act**). Schedule 4 principally lists the credits to the account (Part I) and the debits (Part II). Much of the Schedule has been superseded by the Self-financing regime but the so-called item 8 credits and debits ("sums

calculated as determined by the Secretary of State"), previously used for the HRA subsidy arrangements, still provide an important mechanism for potential Government intervention.

Expenditure and income relating to property listed in Section 74(1) of the 1989 Act must be accounted for in the HRA.

In the so-called *Ealing* case a tenant successfully challenged the inclusion of certain items of expenditure (concerning a homeless persons unit, housing advisory services and wardens in sheltered accommodation) in Ealing Council's HRA. While the decision relating to sheltered accommodation expenditure was 'overtaken' by amendments to the Housing Act 1985 and the 1989 Act by the Leasehold Reform, Housing and Urban Development Act 1993 (see **Welfare Services etc.**), there were enunciated certain principles, which even if self-evident are worth bearing in mind since they are likely to be invoked in any challenge. If an item of expenditure falls within an Item in Part II of Schedule 4 to the 1989 Act, it must be debited; if it does not, it must not be debited. Some items of expenditure, it is acknowledged, may fall on the borderline: Councils have a discretion to include or exclude such items, subject to any direction of the Secretary of State. This is the limit of their discretion.

40 **RTB Receipts**

Receipts arising from the sale of Council dwellings under the Right to Buy (**RTB**) are subject to pooling arrangements, unless (for example) they are used in accordance with the RTB Retention Agreement (the so-called 141 replacement 'deal').

The point of immediate relevance for the Housing Revenue Account (**HRA**) is that (subject to the pooling/retention arrangements) RTB receipts, being capital, fall out-with the HRA **Ring-fence**. It is open to a Council to use those RTB receipts for HRA purposes but there is no obligation to do so.

Shared ownership lease premia are only subject to pooling if the tenant acquires, either initially or within 2 years, more than 50% of the value of the dwelling.

Many of the key features of the Retention Agreement are likely to change – i.e. be relaxed in favour of local authorities – as a result of a consultation on "Use of receipts from Right to Buy sales" (August 2018). It is therefore currently most useful here to focus on the principles underpinning the Retention Agreement.

The so-called 141 receipts are those generated by the increased discounts introduced at the time of Self-financing in 2012, i.e. what was termed the "reinvigoration" of the RTB. The Retention Agreement cross refers to the "sub liability" as set out in some almost incomprehensible (and confusingly circular) algebra in the Schedule to the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. Guidance on Calculating the Poolable Amount (July 2013) is more accessible. It explains the following five deductions from the RTB receipts, in priority order:

- Transaction costs
- Allowable debt
- Local authority share
- Government share

- Buy back allowances

The costs are a fixed amount (at different levels for London and elsewhere). The allowances are evidently complicated to calculate but not large. The debt is essentially that attributable to 'surplus' sold dwellings, i.e. over and above the sales predicted when Self-financing was introduced.

The shares are the most important deductions: they create, so to speak, the surplus receipts available for retention. In effect the Government permits the use of receipts the Treasury was not expecting in 2012. The formulae create this 2012 base line and some of the horrid complexity derives from the possibility that local authorities do not 'deliver' the base line receipts and have to try to make good that deficit before they generate genuinely surplus ones.

The alternative for Council officers is simply to trust to the computerised return 'form'!

See also **Capital Receipts.**

41 **Sales**

With regard to developing units for market sale on HRA land, Section 9(1) of the Housing Act 1985 (the **1985 Act**) provides local authorities with the power to provide housing accommodation by constructing houses and Section 9(3) states that this power may equally be exercised in relation to land acquired for the purpose of disposing of houses provided, or to be provided, on the land. (See also **Acquistion.)**

Case law on the power to provide housing accommodation contained in previous housing legislation (now superseded by the 1985 Act) suggests that the Council would be able to acquire land within the Housing Revenue Account (**HRA**) and develop it for sale relying upon Section 9(1) and (2) alone; but Section 9(3) puts beyond doubt that Councils can buy property in order to build, convert, alter, enlarge, repair or improve for sale.

It is however not clear from statute or the case law whether the power in Section 9 of the 1985 Act applies to HRA land which was not bought by the Council with the intention at the time of purchase of developing it for market sale.

42 **Shares in a company**

If a Council takes shares in (for example) a local housing company in return for an investment then the question arises as to how those shares are to be reflected, if at all, in the Housing Revenue Account (**HRA**). We believe that they represent a capital asset, albeit one which (if the company's directors so decide) can generate a revenue through dividends.

