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STATUTORY INSTRUMENTS

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**1997 No.319**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

**The Local Authorities (Capital Finance) Regulations 1997**

<i>Made</i>	- - - -	<i>12th February 1997</i>
<i>Laid before Parliament</i>		<i>24th February 1997</i>
<i>Coming into force</i>		
<i>for the purposes of regulations 120, 121 and 162(a)</i>		<i>30th March 1997</i>
<i>for all other purposes</i>		<i>1st April 1997</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by sections 40(5), 42(4), 48(1)(c) and (5), 49(3), 51(7), 57(1)(c), 58(4)(b) and (9), 59(3) to (5), 61(4), 64(2) and (5), 66(1)(a) and (6), 190(1) and 191(1) of, and paragraphs 10, 11(2), 15(1)(a), 17, 18(1) and 20 of Schedule 3 to, the Local Government and Housing Act 1989(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Local Authorities (Capital Finance) Regulations 1997 and shall come into force—

- (a) for the purposes of regulations 120, 121 and 162(a), on 30th March 1997; and
- (b) for all other purposes, on 1st April 1997.

(2) In these Regulations except where the context otherwise requires—

“the Act” means the Local Government and Housing Act 1989, and any reference in these Regulations to a section is a reference to a section of the Act; and

“the 1990 Regulations” means the Local Authorities (Capital Finance) Regulations 1990(2).

## **PART II**

### **EXPENDITURE FOR CAPITAL PURPOSES**

*Expenditure to be expenditure for capital purposes*

#### **Issue of loan instruments**

2. Expenditure of a local authority which is incidental to the issue of a loan instrument shall be expenditure for capital purposes unless all of the payments or repayments required to be made by the authority in respect of the loan instrument are required to be made not later than one year after the loan instrument is issued.

#### **Building works**

3. Expenditure incurred by a local authority on the carrying out of works which are intended to—
- (a) increase substantially the thermal insulation of a building or part of a building,
  - (b) increase substantially the extent to which a building or part of a building can or will be used by a person aged 60 or over or a person who is a disabled person within the meaning given to that expression in section 114(6) (approval of applications to provide certain facilities for the disabled), or
  - (c) reduce substantially, in relation to a building or part of a building, the risk to persons in case of fire,

in so far as it is not expenditure for capital purposes by virtue of section 40(2) (capital purposes), shall be expenditure for capital purposes if it may be so regarded in accordance with proper practices.

#### **Advances and grants for building works**

4.—(1) In this regulation, “relevant expenditure” means expenditure incurred by a local authority on the making of advances, grants or other financial assistance to any person towards expenditure incurred or to be incurred by that person on—

- (a) the carrying out of works such as are mentioned in regulation 3; or
- (b) the carrying out of works which are intended to increase substantially the extent to which a building or part of a building can or will be used for any purpose.

(2) Relevant expenditure incurred by a local authority, in so far as it is not expenditure for capital purposes by virtue of section 40(4), and is not expenditure on approved investments, shall be expenditure for capital purposes.

#### **Repayment of grants by local authority**

5. Where a local authority are required to repay or make a payment in respect of any grant or other financial assistance made or given to them by a Minister of the Crown or Community institution

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(2) S.I. 1990/432; amended by S.I. 1990/1273, S.I. 1991/500, S.I. 1992/502, S.I. 1992/738, S.I. 1992/1618, S.I. 1992/2819, S.I. 1992/3257, S.I. 1993/520, S.I. 1993/2014, S.I. 1993/3054, S.I. 1994/553, S.I. 1995/850, S.I. 1995/1526, S.I. 1995/1982, S.I. 1996/568, S.I. 1996/2121 and S.I. 1996/2539.

towards expenditure for capital purposes, the expenditure incurred by the authority on making that repayment or payment shall be expenditure for capital purposes.

### **Housing disposal costs**

6. Where an amount in respect of interest is included in any instalment of a disposal cost payable by a local authority in accordance with regulation 3 of the Housing (Change of Landlord) (Payment of Disposal Cost by Instalments) Regulations 1990(3), the expenditure incurred by the authority on paying that interest shall be expenditure for capital purposes.

### **Computer programs**

7. Expenditure incurred by a local authority on the acquisition or preparation of a computer program, including expenditure on the acquisition of a right to use the program, in so far as it is not expenditure for capital purposes by virtue of section 40(2), shall be expenditure for capital purposes if the authority acquire or prepare the program for use for a period of at least one year for any purpose relevant to their functions.

### **Expenditure under private finance transactions**

8.—(1) In this regulation, “private finance transaction” has the same meaning as in Part IV of these Regulations.

(2) Expenditure incurred by a local authority under a private finance transaction, in so far as it is not expenditure for capital purposes by virtue of section 40(2), shall be expenditure for capital purposes.

*Expenditure not to be expenditure for capital purposes*

### **Financial assistance for officers**

9. Expenditure incurred by a local authority on the making of advances, grants or other financial assistance—

- (a) to an officer of the authority pursuant to the terms and conditions of his employment, or
- (b) in connection with the appointment of a person as an officer of the authority, to that person,

in so far as, apart from this regulation, it would be expenditure for capital purposes by virtue of section 40(4), shall not be expenditure for capital purposes.

### **Expenditure on certain investments**

10.—(1) In this regulation, “relevant amount” means any amount which—

- (a) is due to a local authority under an investment which is, or was at the time it was made, an approved investment under regulation 2(b) or (c) of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(4);
- (b) has become payable by the institution or building society with whom the investment was made (“the relevant body”) before the date on which the authority are entitled under the terms of the investment to require it to be repaid or redeemed; and

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(3) [S.I. 1990/1019](#). There are amendments which are not relevant to this regulation. Part IV of the Housing Act 1988, under which the Regulations were made, was repealed by section 222 of, and paragraph 1 of Part I of Schedule 18 to, the Housing Act 1996 (c. 52) subject to the savings contained in paragraph 12 of the Schedule to the Housing Act 1996 (Commencement No. 3 and Transitional Provisions) Order 1996 (S.I. 1996/2402 (C. 62)).

(4) [S.I. 1990/426](#); amended by [S.I. 1991/501](#) and [S.I. 1992/1353](#).

- (c) has become payable by reason of a default or breach of covenant on the part of the relevant body in relation to the payment of the principal sum invested or interest.
- (2) Expenditure to which paragraph (3) applies, in so far as, apart from this regulation, it would be expenditure for capital purposes by virtue of section 40(4), shall not be expenditure for capital purposes.
- (3) This paragraph applies to expenditure incurred by a local authority on the making of an investment where—
  - (a) a relevant amount has been paid to the authority;
  - (b) the authority apply the relevant amount to meet the expenditure; and
  - (c) the investment consists of a deposit made with, or any security or other instrument issued by, the institution or building society which has become liable to pay the relevant amount.

### **PART III**

#### **CHARGE OF EXPENDITURE TO REVENUE ACCOUNTS**

##### **Expenditure required to be charged to a revenue account**

- 11.** Expenditure in respect of which a local authority have made a determination under section 42(2)(g) (expenditure which the authority determine is, or is to be, reimbursed) shall not be expenditure falling within section 42(2) where—
- (a) the expenditure is, or is to be, met out of a contribution made, or to be made, under section 516(1) of the Housing Act 1985<sup>(5)</sup>; and
  - (b) the contribution is, or is to be, paid by way of commuted payments within the meaning given to that expression in section 157 (commutation of, and interest on, periodic payments of grants etc.).

