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Grant Recovery: Important Additional Information

We are undertaking a major review of the Recovery chapter, in particular to give detailed guidance on changes to our approach, which are effective from 1 April 06. A revised chapter will be published shortly. In the interim, high level information on the changes is given below. Any questions on their implementation should be addressed to the Housing Corporation enquiries team on 0845.230.7000. Aspects of grant recovery not covered by these changes will continue to be governed by existing guidance within this chapter.

1. We will expect associations to apply their RCGF in accordance with the investment priorities of the Regional Housing Strategy (RHS).
2. We will remove the presumption that spending will be in the LA area where receipts were generated, and the requirement to consult with the LA and the Corporation Regional team in such cases. This will be replaced with a requirement to inform the Corporation Regional team of any spend of recycled receipts outside the originating LA area, and to consult the regional team if spend is across sub-regional boundaries.
3. Associations will be required to consult the Corporation regional team if a receipt generated in a rural area (defined as population below 10,000) is to be spent in a non-rural area.
4. We will extend associations' ability to transfer amounts in an RCGF to others within their own group structure to cover others within their development partnership, and (subject to Corporation agreement) to local associations, specialist associations and similar types of association (for example a housing co-operative).
5. We will remove the extension of the time limit for spending receipts (from 3 to 5 years) for Market Renewal Pathfinders.
6. We will impose automatic penalties (in terms of a return of a proportion of the Fund to the Corporation) for late annual returns.
7. We will require associations to certify as part of their annual return that, within their annual audit report, external auditors have considered inflows, outflows, balances (and specifically balances that are more than two years old) and uses for both Funds.
8. We will set a deadline for annual returns of 30 June.
9. We will collect some additional information on use of Funds within the annual return.

1 INTRODUCTION

- 1.1 The following chapters explain how to calculate the grant recoverable upon sales of property and other events and give directions to RSLs who opt to recycle it. They should be read in conjunction with the The Recovery of

Capital Grants General Determination 2003, which is reproduced at Annexe 1 at the end of the REC section of the guide. The Capital Grants concerned are Housing Association Grants paid on projects approved up to 1 April 1997 and Social Housing Grants paid after that date. They do not include Voluntary Purchase Grants or Right To Acquire grants. The Guide contains separate chapters for those grants and for the Disposal Proceeds Fund.

- 1.2 The procedures apply to Capital Grants provided through both the Corporation and local authorities. They apply equally to Housing Association Grant and Social Housing Grant, referred to collectively as Capital Grant. (Terms beginning with capital letters are all defined in the glossary in Chapter REC-6.)
- 1.3 Since 1 April 1997, RSLs have had the option of recycling capital grants into new projects rather than repaying them to the Corporation. The option is available only for events occurring on or after that date. Most have chosen to recycle and the Guide reflects that. There remain, however, a few situations in which the Corporation will always collect Capital Grant rather than allow the RSL to recycle it and others in which the Corporation retains discretion to collect depending on the circumstances. Paragraph 1.4 of Chapter REC-4 lists the occasions when the Corporation will collect. The detailed sections of Chapter REC-3 state the areas of discretion. When this Guide uses the general term “recovery”, it means both recycling and collection by the Corporation.
- 1.4 Chapter REC-4 is the Corporation’s formal direction on how RSLs may apply or appropriate Capital Grants to specific purposes rather than repaying them to the Corporation. The Corporation makes the direction under section 27(2)(b) of the Housing Act 1996 and section 52(2) of the Housing Act 1988, as amended by section 28(3) of the Housing Act 1996.
- 1.5 These policies and procedures flow from the principles in The Recovery of Capital Grant General Determination 2003, which supercedes the Social Housing Grant (Recovery of Capital Grant) General Determination 1997, the Recovery of Housing Association Grant General Determination 1996, the Recovery of Housing Association Grant (Extension of Powers) General Determination 1997 and The Recovery of Capital Grant General Determination 2002. A copy of the 2003 Determination is in Annex 1 of this chapter.

2 EVENTS LEADING TO GRANT RECOVERY

- 2.1 These are known as “Relevant Events” and the Corporation has defined them in its statutory determinations on recovery of Capital Grant.
 - Disposal of a Dwelling except:

- ⇒ to another RSL, in which case the Capital Grant automatically transfers to the receiving RSL. (*Section 18(6) of the Housing Act 1996 and section 52(5) of the Housing Act 1988.*)
 - ⇒ the sale of the first share of a Dwelling under a Shared Ownership Lease where the Dwelling is specifically provided for sale on shared ownership terms;
 - ⇒ the sale of a Dwelling acquired for the purpose of outright sale after repair, improvement or conversion;
 - ⇒ sale and leaseback arrangements under which the RSL disposes of a superior interest in a Property and acquires a long leasehold interest on a back to back basis. These are not Relevant Events when the purpose of the leaseback arrangement is to minimise an RSL's exposure to value added tax or to raise private finance and, in both cases, the Property remains controlled and let by the RSL as Social Housing and the Corporation approves in advance the terms of the transaction. That approval is part of the process of obtaining section 9 consent to the disposal.
 - ⇒ where the legal ownership of land or a Dwelling is transferred to a developer or lender for the period during which a development, redevelopment or re-improvement is carried out, and either the freehold or a leasehold interest is returned to the RSL on terms acceptable to the Corporation and agreed in advance;
 - ⇒ where the consideration is a replacement Property, in which case the Capital Grant already invested will be transferred to the replacement;
 - ⇒ disposal of the freehold reversion on shared ownership Properties which have all been staircased to full ownership or on Properties sold under the Right To Buy;
 - ⇒ disposal of 'spare' land. The disposal of 'spare land' is not a Relevant Event because the Corporation considers Capital Grant to be tied to the Property and not the landscaping.
- a change of use of a Property to one which would not qualify for Capital Grant under Section 18 of the Housing Act 1996 or any replacement of that section. Capital Grant is not Recoverable upon a change to a use which would qualify for Capital Grant under Section 18 of the Housing Act 1996 or any replacement of that legislation. However, some Capital Grant may be Recovered when the Social Housing use changes to one that attracts a lower Capital Grant input, such as from Supported Housing to general needs;

- demolition of Property, with the prior agreement of the Corporation, without redevelopment or sale and where the RSL obtains a capital receipt or compensation. A Property may reach the end of its useful life and/or is no longer suitable for current needs. The RSL must consider the various options, which may include demolition and redevelopment or inclusion either wholly or in part within a new or existing Social Housing development. The act of demolition will not trigger the Recovery of the Capital Grant already invested in the Property.
- An aid or adaptation for a person with a physical disability may be removed and either sold or moved to another Property owned by the RSL. The Capital Grant attributable to the aid or adaptation will remain with the original Property, and will only be Recovered if and when a Relevant Event occurs.
- disposal within three years of purchase of a Dwelling acquired by a former tenant partly financed by Tenants Incentive Scheme Grant;
- a disposal giving rise to a repayment of discount under schedule 2 to the Housing Associations Act 1985;
- failure to use Capital Grant for the purpose for which it was paid;
- failure to comply with any condition attached to the making of Capital Grant;
- discovery that the Secretary of State, the Corporation or a local authority has received incorrect information or made an error in connection with the calculation of Capital Grant payable or repayable;
- de-registration of a Registered Social Landlord by the Corporation.

2.2 The procedures for calculating the amount recoverable are in chapter REC-3.

1 EFFECTIVE DATES

- 1.1 The policies and procedures contained in this guide apply to Relevant Events occurring from 1 April 1997. For Relevant Events that occurred between 1 January 1997 and 31 March 1997, please refer to the 'Recovery of Housing Association Grant' Guide issued in December 1996 with Corporation circular F2 - 48/96. For Relevant Events that occurred between 1 April 1989 and 31 December 1996, refer to the guide to 'Recovery of Housing Association Grant following a relevant event' issued in March 1989 with Corporation circular 16/89.

2 FORMS AND SUPPORTING DOCUMENTS

- 2.1 The following forms are available from our field offices or downloaded from the library at our web site www.housingcorp.gov. Type F2 – 28/97 in the search box and open up circular F2 - 28/97. Once the circular is located the following forms can be located as pdfs at the foot of the relevant web page.

- RCG1 for outright sales
- RCG2 for staircasing sales
- RCG3 for recovery of tenants' discounts

- 2.2 When Supporting Documentation is required, it should be kept with the form.

3 TIMETABLE FOR PROCESSING RECOVERIES

- 3.1 When a relevant event occurs and the RSL opts to credit the Recoverable Capital Grant to its Recycled Capital Grant Fund, the effective date of the credit is the date of the Relevant Event.

- 3.2 When a Relevant Event occurs and the Recoverable Capital Grant is to be paid to the Corporation, the appropriate form should be sent to the regional office of the Corporation responsible for the area in which the Property is situated, within 14 days of:

- the date of completion when a Property is disposed of by sale or transfer;
- the date when demolition started, where a capital receipt is received;
- the date when the Property ceased to be used for a purpose eligible for Capital Grant, or when it ceases to be used for Supported Housing when its use is to change to general needs;

- the receipt of compensation by the RSL where a Property is disposed of under a Compulsory Purchase Order;
 - the date the Dwelling is sold by a former tenant who received a discount and all or part of a discount is repayable (only applicable to Right To Buy sales, and Tenant Incentive Scheme Grants approved after 1 April 1997).
- 3.3 An RSL may fail to complete a project by a date specified, or fail to comply with a condition of grant made by the sponsoring body, either the Corporation or the Local Authority. In determining whether a revised completion date is acceptable, the sponsoring body will take into account the individual circumstances of each case. The Corporation will give an RSL at least three months notice of its intention to Recover Capital Grant, during which time the RSL may set out its case for mitigating circumstances. The Corporation will decide the course of action in such cases. It may reduce any Capital Grant payable, or suspend or cancel any instalment of such Capital Grant still payable, or may direct the payment to the Corporation of the Capital Grant already paid on the project.

4 DELAYED NOTIFICATION AND INTEREST CHARGING

- 4.1 Where the RSL is required to notify the Corporation of a Relevant Event and that notification is not received by the appropriate deadline as set out in paragraphs 3.2 to 3.3 above, the Corporation will normally add interest to the amount of Capital Grant Recovered. For the period between the deadline and the date of receipt of the notification, the Corporation will normally charge interest at the same rate as for late payment of invoices. Interest will not be charged if the Corporation has been informed in writing of a likely delay and has agreed in writing that the circumstances do not justify the charging of interest for a particular period. When some Supporting Documentation is not available, the RSL can avoid interest by paying the whole disposal proceeds to the Corporation.
- 4.2 The Corporation will charge additional interest if the invoice for payment of Capital Grant is not paid within the specified period. This will also be at the rate for late payment of invoices.

1 APPORTIONMENT OF CAPITAL GRANT BETWEEN PROPERTIES

Rental property

1.1 The method of apportioning Capital Grant (including that Capital Grant relating to interest arising after the Relevant Date for payment of Capital Grant to the RSL) should be the same as that used in apportioning the Cost Floor where applicable. Acceptable methods of apportionment of Capital Grant amongst individual Properties include:

- rents as charged on first Letting;
- floor area;
- equal division where Properties are similar in size;
- rateable value where this has been used in previous disposals in the project;
- any other method approved by the Corporation's field office in advance.

1.2 The total amount of Capital Grant to be apportioned shall include:

- Capital Grant paid on the initial development;
- Capital Grant paid to clear the loan on a project originally approved under S.41 of the Housing Associations Act 1985, and the works funded under later legislation;
- Capital Grant paid for re-improvement, Major Repairs, Miscellaneous Works, and aids and adaptations for people with a physical disability;
- Capital Grant paid on any previous project on the site, which has been demolished, less any Capital Grant already Recovered;
- Any element of the Capital Grant paid in respect of scheme administration and on-costs, including the on-cost on DIYSO projects;
- Simple interest.

1.3 An RSL may dispose of an undeveloped plot of land, designated for a future phase or phases, by sale or inclusion in whole or in part within another project. In such cases the valuation obtained at the date of original acquisition must be split between the land and any buildings that were part of that acquisition. The area of the land to be disposed of should be taken as a proportion of the area of the whole land, excluding any buildings, and the value attributed in the same proportion.

1.4 It will also be necessary to add an allowance for acquisition-related costs such as legal fees, interest on the land, etc. In order to simplify the calculation, 7% should be added to the land value. This is the 'on-cost' for New Build 'off the shelf' projects averaged over the 1989 - 97 period. It is not necessary to calculate the actual acquisition-related costs, neither should the calculation incorporate the on-cost used in the original grant application, since this includes inappropriate costs.

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- 1.5 The Capital Grant attributable to the disposed land is the value as detailed in paragraphs 1.3 and 1.4 above multiplied by the Capital Grant rate for the project. Any other Public Sector Subsidy input into the project will be taken into account, the exact calculation being dependent upon the nature and purpose of that other subsidy. For projects approved before the 1988 Act procedures, the grant rate is the total amount of Capital Grant paid on the project, net of any Capital Grant relating to interest arising after the Relevant Date, as a percentage of the Approved Total Cost of the project.

Example

A project was approved and developed under pre-1988 Act procedures, with the land cost including the land earmarked for a second phase that did not proceed. For Phase 1, the Approved Total Cost was £927,201, and HAG was paid of £574,864. The grant rate was £574,864 divided by £927,201 = 62%. (Ignore any interest added because of delays in paying the grant claims)

The whole site land value at acquisition was £200,000 and the Phase 2 land, being 15% of the site, is disposed of. The value of the Phase 2 land is £200,000 x 15% = £30,000. Add the notional on-cost of 7% to give a total cost of £32,100. The Capital Grant attributable to the Phase 2 land is £32,100 x 62% = £19,902.

Because of delays in paying the grant claims, additional interest of £20,000 was paid. The proportion attributable to the Phase 2 land is £19,902 divided by £574,864, then multiplied by £20,000 = £692. The total amount of Recoverable Capital Grant attributable to the Phase 2 land is £19,902 + £692 = £20,594.

If the sale proceeds, net of sale expenses, were £17,000, then £17,000 must be repaid to the Corporation, and must not be credited to the Recycled Capital Grant Fund. The balance of £3,594 unrecovered Capital Grant is written off.

Initial Sales of existing rented stock into shared ownership

- 1.6 A Dwelling forming part of an RSL's existing rented stock may be sold voluntarily on Shared Ownership terms. The Capital Grant attributable to the initial share sold will be all the Capital Grant attributable to the Dwelling (including that Capital Grant relating to interest arising after the Relevant Date). If the initial net sale proceeds are insufficient to recover all of the Capital Grant, the shortfall must be deferred until staircasing takes place - see paragraphs 1.7 and 2.13 below.

Shared ownership staircasing sales

- 1.7 A shared owner may 'staircase' by purchasing a further share, or shares, of the Dwelling. The Capital Grant attributable to the staircased share will be the appropriate percentage of all the Capital Grant attributable to the property,

including that Capital Grant paid on interest arising after the relevant date. It will also include any Recoverable Capital Grant deferred from previous staircasing within the same project, or from an initial sale (see paragraph 1.6 above).

Example

25% share of a Dwelling was initially purchased and the total Capital Grant attributable to the unsold equity (75%) in the property was £21,000. The shared owner buys a further 25% of the property (the equivalent of a third of the remaining unsold equity), so the Capital Grant attributable to that staircasing is one third of £21,000 = £7,000. Recovery of £2,143 had been deferred from a previous staircasing in the same project. The net sale proceeds of this current staircasing was £8,250. Therefore £8,250 of Capital Grant is recovered and the balance of (£7,000 + £2,143 - £8,250) £893 is deferred to the next staircasing within this project.

- 1.8 For shared ownership projects approved on or after 1 April 1993, Capital Grant and Deemed Loan Debt are apportioned according to the market values of the Dwellings at practical completion of the project. For shared ownership projects approved before that date, the Capital Grant and Deemed Loan Debt calculations take into account the percentage of equity initially sold - see Deemed Loan Debt in the Glossary at Chapter REC-6.

Leasehold Schemes for the Elderly (LSE), Rural Restricted Equity, and Rural Buyback.

- 1.9 In all cases the RSL should refer back to the procedures under which the project was developed for the special features relating to disposal and Capital Grant Recovery. The special features relating to Recovery of Capital Grant are summarised below.
- 1.10 For LSE (without staircasing) projects where the units are sold outright at a discounted sale price, the Capital Grant funded discount is not recovered.
- 1.11 For LSE (with staircasing), the Recoverable Capital Grant shall be the total Capital Grant paid less 25%, or the specified percentage, of the cost of providing that Dwelling at final cost stage. For these Dwellings, Capital Grant will never be recovered in full unless the whole Dwelling is disposed of, in which case the procedures for outright sale will apply.

Example

25% of a Dwelling was initially purchased and the Capital Grant attributable to the Dwelling was £21,000. If the shared owner buys the maximum of a further 50% of the Dwelling, the Capital Grant attributable to that staircasing is two thirds of £21,000 = £14,000. The balance of £7,000 Capital Grant remains invested in the Dwelling.

