	Executive 20th June 2012	Agenda Item No. **8**

Title:	Retention of Additional Right to Buy Receipts
For further information about this report please contact	Jameel Malik, Head of Housing and Property Services
Service Area	Housing and Property Services
Wards of the District directly affected	All
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No
Date and meeting when issue was last considered and relevant minute number	N/A
Background Papers	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval

With regard to officer approval all reports *must* be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).

Officer Approval	**Date**	**Name**
Chief Executive	29.05.12	Chris Elliot
Deputy Chief Executive	29.05.12	Bill Hunt
Deputy Chief Executive	29.05.12	Andrew Jones
Head of Finance	29.05.12	Mike Snow
Portfolio Holder for Housing and Property Services	29.05.12	Councillor Norman Vincett

Consultation Undertaken

Please insert details of any consultation undertaken with regard to this report.

Final Decision?	Yes

Suggested next steps (if not final decision please set out below)

1 SUMMARY

1.1 It is proposed that the Council enters into a standard agreement with the Department of Communities and Local Government (CLG) to retain additional Right to Buy (RTB) receipts received as a result of the recent increase in the maximum RTB discount, to help fund the provision of replacement rented affordable homes in the District.

2 RECOMMENDATION

2.1 That Executive notes the terms of the Standard Agreement produced by the Department of Communities and Local Government (CLG) under Section 11(6) of the Local Government Act 2003 - to enable local authorities to retain any additional Right to Buy (RTB) receipts generated as a result of the increased maximum RTB discount in order to fund the provision of replacement Council homes in their district.

2.2 That Executive gives delegated authority to the Head of Housing and Property Services to enter into the Standard Agreement with the CLG on behalf of the Council to retain the receipts of additional RTB sales of council dwellings for investment in replacement affordable housing.

2.3 That Executive gives delegated authority to the Head of Finance to determine the Right to Buy receipts to be reclaimed.

3 REASONS FOR THE RECOMMENDATION

3.1 The Government has introduced a number of measures to 'reinvigorate' the Right to Buy scheme, including increasing the maximum discount to a flat rate of £75,000, compared to previous maximum discount of £26,000. The Government also confirmed that RTB receipts from any additional sales that this change generates would be used to fund replacement stock on a "one-for-one" basis, nationally.

3.2 Following a consultation exercise by the Department of Communities and Local Government (CLG) on the detail of the arrangements, the CLG has announced that the Government's favoured option for delivering these new homes would be through local authorities retaining receipts from their 75% share to spend in their areas, subject to individual local authorities entering into an agreement with the CLG on their use.

3.3 Stock-retained local authorities are being invited to enter into agreements with the CLG to retain these additional RTB receipts for use to replace affordable rented homes in their District. The Council has to enter into the agreement with the CLG by 27th June 2012; otherwise it will not be able to retain any additional RTB receipts generated from 1st April 2012 until the Agreement is signed.

3.4 A copy of the standard CLG Agreement that the Council is invited to sign is attached as Appendix 1. There is no scope for amendment to the standard CLG Agreement. In summary, the agreement states that the Secretary of State agrees to:

- Allow the Council to retain additional RTB receipts to fund the provision of replacement **rented** housing stock (with the Council being able to decide how much of the additional RTB receipts it retains); and

- Give the Council three years (from commencement of the agreement) to invest those receipts before asking for the money to be returned to the CLG.

3.5 The council can utilise the retained receipts from RTB sales for the following options: -

- building new council homes;
- purchasing properties previously sold under RTB that are being offered back to the council;
- purchasing affordable housing as part of private developments;
- purchasing open market dwellings;
- grant funding Registered Providers to develop new affordable housing;
- bringing empty homes back into use through the private sector leasing scheme (subject to confirmation from CLG).

3.6 Under the CLG's agreement, the Council would have to agree that RTB receipts will not make up more than 30% of total spend on replacement stock (including fees), and to return any unused receipts to the Secretary of State with interest. The local authority (or RP if recipients of grant funding) will be expected to fund the remaining 70% from its own reserves or through borrowing serviced by the anticipated rental income from the new homes built. When building new homes local authorities can decide whether or not to charge an affordable rent (i.e. up to 80% of market rent), but will need to be mindful of cost of borrowing when reaching a decision.