##### **Expenditure not required to be charged to a revenue account**

- 12.—(1)** Expenditure to which regulation 10 applies shall be expenditure falling within section 42(2).
- (2) The following expenditure shall be expenditure falling within section 42(2), namely expenditure incurred by a local authority which—
- (a) is met by the application under regulation 155, 156 or 157 of an amount for the time being set aside by the authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities;
  - (b) consists of the transfer of such an amount to any of the bodies specified in regulation 158; or
  - (c) consists of the application of such an amount to meet any liability of the authority in respect of any levy payable under section 136 of the Leasehold Reform, Housing and Urban Development Act 1993<sup>(6)</sup> (levy on disposals of dwelling-houses).

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(5) 1985 c. 68. Section 516 was amended by section 132(5) of the Local Government and Housing Act 1989, and repealed by section 194(4) of, and Part II of Schedule 12 to, that Act, subject to the savings contained in paragraph 2 of the Schedule to the Local Government and Housing Act 1989 (Commencement No. 8 and Transitional Provisions) Order 1990 (S.I. 1990/1274 (c. 36)).

(6) 1993 c. 28.

## PART IV

### CREDIT ARRANGEMENTS

#### *Preliminary Provisions*

#### **Interpretation**

**13.—(1)** In this Part—

“the authority”—

- (a) in relation to a lease, means the local authority who become the lessees under the lease;
- (b) in relation to a contract, credit arrangement or transaction, means the local authority who enter into the contract, the arrangement or the transaction; and
- (c) in relation to the variation of a credit arrangement, means the local authority who agree to the variation;

“housing land” means any land, houses or other property which, if acquired by a local authority, would be land to which section 74(1) (duty to keep Housing Revenue Account) would apply;

“new town corporation” has the same meaning as in section 172 (transfer of new town housing stock);

“non-housing land” means any land other than housing land;

“relevant value”, in relation to the land of which a local authority are to become the lessees, means the value of the lessor’s interest in the land as estimated by the authority before they become the lessees—

- (a) on the assumption that they will become lessees under the lease, and
- (b) according to the statement of practice on the valuation of property contained in the Appraisal and Valuation Manual published in September 1995 by the Royal Institution of Chartered Surveyors under ISBN number 0 85406 699 3(7); and

“term”, in relation to a lease acquired by a local authority, means—

- (a) where the lease is granted to the authority, the period of the lease; and
- (b) where the lease is acquired by the authority otherwise than by a grant, the period of the lease which is unexpired on the date on which the authority become the lessees.

(2) For the purposes of this Part, any reference to a contract is a reference to a single contract or, where two or more contracts taken together constitute a credit arrangement, a reference to those contracts taken together.

#### **Capital cost of leases**

**14.—(1)** In this Part, subject to regulation 15, a reference to the capital cost of a lease is a reference to the amount which, at the time the authority become the lessees, the authority estimate will be the aggregate of—

- (a) the value of the consideration given, or failing to be given, by them in respect of the lease before or during the financial year in which they become the lessees; and
- (b) the value of the consideration falling to be given by them in respect of the lease in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (1)(b), the value of the consideration falling to be given in that year shall be determined by the formula—

$$\left\{ 1 + \frac{x}{100} \right\}^n$$

where—

“x” is the value of the consideration which the authority estimate will fall to be given by them in respect of the lease in that financial year;

“r” is the percentage rate of discount prescribed for the financial year in which the authority became the lessees by regulations made by the Secretary of State for the purposes of section 49 (initial and subsequent cost of credit arrangements); and

“n” is the financial year concerned expressed as a year subsequent to the financial year in which the authority became the lessees (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

(3) For the purposes of this regulation and the following provisions of this Part, in any case where the consideration in respect of a lease consists, in whole or in part of—

- (a) an undertaking to do or refrain from doing something at a future time (whether specified or not), or
- (b) a right to do or refrain from doing something at a future time,

that consideration shall not be regarded as having been given until the undertaking is performed or, as the case may be, the right is exercised.

### Consideration to be disregarded

15.—(1) In determining—

- (a) the capital cost of a lease for the purposes of regulation 35 or 36,
- (b) the adjusted cost of a lease, or
- (c) the consideration given in respect of an earlier leasehold interest in land for the purposes of regulation 35 or 49,

a local authority shall disregard any consideration given or falling to be given in respect of the lease or, as the case may be, the earlier leasehold interest (“the lease”) if it is consideration to which paragraph (2), (3) or (4) applies.

(2) This paragraph applies to any consideration given by the authority before they become the lessees under the lease.

(3) This paragraph applies to any consideration where—

- (a) the lease is excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act by virtue of regulation 122 or 123; and
- (b) the consideration falls to be given by the authority during the period of three months beginning on the date on which the authority become the lessees under the lease.

(4) This paragraph applies to any consideration in money paid out of a grant made under—

- (a) section 3 of the Civil Defence Act 1948(8);
- (b) sections 46, 47 and 48 of the Police Act 1996(9) (police grant and grants for capital expenditure and expenditure on safeguarding national security);

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(8) 1948 c. 5. Part of subsection (3) of section 3 of the Act was repealed by Part I of Schedule 10 to the Police Act 1964 (c. 48) and subsection (4) was repealed by Part XIII of Schedule I to the Statute Law (Repeals) Act 1986 (c. 12).

(9) 1996 c. 16.

- (c) section 20 of the Probation Service Act 1993(10);
- (d) section 63(6) of the Rent Act 1977(11) (schemes for appointment of rent officers); or
- (e) section 59 of the Justices of the Peace Act 1979(12).

### **Meaning of private finance transaction**

16.—(1) In this regulation, “relevant asset” means any non-housing land or any other asset (including works) which is not land.

- (2) For the purposes of this Part, a transaction is a private finance transaction if—
- (a) the consideration received by the authority under the transaction includes the provision—
    - (i) of a relevant asset for use for, or in connection with, the exercise of a function of the authority (“the relevant purpose”); and
    - (ii) of services in relation to the use of the asset for the relevant purpose;
  - (b) the authority do not give to any person any undertaking or guarantee in respect of any obligations or liabilities of the person with whom they enter into the transaction (whether incurred under the transaction or otherwise);
  - (c) the consideration given by the authority under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
  - (d) the fees are determined in accordance with provisions relating to—
    - (i) standards attained in the performance of the services; or
    - (ii) the extent, rate or intensity of use of the asset for the relevant purpose;
  - (e) the first instalment of fees falls to be paid after the authority have begun to use the asset for the relevant purpose; and
  - (f) the terms agreed for the transaction do not provide for any variation in the amount of fees payable, other than variation under the provisions mentioned in sub-paragraph (d), and any provision agreed for increasing the fees by reference to—
    - (i) increases in heating costs attributable to increases in the price of gas, electricity or fuel; or
    - (ii) the figure in Table 2.1 of Economic Trends(13) published by the Office for National Statistics as the most recent percentage change, quarter on corresponding quarter of previous year, of the implied gross domestic product deflator at market prices.

### *Transactions which are credit arrangements*

### **Private finance transactions**

17. A private finance transaction which, apart from this regulation, would not be a credit arrangement is prescribed for the purposes of section 48(1)(c).

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(10) 1993 c. 47.

(11) 1977 c. 42.

(12) 1979 c. 55. Subsection (6) of section 59 was amended by section 12(10) of the Local Government Act 1985 (c. 51) and further amended by section 189 of the Local Government and Housing Act 1989. Subsection (1) was amended by, and subsection (8) was substituted by, paragraph 19 of Schedule 8 to the Police and Magistrates' Courts Act 1994 (c. 29).

(13) Available from the Office for National Statistics or from The Stationery Office.

*Leases and contracts which are not credit arrangements*

**Leases and contracts of small value**

**18.**—(1) A lease or a contract is excluded from section 48 if the authority estimate, at the time they become the lessees or enter into the contract, that the total value of the consideration which will fall to be given by them in respect of—

- (a) the lease or the contract; or
- (b) the lease or the contract taken together with any other arrangement (whether a lease or a contract) which they have entered into with the same person, or an associate of his, in the same financial year,

will not exceed £12,000.