- 1.12 For Rural Restricted Equity property, the shared owner can only staircase up to 80% ownership. The whole of the Capital Grant paid on the property is Recoverable, if possible, from the proceeds of that restricted staircasing.

Example

25% of a Dwelling was initially purchased and the Capital Grant attributable to the unsold equity was £21,000. If the shared owner buys a further 40% of the Dwelling, the Capital Grant attributable to that staircasing is 40/55 (80% - 25%) of £21,000 = £15,273.

If the net sale proceeds were £9,200 then £6,527 of the Recoverable Capital Grant would be deferred to the next staircasing sale.

The Capital Grant attributable to the final staircasing to 80% ownership would be (£21,000 - £15,273) £5,727 plus the deferred £6,527 = £12,254. If the net sale proceeds of the final staircasing were only £12,000 then £254 would be written off.

- 1.13 For Rural Buyback projects, the Recovery of Capital Grant is calculated on a unit basis rather than a project basis. This is the same basis used for rental property, unlike shared ownership. When the final staircasing of this Dwelling takes place, there will be an immediate write off of any shortfall in the Recovery of Capital Grant; it is not deferred to the next staircasing sale within that project.

CALCULATION OF GRANT RECOVERY UPON RELEVANT EVENTS

2 RIGHT TO BUY SALES

Right To Buy discounts

- 2.1 The Recovery of Capital Grant will not be deferred or Capital Grant written off to give discounts to sitting tenants greater than those provided for in Section 129 of the Housing Act 1985.

Right To Buy - sale price

- 2.2 In the case of outright sales, the sale price should not be less than the Cost Floor unless the Cost Floor is greater than the valid valuation at the time of offer (see example 1 below). Where the cost floor is greater than the valuation of the Dwelling (without discount) the sale price should equal the valuation (see example 2 below).

Example 1

- 2.3 The Market Value is £100,000 and the Cost Floor is £60,000. The sale price is the Market Value less the applicable discount provided the discount does not reduce the sale price below £60,000. If the eligible discount is more than £40,000 then the sale price is £60,000.

Example 2

- 2.4 The Market Value is £100,000 but the Cost Floor is £110,000. The sale price, irrespective of eligible discount, is £100,000.

Right To Buy - Loans

- 2.5 In this context a "loan" shall be the Deemed Loan Debt.

Right To Buy - calculation of Capital Grant recoverable

- 2.6 The deductions to be offset against the sale proceeds shall be the Deemed Loan Debt, and reasonable expenses being the valuation and legal expenses of the disposal, the Right To Buy (RTB) sales allowance, any Abortive RTB sales expenses. These net sales proceeds shall be used to recover the Capital Grant attributable to the Dwelling in question. If the net sales proceeds are insufficient to enable the Recovery of all the attributable Capital Grant, then the shortfall will be written off. Please refer to paragraph 16 below for the possibility of further Recovery if a tenant should dispose of the property within the discount period and have to repay all or part of the discount.
- 2.7 Expenses of abortive or deferred sales will not be counted as reasonable expenses where surpluses from RTB sales of Capital Grant funded property in the previous Accounting Period, and the current Accounting Period to date, are sufficient to cover these costs. If an RSL wishes to set these expenses against Recoverable Capital Grant, a schedule or similar evidence must be attached to the Recovery of Capital Grant form, demonstrating the shortfall. Reasonable expenses can also include deficits on RTB service charges in respect of repairs (see circular HC18/88).
- 2.8 Abortive sales mean only those sales that abort after the RTB application has lapsed after the offer notice has been prepared and served. The cost of preparing response notices is covered by the RTB sales administration allowance. However, the Corporation may, if requested, also consider cases where the application was withdrawn before the offer notice had been served but after a considerable amount of work has been done. Supporting documentary evidence similar to that needed for completed sales will be required. Neither the RTB sales allowance nor actual administrative expenses can be claimed in respect of abortive sales.
- 2.9 A copy of the completion notice or a signed statement by the tenant that he or she does not intend to proceed with the sale should be attached to the Recovery of Capital Grant form as supporting evidence.

3 OUTRIGHT SALE OF RENTED PROPERTY

- 3.1 An outright sale of rented property is a sale on the open market, a negotiated private sale, or an outright sale to a sitting tenant other than on RTB terms . It excludes sales under the Voluntary Purchase Grant procedures, the Right To Acquire, the Right To Buy, and sales or transfers to other RSLs.
- 3.2 The sale proceeds received by the RSL must not be below a Valid Valuation by an Independent Qualified Valuer. The eligible deductions from the sale proceeds are the Deemed Loan Debt, and the valuation and legal expenses of the disposal. An RSL may not deduct any administration allowance. The net sale proceeds shall be used to recover the Capital Grant attributable to the Property in question. If net sale proceeds are less than the attributable Capital Grant, the shortfall will be written off.
- 3.3 Where Capital Grant is to be written off, Supporting Documentation should be attached to the Recovery of Capital Grant form to confirm the figures used in the calculation.
- 3.4 Where the consideration for the disposal is the provision of replacement Property on a different site, Capital Grant will not be recovered. Instead the Capital Grant liability will be transferred to the replacement Property by means of a credit and debit to the Recycled Capital Grant Fund, using suitable documentary evidence in place of the Recovery of Capital Grant form and new project application form required under Chapter REC-4. Because the property exchange is for the benefit of the purchaser, the RSL would not normally be expected to pay its own legal and valuation fees, so these expenses must not be deducted from the Recoverable Capital Grant.

4 SALE OF RENTAL PROPERTY ON SHARED OWNERSHIP TERMS

- 4.1 The method of apportioning Capital Grant is given at paragraph 1.6 above.
- 4.2 The sale proceeds must not be below a Valid Valuation by an Independent Qualified Valuer. The eligible deductions from the sale proceeds are the Deemed Loan Debt, and the valuation and legal expenses of the disposal. These net sale proceeds are used to recover the Capital Grant attributable to the proportion of the Property that has been sold. If the sale proceeds are insufficient to enable the recovery of all the attributable Capital Grant, then recovery of the shortfall will be deferred to the next staircasing sale. Where there is a deferment of Capital Grant, the Recovery of Capital Grant form should have Supporting Documentation to confirm the figures used in the calculation.

5 SHARED OWNERSHIP STAIRCASING SALES

- 5.1 The method of apportioning Capital Grant upon staircasing is at paragraph 1.7 above.
- 5.2 The sale proceeds must not be below the applicable proportion of a Valid Valuation by an Independent Qualified Valuer. The eligible deductions from the sale proceeds are the Deemed Loan Debt attributable to the percentage sold, and the Staircasing Allowance. The valuation must be paid for by the prospective purchaser. These net sale proceeds are used to recover the Capital Grant attributable to the staircased proportion of the Dwelling plus any Capital Grant previously deferred on initial or subsequent staircasing sales within the same project. If the net sales proceeds are insufficient to enable the Recovery of all the attributable and deferred Capital Grant, then the shortfall of the Capital Grant Recoverable will be deferred.
- 5.3 When the final Dwelling in a project is staircased to outright ownership, or the maximum percentage allowable for that project, it may not be possible to Recover all of the Capital Grant attributable to that Dwelling and all of the deferred Capital Grant. In such a situation, the final shortfall will be written off.
- 5.4 Where there is a deferral or write off of Capital Grant, the necessary Supporting Documentation must be attached to the Recovery of Capital Grant form.

Shared Ownership - the Mortgagee Protection Clause

- 5.5 Where a Shared Ownership Dwelling is taken into possession by a mortgagee under the terms of a mortgage protection clause, the RSL may accept the valuation by the mortgagee's valuer instead of one by an Independent Qualified Valuer (see paragraph 5.14). The sale proceeds, referred to in paragraph 5.2 above, are the money received from the mortgagee, as stated in the mortgagee's statement of account. This policy is for Capital Grant Recovery purposes only and does not override any legal requirements for a valuation by an Independent Qualified Valuer contained in any shared ownership lease.
- 5.6 Policy in respect of defaulting shared owners is contained in Corporation Circular 26/86 which is still valid, and should be consulted. The following is an updated extract from that circular in relation to Capital Grant Recovery. The Mortgagee Protection Clause allows the leaseholder's mortgagee to staircase at a lower price than that normally required. The amount to be paid for the outstanding share is the actual sale price of the property less those sums due to the mortgagee, i.e. the sum of:
- the mortgagee's reasonable and proper expenses incurred in exercising the right to purchase a new lease or the freehold and in exercising its powers of sale, and

- the amount of principal due under the mortgage approved under Clause 34(15) (or equivalent) of the Lease, and no more than 12 months unpaid interest. The shortfall on staircasing proceeds remains a debt due to the RSL by the defaulting leaseholder.
- 5.7 The mortgagee's reasonable and proper expenses can include advances to the RSL to cover any sums such as rent and service charges due under the lease. These have to be paid to enable the staircasing to take place.
- 5.8 The mortgagee may also claim reasonable legal fees and estate agent's fees and any other costs incurred in connection with the protection of the security or sale of the property. The valuation fee on staircasing can be claimed as a reasonable cost except in right to shared ownership cases.
- 5.9 In the right to shared ownership the leaseholder is not responsible for the Valuer's fees. The RSL can, instead, deduct the Valuer's fees from the sum received from the leaseholder's mortgagee before Recovery of Capital Grant.
- 5.10 Where it is necessary for the leaseholder's mortgagee to use the Mortgagee Protection Clause, Recovery of Capital Grant will be written off or deferred if the RSL can make one of the following certifications as supporting documentation to the Recovery of Capital Grant form:
- The RSL has been advised by its solicitor that, given the circumstances of the case and having regard to the costs involved, there is a reasonable prospect of Recovering some of or all the money due to it. The RSL will take all necessary steps to recover the money due and undertakes to credit all money received, less reasonable costs incurred, to the Recycled Capital Grant Fund, or pay the money to the Corporation if applicable within fourteen days of receipt.
 - The RSL has been advised by its solicitor that, given the circumstances of this case and having regard to the costs involved, there is little prospect of recovering any or all of the money due to it. However, should the circumstances change and the prospects of Recovery improve, the RSL will take all necessary steps to Recovery money due and undertake to credit all money received, less reasonable costs incurred, to the Recycled Capital Grant Fund, or pay the money to the Corporation if applicable within fourteen days of receipt.
 - The RSL is currently taking legal advice about the prospects of Recovery of sums due and will take such action as advised by its solicitors, having regard to the costs involved. The RSL will take all necessary steps to recover money due and undertakes to credit all money received, less reasonable costs incurred, to the Recycled Capital Grant Fund, or pay the money to the Corporation if applicable within fourteen days of receipt.

- 5.11 In deciding what action is reasonable the RSL should obtain the written advice of its solicitors. A copy of the solicitor's advice should be kept with the Recovery of Capital Grant form for audit purposes.
- 5.12 If action is taken as advised by the RSL's solicitor, and no receipts are generated, any expenses or abortive costs will not be allowed against Capital Grant Recovery where the surpluses from shared ownership staircasing sales completed in the previous twelve months are sufficient to cover the costs. In the absence of such surpluses, the RSL can deduct the costs that it has incurred from a future Recovery of Capital Grant on a shared ownership sale or staircasing.
- 5.13 If the amount for which the defaulting leaseholder is liable under the Mortgage Protection Clause would have left the RSL with a surplus after full Recovery of Capital Grant then it is a matter for the RSL to decide whether to seek to Recover this amount when taking action to Recover other monies due. A worked example is given in Appendix 3 of Corporation Circular 26/86.
- 5.14 Where the Recovery of Capital Grant is to be reduced or deferred, the supporting documentation should include an appropriate certification signed by an authorised signatory of the RSL together with a copy of the Completion Statement provided by the leaseholder's mortgagee, and a copy of the mortgagee's explanation if the sale price is lower than the Valuer's valuation, etc.

6 SALES UNDER COMPULSORY PURCHASE ORDERS

- 6.1 If a Property owned by an RSL is disposed of under a Compulsory Purchase Order (CPO), or where there is written evidence of the threat of a CPO, the amount of Capital Grant Recovered may be reduced subject to paragraphs 6.2 and 6.3 below. Disposal of 'spare' land in these circumstances is covered in paragraph 9.2 below.
- 6.2 The compensation offered for a Property, or a group of Properties in the same CPO, may be insufficient to enable the full Recovery of Capital Grant after payment of the expenses of the sale and any Deemed Loan Debt. In such cases the amount of Capital Grant Recovered will be reduced by the net shortfall, and the shortfall written off. Where Capital Grant is to be written off, the Recovery of Capital Grant form must have Supporting Documentation to confirm the figures used in the calculation.
- 6.3 RSLs with land and Property included in a CPO should consider the following:
- RSLs will have at least 21 days from the service of the notice in which to object to the Secretary of State. The decision whether or not to object to a CPO rests with the RSL. If the objection succeeds, costs will normally be awarded against the authority that made the order, i.e.

costs of appearing, or being represented, at an enquiry at which the RSL's objection is sustained by the Secretary of State's refusal to confirm the order in respect of their property. The amount of Capital Grant Recovered will not normally be reduced in respect of any costs incurred by an RSL in opposing a CPO. Where a reduction is sought, the RSL must obtain the prior consent of the Corporation, which will only be given in very exceptional situations. This prior consent is necessary even though the Recoverable Capital Grant is to be recycled by the RSL.

- The search carried out by the RSL's solicitors prior to acquiring the land or Property should have revealed the possibility of a CPO if such plans existed at the time, provided the Local Authority replied correctly to the search enquiries. If either the solicitor or the Local Authority failed to provide relevant information that was still existing at the time of the search, the RSL should pursue the matter with them in the first instance.
- In the case of properties deemed unfit for human habitation, the RSL should check whether any blame might be attributable to a third party (for example because of a misleading survey report or defective design) and if appropriate take action to obtain compensation. The RSL will be responsible for the costs of such action.
- The compensation sought should normally be the market value of the Property. Where Properties have been included in a clearance area as unfit for human habitation, compensation is based on site value with supplements for Properties that have been well maintained (as all RSL Properties are expected to be).
- The acquiring authority will normally repay expenses incurred in employing a professional qualified person to negotiate the value of the Property. RSLs should ensure that any compensation agreed reflects the advice of an Independent Qualified Valuer. If agreement cannot be reached on the amount of compensation the case may be referred to the Lands Tribunal, which has the power to award costs to either party. It is advisable to take professional advice first. The acquiring authority will normally pay for proper legal costs of the conveyance and other reasonable expenses that an RSL has had to incur as a result of a CPO, e.g. survey fees. No administration allowance or cost may be set against the amount of Capital Grant Recovered.
- Where the compensation payment is delayed by the acquiring authority it may be payable with interest. The interest paid to non-charitable RSLs may be subject to tax. Such interest, net of tax and any compensating Tax Relief Grant calculated at the lowest rate applicable to that period, is available for the Recovery of Capital Grant.

7 CO- OWNERSHIP (EQUITY SHARING) SALES

- 7.1 When a co-ownership (equity sharing) society sells property to one of its members, the society should calculate the Capital Grant attributable to the property pro rata, based on the capital amounts of the purchasing members. The society should then repay the attributable Capital Grant to the Corporation. It may not recycle grant and the Corporation permits no deferral or write off of the repayment due. The Corporation does not require a valuation.

8 HOMEBUY REDEMPTIONS

- 8.1 When an owner decides to redeem the equity mortgage, either voluntarily or when obliged to do so upon selling the property, the Capital Grant becomes repayable. The amount to be transferred to the Recycled Capital Grant Fund is normally the lower of either the Capital Grant attributable to the property, or where property values have reduced the amount of the equity loan redeemed. The amount of grant paid to cover the on costs should also be included. However any administrative costs associated with the redemption should not be deducted from the amount to be transferred to the fund.

New Build Homebuy, Treatment and Re-Payment of Grant

- 8.2 Receipts generated on initial sale are to be used to repay/ service the development costs in the first instance with the balance of the receipt to repay grant, via the RCGF for RSLs and direct to the Housing Corporation for non-RSLs. If insufficient monies are received at the point of sale, the outstanding balance of grant is to be repaid at the subsequent redemption of the equity loan. There is an expectation that where the cost of provision exceeds the open market value at practical completion, the provider will refer the scheme to the Investment team at the Regional Office with a view to discuss the need for a variance of the tenure type in light of the prevailing market conditions.
- 8.3 If the receipt covers both the commercial lending and grant repayment liability at the point of sale, there is the capacity for the provider to vary the % equity loan to make it more affordable. In a falling market where the receipt at final sale is insufficient to repay the outstanding grant on redemption, we would require 25% of net proceeds less the administrative cost to be paid into the RCGF.
- 8.4 The following examples of **are for illustrative purposes only**.