3.7 The agreement does not require the Council to *complete* the building of any home within three years; rather, that the Council should have incurred expenditure sufficient that Right to Buy receipts form no more than 30% of it (including fees). Where retained receipts exceed 30%, the Council must return the additional receipts (i.e. the receipt above 30%) to the Secretary of State with interest at base rate plus 4%. The rate has been set deliberately high in order to incentivise local authorities to invest in replacement stock. The rate is specifically designed to discourage local authorities from retaining receipts until such time that they are required to surrender them.

3.8 It is up to each authority whether to enter into such agreements and entirely its decision as to how much of the surplus receipt it retains in each quarter of a financial year.

3.9 The Government requires that claims for RTB receipts to be retained for investment in replacement stock are completed quarterly in arrears. To over claim will lead to repayment at a punitive cost in interest; to under claim will reduce the resources available to the council to replace the lost RTB stock.

3.10 It is recommended that the Head of Finance is authorised to determine the level of the quarterly claim, based upon the calculated amount claimable and the likelihood of the time and cost constraints being met from planned new development.

4 ALTERNATIVE OPTIONS CONSIDERED

4.1 *Option 1: The Council does not enter into the agreement with the CLG*

4.1.1 If a local authority does not enter into an agreement with the CLG, 100% of their additional RTB receipts (after deducting an amount based on the notional debt attributed to the properties sold and an allowance for administration) must be passed over to the Government, which will be redistributed by the Homes and Communities Agency (HCA) for use anywhere in the country. Details of this re-distribution methodology have not yet been provided by the CLG.

4.1.2 While the operation of the proposed RTB agreement poses some challenges for the council, not to enter into the agreement would prevent the council accessing these potential additional resources for stock replacement. The risks attached to the resources flowing from the agreement will not arise unless the council makes a claim for the resources, and can be managed by prudent claims and monitoring of outcomes against targets and timetables.

5 BUDGETARY FRAMEWORK

5.1 From 2nd April 2012 the Right to Buy (RTB) legislation has been amended to increase the maximum discount and change the rules for distributing capital receipts from RTB sales.

5.2 The maximum RTB discount on a home has increased from £26,000 to £75,000. This significantly reduces the sale price, and therefore the capital receipt shared between the Council and Central Government. However Central Government expectations are that the higher discount will encourage more tenants to buy their home, therefore maintaining or increasing the overall level of receipts. It should be noted that the Council has sold no homes in the first 2 months of 2012/13, though it is too early to assess what sales may occur over the year.

5.3 The total capital receipt from RTB sales each quarter is reduced by allowable deductions:

- Administration costs (e.g. legal fees) are now a fixed rate of £1,300 per property rather than actual costs, to encourage efficiency.
- Costs of any improvements to the home in the past 3 years can no longer be deducted.
- If (and only if) the total debt supported on all homes sold in the quarter (calculated for each individual home) exceeds that assumed by the Government in the Self Financing Debt settlement then the additional debt supported by sold properties can be deducted from the receipt.
  How many sales are required depends upon the properties sold, but would be estimated at 14 sales in 2012/13, more in future years.

5.4 The remaining capital receipts are distributed between the Council and Central Government, with Central Government receiving the majority. As in the current system the Councils share can be used for any Capital purpose, and is currently used to partly fund Disabled Facilities Grants.

5.5 However if:

- The Council has signed the agreement (Appendix 1)
- The share that payable to Central Government reaches the assumed income Central Government have specified

Then the Council can choose to 'retain' some, all or none of the remaining receipt, with the understanding that it will either:

- Use these receipts to fund no more than 30% of the total costs of providing new affordable rented homes within 3 years; or
- Pay unused receipts to Central Government within 3 years, and pay interest at a rate of base rate + 4% for the period it retained these receipts.

5.6 An illustration of the distribution of the RTB sale proceeds for a 'typical' sale is shown at Appendix 2.

5.7 There is no guarantee that receipts from RTB sales will be sufficient to provide for any to be retained for providing new homes; this is the very last share of the income, when the Central Government share has reached their assumed income - £676,000 in 2012/13, increasing each year.

5.8 How many sales are required to be able to retain any additional receipts depends upon the properties sold, but would be estimated at 15 sales in 2012/13, more in future years.

