

Minimum Revenue Provision Consultation DCN Response

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About the District Councils' Network

The District Councils' Network (DCN) is a cross-party member led network of 183 district and unitary councils. We are a Special Interest Group of the Local Government Association (LGA) and provide a single voice for district councils within the Local Government Association. DCN councils in England deliver 86 out of 137 essential local government services to over 22 million people - 40% of the population - and cover 68% of the country by area.

Summary of the DCN's position

The District Councils' Network welcomes the opportunity to respond to this consultation. It strongly supports the prudential borrowing system as this allows councils to judge how much debt they can prudently afford to take out. We support flexibility within the system so that there are not hidebound rules that hinder councils' ability to invest to support economic regeneration, housing growth and important preventative services such as leisure. We support, for example, that guidance sets out a range of different methodologies for calculating minimum revenue provision.

We understand the concerns about how some councils have interpreted the legislation and guidance on MRP. However, what should matter most is whether or not councils are servicing debt appropriately i.e. that they are paying interest due in full and that there are clear and appropriate arrangements to repay debt over time. Individuals can take out interest only loans where the principal has to be repaid at the end of the loan period, or can take out loans where the principal is repaid during the duration of the loan. Councils can likewise take out loans that are repaid on different bases.

It might be argued that the requirement for MRP forces councils into one form of making provision for repaying debt when there is more than one way of servicing debt. We welcome the Government's commitment that it does not want to move back to a prescriptive methodology. However, we need to register concern that seeking to tie down more closely how councils are to calculate MRP may have adverse consequences for some councils which have made prudent plans for the servicing and repayment of debt even though they have not perhaps been setting aside provision from revenue resources.

In particular we would stress the need for any changes not to have any impact on the housing revenue account as this could adversely affect the provision of additional social housing.

Q1. Do you agree with the government's proposal to amend the 2003 Regulations to prevent the omission of debt from the MRP calculation?

We do not oppose the principle of this change but believe that the Government needs to consider suitable transitional arrangements to protect councils from significant adverse impacts. These could include:

- Delaying the date for implementation, either generally or for specific councils;
- Limiting application of the change to new assets funded by new debt taken out after 2022-23;
- Excluding debt related to capital loans and leases which are automatically repaid under normal account practice using the capital receipt (the principal element of the repayment).

We have concern around the impact such changes would have on lending made to wholly owned local authority companies, especially those that are involved in the provision of housing. Where these are supported financially through a capital loan, the proposed changes would have an unintended consequence of reducing the financial viability of the arrangements and may prevent local authorities from delivering much needed additional housing supply in their local authority area.

We welcome the consultation paper's suggestion that the proposed changes are not intended to affect the treatment of debt in the Housing Revenue Account. We strongly support that as any change could have a detrimental impact on both national and local policies such as the delivery of new housing, where this is being managed through a council-owned company and supported by loans.

We would urge the Government to consider carefully the responses from individual DCN member councils and take appropriate steps to ensure that they are not exposed to significant adverse impacts on their revenue budgets as a result of any regulations.

Q2. Does the draft statutory instrument achieve the government's objectives as outlined in this document? Are there any unintended consequences arising from the statutory instrument?

We are concerned that the wording of the new regulation 28(3) potentially goes far wider than the proposal to prevent councils from excluding certain debt from the calculation of MRP.

(3) "In determining a prudent amount an authority must not exclude any financing of capital expenditure incurred by the authority, except where the charge in respect of such financing may be delayed in accordance with proper practices."

It seems to us that the wording would double count payments councils are making to service debt. "financing of capital expenditure" can take many forms, yet the wording of the new regulation seems to imply that they have to be paid as well as MRP being set aside. If the policy intention is that all debt should be counted in assessing what level of MRP should be set aside, we wonder whether instead the wording of regulation 27 should be clarified so that it is obvious that "financing of capital

expenditure” relates to all borrowing taken out by the council (subject to the points we make in answer to question 1 about any transitional or permanent exclusions).

Q3. Is it clear from the wording of the statutory instrument, as drafted, that authorities may still postpone the MRP charge as per paragraphs 40 and 41 of the MRP guidance?

This wording is in regulation 28(3) which we have queried above. Again, we feel that wording on the lines of “except where the charge in respect of such financing may be delayed in accordance with proper practices” should feature in regulation 27 instead.

Q4. Are these changes consistent with the current MRP guidance? If not, what is unclear or inconsistent in the guidance?