(2) For the purposes of paragraph (1)—

- (a) a local authority shall be deemed to have entered into another arrangement with the same person, or an associate of his, if they have acquired a lease under which that person or associate is the lessor; and
- (b) two persons are associates of each other if, for the purposes of the Companies Act 1985(14), one of them is a subsidiary of the other, or they are both subsidiaries of some other person.

**Leases under which the consideration given mostly in first year**

**19.** A lease is excluded from section 48 (credit arrangements) if, on the date on which the authority become the lessees, the authority estimate that the value of the consideration which will have been given by them in respect of the lease at the end of a period of one year commencing on that date, is not less than 90 per cent. of the capital cost of the lease.

**Operating leases**

**20.**—(1) In this regulation—

- (a) “operating lease” means a lease by a local authority of any vehicle, vessel, plant, machinery or apparatus; and
- (b) in relation to an operating lease—
  - (i) “arrangement” means any arrangement (whether or not a credit arrangement) which is entered into in connection with the lease;
  - (ii) “the asset” means the asset which is acquired by the authority under the lease; and
  - (iii) “the commencement date” means the date on which the authority become the lessees under the lease, or, if earlier, the date on which the arrangement is made.

(2) An operating lease and an arrangement, if it is a credit arrangement, are excluded from section 48 if the termination value of the asset is not less than 10 per cent. of its value on the commencement date, and the lease, or the lease and the arrangement, does not provide, or do not together provide, for—

- (a) the transfer of the property in the asset to the authority;
- (b) the renewal or continuation of the lease or the arrangement on terms which provide for a transfer of the property in the asset to the authority;

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(14) See section 736 of the Companies Act 1985 (c. 6) so far as that section is of continuing application, or that section as substituted by section 144(1) of the Companies Act 1989 (c. 40).

- (c) the renewal or continuation of the lease or the arrangement for any period for a consideration which is materially less than the amount that would reasonably be regarded, on the commencement date, as the open market rent for that period; or
  - (d) the receipt by the authority of any consideration which is equivalent, or determined by reference, to the value of the asset when the lease expires, the arrangement terminates or the period of any renewal or continuation of the lease or the arrangement terminates.
- (3) For the purposes of paragraph (2), the termination value of the asset is the amount which, on the commencement date, the authority estimate will be the value of the asset
- (a) when the lease expires, or the arrangement terminates; or
  - (b) where the authority have a right to renew or continue the lease or the arrangement, on the latest date on which the lease or arrangement could expire or terminate if the authority exercised that right.

### **Contracts with residuary bodies**

**21.**—(1) In this regulation, “residuary body” means—

- (a) the Local Government Residuary Body (England)(**15**); or
- (b) the Residuary Body for Wales or Corff Gweddilliol Cymru(**16**).

(2) A contract between a local authority and a residuary body is excluded from section 48 if it provides for a transfer of land to the authority.

### **Licensing contracts**

**22.**—(1) In this regulation—

“dwelling” means any building or part of a building which is occupied as a dwelling, or is a hostel providing accommodation for persons who, for the purposes of Part VII of the Housing Act 1996 (homelessness)(**17**), are homeless, or persons who have a special need for accommodation arising from physical or mental disability, age, infirmity or other special social disability or disadvantage;

“long lease” means a lease which is a long tenancy for the purposes of Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants)(**18**);

“shared ownership lease” means a lease of a dwelling granted on payment of a premium which is calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and is not less than 25 per cent. of that value or cost; and

“public body” means a local authority, a new town corporation or an urban development corporation established under Part XVI of the Local Government, Planning and Land Act 1980 (urban development)(**19**).

(2) A contract to which paragraph (3) applies is excluded from section 48.

(3) This paragraph applies to a contract which provides—

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(15) The Local Government Residuary Body (England) was established by article 3 of the Local Government Residuary Body (England) Order 1995 (S.I. 1995/401).

(16) The Residuary Body for Wales or Corff Gweddilliol Cymru was established by section 39 of the Local Government (Wales) Act 1994 (c. 19) on 1st February 1995 pursuant to the Residuary Body for Wales (Appointed Day) Order 1995 (S.I. 1995/103 (C. 5)).

(17) 1996 c. 52. See section 175 of that Act.

(18) 1985 c. 68. See section 115 of that Act.

(19) 1980 c. 65.

- (a) for the construction or enhancement of a dwelling, or the provision of a dwelling by the conversion of a building or part of a building, for the authority on land in which the authority have a freehold or leasehold interest; and
- (b) that the authority are required, after the carrying out of the works, to grant a shared ownership lease of the dwelling or to dispose of the freehold or grant a long lease of the dwelling to any person other than a public body or a company which is a regulated company within the meaning given to that expression in article 1(4) of the Local Authorities (Companies) Order 1995(20).

### **Investments made for the purposes of a superannuation fund**

**23.** A lease or a contract is excluded from section 48 if the authority become lessees under the lease or enter into the contract as an investment for the purposes of a superannuation fund which the authority are required to keep by virtue of the Superannuation Act 1972(21).

### **Other leases excluded from section 48**

- 24.**—(1) A lease of any property is excluded from section 48 if it is—
- (a) assigned to the authority by a new town corporation; or
  - (b) granted to the authority in accordance with regulations made under section 100 of the Housing Act 1988 (tenants continuing as tenants of public sector landlord)(22).
- (2) A lease of any property is excluded from section 48 if a local authority become the lessees by virtue of—
- (a) the Local Government Changes for England (Property Transfer and Transitional Payments) Regulations 1995(23);
  - (b) article 9 of the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994(24);
  - (c) a combination scheme under the Fire Services Act 1947(25);
  - (d) the Local Government Reorganisation (Wales) (Property etc.) Order 1996(26); or
  - (e) article 15 of the National Park Authorities (England) Order 1996(27), or an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)(28) or an award under subsection (3) of that section.

### **Other contracts excluded from section 48**

- 25.**—(1) A contract to which paragraph (2) applies is excluded from section 48.
- (2) This paragraph applies to a contract which would not constitute a credit arrangement if the authority, in making the relevant estimates, disregarded an amount of consideration equal to three per cent. of the total value of the consideration falling to be given by them under the contract.

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(20) S.I. 1995/849; amended by S.I. 1996/621.

(21) 1972 c. 11.

(22) 1988 c. 50. Section 100 was repealed by section 222 of, and paragraph 1 of Part I of Schedule 18 to, the Housing Act 1996 (c. 52) subject to the savings contained in paragraph 12 of the Schedule to the Housing Act 1996 (Commencement No. 3 and Transitional Provisions) Order 1996 (S.I. 1996/2402 (C. 62)).

(23) S.I. 1995/402.

(24) S.I. 1994/3262 (C. 83). There are amendments which are not relevant to this regulation.

(25) 1947 c. 41.

(26) S.I. 1996/532.

(27) S.I. 1996/1243. There are amendments which are not relevant to this regulation.

(28) 1995 c. 25.

(3) In paragraph (2), “relevant estimates” means the estimates which the authority make under section 48(1)(b) for the financial years during which they are to receive any consideration under the contract and the financial year immediately following the last such year.

#### *Initial and subsequent cost of leases*

#### **Exclusion of leases from section 49(2)**

**26.**—(1) Any credit arrangement which is a lease shall be excluded from section 49(2) (initial and subsequent cost of credit arrangements).

(2) In relation to a credit arrangement which is a lease, the initial cost and the cost of the arrangement at any time shall be calculated in accordance with regulations 27 to 39.

#### *Leases of which the initial cost is nil*

#### **Cost of lease at any time**

**27.** Subject to regulation 46, where, by virtue of this Part, the initial cost of a lease is nil, the cost of that lease at any time shall also be nil.