5.9 For reference there were no RTB sales in 2008/09, 3 in 2009/10, 8 in 2010/11, 3 in 2011/12. The increase in RTB discounts may increase sales, though it is too early to predict.

5.10 If the agreement (Appendix 1) is not signed then the Council has no opportunity to retain any available receipts.

5.11 Should the council sign the agreement at a later date there is no opportunity to reclaim money already paid over to Central Government.

5.12 If the agreement is signed, then each quarter where there is the opportunity to retain receipts it will be necessary to assess whether the council is likely to meet the criteria for using these receipts:

- Within the 3 year timescale
- To fund no more than 30% of eligible expenditure on providing new affordable rented homes

5.13 For example, if RTB receipts were sufficient in the first quarter that £60,000 could be retained by the Council for new affordable homes, and it was decided to do so:

- The council would need to spend at least £200,000 on new affordable rented homes within 3 years to avoid having to pay any back (as £60,000 is 30% of £200,000).
- If only £150,000 was spent in the 3 years, then only 30% of this could be funded from retained receipts; i.e. £45,000.
- The remainder, £15,000, would need to be paid to Central Government together with interest at 4% above base rate, approx £2,000 at current rates; so £17,000 in all.
- However the real cost to the council (compared to immediately paying the receipts over) is just the interest cost, which would be slightly mitigated by interest earned on balances.

This illustration is just for one quarter, but there may be the opportunity to retain additional receipts in subsequent quarters if RTB sale receipts are sufficient.

5.14 Currently this Council has the policy of utilising Right to Buy receipts within the Housing Investment Programme, although under current regulations these receipts could be used for non-housing projects. In recent years these receipts have helped to finance Disabled Facilities Grants.

Under the new RTB system the basic 'Local Authority Share' can still be used (assuming sales occur) for any capital purpose, and so remains available to fund DFGs or other Council priorities.

This share was previously 25% of the receipt after deductions. This has been raised to approximately 29%, but capped at a specified amount - £282,000 in 2012/13.

Any additional receipts above this cap can be retained subject to their being used for providing new affordable homes in accordance with the DCLG Agreement. If the Agreement is not signed, and sales exceed those in the Self Financing Settlement, the Council loses this benefit and will need to pay these additional receipts over to Central Government.

6 POLICY FRAMEWORK

6.1 This agreement could potentially provide additional funding for providing new affordable homes, which would assist in achieving the objective within the Housing Business Plan presented to the Executive and Council in March 2012.

Agreement – Section 11(6) of the Local Government Act 2003

This agreement is made pursuant to section 11(6) of the Local Government Act 2003.

Parties

The Secretary of State for Communities and Local Government ("the Secretary of State") and

…………. ……………………. ("the Authority").

This agreement comprises 10 pages

General

1. In this agreement :

   "the due date", "quarter" and "the relevant quarter" have the same meaning as in the Regulations;
   "receipts" means the receipts to which Schedule 1 to the Regulations applies;
   "retained amount" means the amount calculated in Part 1;
   "the Regulations" mean the Local Authority (Capital Finance and Accounting) (England) Regulations 2003;
   "social housing" means low cost rental accommodation as defined by section 68(1)(a) of the Housing and Regeneration Act 2008;
   "the sub-liability" means the sub-liability calculated under Schedule 1 to the Regulations;
   the terms "A", "E", "F","G", "J" and "K" used in this agreement have the same meaning as in Schedule 1 to the Regulations.

2. This agreement applies to receipts received on or after 1st April 2012 ("the commencement date").

3. The Authority is not required to pay to the Secretary of State such portion of the sub-liability calculated in accordance with Part 1 of this agreement provided the Authority complies with the conditions set out in this agreement.

4. The Authority must use the retained amounts for the provision of social housing. Any amounts not used for this purpose must be paid to the Secretary of State and interest will be payable calculated in accordance with paragraph vi of Part 1.

5. The Authority must provide the information set out in Parts 1 and 4 of this agreement to the Secretary of State at the times and in any format the Secretary of State may request.