On the basis that the HRA is self-evidently a revenue account then a capital investment in the local housing company falls out-with the HRA **Ring-fence** and if a dividend is declared then that revenue can be used as the Council sees fit, i.e. for General Fund purposes or within the HRA.

43 **Shops**

Shops can be accounted for in the Housing Revenue Account (**HRA**) only if they are connected with housing provided under Part II of the Housing Act 1985 and the Secretary of State consents: Section 12 of the Housing Act 1985 (the **1985 Act**). As already noted,

London Councils specifically have power to provide and maintain, in connection with Part II housing, buildings (or parts thereof) adapted for commercial use: Section 15 of the 1985 Act.

It is however noteworthy that both Circular 8/95 issued by the then Department of Environment and the draft Guidance on the HRA **Ring-fence** issued by the Department for Communities and Local Government in its Prospectus for Self-financing in 2010 included "shops and other commercial premises" among the various 'legacy' property items which Councils might well decide should be removed from the HRA.

44 **Support**

Whether or not a Council can charge to the HRA the costs of helping and supporting residents in its housing depends on:

- whether the expenditure relates to property held by the Council under Section 74 of the Local Government and Housing Act 1989 (the **1989 Act**)
- whether the expenditure can be debited from the HRA in accordance with Part II of Schedule 4 to the 1989 Act
- in the case of expenditure on (so to speak) the borderline, whether the Council's tenants benefit from the expenditure (with a commensurate 'contribution' from the General Fund to the extent that the community as a whole benefits)

While a Council may be able to charge to the HRA the cost of providing housing welfare services (other than essential care services), services such as training assistance are arguably unconnected to the provision of 'Part II housing' (i.e. accommodation provided pursuant to the Housing Act 1985) and therefore any associated costs must be met from the General Fund. The then Department of the Environment's Circular 8/95 specifically stated that estate-based employment advisory services should not be met by the HRA.

See also **Welfare and Other Services and Amenities**

45 **Temporary Accommodation**

A Council's duties in respect of homelessness fall outside the scope of the Housing Revenue Account (**HRA**) as they are provided for under Part VII of the Housing Act 1996 (the **1996 Act**) rather than Part II of the Housing Act 1985 (the **1985** Act). Therefore any homeless administration services must be funded out of the General Fund.

However, Section 9 of the 1985 Act gives Councils the power to provide housing accommodation by erecting or acquiring houses (and "houses" for these purposes includes lodging-houses and hostels: see also **Hostels**). This could include erecting or acquiring houses to be used for temporary accommodation. Any such temporary accommodation erected or acquired using the Section 9 power would need to be accounted for within the HRA by virtue of Section 74(1) of the Local Government and Housing Act 1989 (the **1989 Act**), unless the accommodation was leased to the Council for a period of 10 years or less (in which case the Housing Revenue Account (Exclusion of Leases) Direction 1997 excludes these dwellings from the HRA: see also **Homelessness etc.**).

The construction or purchase of such accommodation could therefore be paid for from HRA surpluses and, further, in accordance with Part II, Schedule 4 to the 1989 Act, the repair, maintenance, supervision and management of temporary accommodation erected or acquired under the Section 9 power (which could include any accommodation already erected or acquired under this power) should also be debited from the HRA (together with any other items to be debited from the HRA pursuant to Part II).

In basic terms, therefore, it is possible (using a Council's Section 9 power) for the 'bricks and mortar' of the temporary accommodation to be paid for from HRA surpluses and thereafter for the repair and maintenance of that accommodation to be paid for from the HRA. However, any services provided pursuant to a Council's homelessness duties under the 1996 Act must be accounted for out of the General Fund.

46 **Tenancies**

A Council issues secure tenancies under the Housing Act 1985 (the **1985 Act**), whether the dwelling is held in the Housing Revenue Account (**HRA**) or the General Fund. It follows that Right to Buy is not 'avoided' if a dwelling is held in the General Fund.

The 'traditional' types of tenancies available to a local authority were for many years broadly limited to lifetime secure tenancies under Part IV of the 1985 Act and (after the Housing Act 1996 came into force in February 1997) introductory tenancies. Section 154 of the Localism Act 2011 added flexible tenancies with a minimum fixed term of two years to the types of tenancies available to a local authority. The Regulator of Social Housing's Tenancy Standard requires that flexible tenure tenancies should generally be a minimum of 5 years long (other than in exceptional cases, when 2 years are permitted).