Example 1

Deferred Receipt Equity Loan Model

Cost of Provision (including on-costs)		£100k
Funding		
Commercial borrowing/development costs	£75k	
Social Housing Grant	£25k	
Sale at Open Market Value		£120k
Receipt from purchaser - 75%	£90k	
Equity Loan of 25% (held by RSL)	£30k	
Use of Receipt (£90k)		
Repay commercial Borrowings	£75k	
To RCGF	£15k	
On Redemption of Equity Loan		
Current Market Value		£160k
75% of receipt to purchaser	£120k	
25% to provider/ RSL	£40k	
Apportionment of Equity Loan (£40k)		
To RCGF	£10k	
Surplus to provider/RSL	£30k	

Example 2

Deficit Equity Loan Model

Cost of Provision (including on-costs)		£100k
Funding		
Commercial borrowing/development costs	£75k	
Social Housing Grant	£25k	
Sale at Open Market Value		£80k
Receipt from purchaser - 75%	£60k	
Equity Loan of 25% (held by RSL)	£20k	
Use of Receipt (£60k)		
Repay Commercial Borrowings	£60k	
(Shortfall of £15k)		

To RCGF	£0k	
On Redemption of Equity Loan		
Current Market Value		£100k
75% of receipt to purchaser	£75k	
25% to provider/ RSL	£25k	
Apportionment of Equity Loan (£25k)		
Repay Commercial Borrowings Shortfall	£15k	
To RCGF	£10k	
Shortfall to RCGF written off	(£15k)	

9 DISPOSAL OF LAND

Undeveloped land intended for development

9.1 Where Capital Grant funded land has been acquired for an entire development or a phase or phases, and no development was completed at the time of disposal of that land, Capital Grant will be recovered. Where only part of the site is being disposed of, Capital Grant will be apportioned in accordance with paragraphs 1.3 to 1.5 above. If the sale proceeds, confirmed by a valuation by an Independent Qualified Valuer, are insufficient to pay the reasonable expenses of the sale, including marketing costs, and Recovery of all of the attributable Capital Grant, then Capital Grant will be written off to the extent of the shortfall.

Plots of surplus land

9.2 Capital Grant will not be Recovered when an RSL disposes of ‘spare’ land associated with a project. ‘Spare’ land includes:

- part of a garden or general landscaping;
- plots of land for electricity sub-stations or similar utilities;
- land swaps to regularise boundaries; and
- rights of way, access, or easements.

9.3 Spare land excludes any area of land designated at project approval for any future phase or phases (see 9.1 above). If in doubt about whether land is spare, consult the Corporation’s field office’s Investment Officer.

9.4 Section 6 above deals with plots of land disposed of under compulsory purchase.

10 CHANGE OF USE

Change to non-social housing use

- 10.1 A Property remaining in the ownership of the RSL may undergo a change of use to a non-Social Housing category such as to offices, permanent market rent housing, or communal facilities which do not qualify for Capital Grant. In case of uncertainty, it may help to consider whether the new use would attract Capital Grant if presented in a scheme today. If in doubt, contact the field office. When the change is to a non-Social Housing use, Capital Grant will be recovered as if the Property had been sold outright (see section 3 above). Instead of sale proceeds, the RSL must obtain a vacant property valuation, based on the existing use, from an Independent Qualified Valuer to determine the notional "sale proceeds". Where its use has not actually changed but a Property has ceased to be used for six months, refer to section 11 below.
- 10.2 Capital Grant will not normally be Recoverable where the primary need of an elderly resident changes from housing to nursing care and it is intended that the next Letting will be to someone in housing need. Where there is any doubt about the future use of the property, the RSL should consult with the Corporation's field office's Investment Officer in advance, and with the sponsoring Local Authority if applicable.

Change from supported housing to general needs use

- 10.3 Where there is a change of use from Supported Housing to general needs, the RSL must calculate the maximum amount of Capital Grant for which the proposed use would be eligible. The 'Rehabilitation Acquisition and Works' TCI and grant rates or their equivalent should be used which are current when the original use ceases. If the new use requires less capital subsidy than that already paid (including any other public subsidy) then the excess will be paid into the Recycled Capital Grant Fund, except where directed otherwise by the Corporation. A recalculation will not be required where the change of use is to one that will attract a higher Capital Grant input, nor will any additional Capital Grant be paid to the RSL. The only exception to this principle is set out immediately below.
- 10.4 At the discretion of the Corporation, the Recovery described at paragraph 10.3 above may be waived if a replacement Supported Housing service is to be provided by the RSL in units that form part of its general needs stock. The Corporation would reserve the right to implement the recovery described at paragraph 10.3 above if, in the future, the replacement units ceased to be used for Supported Housing without further replacement units being made available.

11 VOID PROPERTY

- 11.1 Where a Property has become vacant for six months, the Corporation should be notified, together with the Local Authority if sponsored by one. The RSL will be expected to produce proposals for either bringing the Property back into use, its demolition, or its disposal. These proposals will be discussed with the Corporation, and Local Authority if applicable, and a course of action agreed. If the RSL does not implement the agreed course of action within a timetable and any extensions to it set by the Corporation, the Capital Grant must be recovered in accordance with the 'change of use' procedures at paragraph 10.1 above.
- 11.2 This policy and procedure for void Properties applies equally to Properties that became void before 1 January 1997, as stated in the Guide to Recovery of HAG issued in December 1996.

12 DEMOLITION

Demolition and the site redeveloped for social housing

- 12.1 A Property may reach the end of its useful life and/or is no longer suitable for current needs. The various options must be considered and may include demolition of either the whole or part of a project and redevelopment either wholly or as part of a larger social housing development. The Corporation's approval must be obtained prior to demolition if the RSL feels that demolition is the most pragmatic path to follow. The act of demolition will not trigger the Recovery of the Capital Grant already invested in the Property. This previously invested Capital Grant is not written off by the Corporation, and the liability for eventual Recovery remains in the land until an event triggering Recovery occurs, in which case the Capital Grant Recovery policy and procedures in force at that time will apply. Equally this Capital Grant will not be deducted from any investment of new or recycled Capital Grant.

Example

- 12.2 A property is demolished and the £100,000 HAG invested in it remains 'dormant' in the land. A new 'works only' property is built on the site and £200,000 of SHG is paid on this new project. The calculation of SHG ignores the previously paid HAG. Some years later the property is sold on the open market. Upon this sale, all £300,000 Capital Grant will be Recovered if the net sale proceeds are greater than this figure. If the net sale proceeds are £180,000 then £180,000 of Capital Grant will be Recovered and the balance of £120,000 written off.

Cost of demolition

- 12.3 An RSL may not deduct the cost of demolition from sale proceeds if it sells the site. However, if it redevelops the site with new Capital Grant, it can include the demolition cost in the works element of the new project. Refer to the TCI guidance notes for more information on this.

Demolition without redevelopment or sale

- 12.4 Where Capital Grant funded Property is demolished but without redevelopment as Social Housing, such as to form an open space or a realignment of roads, Capital Grant will be recovered to the extent of any net capital receipt such as a compensation payment from a statutory authority or some other source. The eligible deductions from the capital receipt are the Deemed Loan Debt and the reasonable expenses incurred. However, any Capital Grant not Recovered in this way will remain tied to the land concerned until such time as a Relevant Event occurs, in which case the Capital Grant Recovery policy and procedures in force at that time will apply.

13 TEMPORARY SOCIAL HOUSING, TEMPORARY MARKET RENT HOUSING, SHORT LIFE & 'HAMA PLUS'

- 13.1 Temporary Social Housing, Temporary Market Rent Housing, Short Life and 'HAMA PLUS' projects are intended to buy only a limited life for Social Housing use. Where the intended life is achieved, Capital Grant will not be recovered. Where two complete years of life are not achieved from the date of the lease, Capital Grant will be recovered in full. If more than two years life is achieved, the amount of Capital Grant Recovered will be reduced pro rata for the proportion of the life, in completed months, which has been achieved. Capital Grant will not be written off should the compensation for the early termination of the lease be less than the amount of Capital Grant to be Recovered.

14 FAILURE TO COMPLY WITH A CONDITION ATTACHED TO THE MAKING OF CAPITAL GRANT

- 14.1 An RSL may fail to, or be unable to, comply with a condition attached to the making of Capital Grant either determined or specified generally or in relation to the Property in question. On discovery of this situation the Corporation's field office should be notified immediately. In considering whether to recover all or part of the Capital Grant, the Corporation shall consider the individual circumstances of the case. For local authority sponsored projects, the local authority should liaise with the Corporation because only the Corporation has the power to Recover Capital Grant. If Capital Grant is recovered, it must be paid to the Corporation in all cases, and not credited to the Recycled Capital Grant Fund.
- 14.2 For Tariff or Cash Programme projects, or parts thereof, the RSL has contracted to provide a given amount of housing. If a Tariff or Cash Programme project fails during development, the RSL must either produce equivalent accommodation without further recourse to Capital Grant or repay

to the Corporation the Capital Grant associated with that part of the programme.

- 14.3 An RSL may fail to complete a project within the original timetable or any revised time scale agreed with the sponsoring body, either the Corporation or a Local Authority. In such a situation the Corporation may direct that the Capital Grant already paid on that project be repaid direct to the Corporation. The sponsoring body shall, in determining any revised time scale, consider the individual circumstances of each case and give the RSL at least three months notice of the intention to Recover Capital Grant unless the project is completed or substantial progress made by a new deadline. For local authority sponsored projects, the local authority should liaise with the Corporation because only the Corporation has the legal power to Recover Capital Grant.

15 DISCOVERY OF INCORRECT INFORMATION OR AN ERROR

- 15.1 The Department for Communities and Local Government, an RSL, the Corporation or a Local Authority may discover that incorrect information has been received, or an error has been made in the calculation of Capital Grant payable or Recoverable. In considering whether to recover all or part of the Capital Grant, the Corporation shall consider the individual circumstances of the case including materiality. In this context, a material error shall be £500 or more. If the decision is to recover the Capital Grant, the Corporation will direct that the amount of the error be paid to the Corporation, and not credited to the RCGF.

16 REPAYMENT OF A DISCOUNT OR TENANTS INCENTIVE SCHEME GRANT

- 16.1 Capital Grant may have been paid in respect of a discount for a Housing for Sale Dwelling or a Tenants Incentive Scheme (TIS) grant. All or part of that Capital Grant shall be recovered if the purchaser disposes of the relevant Dwelling within three years of the completion of sale by the RSL. TIS grant payments made before 1 April 1997, and certain ones paid within 6 months after that date, are not repayable, and reference should be made to the approval of the payment to confirm whether or not it is repayable.
- 16.2 Where Recovery of Capital Grant was previously reduced to provide a discount for a tenant, all or part of that reduced Capital Grant shall be recovered should the former tenant dispose of the Dwelling within three years of the completion of sale by the RSL.
- 16.3 The proportion of discount or TIS grant repayable by the former tenant to the RSL is:
- | | |
|--------------------------------------|--------|
| - Sold within first year of purchase | 100% |
| - After one year | 66.67% |
| - After two years | 33.33% |

- After three years NIL

- 16.4 RSLs may claim a 'Recovery of tenant's discount' allowance as an admissible expense to cover administrative costs when calculating the Capital Grant to be Recovered.

17 DE-REGISTRATION OF A REGISTERED SOCIAL LANDLORD

- 17.1 De-registration of a Registered Social Landlord, under section 4(2) or (4) of the Housing Act 1996, is a Relevant Event for the purposes of Recovering Capital Grant. However the Recovery will be deferred until a further Relevant Event occurs, in accordance with the definition of Relevant Events current at that future time. Capital Grant will be recovered in accordance with the policy and procedures current at the time of this future Relevant Event. In all cases the Recoverable Capital Grant must be paid to the Corporation, and not recycled by the RSL.

18 FINANCIAL DIFFICULTIES

- 18.1 Where the Recovery of Capital Grant places the RSL, or de-registered social landlord, in financial difficulty, the RSL must advise the Corporation of the reasons. The Corporation may decide to defer the repayment to a future date, or accept payment by agreed instalments, or write off part or all of the repayment.

THE RECYCLED CAPITAL GRANT FUND

1 INTRODUCTION AND SUMMARY

- 1.1 The Department allows RSLs to recycle grant in the expectation that freedom from the bidding process will enable RSLs to use grant at least as efficiently as when the Corporation collected and recycled it through the ADP. The RCGF comprises HAG and SHG. Therefore, in broad terms, RSLs may spend RCGF only on things that qualify for SHG. They must adhere to the same grant rates and TCIs that the Corporation uses for bidding. Most conditions attached to SHG funded schemes apply equally to RCGF outputs. The Corporation expect RSLs to recycle grants quickly and to report on outputs, and that the report will be checked by their external auditors. The future of the recycling option depends on RSLs demonstrating that they are producing a high output at good value for money. The Corporation retains powers to collect RCGF if it is misused or when an RSL has not spent it within three years.

Operation of the RCGF

- 1.2 For every Relevant Event occurring from 1 April 1997, the RSL will complete a Recovery of Capital Grant form to calculate the amount of grant recoverable. In most cases, the RSL will credit the recoverable Capital Grant to a Recycled Capital Grant Fund (RCGF).
- 1.3 An RSL has the option, if it wishes, of paying the Recoverable Capital Grant to the Corporation instead of crediting it to an RCGF. Each RSL must weigh up any advantage of being able to recycle Capital Grant against the cost of setting up and administering an RCGF and any additional audit fees charged by its external auditor, and the likelihood of a usable balance being built up in the fund within three years.
- 1.4 In most situations, the RSL may credit the Recoverable Capital Grant to its RCGF. However, there are a few situations in which the Corporation will collect the Capital Grant as soon as possible after the event. They are:
- disposal of Capital Grant funded land acquired for the development of Social Housing or Housing for Sale, or designated for a future phase or phases and no development being completed on that land at the time of the disposal;
 - failure to use Capital Grant for the purpose for which it was paid, or comply with any condition attached to the making of Capital Grant;
 - discovery that the Department for Communities and Local Government or the Corporation or Local Authority received incorrect information or made an error of £500 or more in connection with the calculation of Capital Grant payable or Recoverable - the amount of the error to be paid to the Corporation;

- upon de-registration of a Registered Social Landlord, the uncommitted balance on the RCGF should be paid to the Corporation, with interest to the date of payment;
- the former Social Landlord having already de-registered under Section 4(2) or (4) of the Housing Act 1996, and a further Relevant Event occurring in respect of a Capital Grant funded Property;
- the RSL coming under Corporation supervision and the Corporation deciding that retention of the money by the RSL would be inappropriate;
- discovery of a material error or non-compliance by an RSL with the procedures for recycling Capital Grant, material being a difference of £500 or more, including failure to send in the annual return within the timetable;
- the Corporation concluding that the RSL is unlikely, within three years, to use the RCGF for a permitted purpose;
- on redemption of the outstanding indebtedness on a Property owned by a Co-ownership (equity sharing) society.

2 NON-COMPLIANCE WITH RCGF PROCEDURES

- 2.1. The Corporation may discover that an RSL has not complied with the Corporation's policy and procedures for using the RCGF. In such circumstances the Corporation may direct the RSL to pay to the Corporation the balance in the RCGF plus interest to date, and any money from the RCGF already spent by the RSL on a project, or projects, which does not comply with the Corporation's policy and procedures. In addition the RSL will have to pay to the Corporation any future Recoverable Capital Grant when a Relevant Event occurs.
- 2.2 The Corporation may cancel this direction at any time if it considers that changes made by the RSL should be sufficient to give the Corporation confidence that these recycling procedures will be complied with in future.

3 REGISTERED SOCIAL LANDLORDS - SUPERVISION CASES

- 3.1 When an RSL comes under Corporation supervision, the Corporation may also decide that it would be inappropriate for the RSL to either retain the balance in its Recycled Capital Grant Fund or for any more money to be paid into that fund. In such a situation, the Corporation may direct that the RSL pays to the Corporation the balance held on this fund, plus interest to date, and to pay to

the Corporation any future Recoverable Capital Grant when a Relevant Event occurs.

- 3.2 The Corporation has the discretion to cancel this direction at any time after the RSL ceases to be a supervision case, thereby enabling the RSL to recommence operating its RCGF. The Corporation will not return any previous RCGF balance or Recovered Capital Grant that had been paid to the Corporation.

4 INPUTS TO THE RCGF

- 4.1 For Relevant Events occurring from 1 April 1997, the RSL will calculate the amount of Capital Grant to be recovered. The methods of calculating this amount are detailed in this Guide. For each relevant event the RSL will complete, and retain, a form showing the calculation of the amount of Capital Grant Recoverable. This amount will be credited to the RCGF with effect from the date of the Relevant Event. The form will also show whether the recovery of any Capital Grant is to be deferred, such as when Shared Ownership staircasing sales proceeds are insufficient to enable all the attributable Capital Grant to be Recovered. It will also show whether any Capital Grant is written off.
- 4.2 Where a Relevant Event occurs for a Property produced with funds from the RCGF, a Recovery of Capital Grant calculation must be made. The resulting figure must be credited to the RCGF or paid to the Corporation in accordance with the procedures applicable at that time.
- 4.3 Each year, an RSL should calculate and credit notional interest to the fund - see paragraph 10.4 below. This interest becomes part of the RCGF and an RSL may spend it only on the projects permitted in paragraph 5 below.
- 4.4 Where a Property is sold under the Voluntary Purchase Grant (VPG) or Right To Acquire (RTA) procedures, the VPG or RTA procedures will apply and the net sale proceeds will be credited to the Disposal Proceeds Fund, not the RCGF.