6. This agreement may be terminated by the Secretary of State by giving notice of one quarter.

7. This agreement may be amended by agreement.

Part 1 - Calculation of the portion of the sub-liability that the Authority may retain.

i. Where in any quarter –

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

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

   K less (2.398347729 x G).

ii. The Authority must inform the Secretary of State of the following by the due date of the relevant quarter-
   (a) the value of K less (2.398347729 x G);
   (b) the retained amount; and
   (c) any amount not retained by the Authority.

iii. Where the Authority has informed the Secretary of State (under paragraph ii(c)) that an amount will not be retained, the Authority must pay that amount to the Secretary of State by the due date of the relevant quarter.

iv. Where the Authority has informed the Secretary of State that an amount will not be retained and fails to pay that amount on the due date of the relevant quarter, interest is payable and incurred from the due date until the Authority pays that amount to the Secretary of State.

v. Where the Authority does not inform the Secretary of State of the amount it will not retain by the due date of the relevant quarter, it will be assumed that the retained amount for that quarter is the full amount the Authority may retain and where an amount is not retained and is paid to the Secretary of State, interest will be payable and incurred from the due date until the date the Authority pays that amount to the Secretary of State.

vi. The Authority may pay any part of the retained amount to the Secretary of State and where it does so, interest is payable and incurred from the due date of the relevant quarter in which the retained amount was retained by the Authority until the date it is paid to the Secretary of State.

Part 2– Return of retained amounts

i. This Part applies where 13 quarters have expired since the commencement date.

ii. In this Part :

“the reckonable quarter” means the quarter 12 quarters prior to the relevant quarter;
“quarter 1” means the quarter in which the commencement date falls;
A is the total of the retained amounts for all quarters from quarter 1 to the reckonable quarter;
“the total amount spent on the provision of social housing” is the amount spent on the provision of social housing from quarter 1 to the last day of the relevant quarter;
R is the total of the returnable amounts calculated under paragraph iv of this Part and amounts paid to the Secretary of State under paragraph vi of Part 1 for all the quarters from quarter 1 to the reckonable quarter.

iii. The total retained amount is calculated as follows –

$$A – R.$$

iv. Where on the last day of the relevant quarter, the total retained amount exceeds 30% of the total amount spent on the provision of social housing, the Authority must pay to the Secretary of State the portion of the total retained amount in excess of 30% of the total amount spent on the provision of social housing (“the returnable amount”).

v. Where the Authority must pay a returnable amount to the Secretary of State under paragraph iv of this Part, interest is payable, calculated and incurred from the due date of the reckonable quarter until the date the returnable amount is paid to the Secretary of State.

Part 3 - Calculation of interest

Where interest is payable under this agreement, it will be calculated at a rate of 4% above the base rate on a day to day basis compounded with three-monthly rests and "base rate" has the same meaning as in the Regulations.

Part 4 - Provision of information

On the due date of each relevant quarter the Authority must provide to the Secretary of State the details of the number of starts on site since the commencement date.

"Start on site" means the earlier of commencement of the following by the Authority or other body to which the Authority has paid all or part of the retained amount for the purpose of providing social housing:

(a) excavation for strip or trench foundations or for pad footings;

(b) digging out and preparation of ground for raft foundations;

(c) vibrofloatation, piling, boring for piles or pile driving; or

(d) drainage work specific to the buildings forming part of the scheme.

Part 5 – The amount spent on the provision of social housing

i. The amount spent on the provision of social housing shall not include any expenditure which has been used or which the authority intends to use to-

   (a) reduce a capital receipt under regulation 15(1)(c) of the Regulations (capital allowance); or

   (b) buy back a relevant interest defined in paragraph 3(1)(b) of the Schedule to the Regulations and claim buy back allowance in respect of that expenditure under paragraph 3 of the Schedule to the Regulations.

ii. The amount spent on the provision of social housing shall not include any expenditure on dwellings which are social housing at the time of the expenditure.

iii. The amount spent on the provision of social housing is the amount spent by the Authority or by a body to which the Authority has paid some or all of the retained amounts (such body must not be a body in which the Authority holds a controlling interest) on the development costs associated with the provision of social housing for the benefit of the Authority's area.

iv. Where the Authority has paid all or some of the retained amounts to a body for the purpose of contributing towards the cost of providing social housing, the Authority must ensure that only retained amounts provided by the Authority have been used by such body for the provision of social housing for the benefit of the Authority.

v. Social housing is provided for the benefit of the Authority where it is situated in the area of the Authority or the Authority has nomination rights in respect of the social housing.

vi. The amount spent on social housing includes the following:

(a) the development costs associated with the acquisition of dwellings to be used as social housing;
(b) the development costs associated with the acquisition of land for the construction of dwellings to be used as social housing;
(c) the development costs of the construction of dwellings to be used as social housing.

vii. In this Part "development costs" means the costs set out in Part 6.