The current MRP Guidance, paragraph 20, makes it clear that it is for the authority to determine an amount of MRP that it considers to be prudent as determined by the Section 151 Officer. This proposed change would impact on the ability for a local authority in England to set a policy that it considers prudent.

Paragraph 21 of the Guidance states that the underpinning principle of the local authority finance system is that all capital expenditure must be financed by capital receipts, capital grants (or other contributions) or eventually from revenue income. However there may be short-term timing differences between capital expenditure and the receipts/grants that support this activity. For example, an authority may spend money in order to achieve a capital receipt, but there is a timing difference in receiving the capital receipt either due to achieving the best price or the time for conveyancing to occur. There may also be a delay in the receipt of grants or contributions, such as Section 106 / CIL receipts. This proposed change to the regulation may have unintended consequences on the ability to delay MRP until the receipts are received and used to pay down debt created to achieve the sale or to fulfil the planning obligation.

In paragraph 23 of the Statutory Guidance, it states that whilst the Secretary of State considers that the methods of making prudent provision include the options set out in paragraphs 31 to 37 (options 1 to 4), they also say that this does not rule out or otherwise preclude a local authority from using an alternative method should it decide that it is more appropriate. Being more prescriptive potentially removes some of the flexibility currently available in a prudent MRP policy and in that sense is not consistent with the current MRP Guidance.

Q5. Do you agree with the government’s proposal to amend the 2003 Regulations to prevent the use of capital receipts to be used in place of a revenue charge?

In general, using capital receipts to significantly reduce their annual MRP charge through paying for the MRP by using capital receipts is not in our view appropriate. However adopting a blanket ruling may cause significant issues in some areas, such as capital loans and leases which are automatically repaid under normal accounting practice using the capital receipt (the principal element of the repayment). Not allowing this will cause a double-count.

We are aware of one DCN member council where the double counting would be over £10million in 2023/24 and 2024/25, and would be an overprovision and also a conversion of revenue to capital resources (under Regulation 23 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, the use of capital resources is restricted) which would have an impact on that council's ability to deliver services and could also result in a severe loss of financial resilience.

More specifically, it could mean the income from leases is not treated fully as revenue, but has to be split into a capital and revenue element. As councils already provide MRP on the lease value, this means the revenue can't be matched for the capital element making the leases a loss maker for the General Fund. There may be other councils with similar issues and we therefore urge the Government to study carefully the detailed responses from our members.

Q6. Does the draft statutory instrument achieve the government's objectives as outlined in this document? Are there any unintended consequences arising from making this change?

See our answers to earlier questions.

Q7. Is it clear from the wording of the statutory instrument, as drafted, that authorities may set capital receipts against borrowing?

We believe that this is clear in regulation 23 of the 2003 Regulations.

Q8. Are these changes consistent with the current MRP guidance? If not, what is unclear or inconsistent in the guidance?

We believe the proposed changes have some inconsistencies with the current MRP guidance.

The current MRP guidance makes it clear that it is for each authority to determine what is prudent and allows flexibility for an authority to determine its policy accordingly. However, the proposed regulations introduce a more prescriptive regime.

The proposed change would result in MRP being made for a capital loan advance regardless of when the principal repayment of those loans is received. If this is the case, then some schemes that are supported by capital loans would not be able to continue because it would create an extra revenue budget pressure and in many cases could result in an overprovision. This seems to conflict with making a prudent provision and may overcharge taxpayers.

Q9. Where these changes will have a financial impact on your authority, what is the estimated increase/(decrease) in annual revenue cost (for illustrative purposes, assume the changes take effect from 2022/23)?

We refer to the response from individual member councils.

Q10. Where these changes affect the amount of MRP charged by your authority what, if any, effect will there on financial sustainability?

We refer to the response from individual member councils.

Q11. Aside from financial sustainability, what other impacts will the changes have? For example, changes to capital plans, debt management or current investments. Include a costed impact if appropriate.

We refer to the response from individual member councils.

Q12. Do you agree that the government should implement the amendments to the legislation to come into effect from the 2023/24 financial year?

In principle, yes, but subject to the points we make in response to question 1.

Q.13. If not, are there any specific proposals for deferring implementation to a later financial year? What would be the implications of not doing so?

We would urge the Government to consider carefully the responses from individual DCN member councils and take appropriate steps to ensure that they are not exposed to significant adverse impacts on their revenue budgets as a result of any regulations.

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