5 PERMITTED USES OF THE RCGF

- 5.1 RSLs may spend their RCGF only on activities that would qualify in principle for SHG through the NAHP, plus flexible tenure on the terms defined in REC-5. Such expenditure includes works and acquisition elements of schemes.
- 5.2 If in doubt, consult the Corporation's field office' Investment Officer. However, in response to queries received, these are some uses that are not permitted:

- Voluntary purchase grants or right to acquire grants;
- Adaptations costing less than £500;
- Work to existing stock that is ineligible for funding because of the terms under which it was originally financed. Examples are major repairs to general needs projects funded under the Housing Acts 1988 and 1996 and stock transferred from a local authority;
- Do-it-yourself shared ownership (DIYSO) schemes are no longer permitted, except for completing commitments made in the previous year. This holds true even when the grant in the RCGF comes from staircasing sales on local authority DIYSO schemes. The transitional arrangements should be the same as those in circular F2 - 28/98.
- Day to day and cyclical maintenance.
- Tenant Incentive Schemes are no longer permitted, except for any to which an RSL is committed from an agreement in the previous year. The transitional arrangements should be the same as those in circular F2 - 28/98.
- Acquisition simply for landbanking.

Permitted

- RSLs may spend their RCGF on Homebuy grants, on the same terms as under the Corporation's Approved Development Programme.

5.3 In planning the use of its RCGF, an RSL should study the Corporation's regional policy statement for the area and consult the local authority within whose boundaries it proposes to invest the money. An RSL should spend its RCGF on the unmet housing priorities in that local authority. The Corporation's approval is not required (except in 6.3 below).

5.4 The outputs from the RCGF will have the same funding conditions as if the new project had been funded with SHG, including compliance with the Social Housing Standard. However, Egan compliance is at the discretion of the RSL.

6 COMBINING RCGF WITH SHG, DISPOSAL PROCEEDS FUND (DPF) AND OTHER FINANCE.

6.1 RSLs may combine RCGF with DPF and new SHG in the following ways:

- combine RCGF with SHG in projects sponsored by the ADP or by local authorities;

- combine their Disposal Proceeds Fund (DPF) with SHG in projects sponsored by the ADP or by local authorities. Such projects could only be those that are permitted uses of the DPF.
- combine DPF, RCGF and SHG in projects sponsored by the ADP or by local authorities. Again, such projects could only be those that are permitted uses of the DPF.

In new bids and allocations

- 6.2 RSLs may not use RCGF to subsidise their bids. They must declare their intended contribution from RCGF at the time of bidding for SHG. In assessing value for money and deciding allocations, the Corporation will take account of both SHG and RCGF. RCGF will count as the sort of other public subsidy that is deducted in the calculation of SHG.

In existing allocations

- 6.3 When RSLs have bid competitively or offered a contribution from reserves, they cannot automatically top up an existing allocation with RCGF, or additional RCGF. If that is their proposal, they must always consult the Corporation's regional office and the local authority. The Corporation will agree to the addition of RCGF only in circumstances in which it would have added further SHG to the allocation, such as changes to the mix of units produced, following planning considerations. If the Corporation considered that the scheme no longer offered sufficient value for money, it could withdraw the SHG contribution.

Accounting for outputs

- 6.4 To prevent double counting, RSLs should not include in their annual return (para 12) the units produced or repaired with a combination of RCGF and SHG. These will count as SHG units.
- 6.5 Any project qualifying for less than 100% Capital Grant will require a proportion of the costs to be met with private sector loans or a contribution from the RSL's own resources. The RSL may, of course, reduce the notional grant rate by extra contributions from reserves and private finance. When other public subsidies assist in financing the project, the Capital Funding sections of this Guide apply.

Other possible combinations

- 6.6 Where RSLs are members of a group structure, although each member of the group must have its own RCGF, they may transfer RCGF amongst themselves to create usable balances. The Corporation encourages such transfers when they speed up recycling and/or enable the group to direct the fund to the highest priority needs. However RSLs should be aware that the act of

transferring funds will not restart the 3 year timetable. Examples might be when a home ownership subsidiary has a large fund but the main need is new housing for rent or repairs to the stock of the parent RSL.

7 LOCATION OF RECYCLING

- 7.1 The Corporation recognise that many recoveries arise on HAG and SHG schemes originally supported out of local authorities' capital allocations. Those authorities will generally wish to see the grants recycled within the area of origin. On the other hand, it is inefficient for an RSL to hold small sums of grant until it has accumulated enough to fund a scheme in the local authority where the recovery arose.
- 7.2 If an RSL accumulates £100,000 of recyclable grant during a year within a local authority area, the Corporation would expect it almost always to be practicable for the RSL to use that amount for a housing priority within that same local authority. In this context, a year means the RCGF reporting year ending on 31 March. Upon having accumulated £100,000 of recycled grant within a year, an RSL should notify the local authority in writing that it has reached that amount. If it has not already done so, it should consult that local authority about recycling within the same area. If consultation ends with the RSL deciding not to recycle within the same area, the RSL should convey its decision in writing to the local authority concerned, with one copy to our field office and another retained for the external auditor of the RSL.
- 7.3 An RSL may, in consultation with the local authorities concerned, choose to combine sums above £100,000 to provide a scheme in one local authority and offer nominations to the other local authorities where the recoveries arose, assuming that this is practicable.
- 7.4 When an RSL accumulates less than £100,000 of recyclable grant during a year within a particular local authority area, it may recycle the grant within that same area but the Corporation does not expect it necessarily to do so. It may amalgamate these smaller amounts and recycle in any local authority area within its normal area of operation.
- 7.5 This entails some changes to RSLs' internal records of recoveries. An RSL would continue to record recoveries by local authority area as before. It would need to introduce a trigger to alert staff when recoveries reached £100,000 in any local authority within any year. During the year, it would not be able to recycle grant outside the area in which it had arisen, in case the total later passed the £100,000 mark. Alternatively, if it did recycle outside the area, it would do so at the risk of having to reinstate that money from other parts of its RCGF or its own resources if no other RCGF was available. At the end of the year, the internal recording system should be able to identify all recoveries amounting to less than £100,000 in the year, so that they could be available for recycling in any local authority area. The system would have to ensure that recoveries amounting to more than £100,000 would remain dedicated to the local authority in which they arose. All interest accruing on the RCGF is not

attributable to any particular local authority. These suggestions for internal recording are to assist an RSL in demonstrating to its external auditor that it has complied with procedures. They do not alter the treatment in the statutory accounts or the details to be reported in the annual return to the Corporation.

- 7.6 The donor authority for staircasing receipts on DIYSO projects is the one with the original allocation of Capital Grant, not the one where the shared owner chose to buy.

8 USES OF THE RCGF - ADMINISTRATION

- 8.1 The Corporation's approval is not necessary for the proposed use of the fund or the calculation of the amount to be withdrawn from the RCGF.
- 8.2 The withdrawal from the RCGF must be calculated in accordance with the Corporation's Capital Funding procedures current at the time of the withdrawal. The RSL must make the same calculations, in writing, as if it was seeking approval by the Corporation for an SHG funded project. The RSL must use the TCIs and grant rates applicable at the time when the first tranche of SHG would have been paid by the Corporation. The calculation must be rechecked within the RSL. The resulting figure for SHG will be the maximum amount to be withdrawn from the RCGF for that new project, in line with the Capital Funding sections of this Guide.
- 8.3 As for SHG, and with effect from April 2002, an RSL may not use RCGF for projects with costs exceeding 110% of TCI. Refer to chapter RENT-1.
- 8.4 If it simplifies administration, the RCGF should be debited in full when acquisition takes place, or upon start on site if that is the first stage, instead of the SHG staged payments. If, however, the project is combined with an allocation of SHG, the RCGF may be drawn down in the same stages and proportions as the SHG (we would not hold back the SHG until all the RCGF had been drawn). At Practical Completion, the RSL should credit any savings to the RCGF, and withdraw eligible over-runs from the RCGF up to the balance on the Fund. If the over-run is greater than the balance on the RCGF, the excess will have to be funded by the RSL. In connection with section 11 below, collection of three-year old RCGF, savings returned to RCGF count as new receipts and start a new three-year "life".
- 8.5 Withdrawals from the RCGF must not exceed the balance in the fund; the fund cannot be 'overdrawn' in anticipation of future receipts.
- 8.6 Properties provided from the RCGF will be available to local authority nominees in the same way as property provided with SHG.
- 8.7 Properties provided from the RCGF will not be subject to the Right To Acquire under section 16 of the Housing Act 1996, except when RCGF was used in combination with the Disposal Proceeds Fund or new SHG.

9 MANAGEMENT AND MAINTENANCE OF NEW UNITS PRODUCED FROM THE RCGF

- 9.1 Eligibility for SHG to fund major repairs in respect of RCGF funded units is the same as for units initially funded with SHG, i.e. Supported Housing units qualify but the RSL has to finance repairs to other units itself.
- 9.2 If the RCGF was spent on major repairs to a pre-HAG property, a 1985 Act property, or a Supported Housing property provided under the Housing Act 1988, that property would remain eligible in principle for major repairs SHG.
- 9.3 Eligibility for various other financial arrangements are:
- Move on allowance | eligible in principle.
 - Small RSL Supplements (SMG) | eligible in principle.
 - Revenue Deficit Grant | not eligible.
- 9.4 Where applicable, Property provided out of the RCGF could be sold under the RTB, staircasing provisions, on the open market, or under the Voluntary Purchase Grant procedures.

10 ACCOUNTING ARRANGEMENTS FOR THE RCGF

- 10.1 RSLs are advised to maintain a designated fund within its accounts entitled 'Recycled Capital Grant Fund'. This fund must be kept entirely separate from the Disposal Proceeds Fund . There is no requirement to maintain a separate bank account for this fund.
- 10.2 RSLs may transfer money in and out of this fund without reference to the Corporation. The RSL may obtain advice from the Corporation on policy or practical issues, contacting the local office for the area in which the existing property is situated for advice on inputs, or the area in which the 'output' property is situated for outputs.
- 10.3 The fund should be supported by an audit trail detailing inputs such as capital grant recovered due to disposal etc and notional interest, and any withdrawals made. RSLs may be asked to produce evidence of the audit trail; any grant recovery forms and other supporting documentary evidence should be retained for six years.

Addition of notional interest

- 10.4 At 31 March each year, RSLs should add notional interest to their RCGF. The rates are as follows.

10.5 While the RCGF stands at no more than £250,000, the notional rate is that which an RSL would obtain by placing the money in the high interest deposit account operated by its own clearing bank. Therefore an RSL should keep a record of these rates available for its auditor.

10.6 While the RCGF stands above £250,000, the notional rate is linked to the Bank of England’s base lending rate, as follows:

Size of RCGF	Rate of notional interest
£250,001 to £500,000	Base lending rate minus 75 basis points
£500,001 to £750,000	Base lending rate minus 50 basis points
£750,001 to £1,000,000	Base lending rate minus 25 basis points
Over £1,000,000	Base lending rate

10.7 The rates quoted are annual rates. Calculate notional interest on a daily basis according to a 365 day year convention, that is:

$$\text{Balance} \times \text{rate} \times (\text{days}/365)$$

10.8 RSLs who pay corporation tax on their interest earnings may deduct tax from their notional interest at the standard corporation tax rate applying. This was 33% for 1997/98, 31% for 1998/99 and has been 30% since then.

10.9 An example appears in paragraph 8.6 of the chapter on the Disposal Proceeds Fund (DPF-1).

11 COLLECTION OF RCGF UNSPENT AFTER THREE YEARS

11.1 RSLs should direct grant in the RCGF to meeting priority housing needs. If RSLs do not recycle the grant within three years, the Corporation has powers to collect and recycle it through the ADP. The Corporation will use these powers, if necessary, and will add interest to any recoveries. The three-year period can only be extended as per paragraph 11.3 below.

11.2 Whilst three years is the normal time allowed for recycling, the Corporation may exceptionally collect RCGF sooner than that if, after making enquiries, it believes that an RSL is unlikely to be able to use its RCGF within three years. It may go on to direct the RSL to pay any future recoverable Capital Grants to the Corporation rather than into the RCGF.

RCGF in Market Renewal Area Pathfinders

11.3 If RCGF is to be used for schemes within Market Renewal Area Pathfinders as defined by the DCLG, RSLs are allowed a two-year extension on the three-year rule in paragraph 11.1 above. RSLs should identify in their annual returns amounts earmarked for MRAP use.

How to identify "three year grant"

- 11.4 RSLs will identify the amount of three year RCGF repayable, if any, while preparing for electronic data entry of their annual return. RSLs must make payment of any outstanding three-year old grant to the Corporation with or without an invoice from the Corporation with interested accrued less tax on interest received (up to at least 30 days before payment was made to the Corporation).
- 11.5 The three years starts from the end of the RCGF year in which an RSL deposited grant in its RCGF. For example, grant placed in the RCGF between 1 April 1999 and 31 March 2000 inclusive became collectable on 1 April 2003, if it had not been spent or committed by 31 March 2003. The grant repayable at 1 April 2003 may not be spent or committed from 1 April onwards. The only possible use of that money will be repayment to the Corporation.

Contractual commitments

- 11.6 If, by 31 March, an RSL had entered into a contractual commitment to incur expenditure on permitted purposes, it could regard the RCGF element as having been spent. Only the following count as contractual commitments:
- a) An exchange of contracts to acquire;
 - b) Signing a building contract;
 - c) Confirming to a Homebuy applicant that they can seek a property to purchase.
- 11.7 Contracts devised simply to avoid payment of three-year grant are not acceptable. For that reason, the Corporation expects contractual commitments to result in the contracted expenditure being incurred within six months. On a building contract, that would mean starting on site within six months.

First in, first out

- 11.8 When calculating the amount payable to the Corporation, you may deem grants placed in the RCGF to have been spent in the order first in, first out, regardless of the local authority of origin. Taking the year 31 March 2001 as an example, this enables RSLs to take full credit for all expenditure during the period 1997/98 to 2000/2001 even if, when analysed strictly by local authority of origin, that expenditure would not all match receipts deposited during 1997/98. If, by 31 March 2001, an RSL has spent, in total, more than it deposited during 1997/98, it has nothing to pay. When this comparison does leave something to pay, however, it can create complications for internal

systems that record income and expenditure by local authority. In such situations, the principle of first in, first out takes precedence, and that minimises the RSL's payment to the Corporation.

11.9 The following example illustrates this:

RCGF year	Date	LA area	Receipt	Spend
1997/98	May 97	Easton	150,000	
	June 97	Weston	150,000	
	August 97	Norton	100,000	
	January 98	Norton		150,000
1998/99		Middleton	50,000	
1999/00		Middleton	50,000	
2000/01		Norton		80,000
		Middleton		100,000
Total				330,000

- (a) This RSL deposited £400,000 during 1997/98. At 31 March 2001, looking at it strictly by local authority, it may have spent either £150,000 or £230,000 of the 1997/98 money, depending on what arrangements it made for financing the projects in Norton. That implies that the Corporation might collect up to £250,000. For example, as none of the Easton money had been spent in Easton, an RSL might be concerned that it had to repay that £150,000.
- (b) Applying the principle of first in, first out, this RSL had received £400,000 during 1997/98 and spent £330,000 during 1997/2001. This reduces the amount repayable to just £70,000. It is for the RSL to distribute the benefit of this reduction between the local authority areas. For purposes of that exercise only, RSLs need not assume that, because the last receipt in 1997/98 was from Norton, the £70,000 should necessarily be deducted from Norton.
- (c) For 1997/98 and 1998/99, the guidance was to aim, where practicable, and after consultation with the "donor" local authority, to re-invest in the area where the receipts arose. It was for the RSL to decide what was practicable and to negotiate the terms of transfers that would enable it to amalgamate funds to produce schemes sooner. It should now take account of which LAs have already conceded receipts to schemes in other areas, equitable treatment of local authority areas in similar circumstances, transfer arrangements negotiated in consultation with the local authorities and the region's housing priorities.

Adding interest to the repayment

11.10 The starting date for the calculation of interest will be the date of deposit of the individual grants in the RCGF. The end date for calculation will be the date of receipt of payment for any three-year old grant by the Corporation. Two-year old and three-year old grant should exclude interest received after the deposit of grant. Withdrawals can be deducted from both capital grant

recovered and interest received on both the capital grant recovered and interest itself. It is the responsibility of RSLs to make clear distinctions between capital grant recovered and interest received on both capital grant and interest itself.