#### **Leases under certain private finance transactions**

**28.** The initial cost of a lease of land shall be nil where the authority become the lessees under the provisions of a private finance transaction, and the initial cost of that transaction falls to be determined under regulation 40.

#### **Lease of land for term not exceeding three years**

**29.** The initial cost of a lease (“the new lease”) of land shall be nil where—

- (a) the term of the new lease does not exceed three years;
- (b) the authority have not, at any time within the period of five years ending on the date on which they become the lessees, had a freehold interest in any part of the land, or an earlier leasehold interest in any part of the land for a term which, added to the term of the new lease, produces a combined term of more than three years; and
- (c) no other local authority have, within the same period, had a leasehold interest in any part of the land for a term which, added to the term of the new lease, produces a combined term of more than three years.

#### **Lease of dwelling-house for use as accommodation for homeless persons**

**30.**—(1) In this regulation, “dwelling-house” has the same meaning as in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants)(**29**).

(2) The initial cost of a lease of a dwelling-house shall be nil where the term of the lease does not exceed ten years and the authority have decided, before they become the lessees under the lease, to use, or continue to use, the dwelling-house to provide accommodation in the exercise of their functions under Part VII of the Housing Act 1996 (homelessness)(**30**).

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(29) 1985 c. 68. See section 112 of the Act.

(30) 1996 c. 52.

### **Lease of land for non-housing purposes**

**31.**—(1) In this regulation—

“the demised land”, in relation to a new lease, means the land demised by the new lease; and  
“new lease” means a lease of non-housing land—

- (a) which is for a term not exceeding ten years;
- (b) which does not confer on the lessee an option to purchase the lessor’s interest in the demised land; and
- (c) of which the capital cost does not exceed 70 per cent. of the relevant value of the demised land.

(2) The initial cost of a new lease shall be nil where—

- (a) the authority have not at any time had a freehold or any leasehold interest in the whole or any part of the demised land; and
- (b) no other local authority have had a leasehold interest in the demised land under a lease of which the initial cost was nil.

(3) The initial cost of a new lease shall be nil where—

- (a) the authority had a leasehold interest in the demised land under an earlier lease acquired before 1st April 1989; and
- (b) the new lease is a lease of the same land granted to the authority upon the expiry date of the earlier lease.

(4) The initial cost of a new lease shall be nil where the authority have disposed of the freehold or a leasehold interest in any land, and—

- (a) the new lease is a lease of the whole or any part of a new building constructed on that land after the date of that disposal; or
- (b) the new lease is a lease of part of a building on that land which was occupied before the disposal for the purposes of, or in connection with, the exercise of any of the authority’s functions, and the capital cost of the new lease is less than 50 per cent. of the amount which would be the capital cost of a lease on identical terms of the whole building.

### **Consecutive leases of land for total term not exceeding ten years**

**32.** The initial cost of a lease (“the new lease”) of land shall be nil where—

- (a) the authority had an earlier leasehold interest (“the preceding interest”) in the land, and become the lessees upon the expiry of the preceding interest;
- (b) the preceding interest was a lease of which the initial cost was nil by virtue of regulation 29 or regulation 7(3) of the 1990 Regulations<sup>(31)</sup>;
- (c) the new lease is for a term which, added to the term of the preceding interest, produces a combined term of not more than ten years; and
- (d) but for the preceding interest, the initial cost of the new lease would be nil by virtue of regulation 31.

### **Fire authority leases**

**33.**—(1) In this regulation—

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(31) See the 1990 Regulations as amended by [S.I. 1995/850](#).

- (a) “new fire authority” means a fire authority constituted by a combination scheme under the Fire Services Act 1947<sup>(32)</sup> made in consequence of an order under Part II of the Local Government Act 1992 (local government changes for England)<sup>(33)</sup> containing provision for giving effect to a structural change (within the meaning given to that expression in section 14 of that Act), or in consequence of the provisions of the Local Government (Wales) Act 1994<sup>(34)</sup>; and
- (b) in relation to a new fire authority—
  - (i) “old fire authority” means a county council which is superseded as a fire authority by the new fire authority; and
  - (ii) “relevant date” means the date on which the combination scheme which constitutes the new fire authority is brought into full operation.
- (2) The initial cost of a lease (“the new lease”) of land shall be nil where—
  - (a) the authority are a new fire authority;
  - (b) the old fire authority occupied the land on the day before the relevant date, and the authority become the lessees within a period of 12 months beginning on the relevant date;
  - (c) immediately before the date on which the authority become the lessees, another local authority have a freehold or leasehold interest in the land;
  - (d) the term of the new lease does not exceed ten years;
  - (e) the new lease does not confer on the lessee an option to purchase the lessor’s interest in the land; and
  - (f) where the term of the new lease exceeds three years, the capital cost of the new lease does not exceed 70 per cent. of the relevant value.
- (3) The initial cost of a lease (“the new lease”) of land shall be nil where—
  - (a) the authority are the old fire authority in relation to a new fire authority, and become the lessees of the new fire authority within a period of 12 months beginning on the relevant date;
  - (b) immediately before the relevant date, the authority had a freehold or earlier leasehold interest in the land which has been transferred to the new fire authority under the provisions of the combination scheme which constituted the new fire authority;
  - (c) the term of the new lease does not exceed ten years;
  - (d) the new lease does not confer on the lessee an option to purchase the lessor’s interest in the land; and
  - (e) where the term of the new lease exceeds three years, the capital cost of the new lease does not exceed 70 per cent. of the relevant value.

### **National Park authority leases**

**34.**—(1) In this regulation—

“National Park authority” has the same meaning as in article 2 of the National Park Authorities (England) Order 1996<sup>(35)</sup>;

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<sup>(32)</sup> 1947 c. 41.

<sup>(33)</sup> 1992 c. 19.

<sup>(34)</sup> 1994 c. 19.

<sup>(35)</sup> S.I. 1996/1243. There are amendments which are not relevant to these Regulations.

“relevant agreement or award” means an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)(36) or an award under subsection (3) of that section; and

“relevant council”, in relation to a National Park authority, means the council which, pursuant to paragraph 8 of Schedule 17 to the Local Government Act 1972, appointed the National Park Committee for the Park for which the authority is established.

- (2) The initial cost of a lease of land shall be nil where—
- (a) the authority are a National Park authority;
  - (b) the relevant council occupied the land on 31st March 1997, and the authority become the lessees within a period of 12 months beginning on 1st April 1997 other than by virtue of a relevant agreement or award;
  - (c) immediately before the date on which the authority become the lessees, another local authority have a freehold or leasehold interest in the land;
  - (d) the term of the lease does not exceed ten years;
  - (e) the lease does not confer on the lessee an option to purchase the lessor’s interest in the land; and
  - (f) where the term of the lease exceeds three years, the capital cost of the new lease does not exceed 70 per cent of the relevant value.
- (3) The initial cost of a lease (“the new lease”) of land shall be nil where—
- (a) the authority are the relevant council in relation to a National Park authority, and become the lessees of the National Park authority within a period of 12 months beginning on 1st April 1997;
  - (b) on 31st March 1997 the authority had a freehold or earlier leasehold interest in the land which has vested in the National Park authority by virtue of article 15 of the National Park Authorities (England) Order 1996 or a relevant agreement or award;
  - (c) the term of the new lease does not exceed ten years;
  - (d) the new lease does not confer on the lessee an option to purchase the lessor’s interest in the land; and
  - (e) where the term of the new lease exceeds three years, the capital cost of the new lease does not exceed 70 per cent. of the relevant value.

#### *Other leases*

#### **Leases having an initial cost which includes consideration under earlier lease**

**35.—**(1) In this regulation—

“dwelling-house” has the same meaning as in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants);

“excluded tenancy” means a tenancy or licence to occupy a dwelling-house which, for the purposes of Part IV of the Housing Act 1985, was excluded from being a secure tenancy by virtue of paragraph 4 (accommodation for homeless persons)(37) or paragraph 6 (short-term arrangements) of Schedule 1 to that Act; and

“relevant lease” means any lease of land other than a lease of a dwelling-house which—

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(36) 1995 c. 25.