Schedule 7 to the Housing and Planning Act 2016 (the **2016 Act**) has the effect of requiring that new secure tenancies be for a fixed term of between 2 and (usually) 10 years. Schedule 8 to the 2016 Act applies these new requirements to family members who succeed existing secure and introductory tenants and who will therefore be granted a new 5 year fixed term tenancy, rather than succeed to a lifetime periodic tenancy. The provisions of the 2016 Act would effectively mean the end of flexible tenure tenancies under the Localism Act 2011 (although transitional arrangements would likely be put in place for existing flexible tenancies).

The Government however recently announced that it had decided not to implement the 2016 Act provisions "at this time".

See also **Leases**

47 **Universal Credit**

The introduction of Universal Credit (**UC**) will have major implications for local housing authorities' income. For the present the changes are described in the section on **Housing Benefit.** In future versions of this Manual, when UC is implemented (with or without significant adjustments), this section will replace the **Housing Benefit** one.

48 **Voluntary Code**

The Chartered Institute of Public Finance and Accountancy and the Chartered Institute of Housing issued a "Voluntary Code for a Self-financed Housing Revenue Account" in 2013. This was intended to help Councils have "effective governance and financial management frameworks in place in order for Self-financing to be a success". The Code covers various

principles, namely co-regulation, financial viability, communications and governance, risk management, asset management and financial and treasury management.

49 **Welfare and Other Services and Amenities**

Part II of the Housing Act 1985 (the **1985 Act**) confers power on authorities to provide a wide range of services and facilities including:

(a) Facilities for obtaining meals and refreshments and for doing laundry and laundry services such as accord with the needs of the persons for whom the housing accommodation is provided (Section 11 of the 1985 Act).

(b) Services for promoting the welfare of persons for whom the Council provides accommodation, as accord with the needs of those persons (Section 11A of the 1985 Act).

Section 128 of the Leasehold Reform, Housing and Urban Development Act 1993 gives power to the Secretary of State to remove Councils' discretion to account for such services in the Housing Revenue Account (**HRA**) and has done so via the Housing (Welfare Services) Order 1994 (the **1994 Order**) – evidently still in force - which stipulated that the following welfare services were not to be charged to the HRA:

- Assistance with personal mobility;
- Assistance at meal times;
- Assistance with personal appearance or hygiene;
- Administration of medication
- Nursing care.

See also **Community Alarm Schemes.**

(c) Subject to obtaining the Secretary of State's consent, shops, recreation grounds and other buildings or land (Section 12(1) of the 1985 Act).

In the case of shops and recreation grounds there must be a connection with housing accommodation provided under Part II of the 1985 Act. In the case of other buildings or land, the Secretary of State must decide that they serve a beneficial purpose for tenants of Part II accommodation. The Department of the Environment, as was, in its Circular 8/95 (**the Circular)** indicated that such buildings or land needed to relate to the Council's role as landlord of the associated housing stock.

(d) Laying out and constructing public streets or roads and open spaces on land acquired by the authority for the purposes of Part II of the 1985 Act (Section 13(1) of the 1985 Act).

The Circular indicated that the following Welfare Services (provided by wardens and, in some circumstances, other housing staff) had sufficient connection with Councils' landlord

functions to justify the costs being charged to the HRA, if Councils decided that it is appropriate to do so:

- Counselling, monitoring and support in connection with tenants' well-being, health and personal needs
- Monitoring and alarm schemes in place to reflect increased personal dependency/frailty of tenants
- Cleaning tenants' rooms and windows, and their laundry services, reflecting their reduced ability to do so themselves
- Organising social/leisure activities and functions
- Liaising with medical/social services staff/GPs about tenants' needs
- Providing and supervising restaurants/meals and ancillary services
- Counselling and liaising with relatives
- Running regular errands because tenants are unable to do so themselves
- Administering first aid
- Responding to out-of-hours calls by tenants.

The Circular stated:

"The primary role of professional Council housing management is to ensure that the housing is properly utilised, is kept in good repair and that rents are collected. But, in cases of special needs, and the most difficult and challenging estates, the responsibility of managers covers a wide range of functions, alongside the efficient and effective delivery of the normal estate management duties …. as a general rule, authorities may charge to the HRA the cost of providing housing welfare services (other than essential care services [listed in the 1994 Order]) where these are not the dominant function of the housing staff concerned …. [but] there may occasionally be circumstances which warrant a member of staff spending most or all of his or her time on associated welfare services for a particular group of tenants, as part of the more general housing service for that group. Where an authority is satisfied that this is the most cost effective option, they may choose to charge the cost to the HRA."