- 11.11 In the example at 11.8 above, where the last receipt exceeded the amount recoverable, the start date for calculating interest would be in August 1997, the date of that last receipt.
- 11.12 In the calculation, interest should be compounded at 31 March of each year from the date of deposit.
- 11.13 The rate of interest will relate not to the size of the repayment but to the varying size of the RCGF over the period from the date of deposit to the date of submitting the RCGF return. These rates will already be known from the calculation of interest for previous annual returns and the principles are in section 10 above.

Liaison with the external auditor

- 11.14 For RCGF years ending up to and including 31 March 2001, RSLs certify that they will ask their external auditor to include RCGF in the consolidated audit report required by circular R2 - 40/98. The external auditor reports, at the next accounting year-end, that the annual return was properly prepared in line with Corporation guidance and that it agrees with the underlying books and records. It is therefore important to keep the external auditors informed during this process. RSLs should keep a record of external auditors examinations of RCGF accounts as reported.
- 11.15 For RCGF years ending 31 March 2002 onwards, RSLs certify that they will ask their external auditors to include the operation of the RCGF in their annual audit. However, RSLs need no longer ask their external auditors to include RCGF in the consolidated audit report and opinion. RSLs should keep a record of external auditors examinations of RCGF accounts as reported. Any observations or findings that affects the accuracy, or true and fair view of the RCGF accounts as submitted in RSLs return should be communicated to Investment staff within the Corporation's local office, who will liaise with staff at the Corporation's Maple House accordingly.

Collection process

- 11.16 After reviewing the electronically submitted annual return, Maple House will confirm to both the RSL and the Corporation's local office of its agreement to the accuracy of the return, in writing, (not necessary a true and fair view of the RCGF return). Where errors exist, RSLs will be informed and adjustments required in writing. Such adjustment(s) will be effected in the following year's return. The Corporation will then raise an invoice for the three years old grant plus the interest that the RSL had calculated up to 31 March, the date of the annual return. The Corporation will ask the RSL to calculate and pay

additional interest from 1 April to the date of the invoice. Any correspondence covering the payment should refer to repayment of RCGF, three-year old grant.

- 11.17 The Corporation's terms for payment of invoices are within 30 days of the invoice. If a payment arrives any later, the Corporation will itself calculate and invoice for additional interest at a penalty rate for the period from 30 days after the date of the invoice up to the date when the Corporation received payment.

Implications for the return for 31 March 2002 and future years

- 11.18 The same exercise of identifying three-year grant and associated interest will be repeated in the return for 31 March 2002. This will relate to grant deposited during 1998/99.
- 11.19 If expenditure incurred during the period 1 April 1997 to 31 March 2001 has already been recorded as using up deposits made during 1997/98, it cannot be used again to cancel out deposits made during 1998/99.
- 11.20 In the example at 11.8 above, the RSL would take steps to spend at least £50,000 during 2001/2002, to avoid the need for another payment to the Corporation on 1 April 2002.

12 ANNUAL RETURN TO THE CORPORATION

Annual RCGF returns

- 12.1 RSLs who repay or recycle grant must send an annual RCGF return to the Corporation. It is the RSLs responsibility to ensure its returns are submitted on time. For years ending 31 March 2004 onwards, the deadline for returns will be 30 May of the year in question. RSLs will not be able to submit RCGF returns after the deadline, as the on-line system (IMS) will not be available. If RSLs miss the deadline they will need to wait until the next financial year ending to make adjustments. For all three-year old grant recovered, payment must be made to the Corporation within the financial year the submission is due.
- 12.2 The collection of information on void stock is under review. For the moment, the Corporation no longer requires a return from any RSLs who had six-month-old voids but no actual RCGF or grant repayments.
- 12.3 The Corporation collects returns for years ending 31 March 2001 onwards by direct internet data entry only. Our business web site is www.housingcorp-online.org. RSLs who need to report on grant repayment and RCGF must obtain access rights. Those without that access should contact the Elonex Helpdesk on 0845.230.9689. Our "Getting Started" guidance, under "Help" on the web site, explains the process. There is also guidance on line specifically for people completing electronic RCGF returns.

- 12.4 RSLs who are submitting a RCGF return on IMS for the first time may send a manual return for previous years to the Corporation's local office, who will advise them in what format any information will be required. These returns are required to be made on or before 31st December of the year in which the first electronic submission is being made.
- 12.5 Following receipt of information relating to previous years RCGF from the Corporation's local office, Maple House will input such information into IMS, only when it agrees with the accuracy of the returns. Maple House will liaise with RSLs directly where accuracy of any return is in question.
- 12.6 Upon completion of action regarding the previous year's returns, the Corporation will notify RSLs in writing of the closing balance of that return. This figure is then to be used as the opening balance for the subsequent year's return.

Additional information that the Corporation collects from 31 March 2001

- 12.7 From 31 March 2001, the RCGF return should include RCGF that is attributed to particular local authorities, where that amounted to more than £100,000 in a year (see section 7.5 above).

RSLs should include here amounts generated and used:

- a) only for years ended 31 March 2000 onwards; and
- b) only when amounts of £100,000 or more had been generated in the year or amounts remained from a previous year in which £100,000 or more had been generated. Therefore if the closing balance for a particular authority drops below £100,000, RSLs must continue to report on the balance in subsequent years until it is used up.

We expect this information to be available already from internal accounting systems suggested in paragraph 7.5 above. The Corporation may make this information available to local authorities.

FLEXIBLE TENURE THROUGH THE RECYCLED CAPITAL GRANT FUND

- 1.1 Flexible tenure on the following terms is a permitted use of the RCGF. It is a 'safety net' to enable a shared owner to remain in their own home despite changes in their financial circumstances. It is a last resort option when the lessee has got, or is about to get, into mortgage arrears and potentially lose their home. This may be a result of financial difficulties due to, for example, long term unemployment, a change of family circumstances, or a serious or long term illness. 'Flexible tenure' is defined as:
- the repurchase of equity by an RSL from a shared owner in difficulty, but not necessarily in arrears, with his/her mortgage repayments, or
 - in the case of property specifically built as shared ownership for the elderly, the repurchase of equity to pay for essential repairs or maintenance if the leaseholder cannot afford to pay for the work. This option is not available for other types of shared ownership scheme which happen to be owned by elderly people
- 1.2 Flexible tenure through the RCGF cannot be used to release equity for any other purpose such as to repay debt (other than mortgage debt and arrears) or to buy goods or services.

2 FUNDING FOR FLEXIBLE TENURE

- 2.1 Public funding of flexible tenure is confined to finance from the RCGF. Social Housing Grant (SHG) or the Disposal Proceeds Fund cannot fund flexible tenure. The RSL must have sufficient balance in its RCGF.
- 2.2 Equity re-purchase should be to a level at which the shared owner can afford the lower payments. This can include repurchasing sufficient equity to clear the mortgage, pay off arrears of interest and principal on the mortgage, and reduce payments to nil. There is also the option of full re-purchase, under which the shared owner becomes an assured tenant of the RSL. However, once a property has been re-possessed by the lender, flexible tenure ceases to be an option.

3 ELIGIBILITY CRITERIA FOR FLEXIBLE TENURE

- 3.1 The key principles are:
- *Shared owners do not have any right or entitlement to flexible tenure.* Any offer of flexible tenure is purely at the discretion of the RSL already owning part of the equity in the property. An RSL must confine

its offer of flexible tenure to shared owners in its own stock. The RSL may set its own detailed procedures provided that they comply with the general policy and procedures in this circular. Where an RSL does offer flexible tenure, its policy and procedures should be published and made available to all shared owners in its property so that it can be seen to operate in an open and accountable way.

- *The shared owner must currently own less than 100% of the property.* They must be paying rent on the unsold equity in the property. The term 'rent' excludes ground rent and service charges. Flexible tenure is not available for other owner occupiers including former shared owners or those who have bought a property through a discount or incentive scheme such as Right To Buy (RTB), Right To Acquire (RTA), the Tenants' Incentive Scheme (TIS) or the Homebuy scheme.
- *The RSL must be satisfied that the shared owner has explored and exhausted other options.* The shared owner must produce suitable evidence to prove their difficulty with mortgage repayments although they need not already be in arrears. They must be able to show that other short and long term options have been exhausted such as loan rescheduling, or selling and moving to cheaper property within a reasonable travel to work area. The assessment should include the ability of the lessee to meet future repair and maintenance liabilities. This should be based upon advice from an independent debt-counselling agency, which should include consideration of Housing Benefit eligibility.
- *For shared ownership for the elderly properties, the same policy applies, i.e. the shared owner must have mortgage repayment problems and/or difficulty paying for repairs and maintenance if they own less than the maximum percentage allowed.* Flexible tenure repurchase from the maximum level will also be permitted to allow repair and maintenance work to be carried out where the lessee demonstrates that there is a need for such work to the property and that they lack the funds to pay for it. Flexible tenure will not be allowed to release equity for other purposes.

4 INVOLVEMENT OF PRIVATE LENDERS

- 4.1 For any form of equity repurchase or mortgage rescue, the RSL should ensure that any offer is acceptable to the shared owner's mortgagee, and the RSL's own lender. The latter may require a revolving credit facility.

5 GENERAL PROCEDURES FOR FLEXIBLE TENURE

- 5.1 The value limits and TCI calculations normally associated with shared ownership do not apply to flexible tenure.

Basis of valuation

- 5.2 The same general procedures apply to downward staircasing as for upward staircasing, i.e. the maximum amount payable will be the appropriate percentage of the current open market vacant value determined by an independent qualified valuer.

Proceeds of the transaction

- 5.3 It will most likely be a condition of the shared owner's mortgage that sale proceeds are paid direct to the first mortgagee. The RSL's solicitor will advise on this, but it would avoid any risk of misuse of the money. The shared owner must pay for the valuation and his/her own legal fees. In practice, this may be a deduction from the payment to the shared owner or the mortgagee.

The drawdown from the RCGF

- 5.4 The money is drawn down from the RCGF on the completion date of the legal transaction. Worked examples are given at stage 3 in paragraphs 6 and 7.

Debit from RCGF = (staircasing sales allowance) + (consideration for the transaction x the grant rate).

Use the staircasing sales allowance at the level current on the date of completion of the flexible tenure transaction. Use the SHG grant rate for a rehab. existing satisfactory property in that TCI Cost Group area, current on the completion date of the flexible tenure transaction

Example

A shared owner owns 75% of a house valued on 2/12/98 at £60,000 in Exeter (TCI Cost Group D), and staircases down to 25% ownership in January 1999.

The owning RSL pays £29,700 to the shared owner's mortgage company (£30,000 less valuation and the shared owner's legal fees totalling £300).

According to the Corporation's circulars, the grant rate for that area is 52.7% and the staircasing sales allowance is currently £400.

The withdrawal from the RCGF is (£400 staircasing allowance) + (£30,000 x 52.7%) = £16,210

The rent increases from £10 a week on 25% to £30 a week on the 75% now owned by the RSL - ignoring any service charge.

Resulting public subsidy and Deemed Loan Debt

- 5.5 The resulting amount of public subsidy (Housing Association Grant or SHG plus Recycled Capital Grant) attributable to the property must take into account any deferred recovery of HAG or SHG in the same scheme (see the worked examples below).
- 5.6 The resulting Deemed Loan Debt (DLD) will be the outstanding balance of the original DLD plus the new DLD attributable to the repurchased part of the property.

Subsequent upward or downward staircasing

- 5.7 When a subsequent upward staircasing of the property occurs, the normal staircasing procedures should be followed, treating the RCGF money as if it were SHG. If necessary, further flexible tenure transactions may be permitted should the shared owner's financial situation deteriorate further, even to the extent of a complete repurchase of the property.
- 5.8 Where a shared owner staircases down to a lower level of equity, the terms of the existing lease will continue, including the right to staircase up again.

Rents after flexible tenure transaction

- 5.9 Whenever the shared owner staircases downward or upward, the rent should be adjusted pro rata for the changed percentage rented, and comply with the RSL's rent policy.

Complete re-purchase - tenancy considerations

- 5.10 Where a shared owner becomes an outright tenant, the shared ownership lease must be formally terminated and an assured tenancy agreement entered into on the same terms as for any other new tenancy agreement for rented housing let by that RSL.
- 5.11 It would be at the discretion of the RSL whether to offer a shared ownership lease in the future.
- 5.12 The ex-shared owner will not have the RTA because the repurchase will be funded by the RCGF, not SHG. As a tenant s/he may, if the tenant's circumstances improve, be eligible for any discount or incentive scheme if offered by the RSL, such as the Voluntary Purchase Grant Scheme with any eligibility period starting from the date of this new tenancy.
- 5.13 The change from shared ownership to a tenancy shifts the insurance, maintenance and repairing obligations from the ex-leaseholder to the RSL. Therefore it is recommended that the RSL carries out a survey of the property before completion of the flexible tenure application in order to assess any

immediate and future repair liabilities under the Corporation's Social Housing Standards.

6 EXAMPLE OF A SERIES OF TRANSACTIONS INCLUDING DOWNWARD STAIRCASING FOR A DIYSO PROPERTY

The same principles apply to most types of shared ownership property.

Step 1 - Original sale to the shared owner

The shared owner initially bought 50% of a property worth £54,000 in Barnet (TCI Cost Group - A)

Original market value (OMV)	£54,000
less initial 50% sale	<u>£27,000</u>
Unsold equity	£27,000
HAG at 62.10%	£16,767
On cost at 5% of OMV (100% HAG)	<u>£2,700</u>
Total HAG paid	£19,467

The DLD is £10,233 = Approved Total Cost (OMV £54,000 + on-cost £2,700) - initial sale proceeds £27,000 - HAG £19,467.

Step 2 - Staircasing from 50% to 75% ownership

The shared owner staircases from 50% to 75% ownership in July 1995 at a market value of £49,000.

The net sale proceeds are £6,755 = sale proceeds of £12,250 (25% of £49,000) minus the staircasing allowance £378 and the attributable DLD £5,117 (50% of £10,233).

The attributable HAG was £9,733 = 50% of £19,467.

The credit to the RCGF is £6,755 (lower of net sale proceeds and attributable HAG), with recovery of £2,978 deferred (£9,733 - £6,755) until the next staircasing transaction.

Step 3 - Flexible tenure re-purchase, staircasing down from 75% to 25% ownership

In March 1999 the shared owner sells 50% of the property back to the RSL, and the market value has increased to £62,000. Note that the downward staircasing can take the ownership below the initial percentage bought. The shared owner has to pay for the valuation fee and his/her own legal costs. The RSL pays its own legal costs out of the staircasing allowance. The financing of this transaction is:

Market value	£62,000
Re-purchase by RSL of 50%	£31,000
Funded from RCGF at 1998/99	
TCI group A rate of 69%	<u>£21,390</u>
Funded by loan or reserves	£9,610

The withdrawal from the RCGF is £21,790, being £21,390 plus the 1998/99 Staircasing Allowance of £400.

The total HAG/RCGF liability becomes £34,502 = the original HAG of £19,467 less recovered £6,755, plus RCGF money £21,790. There is no longer a deferred HAG recovery of £2,978.

The DLD is now £14,726 = the £5,116 balance of the original DLD (£10,233 - £5,117) plus the new funding by loan or reserves £9,610.

Step 4 - Future staircasing from 25% to 50% ownership

In April 2002 the shared owner buys a further 25% when the market value is £80,000. For grant recycling purposes, the net sale proceeds will be £14,654 = the gross sale proceeds £20,000 (25% of £80,000) minus the 2002/03 staircasing allowance, say £437, and the £4,909 attributable DLD (1/3 of £14,726).

The attributable grant is £11,501 = 1/3 of £34,502.

The credit to the RCGF is £11,501 (lower of net sale proceeds and attributable grant).

7 SHARED OWNERSHIP FOR THE ELDERLY (SOE) - EXAMPLE OF A SERIES OF TRANSACTIONS INCLUDING DOWNWARD STAIRCASING

There are other types of restricted shared ownership where outright ownership is not allowed and the leaseholder will always pay rent. Flexible tenure is therefore permissible even when the maximum equity is owned by the leaseholder (see paragraph 3.1, bullet 4 above)

Step 1 - Initial sale to the shared owner for the elderly (the leaseholder)

Initially the leaseholder bought 35% of a property in Barnet (TCI Cost Group A) with a market value of £54,600, on a scheme of 14 identical units. HAG paid on this unit was £20,620, of which £8,792 is recoverable on staircasing, i.e.

		<u>Total scheme</u>	<u>per unit</u>
A	Original market value	£764,400	£54,600
B	Approved Final Cost	£662,381	£47,313
C	Initial 35% sales	£273,000	£19,500

D	Unrecoverable "Fixed" HAG at 25% of lower of final cost or final market value (25% of B)	£165,595	£11,828
E	Recoverable HAG at 55% of balance of £223,786 (662,381 - £273,000 - £165,595)	£123,082	£8,792

The DLD is £100,704 (£7,193 per unit) = Approved Final Cost £662,381 - initial sale proceeds £273,000 - Fixed HAG £165,595 - recoverable HAG £123,082.