(37) Paragraph 4 was substituted as from 20th January 1997 by paragraph 3 of Schedule 17 to the Housing Act 1996 (c. 52).

- (i) was, at any time after 31st March 1990 and before 1st April 1997, let or occupied under an excluded tenancy; or
  - (ii) has, at any time after 31st March 1997, been used by the authority or any other local authority to provide accommodation in the exercise of their functions under Part VII of the Housing Act 1996 (homelessness).
- (2) Subject to regulations 37 and 38, where in relation to a relevant lease of land—
- (a) the initial cost does not fall to be determined under any of regulations 28 to 34,
  - (b) the authority had an earlier leasehold interest (“the preceding interest”) in the whole or part of the land, and
  - (c) the authority acquired the preceding interest on or after 1st April 1990 under a lease of which the initial cost was nil by virtue of these Regulations or the 1990 Regulations(38),
- the initial cost shall be the aggregate of the capital cost of the relevant lease and the value of the consideration given by the authority in respect of the preceding interest.

### **Leases of other descriptions**

**36.**—(1) Subject to regulations 37 and 38, where the initial cost of a lease of land does not fall to be determined under any of regulations 28 to 35, the initial cost of the lease shall be the capital cost of the lease.

- (2) The initial cost of a lease of goods shall be the capital cost of the lease.

### **Leases under private finance transactions—leases not falling with regulation 28**

**37.**—(1) Where, in relation to a lease of land, the authority become the lessees under the provisions of a private finance transaction, and the initial cost of that transaction falls to be determined under regulation 41, the initial cost (if it is not nil by virtue of any other provision of this Part) shall be lesser of—

- (a) 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the lease; and
- (b) the amount which, apart from this regulation, would be the initial cost of the lease minus the relevant deduction.

(2) For the purposes of paragraph (1)(b), the relevant deduction is the amount, if any, by which amount A exceeds amount B where—

“amount A” means the amount of the relevant deduction determined under regulation 41(5) for the private finance transaction in question; and

“amount B” means the amount which, apart from regulation 41, would be the initial cost of that transaction.

(3) Where, in relation to a lease of land, the authority become the lessees under the provisions of a private finance transaction, and the initial cost of that transaction falls to be determined under regulation 42, the initial cost (if it is not nil by virtue of any other provision of this Part) shall be 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the lease.

### **Reduction in the initial cost of certain leases**

**38.**—(1) For the purposes of this regulation—

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(38) See regulation 7 of the 1990 Regulations.

- (a) a lease is a relevant lease if it is a lease of land and its initial cost falls to be determined under regulation 35, 36 or 37;
  - (b) “old lease” means a lease of which the initial cost fell to be determined under regulation 35, 36 or 37 or paragraph (6) or (7) of regulation 7, or regulation 7A, of the 1990 Regulations<sup>(39)</sup>; and
  - (c) “relevant time”, in relation to an old lease, means the time when the authority’s interest in the lease ceases other than by reason of the expiry of the term of the lease.
- (2) A local authority who become the lessees under a relevant lease may reduce the amount which, apart from this regulation, would be the initial cost of that lease by an amount not exceeding the balance of the released credit cover in relation to an old lease.
- (3) In paragraph (2), the balance of the released credit cover in relation to an old lease is an amount determined by the authority by—
- (a) estimating, at the relevant time and on the assumptions specified in paragraph (4), the initial cost of a new lease of the land demised by the old lease; and
  - (b) subtracting from that estimate any amount which the authority have already applied out of that estimate in reduction under paragraph (2) of the initial cost of a lease other than the relevant lease concerned.
- (4) The assumptions specified for the purposes of paragraph (3) are—
- (a) that the term of the new lease was equal to the term of the old lease less the expired portion of that term;
  - (b) that the initial cost of the new lease would fall to be determined under regulation 36;
  - (c) that apart from the term of the new lease, the new lease was identical to the old lease; and
  - (d) that the initial cost of the new lease fell to be calculated at the time when the initial cost of the old lease was calculated.

### **Cost at any time of certain leases**

**39.** Where a local authority become the lessees under a lease of which the initial cost falls to be determined under regulation 35, 36 or 37, the cost of the lease at any time shall be the amount which would be the capital cost of the lease, if it was entered into at the time in question, on the basis of an estimate made at that time and disregarding any consideration given by the authority in respect of the lease before that time.

### *Private finance transactions*

#### **Transactions for the provision of a capital asset and services**

- 40.**—(1) In this regulation, in relation to a private finance transaction—
- “asset” means the asset provided under the transaction; and
  - “relevant purpose” means the purpose for which the asset is provided under the transaction.
- (2) A credit arrangement which is a private finance transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the arrangement shall be nil, if—
- (a) the services provided in relation to the asset consist of, or include, maintaining and repairing the asset and doing everything necessary to ensure that the asset can be used for the relevant purpose in safety and comfort and in accordance with any requirements specified by the authority; and

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(39) Regulation 7A was inserted by [S.I. 1996/568](#) and revoked by [S.I. 1996/2539](#).

- (b) the authority determine, immediately before the date on which they enter into the transaction, that their estimate of amount B does not exceed 80 per cent. of their estimate of amount A.
- (3) For the purposes of paragraph (2), in relation to a private finance transaction—
  - “amount A” means the amount which, apart from this regulation, would be the initial cost of the transaction; and
  - “amount B” is the amount which would be amount A if for each relevant financial year (within the meaning given to that expression in section 48(2)) the authority assumed—
    - (a) that the amount of fees falling to be paid under the transaction would be the minimum which could become payable in that year (without there being a breach of any term of the transaction); and
    - (b) that the minimum extent, rate or intensity of use of the asset for the relevant purpose would be 80 per cent. of the extent, rate or intensity of use estimated by them for that year for the purpose of estimating amount A.

### **Transactions for the replacement or enhancement of a building and provision of heating services**

**41.**—(1) In this regulation, in relation to a private finance transaction to which paragraph (3) applies (a “relevant transaction”)—

“corresponding purpose”, in relation to any qualifying purpose, means the same qualifying purpose, or a different purpose within the same category as that which includes the same qualifying purpose;

“old building” means the relevant building in respect of which the authority make a decision such as is mentioned in paragraph (3)(b); and “new building” means the building which, in consequence of such a decision, the authority use for a corresponding purpose;

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories 1 to 6 and 8 and 9 of Schedule 1 to these Regulations, and “category” means one of those categories; and

“relevant building” means a building—

- (a) which is situated on non-housing land;
- (b) which is in use by the authority for a qualifying purpose; and
- (c) in which the authority have a freehold interest or a leasehold interest under a lease granted for a term of not less than 99 years.

(2) A credit arrangement which is a relevant transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the transaction shall be calculated in accordance with paragraphs (4) to (7).