Part 6 – Development costs

Development costs means the costs relating to the development of social housing in respect to the heads of expenditure set out below.

Heads of expenditure

1 ***Acquisition***

1.1 *Purchase price of land/site.*

1.2 *Stamp Duty Land Tax on the purchase price of land/site.*

2 ***Works***

2.1 *Main works contract costs (excluding any costs defined as on costs).*

2.2 *Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.*

2.3 *statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.*

2.4 *Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.*

2.5 *Irrecoverable VAT on the above (where applicable).*

3 ***On costs***

3.1 *Legal fees and disbursements.*

3.2 *Net gains/losses via interest charges on development period loans.*

3.3 *Building society or other valuation and administration fees.*

3.4 *Fees for building control and planning permission.*

3.5 *Fees and charges associated with compliance with European Community directives, and any requirements relating to energy rating of dwellings, Eco-Homes certification and Housing Quality Indicators.*

3.6 *In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note 1 below).*

3.7 *Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).*

3.8 *Contract performance bond premiums.*

3.9 *Borrowing administration charges (including associated legal and valuation fees).*

3.10 *An appropriate proportion of the development and administration costs of the Authority or the body in receipt of funding from the Authority.*

3.11 *Irrecoverable VAT on the above.*

Note 1

Where the development contract is a design and build contract, the on-costs are deemed to include the builder's design fee element of the contract sum. The amount included by the builder for design fees should be deducted from the works cost element referred to above, as should other non-works costs that may be submitted by the builder such as fees for building and planning permission, building warranty, defects liability insurance, contract performance bond and energy rating of dwellings.

Note 2

Some items will not qualify as development costs unless the Authority can clearly demonstrate that such costs are properly chargeable to the social housing, i.e. for the sole use of the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

- *works to any roads which do not exclusively serve the social housing;*
- *landscaping to areas of land which lie outside the boundaries of the land on which the social housing is situated;*
- *district heating systems;*
- *trunk sewers and sewage disposal works;*
- *special refuse treatment buildings;*
- *public conveniences;*
- *community halls, club rooms, recreation rooms.*

Note 3

Subject to the above, where any cost incurred or to be incurred by the Authority or a body in receipt of funding from the Authority is common both to the development of the social housing and to any other activity, asset or property of the Authority or a body in receipt of funding from the Authority, only such part of that cost as is attributable to the development of the social housing may be treated as a cost in respect of which the retained amount may be paid.

Signed on behalf of the Authority by ……………………………………………

(insert name and position in capitals)

…………………………………………………………….. (add signature and date)

Signed on behalf of the Secretary of State by Graham Duncan – Deputy Director – Affordable Housing Regulation and Investment

……………………………………………………………………(add signature and date)

Appendix 2

Distribution of RTB receipts for a 'typical' sale, based on the average for the past 3 years.

Note that the distribution changes for the new system when certain 'thresholds' are met:

- When the Debt supported by sold properties exceeds that specified by Central Government
- When the Share to Central Government reaches their specified Cap

		Previous RTB System 'Average' 1 Sale £	New RTB System – 1 'Average' Sale		
			Before Reaching Debt Threshold £	Above Debt Threshold, Below Gov. Share Cap £	After Reaching Gov. Share Cap £
Approx. no. of sales to reach 'threshold'		*n/a*	*1*	*14*	*15*
Valuation		129,500	129,500	129,500	129,500
less: Discount		(26,000)	(58,500)	(58,500)	(58,500)
Sale Price		**103,500**	**71,000**	**71,000**	**71,000**
Share to Central Government		**76,650**	**49,200**	**32,300**	**0**
Deductions:	Admin Cost	600	1,300	1,300	1,300
	Improvement Costs	700	0	0	0
	Debt supported by home	0	0	24,000	24,000
Share to WDC (currently used for DFG's)		25,550	20,500	13,400	0
Available to retain for New Build		0	0	0	45,700
Total to WDC		**26,850**	**21,800**	**38,700**	**71,000**
Grand Total (Sale Price)		**103,500**	**71,000**	**71,000**	**71,000**