The Fixed HAG of £165,595 is only recoverable if the freehold, or originally purchased lease, is disposed of on the open market, and not to another RSL.

Step 2 - The leaseholder staircases from 35% to 60% ownership

The leaseholder staircases from 35% to 60% ownership in July 1995 at a market value of £50,000. The net sale proceeds are £7,627 = sale proceeds of £12,500 (25% of £50,000) less the Staircasing Allowance £378 and the attributable DLD £4,495 (25/40ths of £7,193).

The attributable amount of recoverable HAG was £5,495 = 25/40ths of £8,792.

The credit to RCGF is £5,495.

Step 3 - Flexible tenure re-purchase from 60% to 25% ownership

In January 1999 the leaseholder sells 35% of the property back to the RSL, and the market value has increased to £60,000. The leaseholder has to pay for the valuation fee and his/her own legal costs. The RSL pays for its legal costs out of the staircasing allowance. The financing of this transaction is:

Market value	£60,000
Re-purchase of 35%	£21,000
Funded from RCGF at 1998/99	
TCI Cost Group A rate of 69%	<u>£14,490</u>
Funded by loan or reserves	£6,510

The withdrawal from the RCGF is £14,890 = £14,490 plus the current level Staircasing Allowance of £400.

The total recoverable HAG/RCGF money becomes £18,187 = the original recoverable HAG of £8,792 less recovered £5,495, plus RCGF money £14,890.

The DLD is now £9,208 = the £2,698 balance of the original DLD (£7,193 - £4,495) plus the new funding by loan or reserves £6,510.

Step 4 - The leaseholder inherits some money and staircases to the maximum 75% ownership

In 2002 the leaseholder inherits some money and staircases to 75% ownership when the market value is £65,000.

The net sale proceeds of this staircasing will be £22,855 = the gross sale proceeds £32,500 (50% of £65,000) less the 2002/03 staircasing allowance, say £437, and the £9,208 attributable DLD (50/50ths of £9,208).

The recoverable HAG is £18,187 (50/50ths of £18,187) which is credited to the RCGF.

GLOSSARY OF TERMS USED IN THE GRANT RECOVERY CHAPTERS

"1985 Act" means the Housing Associations Act 1985;

"Accounting Period" means the period to which the RSL's income and expenditure account relates;

"Approved Total Cost" is referred to in the calculation of the Deemed Loan Debt (as defined below). In this context it means the total eligible costs, including capitalised interest, of the original development used in the calculation of Capital Grant at final cost stage. For Tariff and Cash Programme projects, this is the Total Cost Indicator (TCI). The calculation includes any Co-operative Promotion Allowance or Special Projects Promotion Allowance. For Do-it-Yourself Shared Ownership (DIYSO) projects it includes the on-cost, because Capital Grant is paid on the on-cost as well as the purchase price. For all projects it excludes any costs that do not qualify for Capital Grant. It also excludes costs for any subsequent additional works such as Major Repairs.

On some Housing for Sale projects, the calculation of Capital Grant at final cost stage imposed a limit on the approved total cost. In those cases, the Approved Total Cost is that limit;

"Capital Grant" means grant paid under Section 18 of the Housing Act 1996, section 41 of the Housing Associations Act 1985, and section 50 of the Housing Act 1988, to defray all or part of the capital expenditure incurred or to be incurred, including any Major Repairs, Miscellaneous Works, and Re-Improvements;

"Cash Programme project" means a project approved under the Corporation's Cash Programme procedures;

"Corporation" means the Housing Corporation or its duly appointed agent;

"Cost Floor" in the context of the Right To Buy means those costs in respect of the Dwelling, which are treated as incurred after 31 March 1974 and relevant in accordance with the Secretary of State's Determinations made under Section 131 of the Housing Act 1985 as amended by Section 122 of the Housing Act 1988. In cases where the Landlord's notice under Section 125 of the 1985 Act is issued after 9 March 1989, the Secretary of State's Determination made in March 1989 shall apply.

"Deemed Loan Debt" (DLD) Refer to the main glossary in Chapter GEN-11;

"Disposal Proceeds Fund" has the meaning contained in Section 24 of the Housing Act 1996;

"Dwelling" Refer to the main glossary in Chapter GEN-11;

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"HAMA Plus project" Refer to the main glossary in Chapter GEN-11;

"Hostel" Refer to the main glossary in Chapter GEN-11;

"Housing Association Grant (HAG)" means Capital Grant paid to Registered Social Landlords under Section 41 of the Housing Associations Act 1985 and Section 50 of the Housing Act 1988;

"Housing for Sale" means Dwellings produced in accordance with the Housing Corporation's procedures, by a Registered Social Landlord, for outright sale or sale on a Shared Ownership Lease;

"Independent Qualified Valuer" Refer to the main glossary in Chapter GEN-11;

"Letting" Refer to the main glossary in Chapter GEN-11;

"Local Authority" has the meaning given by section 106(1) of the Housing Associations Act 1985 i.e. a county, district, or London borough council, the Common Council of the City of London or the Council of the Isles of Scilly and in sections 84(5) and 85(4) of the Housing Associations Act 1985, and includes a joint authority established by Part IV of the Local Government Act 1985;

"Major Repairs" means those works, excluding re-improvements, to a Property owned by a Registered Social Landlord which are necessary to ensure the continued habitability of the Property and which fall into the following categories:

- major works which have become necessary since the original development or rehabilitation work was completed, including those works required by subsequent legislation;
- replacement of, or major work on, those components of a Property which have come to the end of their useful lives;

"Member of the Family" has the meaning contained in Section 62 of the Housing Act 1996, being the spouse of that person, or they live together as husband and wife, or that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece; a relationship by marriage is treated as a relationship by blood, with half-blood treated as whole blood, and a stepchild as a child;

"Miscellaneous Works" means remedial work to heating systems in existing Property, energy conservation works, works for the removal of lead in drinking water, for reducing the risk of exposure to asbestos, to upgrade or install fire precautionary measures recommended by a fire authority (within the meaning

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of section 38 of the Fire Services Act 1947), remedial works to Property contaminated by radon or structural adaptations for people with physical disabilities or such other works as the Corporation may specify from time to time;

“*Property*” means a Dwelling, Hostel, or Shared Housing;

“*Public Sector Subsidy*” means subsidy from a Public Sector Body, defined in the main glossary;

“*Recovery*” means reduction of any Capital Grant payable by the Corporation, suspension or cancellation of any instalment of Capital Grant by the Corporation, or a direction to apply or appropriate for such purposes as the Corporation may specify, or payment to the Corporation of such amounts as the Corporation may specify;

“*Registered Social Landlord (RSL)*” Refer to the main glossary in Chapter GEN-11;

“*Relevant Date*” means the date on which payment of Capital Grant is due, according to timetables published by the Corporation from time to time;

“*Relevant Event*” means an event that will cause the Recovery of Capital Grant;

“*Right To Acquire*” has the meaning contained in Section 16 of the Housing Act 1996;

“*Shared Housing*” means residential accommodation other than in separate and self-contained premises;

“*Shared Ownership Lease*” has the meaning given by section 106(1) of the Housing Associations Act 1985, i.e. a lease:

- granted on payment of a premium calculated by reference to a percentage of the value of the house or Dwelling or of the cost of providing it, or
- under which the tenant (or his personal representatives) will or may be entitled to a sum calculated by reference directly or indirectly to the value of the house or Dwelling;

“*Short Life project*” means Property brought into short term use for a period of between 2 and 10 years which was not owned by the Registered Social Landlord prior to such use and which otherwise would have remained vacant;

“*Social Housing*” means Property acquired, provided, constructed, repaired, converted, improved, or adapted by a Registered Social Landlord for rent,

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shared ownership or sale below market value and funded wholly or partially by Capital Grant;

“*Social Housing Grant (SHG)*” Refer to the main glossary in Chapter GEN-10;

“*Supporting Documentation*” means:

- invoices in respect of reasonable expenses. These invoices should show the Property sold, the date and amount of fees incurred and why they were paid, e.g. drawing up a draft conveyance;
- a copy of any valuation report unless the value is stated on the invoice for the valuation fee;
- a copy of the section 125 notice or its equivalent.
- when applicable, a schedule showing that abortive RTB costs cannot be funded from RTB surpluses.

“*Supported Housing*” means accommodation owned by a Registered Social Landlord and allocated to people who need intensive and supportive housing management. It excludes accommodation the primary purpose of which is to provide care rather than housing, accommodation which aims to fulfil a statutory duty other than under housing legislation, and accommodation which is not provided with the aim of providing residents with a permanent home or the life skills and confidence to move into permanent accommodation. It also excludes categories I and II sheltered housing for the elderly, as defined in the Ministry of Housing and Local Government Circular 82/69;

“*Tariff Project*” means a project approved under the Corporation’s Tariff procedures;

“*Temporary Social Housing*” Refer to the main glossary in Chapter GEN-11;

“*Temporary Market Rent Housing*” means Properties intended to be kept available for Letting at market rents for periods of at least two years but shorter than thirty years, and developed in accordance with the Corporation’s Capital Funding Guide;

“*Tenants Incentive Scheme Grant*” means Capital Grant paid to a Registered Social Landlord under the Corporation’s Tenants Incentive Scheme procedures;

“*Valid Valuation*” means a valuation dated no more than three months before the date of exchange of contracts to sell a Property or land, or the period of validity stated in the valuation, or the shared ownership lease if applicable;

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“Voluntary Purchase Grant” means grant paid to a Registered Social Landlord under Section 21 of the Housing Act 1996 in accordance with the Corporation’s procedures.

THE RECOVERY OF CAPITAL GRANTS GENERAL DETERMINATION 2003

1. The Housing Corporation (“the Corporation”), in exercise of the powers conferred on it by sections 27, 53 and 54 of the Housing Act 1996, sections 52 and 53 of the Housing Act 1988 as amended by section 28(3) of the Housing Act 1996 and all other powers enabling it in that behalf, with the approval of the Secretary of State and after consultation with such bodies appearing to the Corporation to be representative of Registered Social Landlords as it considered appropriate, hereby makes the following General Determination of the principles upon which the Corporation shall specify:
 - (a) the events upon which the Corporation shall Recover Capital Grants paid under section 18 of the Housing Act 1996, section 50 of the Housing Act 1988, section 41 of the Housing Associations Act 1985 and grants paid under any enactment replaced by section 41 of the Housing Associations Act 1985;
 - (b) the manner in which, and time or times at which, Capital Grant is to be Recovered;
 - (c) the circumstances and manner in which a Registered Social Landlord may apply or appropriate Recoverable Capital Grant to specified purposes, and those purposes;
 - (d) the method for calculating the amount of Capital Grant to be Recovered;
 - (e) the circumstances and manner in which the Corporation may direct interest to be added to Recovery of Capital Grant at specified rates;
 - (f) the proportion of Capital Grant which, upon a transfer of land or Property to another Registered Social Landlord, shall be deemed to be vested in that other Registered Social Landlord.
2. This General Determination is made without prejudice to the Corporation's power to make specific Determinations under the provisions of the Housing Act 1988 and, with the approval of the Secretary of State, under the provisions of the Housing Act 1996.

CITATION AND COMMENCEMENT

3. This Determination may be cited as the Recovery of Capital Grants General Determination 2003.
4. This Determination has effect from the date it is signed.
5. The Recovery of Capital Grants General Determination 2002 shall not apply to Relevant Events occurring on or after the date of this Determination.

INTERPRETATION

6. Words and expressions used in this Determination shall, unless the context requires otherwise, have the following meanings:

“Approved Total Cost” in the interpretation of the Deemed Loan Debt, means the total eligible costs of the original development (either actual or notional) used in the calculation of Capital Grant at the final cost stage. It excludes any costs that do not qualify for Capital Grant. It excludes the costs of subsequent works such as a major repair, re-improvement etc.;

“Capital Grant” means Social Housing Grant paid under section 18 of the Housing Act 1996, Housing Association Grant paid under section 50 of the Housing Act 1988, Housing Association Grant paid under section 41 of the Housing Associations Act 1985 and grant paid under any enactment replaced by section 41 of the Housing Associations Act, to defray all or part of the capital expenditure incurred or to be incurred, including any Major Repairs, Miscellaneous Works, and Re-improvements;

“Corporation” means the Housing Corporation or its duly appointed agent;

“Dwelling” has the meaning given by section 63 of the Housing Act 1996;

“Deemed Loan Debt” means for a rental project the shortfall between the Approved Total Cost of the project, used for calculating the final Capital Grant and the total of Capital Grant and any other Public Sector Subsidy input into the project. The amount of Capital Grant used in this calculation is net of any Co-operative Promotion Allowance or Special Projects Promotion Allowance. For Housing for Sale projects the initial Deemed Loan Debt will be the Approved Total Cost net of the actual sales proceeds of the first share in each Dwelling and the total public capital subsidy input into the project;

“Equity Percentage Loan” means a loan which is equal to a percentage agreed between a Registered Social Landlord and an Equity Mortgagor multiplied by the value of the Dwelling to be acquired by the Equity Mortgagor as determined by the Registered Social Landlord when it makes the loan;

“Equity Mortgage” means a mortgage under which, in consideration for an Equity Percentage Loan, the mortgagor agrees that on the loan becoming repayable he or she shall pay to the Registered Social Landlord an amount which is equal to the agreed percentage multiplied by the value of the Dwelling, as determined in accordance with the terms of the mortgage, at the date on which the loan becomes repayable;

“Estates Renewal Challenge Fund Programme” means a process by which the Department for Transport, Local Government and the Regions entertains and approves bids for financial assistance under section 126 of the Housing Grants, Construction and Regeneration Act 1996 and makes recommendations to the Corporation in relation to financial assistance under section 18 of the Housing Act 1996;

“Flexible Tenure” means a method, approved by the Corporation in relation to the Recycled Capital Grant Fund, by which a Registered Social Landlord may repurchase shares of property from a Shared Ownership Leaseholder, so that the Shared

Ownership Leaseholder comes to own a lesser share of the equity in the property, or becomes an assured tenant;

“*Hostel*” has the meaning given by section 63 of the Housing Act 1996;

“*Housing Activities*” has the meaning given by section 63 of the Housing Act 1996;

“*Housing for Sale*” means Property produced in accordance with the Housing Corporation’s procedures by a Registered Social Landlord for outright sale or sale on a Shared Ownership Lease;

“*Independent Qualified Valuer*” means the District or Borough Valuer, or a Professional Associate, or Fellow of the Royal Institution of Chartered Surveyors, or the Incorporated Society of Valuers and Auctioneers, or any successor body or bodies thereof, who is not employed by, or acting on behalf of, or a member of a family (as defined in section 62 of the Housing Act 1996) of the person or related to the organisation selling or transferring or purchasing the Dwelling or land being valued;

“*Letting*” includes a sub-lease, sub-tenancy or licence and an agreement for a lease, tenancy, licence, sub-lease or sub-tenancy;

“*Local Authority*” has the meaning given by section 106(1) of the Housing Associations Act 1985;

“*Major Repairs*” means those works to a Property owned by a Registered Social Landlord which are necessary to ensure the continued habitability of the Property, excluding re-improvements, and which fall into the following categories;

- (a) major works which have become necessary since the original development or rehabilitation work was completed, including those works required by subsequent legislation;
- (b) replacement of, or major work on, those components of a Property which have come to the end of their useful lives;

“*Miscellaneous Works*” means remedial work to heating systems in existing Properties, energy conservation works, works for the removal of lead in drinking water, for reducing the risk of exposure to asbestos, to upgrade or install fire precautionary measures recommended by a fire authority (within the meaning of section 38 of the Fire Services Act 1947), remedial works to Properties contaminated by radon or structural adaptations for people with physical disabilities;

“*Property*” means a Dwelling, Hostel or Supported Housing;

“*Public Sector Subsidy*” means subsidy from a local authority, or any other source of public money;

“*Recovery*” comprises reduction of any Capital Grant payable, suspension or cancellation of any instalment of Capital Grant, the application or appropriation of

Capital Grant for such purposes as the Corporation may specify or payment to the Corporation of such amounts as the Corporation may specify;

“*Recycled Capital Grant Fund*” has the meaning given in paragraph 12 of this Determination;

“*Registered Social Landlord*” means a body which is registered by the Housing Corporation under sections 1(2) or section 3 of the Housing Act 1996;

“*Relevant Event*” means an event, as referred to in section 27(1) of the Housing Act 1996 and section 52(1) of the Housing Act 1988, which may give rise to Recovery of Capital Grant;

“*Right to Buy*” means the right conferred on tenants to buy Property from a Registered Social Landlord under Part V of the Housing Act 1985 and includes cases in which the right is preserved under section 171A of the Housing Act 1985;

“*Sale and Leaseback*” means a transaction in which a Registered Social Landlord disposes of a freehold or superior leasehold interest in land or Property and acquires simultaneously a long leasehold interest in that land or Property;

“*Shared Ownership Lease*” means a lease of the type described in section 2(6) of the Housing Act 1996;

“*Simple Interest*” means further amounts of Capital Grant added to a payment of Capital Grant in compensation to a Registered Social Landlord for delays in payment of the Capital Grant. The further amounts of Capital Grant are calculated in the manner of interest accruing according to the length of delay in payment;

“*Social Housing*” means Properties acquired, provided, constructed, repaired, converted, improved, or adapted by a Registered Social Landlord for rent, shared ownership, or sale below market value and funded wholly or partially by Capital Grant;

“*Social Housing Grant*” means those Capital Grants paid under section 18 of the Housing Act 1996;

“*Supported Housing*” means accommodation owned by a Registered Social Landlord and allocated to people who need intensive and supportive housing management. It excludes accommodation the primary purpose of which is to provide care rather than housing, accommodation which aims to fulfil a statutory duty other than under housing legislation, and accommodation which is not provided with the aim of providing residents with a permanent home or the life skills and confidence to move into permanent accommodation. It also excludes categories I and II sheltered housing for older persons, as defined in the Ministry of Housing and Local Government Circular 82/69;

“*Temporary Social Housing*” means Properties intended to be kept available for Letting for periods longer than two years but shorter than thirty years. It includes Property which received Capital Grant under procedures that the Corporation published for programmes described as “Short Life” housing, “Housing Associations as Managing Agents” and “Temporary Social Housing”;

“*Tenant Incentive Scheme*” means a programme of Capital Grants to Registered Social Landlords to enable them to make payments to tenants as an incentive to vacate the Registered Social Landlord's Dwelling.