(3) This paragraph applies to a private finance transaction where—

- (a) the initial cost of the transaction does not fall to be determined under regulation 40;
- (b) at any time during the period of five years ending on the date on which they enter into the transaction, the authority made a single decision either—
  - (i) to cease to use a relevant building and to use a different building for a corresponding purpose; or
  - (ii) to carry out works for the enhancement of a relevant building and to continue to use the same building, after the completion of the works, for a corresponding purpose;
- (c) the asset provided for the authority’s use under the transaction consists of, or includes, the new building or, as the case may be, the works of enhancement of the relevant building; and

- (d) the services provided in relation to the asset consist of, or include, maintaining and repairing the system for heating the new building and providing for the supply of the gas, electricity and fuel required for such heating.
- (4) Subject to paragraph (7), the initial cost of a relevant transaction shall be the lesser of—
- 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the transaction; and
  - the amount which, apart from this regulation, would be the initial cost of the transaction minus the relevant deduction.
- (5) For the purposes of paragraph (4)(b), the relevant deduction is the amount which would be the initial cost of the transaction assuming that—
- the initial cost fell to be determined in accordance with section 49(1) and (2);
  - no consideration was required to be given in the financial year in which the transaction was entered into; and
  - for each subsequent financial year of the transaction, for the purposes of the formula in section 49(2), “x” was an amount equal to the product of the formula—

$$E \left( 1 + \frac{i}{100} \right)^n$$

where—

“E” means the average annual expenditure which the authority incurred, during the period of 5 years ending on the date on which they enter into the transaction (or, if earlier, the date on which they cease to use the old building) in providing for the old building the same services as those to be provided under the transaction;

“i” means the figure in Table 2.1 of Economic Trends published by the Office for National Statistics as the most recent percentage change, quarter on corresponding quarter of previous year, of the implied gross domestic product deflator at market prices; and

“n” has the same meaning as in section 49(2).

- (6) Subject to paragraph (7), the cost at any time of a relevant transaction shall be the lesser of—
- 70 per cent. of the amount which, apart from this regulation, would be the cost of the transaction at that time; and
  - the amount which, apart from this regulation, would be the cost of the transaction at that time minus an amount equal to the product of the formula—

$$\frac{D \times Y}{T}$$

where—

“D” means the relevant deduction determined in relation to the transaction in accordance with paragraph (5);

“T” means the number of years comprising the period over which consideration falls to be given by the authority under the transaction; and

“Y” means the number of years which, at the time in question, comprises the unexpired part of that period.

- (7) For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority shall disregard any consideration not in money which has been, or falls to be, given by them in respect of the transaction.

## **Transactions for the provision of a building and heating services**

**42.—**(1) In this regulation—

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories 1 to 6 and 8 and 9 of Schedule 1 to these Regulations, and “category” means one of those categories; and

“relevant transaction” means a private finance transaction to which paragraph (3) applies.

(2) A credit arrangement which is a relevant transaction shall be excluded from section 49(2), and the initial cost and the cost at any time of the transaction shall be calculated in accordance with paragraphs (4) to (6).

(3) This paragraph applies to a private finance transaction where—

- (a) the initial cost of the transaction does not fall to be determined under regulation 40 or 41;
- (b) the asset provided under the transaction consists of, or includes, a building which is on non-housing land and is for use for a qualifying purpose; and
- (c) the services provided in relation to the asset consist of, or include, maintaining and repairing the system for heating the building and providing for the supply of the gas, electricity and fuel required for such heating.

(4) Subject to paragraph (6), the initial cost of a relevant transaction shall be 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the arrangement.

(5) Subject to paragraph (6), the cost at any time of a relevant transaction shall be 70 per cent. of the amount which, apart from this regulation, would be the cost of the transaction at that time.

(6) For the purpose of calculating the initial cost or cost at any time of a relevant transaction, the authority shall disregard any consideration not in money which has been, or falls to be, given by them in respect of the transaction.

### *Initial and subsequent cost of other credit arrangements*

## **Arrangement for improving the heating or lighting of a building**

**43.—**(1) An arrangement to which paragraph (2) applies shall be excluded from section 49(2), and the initial cost and the cost at any time of such an arrangement shall be calculated in accordance with regulation 45.

(2) This paragraph applies to a credit arrangement where—

- (a) the arrangement is for the carrying out of works consisting of the improvement of the system for heating or lighting a building in which the authority have a freehold or leasehold interest, or the installation of a new system for such heating or lighting; and
- (b) the person with whom the arrangement is made is required under the arrangement, or under a separate contract entered into no later than the date of the arrangement, to maintain and repair the system for heating, or, as the case may be, lighting the building concerned.

## **Arrangement for improving street lighting**

**44.—**(1) An arrangement to which paragraph (2) applies shall be excluded from section 49(2), and the initial cost and the cost at any time of such an arrangement shall be calculated in accordance with regulation 45.

(2) This paragraph applies to a credit arrangement where—

- (a) the arrangement is for the carrying out of works which are intended to improve the system of lamps, lamp posts and other materials and apparatus which supplies the means of

- lighting streets, markets and public buildings in the area of the authority (“the lighting system”);
- (b) the works consist of the installation of new lamps, lamp posts and other materials and apparatus;
- (c) the person with whom the arrangement is made is required under the arrangement, or under a separate contract entered into no later than the date of the arrangement, to maintain and repair the lighting system in whole or in part; and
- (d) the lighting system—
- (i) was provided by the authority in the exercise of powers under section 161 of the Public Health Act 1875<sup>(40)</sup> or section 97 of the Highways Act 1980 (lighting of highways)<sup>(41)</sup>; or
  - (ii) has vested in the authority by virtue of section 270 of the Highways Act 1980 (transfer of lighting systems).

#### **Initial cost and cost at any time of arrangements for heating or lighting improvements**

**45.**—(1) In this regulation, “relevant arrangement” means a credit arrangement to which regulation 43(2) or 44(2) applies.

(2) The initial cost of a relevant arrangement shall be the amount which, apart from this regulation, would be the initial cost of the arrangement minus the amount which would be the initial cost assuming that—

- (a) no consideration was required to be given in respect of the arrangement in the financial year in which the arrangement comes into being; and
- (b) for each subsequent financial year of the arrangement, for the purposes of the formula in section 49(2), “x” was an amount equal to the product of the formula—

$$A \left( 1 + \frac{i}{100} \right)^n$$

where—

“A” means the average annual expenditure incurred by the authority during the period of five years ending on the date on which they enter into the arrangement, on operating, maintaining and repairing the heating system or lighting system which is improved or replaced by the works carried out under the arrangement;

“i” means the figure in Table 2.1 of Economic Trends published by the Office for National Statistics as the most recent percentage change, quarter on corresponding quarter of previous year, of the implied gross domestic product deflator at market prices; and

“n” has the same meaning as in section 49(2).

(3) The cost at any time of a relevant arrangement shall be the amount which, apart from this regulation, would be the cost of the arrangement at that time minus an amount equal to the product of the formula—

$$\frac{I \times T}{P}$$

where—

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<sup>(40)</sup> 1875 c. 55.

<sup>(41)</sup> 1980 c. 66.

“I” means the amount which would be the initial cost of the arrangement calculated on the assumptions mentioned in paragraph (2);

“P” means the number of years comprising the period over which the consideration on the part of the authority under the arrangement falls to be given; and

“U” means the number of years which, at the time in question, comprises the unexpired part of that period.

### *Variation of credit arrangements*

#### **Variation of arrangements excluded from section 49(2)**

46. Where a credit arrangement which is excluded from section 49(2) is varied as mentioned in section 51(1) (variation of credit arrangements), the adjusted cost and the cost of the arrangement at any time after the variation shall be determined in accordance with regulations 47 to 51.

#### **The adjusted cost of arrangements—general provision**

47.—(1) Subject to regulation 15, the adjusted cost of a credit arrangement which is excluded from section 49(2), other than a credit arrangement falling within regulation 48, 49 or 50, shall be the amount which, at the time the arrangement is varied, the authority estimate will be the aggregate of—

- (a) the value of the consideration given by them in respect of the arrangement before or during the financial year in which the arrangement is varied; and
- (b) the value of the consideration falling to be given by them in respect of the arrangement, as varied, in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (1)(b), the value of the consideration falling to be given in that year shall be the amount determined by the formula in regulation 14(2), but, for this purpose—

“x” is the value of the consideration which the authority estimate will fall to be given by them in that financial year in respect of the arrangement as varied;

“r” is the percentage rate of discount prescribed for the financial year in which the arrangement is varied by regulations made by the Secretary of State for the purposes of section 49; and

“n” is the financial year concerned expressed as a year subsequent to the financial year in which the arrangement is varied (so that the first of the subsequent financial years is 1, the next is 2, and so on).