The Circular gave two examples of Welfare Services which it considered should not be paid for from the HRA:

- Estate-based employment advisory services
- Drug rehabilitation centres.

As far as Non-Welfare Services and Functions are concerned, Circular 8/95 simply identified the need for a fair apportionment of costs and income between the HRA and the General Fund, with specific reference to paragraph 3A of Part III of Schedule 4 to the Local Government and Housing 1989 Act (the **1989** Act) for the crediting/debiting of: income and expenditure on welfare services to the HRA: see **Accounting Transfers.**

Alongside these particular rules relating to Welfare and Non-Welfare Services are items 1 and 2 of Part II of Schedule 4 to the 1989 Act, which allow expenditure on repairs, maintenance and management and also on capital expenditure on HRA assets to be debited to the HRA.

It is worth noting that, while the phrase 'management of houses and other property' is to be given a wide meaning (see *Shelley v. London County Council* as cited in the *Ealing* judgement), a Council must not account for an item of expenditure in the HRA unless the test set out in the section on **Support** is satisfied.

50 **Conclusion**

We emphasise not only the "unofficial" status of this Manual but also its intentionally provisional nature. We are keen to make it as useful as possible, answering questions and addressing issues as they occur from time to time. We hope that Council officers will make contact with queries either already covered by the Manual or relating to matters which should be covered in future versions. Contact details are given below.

51 **Scope of the Manual and Disclaimer**

Every effort has been made to ensure that the information provided in this Manual is accurate, but no liability on the part of any of the authors or Trowers & Hamlins LLP itself is accepted. This Manual is not intended to constitute advice on which reliance should be placed but rather to provide general guidance for those who wish to gain a better understanding of how the Housing Revenue Account works. No steps or decisions should be taken in accordance with, or any reliance placed on, this Manual without taking and following specifically commissioned advice from officers, consultants or other advisers. Please also note that, without prejudice to this general disclosure, the Manual has been prepared by Trowers & Hamlins LLP as lawyers and not accountants or financial advisers.

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Schedule – Glossary of terms and list of HRA 'rules'

Circular	Circular issued by the Department of Environment in 1995 on accounting for expenditure and income inside or outside the HRA.
Core Services	Services so described in the draft HRA Guidance annexed to the 2010 Prospectus.
Core Plus Services	Services so described in the draft HRA Guidance annexed to the 2010 Prospectus.
CRI	Consolidated Rate of Interest**.**
DCLG	Department for Communities and Local Government, now MHCLG.
DoE	Department of the Environment (a predecessor to the DCLG).
General Determination	The Item 8 Credit and Item 8 Debit (General) Determination (amended 2018)
General Power of Competence	Power set out in Section 1 of the 2011 Act.
HA 1988 Act	Housing Act 1988.
HRA	Housing Revenue Account.
LGA 1988 Act	Local Government Act 1988.
MHCLG	Ministry for Housing, Communities and Local Government
Non-Core Services	Services so described in the draft HRA Guidance annexed to the 2010 Prospectus.
Prudential Code	The Prudential Code for Capital Finance in Local Authorities.
RCCO	Revenue Contribution to Capital Outlay.
RSH	Regulator of Social Housing
Self-financing	System of financing Council housing introduced in 2012 (replacing the HRA subsidy system).
1985 Act	Housing Act 1985.
1989 Act	Local Government and Housing Act 1989.
1993 Act	Leasehold Reform, Housing and Urban Development Act 1993
1994 Order	Housing (Welfare Services) Order 1994.
1996 Act	Housing Act 1996.

1997 Direction	Housing Revenue Account (Exclusion of Leases) Direction 1997.
2003 Regulations	Local Authorities (Capital Finance and Accounting) (England) Regulations 2003.
2008 Act	Housing and Regeneration Act 2008.
2010 Prospectus	DCLG: "Council Housing: a real future" (2010).
2011 Act	Localism Act 2011.
2012 Determination	Limits on Indebtedness Determination (February 2012) issued by DCLG (amended twice in 2013) – revoked in 2018.
2016	Housing Revenue Account (Accounting Practices) Directions 2016
2017 Determination	Item 8 Credit and Item 8 Debit (General) Determination from 1 April 2017 – amended in 2018