RELEVANT EVENTS GIVING RISE TO RECOVERY OF GRANT

7. The Corporation may exercise its powers of Recovery when the following Relevant Events occur:
- (a) when, during the progress of a project approved for Capital Grant, an instalment of Capital Grant was claimed or paid in anticipation of an acquisition, contract stage or other stage in the development process, and that acquisition, etc., either does not take place or takes place later than anticipated;
 - (b) when, after an instalment of Capital Grant has been advanced upon a project approved for Capital Grant, the Corporation or a Local Authority cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant;
 - (c) discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required;
 - (d) disposal of land or Property by a Registered Social Landlord, except:
 - (i) to another Registered Social Landlord with the prior approval of the Corporation;
 - (ii) the sale of the first share of a Dwelling under a Shared Ownership Lease where the Dwelling is specifically provided for sale on shared ownership terms;
 - (iii) the sale of a Dwelling acquired for the purpose of outright sale after repair, improvement or conversion;
 - (iv) Sale and Leaseback provided that the Corporation has given prior approval to the terms and objectives of the transaction;
 - (v) Lease and sub lease arrangements under which a Registered Social Landlord disposes of a superior interest in a property and there is the simultaneous grant of a sub lease to another Registered Social

Landlord. These are not relevant events where the purpose of the lease and sublease arrangement is to raise private finance, the property remains controlled and let by a Registered Social Landlord as Social Housing and the Corporation approves in advance the terms of the transaction. That approval is part of the process of obtaining consent to the disposal under section 9 of the Housing Act 1996.

- (vi) when the legal ownership of Property or land is transferred to a developer for the period during which a development, redevelopment or re-improvement is carried out, and either the freehold or a leasehold interest is returned to the Registered Social Landlord on terms acceptable to the Corporation;
- (vii) when Property included in an Estates Renewal Challenge Fund Programme is disposed of under the Right to Buy;
- (viii) when Property included in an Estates Renewal Challenge Fund Programme is disposed of outright on the open market or by private sale provided that either of the following conditions is fulfilled:
 - (1) the disposal without Recovery of Capital Grant was part of a programme of sales included in the valuation and business plan that formed the basis on which the Department for Transport, Local Government and the Regions gave consent to the transfer of the stock; or
 - (2) the Corporation agrees in advance to disposal without Recovery of Capital Grant either as an amendment to the delivery plan or after the delivery plan is complete;
- (ix) the disposal of an adaptation provided to assist a resident with a physical disability;
- (x) when the consideration is broadly equivalent replacement Property or Properties or land, or the money to provide broadly equivalent replacement Property or Properties or land;
- (xi) disposal of a Property to a tenant of the Registered Social Landlord with the assistance of a purchase grant under sections 20 or 21 of the Housing Act 1996;
- (xii) disposal of small plots of surplus land. The Corporation will not normally Recover any Capital Grant when a Registered Social Landlord disposes of a small plot of spare or ancillary land on a project developed with the aid of Capital Grant, where that plot is not suitable to provide any further Social Housing. The Corporation will issue guidance specifying in greater detail the circumstances in which this exemption from recovery would apply;

- (xiii) upon disposal of certain freehold reversions. The Corporation will not normally Recover any Capital Grant when a Registered Social Landlord disposes of a freehold or superior leasehold reversion, where that represents its only remaining interest in Property or Dwellings that it had previously disposed of outright to tenants on Right to Buy terms or upon which Shared Ownership Leaseholders had progressed to own the Dwellings in full;
 - (e) a change of use of land or Property to one which would not qualify in principle for Social Housing Grant, or a change of use from one which received a high rate of Capital Grant to one which would have qualified for a significantly lower rate;
 - (f) cessation of use of land or Property;
 - (g) demolition of Property or other buildings funded by Capital Grant;
 - (h) failure to use Capital Grant for the purpose for which it was paid;
 - (i) failure to comply with any condition attached to the making of Capital Grant, including failure to complete a project;
 - (j) discovery that the Secretary of State, the Corporation or a Local Authority has received incorrect information or made an error in connection with the calculation of Capital Grant payable or Recoverable;
 - (k) a disposal that would give rise to a repayment of discount under section 156 of the Housing Act 1985;
 - (l) a disposal that would give rise to a repayment of discount under sections 11 and 12 of the Housing Act 1996;
 - (m) a disposal that would give rise to the repayment of a payment made to a tenant as an incentive to vacate a Dwelling owned by a Registered Social Landlord under the terms of the mortgage deed requiring repayment of the original payment;
 - (n) the redemption, or a disposal giving rise to the redemption, of an Equity Percentage Loan secured by an Equity Mortgage;
 - (o) depending on the circumstances, de-registration of a Registered Social Landlord by the Corporation, under section 4(2) or (4) of the Housing Act 1996. The Corporation may defer recovery until any of the events described in (a) to (n) above should occur.
8. When a Relevant Event occurs, a Registered Social Landlord must either notify the Corporation according to a timetable specified by the Corporation or must apply or appropriate the Capital Grant Recoverable in ways determined or directed by the Corporation.

PRINCIPLES FOR THE APPROPRIATION, APPLICATION OR RECOVERY OF CAPITAL GRANT

9. Upon notification or discovery of a Relevant Event, the Corporation may Recover Capital Grant. Capital Grant includes any Simple Interest which accompanied payment of the principal Capital Grant.
10. When a Relevant Event occurs on only part of the Property or land on which Capital Grant was paid, the Corporation may Recover a proportionate amount of Capital Grant. The Corporation may specify methods of apportionment.
11. Upon any Relevant Event, depending on the circumstances, Recovery by the Corporation may include any of the following:
 - (a) the reduction of any Capital Grant payable, or yet to be paid, by the Corporation;
 - (b) the suspension of any instalment of Capital Grant; and
 - (c) the cancellation of any instalment of Capital Grant.

Circumstances in which Registered Social Landlords may apply or appropriate Capital Grant to specified purposes

12. Subject to paragraphs 16, 17 and 19 below, Registered Social Landlords may choose between repaying the Capital Grant Recoverable to the Corporation or placing it in a fund, known as the Recycled Capital Grant Fund, to be applied or appropriated for the following purposes:
 - (a) Housing Activities for which the Corporation would, in principle, make available Social Housing Grant. The choice of Housing Activity must therefore have regard to the Corporation's investment priorities and the housing needs identified by local authorities. A Registered Social Landlord may contribute Recycled Capital Grant Fund to such activities only at the same rates of grant, cost limits and other terms and conditions that the Corporation applies generally to Housing Activities which it funds with Social Housing Grant;
 - (b) Flexible Tenure only in ways and circumstances approved by the Corporation;
 - (c) When
 - (i) the Capital Grant in the Recycled Capital Grant Fund arises from Recoveries relating to Property included in an Estates Renewal Challenge Fund Programme; and

- (ii) the Registered Social Landlord is one which confines its activities to the area originally included in the Estates Renewal Challenge Fund Programme and has no plans to pursue Social Housing activities outside those original boundaries;

the Registered Social Landlord may spend the Recycled Capital Grant Fund on work to the stock within the boundaries of the Estates Renewal Challenge Fund Programme, even though that stock may have been acquired as tenanted former public sector stock, as described in paragraph 14 of the Social Housing Grant (Capital) General Determination 2001.

- (d) other activities which the Corporation, with the agreement of the Department for Transport, Local Government and the Regions, may announce from time to time.
13. The Corporation may direct that notional interest accruing on Capital Grant in the Recycled Capital Grant Fund may also be applied or appropriated to these same purposes. The notional interest shall be calculated according to the principles in paragraph 19(b) below.
 14. In circumstances specified by the Corporation, a Registered Social Landlord may transfer all or part of its Recycled Capital Grant Fund to another Registered Social Landlord so that the other Registered Social Landlord may apply or appropriate it to the purposes in paragraph 12 above.
 15. The Corporation may set time limits within which it expects a Registered Social Landlord to apply or appropriate Capital Grant to these purposes. For purposes of these time limits, a transfer of Recycled Capital Grant Fund to another Registered Social Landlord will not re-start the timetable.

Circumstances in which Registered Social Landlords would normally repay Capital Grant to the Corporation

16. The Corporation will normally demand repayment of Capital Grant Recoverable, without the option of placing it in a Recycled Capital Grant Fund, upon the following Relevant Events:
 - (a) when, during the progress of a project approved for Capital Grant, an instalment of Capital Grant was claimed or paid in anticipation of an acquisition, contract stage or other stage in the development process, and that acquisition, etc., either does not take place or takes place later than anticipated;
 - (b) when, after an instalment of Capital Grant has been advanced upon a project approved for Capital Grant, the Corporation or a Local Authority cancels the approval, or approves the project on revised terms which involve a reduced entitlement to Capital Grant;

- (c) discovery, upon an intermediate or final review of the costs of a project approved for Capital Grant, that an instalment or payment on account of Capital Grant had been greater than eventually required;
- (d) disposal of Capital Grant funded land acquired for the development of Social Housing, or designated for a further phase or phases of Social Housing, when the development or further phase or phases was, or were, not completed at the time of disposal;
- (e) failure to use Capital Grant for the purpose for which it was paid, including failure to complete a project;
- (f) failure to comply with any condition attached to the making of Capital Grant;
- (g) subject to a minimum amount specified from time to time by the Corporation, discovery that the Secretary of State, the Corporation or a Local Authority has received incorrect information or made an error in connection with the calculation of Capital Grant payable or repayable;
- (h) de-registration of a Registered Social Landlord by the Corporation, under section 4(2) or (4) of the Housing Act 1996;
- (i) redemption of the outstanding indebtedness on a Property owned by a co-ownership (equity sharing) housing society.

Circumstances in which the Corporation may withdraw the option of applying or appropriating Capital Grants through the Recycled Capital Grant Fund

17. The Corporation may override the principles in paragraphs 12 and 16 above in the following circumstances, which are not Relevant Events, and direct as indicated;
- (a) the Corporation decides, in exercise of its regulatory and financial supervisory responsibilities, that a Registered Social Landlord's financial or management circumstances are such that Capital Grant Recoverable previously placed in a Recycled Capital Grant Fund is at risk. The Corporation may direct instead that the contents of the Recycled Capital Grant Fund should be paid to the Corporation;
 - (b) the Corporation decides, in exercise of its regulatory and financial supervisory responsibilities, that a Registered Social Landlord's financial or management circumstances are such that the option of placing Capital Grant Recoverable into a Recycled Capital Grant Fund would put that Capital Grant at risk. The Corporation may direct instead that Capital Grant Recoverable upon future Relevant Events should be paid to the Corporation for as long as the Corporation considers to be appropriate;
 - (c) the Corporation discovers that a Registered Social Landlord has made a material error, materiality to be specified by the Corporation, in the calculation or administration of its Recycled Capital Grant Fund. The Corporation may

instead direct the Registered Social Landlord to pay to the Corporation all or part of the Recycled Capital Grant Fund;

- (d) the Corporation discovers that a Registered Social Landlord has failed to administer its Recycled Capital Grant Fund according to paragraph 19 below or has failed to report or supply information on the amounts of Capital Grant Recoverable in its Recycled Capital Grant Fund. The Corporation may then direct the Registered Social Landlord to pay to the Corporation all or part of the Recycled Capital Grant Fund. After considering the circumstances, the Corporation may additionally direct that Capital Grant Recoverable upon future Relevant Events should be paid to the Corporation for as long as the Corporation considers to be appropriate;
- (e) the Corporation discovers that a Registered Social Landlord has applied or appropriated its Recycled Capital Grant Fund for purposes other than those determined herein and specified in further guidance by the Corporation. The Corporation may then direct the Registered Social Landlord to pay to the Corporation all or part of the Recycled Capital Grant Fund together with any amounts applied or appropriated to unauthorised purposes. After considering the circumstances, the Corporation may additionally direct that Capital Grant Recoverable upon future Relevant Events should be paid to the Corporation for as long as the Corporation considers to be appropriate;
- (f) the Corporation decides that a Registered Social Landlord is unlikely to be able to apply or appropriate all or part of its Recycled Capital Grant Fund to a permitted purpose within a time limit specified by the Corporation. The Corporation may instead direct the Registered Social Landlord to pay to the Corporation all or part of the Recycled Capital Grant Fund. After considering the circumstances, the Corporation may additionally direct that Capital Grant Recoverable upon future Relevant Events should be paid to the Corporation for as long as the Corporation considers to be appropriate;
- (g) the Corporation learns that a Registered Social Landlord has not applied or appropriated all or part of its Recycled Capital Grant Fund to a permitted purpose within a time limit specified by the Corporation. The Corporation may instead direct the Registered Social Landlord to pay to the Corporation all or part of the Recycled Capital Grant Fund;
- (h) the Corporation agrees to a Registered Social Landlord's request for de-registration under section 4(2) or (4) of the Housing Act 1996. The Corporation may direct the Registered Social Landlord to pay to the Corporation the balance in the Recycled Capital Grant Fund including accrued interest.

In addition to the circumstances already listed above, the Corporation may withdraw the option of applying or appropriating Capital Grants through the Recycled Capital Grant Fund if it considers that it would be appropriate to do so in the circumstances of a particular case.

18. When the Corporation directs repayment of Recoverable Capital Grant placed in a Recycled Capital Grant Fund, it may direct the Registered Social Landlord to calculate and add interest attributable to the amount repaid. The interest would be calculated according to paragraph 19(b) below.

The administration of Recycled Capital Grant Funds

19. Registered Social Landlords shall administer Recycled Capital Grant Funds according to the following principles:
- (a) to apply or appropriate the Recycled Capital Grant Fund only to the purposes and in the manner set out in this determination and specified by the Corporation in detailed procedures;
 - (b) to add notional interest to the Recycled Capital Grant Fund at rates specified by the Corporation which shall not exceed the rates which a Registered Social Landlord might reasonably expect to earn on the deposit of the cash comprising its Recycled Capital Grant Fund. These rates may be tiered to reflect the higher rates available on larger balances;
 - (c) to keep records, documents and vouchers supporting transactions, as specified by the Corporation, for periods specified by the Corporation;
 - (d) to report annually on the calculation and uses of its Recycled Capital Grant Fund and ask its external auditors to report on those matters in a form specified by the Corporation in consultation with bodies representing auditors;
 - (e) when required by an Accounting Determination under section 7 and Part III of Schedule 1 to the Housing Act 1996, to present the Recycled Capital Grant Fund in its statutory accounts in the form stated in that Accounting Determination;
 - (f) in respect of Property provided with the aid of Recycled Capital Grant Fund, to comply with the Corporation's Regulatory Code and regulatory requirements as if that Property had been provided with Social Housing Grant;
 - (g) when a Relevant Event occurs to land or Property provided with the aid of Recycled Capital Grant Funds, the principles within this Determination apply equally to the Recovery of the recycled Capital Grant, and may entail returning the appropriate proportion of Capital Grant to the Recycled Capital Grant Fund.

THE METHOD OF CALCULATING THE AMOUNT OF GRANT RECOVERABLE ON RELEVANT EVENTS

Miscellaneous refunds and recalculations during the progress of a scheme.

20. If the Relevant Events at paragraph 7(a) to (c) should occur, the amount of Capital Grant Recoverable will normally be calculated by comparison of the amount advanced with the amount actually needed or with the amount of the revised entitlement.