#### **Leases having an adjusted cost of nil**

48. Where—

- (a) a credit arrangement which is a lease of land (“the arrangement”) is varied by the grant to the authority of a new lease of the same land for a term which extends beyond the expiry date of the arrangement, and
- (b) if the new lease were granted upon the expiry of the arrangement, the initial cost of the new lease would fall to be determined under regulation 29, 30 or 32,

the adjusted cost of the arrangement shall be nil.

#### **Variation of lease where initial cost included consideration under earlier lease**

49.—(1) In this regulation—

“preceding interest”, in relation to a relevant lease, means the earlier leasehold interest mentioned in regulation 35(2) or, as the case may be, paragraph (6)(b) of regulation 7 of the 1990 Regulations; and

“relevant lease” means a lease of which the initial cost was determined under regulation 35 or paragraph (6) of regulation 7 of the 1990 Regulations<sup>(42)</sup>.

(2) Where a local authority agree to a variation of a credit arrangement which is a relevant lease, the adjusted cost of the lease shall be the aggregate of—

- (a) the amount which, apart from this regulation, would be the adjusted cost by virtue of regulation 47; and
- (b) the value of the consideration given by the authority in respect of the preceding interest.

### **Continuation of tenancy under Part II of the Landlord and Tenant Act 1954**

**50.**—(1) In this regulation—

“the 1954 Act” means the Landlord and Tenant Act 1954<sup>(43)</sup>; and

“relevant lease” means a lease which creates a tenancy to which Part II of the 1954 Act (security for business and professional tenants) applies.

(2) Where a credit arrangement which is a relevant lease is varied by the continuation of the tenancy by virtue of section 24 of the 1954 Act (continuation of tenancies to which Part II applies and grant of new tenancies), the adjusted cost of the lease shall be an amount determined for the lease under regulation 47, or, where the initial cost of the lease was determined under regulation 35 or paragraph (6) of regulation 7 of the 1990 Regulations, under regulation 49.

### **Cost of arrangements at any time after variation**

**51.** Where a local authority agree to a variation of a credit arrangement which is excluded from section 49(2), the cost of the arrangement at any time after the variation shall be the amount which would, in accordance with regulation 47, be the adjusted cost of the arrangement if the variation was made at the time in question, on the basis of an estimate made at that time and disregarding any consideration given by the authority in respect of the arrangement before that time.

## **PART V**

### **CREDIT APPROVALS**

#### **Interpretation**

**52.** In this Part, “the 1996 Act” means the Housing Grants, Construction and Regeneration Act 1996<sup>(44)</sup>.

#### **Specified capital grants—all local authorities**

**53.** Contributions paid to a local authority under section 569(1) of the Housing Act 1985 (contributions towards expense of assisting owners of defective housing)<sup>(45)</sup> are specified for the

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<sup>(42)</sup> S.I. 1990/432; paragraph (6) of regulation 7 was amended by S.I. 1992/3257, S.I. 1995/850, S.I. 1996/568 and S.I. 1996/2539.

<sup>(43)</sup> 1954 c. 56.

<sup>(44)</sup> 1996 c. 53.

<sup>(45)</sup> Section 569 was amended by section 157(8) of the Local Government and Housing Act 1989 and section 138 of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

purposes of section 57, except to the extent that they are paid in annual sums payable for a period of ten years or more.

#### **Specified capital grants—local authorities in England**

**54.**—(1) In this regulation, “relevant grant” means—

- (a) a disabled facilities grant within the meaning given to that expression in section 101(2)(c) (grants for improvements and repairs)<sup>(46)</sup>; or
- (b) a grant available under section 1 of the 1996 Act (grants for improvements and repairs) towards the cost of works required for the provision of facilities for disabled persons in dwellings and in the common parts of buildings containing one or more flats.

(2) Contributions paid to a local authority in England are specified for the purposes of section 57 (effect of certain capital grants on credit approvals) if they are paid under section 132(1) or under section 92(1) of the 1996 Act towards expenditure incurred by the authority on making relevant grants.

#### **Specified capital grants—local authorities in Wales**

**55.** Contributions and subsidies paid to a local authority in Wales are specified for the purposes of section 57 if they are paid under—

- (a) section 429(1) of the Housing Act 1985 (contributions to improvement for sale schemes);
- (b) section 96(1) (contributions towards expenditure under Part VII of the Act (renewal areas));
- (c) section 132(1);
- (d) section 165(4) (slum clearance subsidy);
- (e) section 92(1) of the 1996 Act; or
- (f) section 139(1) of the 1996 Act (contributions towards expenditure on relocation grants).

## **PART VI**

### **CAPITAL RECEIPTS**

#### *Sums to be capital receipts*

#### **Transfer of property under the London Government Act 1963**

**56.** Where a sum in respect of principal is payable to a local authority by virtue of an order made under section 23(3) or 84 of the London Government Act 1963 (transfer of land held for housing purposes)<sup>(47)</sup> in relation to any matter which has been transferred under the order from the authority to another body, the sum received by the authority shall be a capital receipt.

#### **Transfer of property under the Local Government Act 1972**

**57.** Where a sum in respect of principal is payable to a local authority by virtue of—

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<sup>(46)</sup> Part VIII of the Act, including sections 101 and 132, was repealed by section 147 of, and Part I of Schedule 3 to, the 1996 Act with savings in respect of applications for grant of the descriptions mentioned in section 101 made before the commencement of Part I of the 1996 Act (see section 102(2) of that Act).

<sup>(47)</sup> 1963 c. 33. Paragraph (a) and part of paragraph (b) of section 23(3) were repealed with savings by section 102(2) of, and Schedule 17 to, the Local Government Act 1985 (c. 51).

- (a) an order under section 51(2), 58(2) or 67(4) of the Local Government Act 1972 (“the 1972 Act”)(48), regulations under section 67(1) or (2) of the 1972 Act, or an agreement under section 68 of the 1972 Act in relation to any matter which has been transferred under the order, the regulations or, as the case may be, the agreement from the authority to another body; or
- (b) an order under section 254(1) or (2)(a) or (d) of the 1972 Act, or under those provisions as extended by section 34(1) of, and paragraph 5(2)(b) of Schedule 6 to, the Water Act 1973(49), in relation to any matter which has been transferred under the 1972 Act or the order from the authority to another body,

the sum received by the authority shall be a capital receipt.

### **Repayment of money deemed to have been borrowed**

**58.** A sum received by a local authority in respect of a repayment of principal in relation to money which, by virtue of an order made under section 66(1) or 67(3) of the Local Government Act 1985 (discharge of residuary functions)(50), is deemed to have been borrowed from them by another local authority shall be a capital receipt.

### **Payment made to redeem landlord’s share**

**59.** A sum received by a local authority in respect of an interim or final payment made in accordance with Schedule 6A to the Housing Act 1985 (redemption of landlord’s share)(51), if it is not a capital receipt by virtue of section 58(1)(a) (capital receipts), shall be a capital receipt.

### **Disposal of premises transferred to grant-maintained school**

**60.**—(1) In this regulation, “grant-maintained school” has the same meaning as in section 183 of the Education Act 1996(52).

(2) Where the governing body incorporated for the purpose of conducting a grant-maintained school are required by the Secretary of State under section 298(2)(b) of the Education Act 1996 to pay a sum to a local authority, the sum received by the authority shall be a capital receipt.

### *Sums not to be capital receipts*

### **Capital receipts not exceeding £6,000**

**61.** A sum received by a local authority which, apart from this regulation, would be a capital receipt by virtue of section 58(1)(a) shall not be a capital receipt if the aggregate of all sums received or to be received by the authority in respect of the disposal for which the sum is paid does not exceed £6,000.