Disposal of undeveloped land

21. This paragraph relates to land acquired with the aid of Capital Grant for development as a project or part of a project approved for Capital Grant. When the development, or a phase of the development, does not proceed and this land is disposed of outright on the open market or by private sale, the calculation of the Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:
- (a) the valuation fee incurred by the Registered Social Landlord in respect of the disposal;
 - (b) marketing costs incurred by the Registered Social Landlord in respect of the disposal; and
 - (c) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all of the Capital Grant attributable to that land, the amount of Capital Grant Recovered will be reduced by the shortfall. Otherwise, the Capital Grant is Recoverable in full.

Outright sales to tenants under the Right to Buy and voluntary sales to tenants on Right to Buy terms.

22. When land and Property is disposed of outright to a tenant under the Right to Buy, or is disposed of outright and voluntarily to tenants on terms identical to those Right to Buy provisions, the calculation of the Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:
- (a) the Deemed Loan Debt;
 - (b) the valuation fee incurred by the Registered Social Landlord in respect of the disposal;
 - (c) expenses of other sales on Right to Buy terms which fell through after the Registered Social Landlord had served an offer notice, where the Registered Social Landlord cannot cover such expenses from surpluses on other Right to Buy sales made within a period specified by the Corporation;
 - (d) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal; and

- (e) an allowance, set by the Corporation from time to time, to cover a Registered Social Landlord's administrative expenses incurred in effecting the Right to Buy.

If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount of Capital Grant Recovered will be reduced by the shortfall. Otherwise, the Capital Grant is Recoverable in full.

Voluntary sales to tenants not on Right to Buy terms

23. When land and Property is disposed of outright to a tenant on terms not identical to those Right to Buy provisions, that is to say either more favourable or less favourable to the tenant than those available under the Right to Buy, the calculation of Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:

- (a) the Deemed Loan Debt;
- (b) the valuation fee incurred by the Registered Social Landlord in respect of the disposal; and
- (c) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount of Capital Grant Recovered will be reduced by the shortfall. Otherwise, the Capital Grant is Recoverable in full.

Outright disposals on the open market or by negotiation

24. When land or Property is disposed of outright on the open market or by private sale, the calculation of Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:

- (a) the Deemed Loan Debt;
- (b) the valuation fee incurred by the Registered Social Landlord in respect of the disposal; and
- (c) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount

of Capital Grant Recovered will be reduced by the shortfall. Otherwise, the Capital Grant is Recoverable in full.

Disposals under compulsory powers

25. When land or Property is disposed of to a body exercising statutory powers of compulsory purchase, or by negotiated sale to such a body under the threat of compulsory purchase, the calculation of Capital Grant Recoverable will normally be as follows. From the compensation and any proceeds of the disposal, together with any interest added to the compensation payment, deduct:
- (a) the Deemed Loan Debt;
 - (b) except when the body exercising compulsory powers is statutorily obliged to pay it, the valuation fee incurred by the Registered Social Landlord in respect of the disposal; and
 - (c) except when the body exercising compulsory powers is statutorily obliged to pay them, the legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

Irrespective of the proceeds actually received, the figure to be used in this calculation will normally be the higher of disposal proceeds and a valuation provided by an Independent Qualified Valuer or, when compulsory powers have been exercised, the amount obtained by a qualified valuer acting on behalf of the Registered Social Landlord in negotiation with the body exercising compulsory powers.

26. If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount of Capital Grant Recovered will normally be reduced by the shortfall. However, net surpluses upon disposals of other Property or land within the same Compulsory Purchase Order, and owned by the Registered Social Landlord, are deemed available to cover the shortfall in whole or in part. If a shortfall still remains, the amount of Capital Grant Recovered will be reduced by the shortfall. Otherwise, the Capital Grant is Recoverable in full.

Voluntary sales on shared ownership terms

27. When Property previously provided for rent is disposed of by Shared Ownership Lease on the open market or by private sale, the calculation of Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:
- (a) the Deemed Loan Debt;
 - (b) the valuation fee incurred by the Registered Social Landlord in respect of the disposal; and

- (c) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property, the Recovery of the balance will be deferred until the sale of a further share of the Property. Otherwise, the Capital Grant is Recoverable in full.

28. When the sale into shared ownership is of a Property included in an Estates Renewal Challenge Fund Programme, Capital Grant will be recovered as in the paragraph immediately above except when the Department for Transport, Local Government and the Regions had approved sales into shared ownership without recovery as part of the delivery plan.

Shared ownership staircasing sales

29. When, after the sale of the first share of a Dwelling under a Shared Ownership Lease, a Registered Social Landlord sells a further share of that Dwelling, the calculation of the Capital Grant Recoverable will normally be as follows. From the proceeds of the disposal or a valuation provided by an Independent Qualified Valuer, whichever is the higher, deduct:

- (a) the appropriate proportion of Deemed Loan Debt;
- (b) an allowance, set by the Corporation from time to time, to cover a Registered Social Landlord's administrative and legal expenses incurred in disposing of a further share of a property; and
- (c) when applicable, expenses properly incurred by a mortgagee in possession under the terms of a mortgagee protection clause.

30. If the net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all of the Capital Grant attributable to that share of the Dwelling, together with any Capital Grant Recoverable deferred from the disposal of previous shares, Recovery of the balance will normally be deferred until the sale of a further share of the Dwelling. Otherwise, the Capital Grant attributable to the share, together with that deferred from the disposal of previous shares, is Recoverable in full. If, when all remaining shares of the Dwelling have been sold, a balance of deferred Recovery remains, the Corporation will not normally Recover that balance

31. This paragraph applies to projects containing more than one shared ownership Dwelling. If the net disposal proceeds resulting from the calculation in paragraph 29 above are insufficient to enable the Recovery of all of the Capital Grant attributable to that share of the Dwelling, together with any Capital Grant Recoverable deferred from the disposal of previous shares, Recovery of the balance will normally be deferred until the sale of a further share of that Dwelling or until sales of other shares of shared ownership Dwellings within the same project. If, when all remaining shares of all

shared ownership Dwellings within the project have been sold, a balance of deferred Recovery remains, the Corporation will not normally Recover that balance.

Temporary Social Housing not achieving expected life

32. When the intended life of a Temporary Social Housing Scheme is not achieved, the Capital Grant Recoverable will be calculated by reference to the life expected and the life actually achieved. Capital Grant will normally be Recoverable in full if two complete years of life are not achieved from the date of the original lease. After two years, Recovery will normally be reduced in proportion to the life which has been achieved.

Change of use to one not qualifying in principle for Social Housing Grant

33. When a Registered Social Landlord changes the use of land or Property to one which would not qualify, in principle, for Social Housing Grant, the calculation of Capital Grant Recoverable will normally be as follows. From the valuation of the land or Property, based on vacant possession for existing use, as assessed by an Independent Qualified Valuer, deduct:
- (a) the Deemed Loan Debt;
 - (b) the valuation fee incurred by the Registered Social Landlord in respect of the change of use; and
 - (c) legal fees and associated legal expenses incurred by the Registered Social Landlord in respect of the disposal.

If the notional net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount of Capital Grant Recovered will normally be reduced by the shortfall. In this comparison, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Change of use to one which would have received less Capital Grant

34. When a Registered Social Landlord changes the use of land or Property to one which would still qualify, in principle, for Social Housing Grant, but at a significantly lower rate of grant, the Corporation will normally Recover Capital Grant. The amount Recoverable will represent the difference between the Capital Grant paid in respect of the old use, together with any Public Sector Subsidy, and the Social Housing Grant which would be payable in principle on the new use under procedures current at the time of the change of use. The Corporation will specify how that calculation is to be performed. In this comparison, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Temporary change of use with permission

35. The Corporation may agree a temporary change of use, without recovery, to one not qualifying in principle for Social Housing Grant. The Corporation will specify the situations in which it would give such agreement, which will take into account:
- (a) the level of demand for the existing use of the land or Property;
 - (b) the likelihood that it could be returned to Social Housing within a specified period;
 - (c) factors which make it difficult or undesirable to dispose of the land or property;
 - (d) whether the temporary use offers a housing or regeneration function; and
 - (e) whether the temporary use falls within the permitted purposes of a Registered Social Landlord.

Cessation of use of land or Property

36. When a Registered Social Landlord has ceased to use land or Property, the Corporation may Recover Capital Grant. The calculation of Capital Grant Recoverable will normally be the valuation of the land or Property, based on vacant possession for existing use, as assessed by an Independent Qualified Valuer, less the Deemed Loan Debt. If the notional net disposal proceeds resulting from this calculation are insufficient to enable the Recovery of all the Capital Grant attributable to that Property or land, the amount of Capital Grant Recovered will normally be reduced by the shortfall. In this comparison, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Demolition of Property

37. When a Registered Social Landlord demolishes Property the Corporation may Recover Capital Grant. The Corporation will consider the circumstances of the case before directing how much Capital Grant should be Recovered.
38. Notwithstanding the paragraph immediately above, the Corporation will not normally Recover Capital Grant on Property demolished because it had reached the end of its useful life, which will be determined by factors including its physical condition and the number of years of use which might reasonably have been expected of Property of that type and location. However, if a capital receipt should arise in connection with the demolition, that will be available for Recovering Capital Grant. To the extent that the Registered Social Landlord must finance the Recovery out of its own resources, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Failure to comply with a condition of Capital Grant

39. If a Registered Social Landlord fails to comply with a condition specified by the Corporation when making a Capital Grant, the Corporation may Recover all or part of the Capital Grant paid on the project, whichever is reasonable and appropriate having regard to all the circumstances. If the Registered Social Landlord must finance the Recovery out of its own resources, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Failure to use Capital Grant for the purpose intended

40. If a Registered Social Landlord fails to use Capital Grant, or fails to use it for the purpose for which it was paid, the Corporation may Recover all or part of the Capital Grant paid on the project, whichever is reasonable and appropriate having regard to all the circumstances. If the Registered Social Landlord must finance the Recovery out of its own resources, the Capital Grant attributable to the Property or land shall exclude any Simple Interest element of the Capital Grant.

Redemption of Equity Mortgages in the Homebuy scheme

41. This paragraph applies when an Equity Mortgagor who has bought a Dwelling with the aid of Capital Grant redeems all or part of an Equity Percentage Loan, either voluntarily or upon disposal of the Dwelling. The Capital Grant Recoverable will normally be the lower of the Capital Grant attributable to the Dwelling or the amount of Equity Percentage Loan redeemed.
42. The Corporation, in consultation with bodies representing Registered Social Landlords and with the agreement of the Department for Transport, Local Government and the Regions, may from time to time specify an allowance to cover a Registered Social Landlord's administrative expenses incurred in redeeming Equity Percentage Loans. When the amount of Capital Grant Recoverable exceeds the Equity Percentage Loan redeemed, a Registered Social Landlord may deduct any such allowance from the Equity Percentage Loan to arrive at the Capital Grant Recoverable.

Repayment of discounts on Tenant Incentive Schemes

43. This paragraph applies to a disposal that would give rise to the repayment of all or part of a payment made to a tenant as an incentive to vacate a Dwelling owned by a Registered Social Landlord under the terms of the mortgage deed. The Capital Grant Recoverable will normally be the lower of the Capital Grant paid as an incentive or the amount of the repayment by the former tenant. In this calculation, the Registered Social Landlord may deduct from the Capital Grant attributable an allowance, set by the Corporation from time to time, to cover a Registered Social Landlord's administrative expenses incurred in retrieving the payment from the former tenant.

Repayment of Right to Buy Discount

44. Where grant has been paid in respect of a transaction under the provisions of section 58 of the Housing Act 1988 or the recovery of grant has been reduced in respect of a sale to a sitting tenant under the provisions of Part V of the Housing Act 1985, and a disposal takes place which should give rise to a repayment of a discount under Schedule 2 to the Housing Associations Act 1985, the grant paid or reduced may be recovered on an equitable basis. In this calculation, the Registered Social Landlord may deduct from the Capital Grant attributable an allowance, set by the Corporation from time to time, to cover a Registered Social Landlord's administrative expenses incurred in retrieving the discount from the former tenant.

Disposal, removal or transfer of an adaptation

45. This paragraph applies when a Registered Social Landlord disposes of, transfers or otherwise removes an adaptation previously fitted to its Property in order to assist residents with a physical disability, where that adaptation was funded with the aid of Capital Grant. Upon disposal, no Capital Grant is normally Recoverable. The Capital Grant paid in respect of the adaptation remains instead attributable to the Property and is Recoverable if any subsequent Relevant Event should occur in respect of that Property.

De-registration by the Corporation

46. Upon de-registration of a Registered Social Landlord, under section 4(4) of the Housing Act 1996, Recovery will normally be deferred until such time as a further Relevant Event occurs, in accordance with the definition of Relevant Events current at the date of that further Relevant Event. Capital Grant may be Recovered in accordance with the policy and procedures current at the date of that further relevant event.

Financial difficulties

47. Where Recovery of Capital Grant calculated in accordance with the provisions of this Determination would place a Registered Social Landlord in financial difficulty, the Corporation may:
- (a) defer the Recovery to a future date, or
 - (b) accept Recovery by agreed instalments, or
 - (c) reduce part or all of the Recovery.

INTEREST ON RECOVERY OF GRANT

48. The Corporation may direct a Registered Social Landlord to add interest to an amount of Grant repayable upon a Relevant Event. The Corporation may direct the addition of interest in the following circumstances:

- (a) when a Registered Social Landlord is late in notifying the Corporation of the occurrence of a Relevant Event;
 - (b) when the Corporation discovers, without having been notified by a Registered Social Landlord, that a Relevant Event has occurred;
 - (c) when a Registered Social Landlord is late in repaying Grant after the Corporation has raised an invoice for repayment.
49. In paragraph 48 above, lateness shall be measured by reference to events which create a requirement to notify the Corporation and timetables and deadlines linked to those events, all of which the Corporation specifies from time to time in published circulars, letters, procedures, on its web site and in other guidance on Capital Grant.
50. Interest will normally accrue daily from the date when a Registered Social Landlord should have notified the Corporation of an event giving rise to recovery to the date when the Registered Social Landlord actually did notify the Corporation. The Corporation may reduce the addition of interest when a Registered Social Landlord fails to notify the Corporation of an event giving rise to recovery if that Registered Social Landlord had already returned the Grant to the Corporation by the notification date.
51. When the Corporation issues an invoice to a Registered Social Landlord for repayment of Grant, or an invoice for interest in respect of late notification of an event giving rise to recovery of Grant, the invoice may provide for the addition of further interest, suspended until the date specified for payment of the invoice. If the Registered Social Landlord does not pay the invoice by the specified date, interest will accrue daily from the date specified for payment of the invoice until the date when the Corporation receives payment of the invoice.
52. While Capital Grant remains in a Recycled Capital Grant Fund, the Corporation will direct Registered Social Landlords to add notional interest to the Recycled Capital Grant Fund as in paragraph 19(b) above.
53. The rates of interest specified by the Corporation may differ according to the category of Relevant Event and these in turn may differ from the rates charged on late payment of invoices and the rates on collection of Capital Grant which has been standing in the Recycled Capital Grant Fund.
54. With regard to paragraphs 48 to 53 above, the Corporation will specify further the rates and basis for calculation from time to time in published circulars, letters, procedures, on its web site and in other guidance on Capital Grant.

THE APPROPRIATE PROPORTION OF CAPITAL GRANT DEEMED TO BE TRANSFERRED BETWEEN REGISTERED SOCIAL LANDLORDS, FOR PURPOSES OF RECOVERY

55. When land or Property on which Capital Grant has been paid becomes vested in, or is leased for a term of years to, or reverts to, another Registered Social Landlord, and a Relevant Event subsequently occurs, this Determination shall apply to the entire Capital Grant paid on the land or Property as if the Capital Grant had been made to that other Registered Social Landlord. This arrangement will also apply when one of the Registered Social Landlords is registered by the Housing Corporation and the other is registered by the National Assembly for Wales.

BY ORDER OF THE CORPORATION this 4th day of April 2003

Norman Perry
Chief Executive

EXPLANATORY NOTES

(These notes are not part of the Determination)

Legislation requires the Corporation to set out, in a statutory determination, the occasions when it will recover capital grants from Registered Social Landlords (RSLs) and the principles which it will apply to the recovery process. The Corporation must also determine when and how it will add interest to recoveries.

The term “recovery” does not necessarily mean repayment to the Corporation. The Corporation can instead direct a RSL to “apply or appropriate” the grant to a particular purpose. On most occasions, the Corporation gives a RSL the option of recycling that capital grant itself into housing projects. RSLs would do this through a Recycled Capital Grant Fund (RCGF) and the housing produced must be of the sort that the Corporation would, in principle, have funded with new grants.

This determination covers all property funded with housing association grant or social housing grant, through the Corporation or a Local Authority, from 1974 onwards.

It consolidates two former separate determinations one for each grant. It introduces paragraphs enabling the Corporation to add interest to recoveries of social housing grant. It also updates those determinations for changes in policy which affect grant recovery, such as redemption of equity mortgages under the Homebuy scheme, the possibility of Tenant Incentive discounts being repaid and the special circumstances of projects funded with grant under the Estates Renewal Challenge Fund.