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(48) 1972 c. 70. Section 51 was repealed, with a saving for orders, by section 29(2) and (3) of, and Part II of Schedule 4 to, the Local Government Act 1992 (c. 19).

(49) 1973 c. 37. The repeal of section 34(1) and paragraph 5(2)(b) of Schedule 6 by section 190(3) of, and Part II of Schedule 27 to, the Water Act 1989 (c. 15) is subject to savings in article 5(1) of the Water Act 1989 (Commencement No. 2 and Transitional Provisions) Order 1989 (S.I. 1989/1557 (C. 52)).

(50) 1985 c. 51.

(51) 1985 c. 68. Schedule 6A was inserted by Schedule 16 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28).

(52) 1996 c. 56.

### **Disposal of investments**

**62.** A sum received by a local authority in respect of the disposal of an investment which, at the time of disposal, is not an approved investment shall not be a capital receipt if—

- (a) by virtue of regulation 12(1), the expenditure incurred by the authority on making the investment was expenditure falling within section 42(2) (expenditure excluded from requirement to charge expenditure to revenue account); or
- (b) the investment was an approved investment under regulation 2(b) or (c) of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990<sup>(53)</sup> (“the 1990 Regulations”), and has ceased to be an approved investment because—
  - (i) where the deposit which constitutes the investment was made with an authorised institution, that institution has ceased to be an authorised institution within the meaning given to that expression in regulation 1(2) of the 1990 Regulations; or
  - (ii) where the deposit which constitutes the investment was made with a building society, that building society has ceased to be a building society within the meaning given to that expression in regulation 2(c) of the 1990 Regulations.

### **Repayment of grants**

**63.** A sum received by a local authority which, apart from this regulation, would be a capital receipt by virtue of section 58(1)(c) shall not be a capital receipt if it is paid by a person other than the person to whom the authority gave the grant or other financial assistance in relation to which the sum is paid.

## **PART VII**

### **RESERVED PART OF CAPITAL RECEIPTS**

#### *Preliminary provisions*

### **Interpretation**

**64.** In this Part—

“nil per cent. receipt” means a capital receipt of which the reserved part is nil per cent. by virtue of regulation 65;

“the authority”, in relation to a capital receipt, means the local authority by whom the receipt is received; and

“reserved part”, in relation to a capital receipt received by a local authority, means the amount or the percentage of the receipt which is the reserved part of the receipt for the purposes of section 59 (the reserved part of capital receipts).

### **Capital receipts of debt-free authorities**

**65.—(1)** In this regulation—

“disregarded borrowing” means—

- (a) borrowing which is short-term borrowing for the purposes of section 45(1)(b) (the authority’s own borrowing limits);

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<sup>(53)</sup> S.I. 1990/426; amended by S.I. 1991/501, S.I. 1992/1353, S.I. 1995/850, S.I. 1995/1982 and S.I. 1996/568.

- (b) borrowing undertaken under section 5 of the City of London (Various Powers) Act 1924<sup>(54)</sup>; or
- (c) borrowing undertaken before 24th August 1995, other than borrowing by the issue of stock on or after 15th December 1993, from a person who is not a relevant lender; and “relevant lender” means—
  - (a) the Public Works Loan Board;
  - (b) the Bank of England;
  - (c) the European Investment Bank;
  - (d) a body mentioned in any of paragraphs 1 to 17, or in paragraph 28, 29 or 30, of Part II of the Schedule to the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990;
  - (e) an authorised institution (within the meaning which that expression has in the Banking Act 1987 <sup>(55)</sup>); or
  - (f) a building society (within the meaning given to that expression in the Building Societies Act 1986 <sup>(56)</sup>).
- (2) The reserved part of a capital receipt shall be nil per cent. where—
  - (a) at the beginning of the financial year in which the receipt is received, the credit ceiling of the authority, as determined under Part III of Schedule 3 to the Act, was nil or a negative amount;
  - (b) at the time the receipt is received, the authority have no money outstanding by way of borrowing other than disregarded borrowing;
  - (c) the reserved part does not fall to be determined under regulation 67, 68, 69 or 70; and
  - (d) if the receipt was derived from the disposal of an interest in a dwelling held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation)<sup>(57)</sup>, the disposal was made by virtue of Part V of that Act (the right to buy).

### *Share capital and loan capital*

#### **Disposal of share and loan capital**

66.—(1) In this regulation—

“capital in a bus company” means share capital or loan capital which—

- (a) is in a company formed under section 59 or 67 of the Transport Act 1985<sup>(58)</sup>, and was acquired by the authority before 15th February 1989; or
- (b) is in a company formed under section 61 of that Act, and was acquired by the authority before the date, if any, specified in relation to the company under subsection (9) of that section;

“capital in a public airport company” means share capital or loan capital which is in a public airport company, and which was acquired by the authority—

- (a) before 15th February 1989; or

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<sup>(54)</sup> 1924 c. xxxvii. Section 5 was repealed by section 40(1) of the City of London (Various Powers) Act 1960 (c. xxxvi).

<sup>(55)</sup> 1987 c. 22.

<sup>(56)</sup> 1986 c. 53.

<sup>(57)</sup> 1985 c. 68.

<sup>(58)</sup> 1985 c. 67.

- (b) on or after 15th February 1989 as consideration for a transfer to the company of any property or rights of the authority, or in advance of such a transfer by virtue of a scheme under section 15 of the Airports Act 1986<sup>(59)</sup>;

“education or training company” means a company which is engaged principally either—

- (a) in the activities of providing, constructing, improving, repairing and maintaining land and any other assets in use for the purposes of a school which is a maintained school within the meaning given to that expression in section 305 of the Education Act 1993<sup>(60)</sup>; or
- (b) in the provision of the services which the Secretary of State is under a duty to secure under section 8 of the Employment and Training Act 1973 (careers services for school and college students)<sup>(61)</sup>, or has a power to secure under section 9 of that Act (careers services for others); and

“non-housing company”, in relation to any share capital or loan capital, means a company which has not, at any time since the date of issue of the capital concerned, engaged in any of the activities of providing, constructing, improving, managing, facilitating or encouraging the construction or improvement of housing accommodation; and

“public airport company” has the same meaning as in Part II of the Airports Act 1986.

(2) The reserved part shall be 75 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received in respect of a disposal of share capital or loan capital in a body corporate, other than a disposal of share capital or loan capital which—

- (a) is capital in a bus company;
- (b) is capital in a public airport company;
- (c) is capital in a company such as is mentioned in paragraph (4);
- (d) is in a company which was formed by, or with the participation of, the authority, and, at the time of the disposal, is an education or training company;
- (e) is in a non-housing company, and was acquired by the authority—
- (i) before 10th March 1988; or
- (ii) on or after 1st April 1990 for the purpose of providing financial assistance under section 33 (promotion of economic development);
- (f) is in a company formed by, or with the participation of, the authority for any of the purposes referred to in section 145(1) of the Local Government Act 1972 (provision of entertainments)<sup>(62)</sup>; or
- (g) is in a company formed by, or with the participation of, the authority as mentioned in subsection (3)(a) of section 32 of the Environmental Protection Act 1990 (transition to waste disposal companies)<sup>(63)</sup>, or pursuant to directions given by the Secretary of State under section 32(2) of that Act.

(3) The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of—

- (a) a disposal of capital in a bus company; or

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<sup>(59)</sup> 1986 c. 31.

<sup>(60)</sup> 1993 c. 35.

<sup>(61)</sup> 1973 c. 50. Sections 8 and 9 were substituted by section 45 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

<sup>(62)</sup> 1972 c. 70.

<sup>(63)</sup> 1990 c. 43.

- (b) a disposal of capital in a public airport company, where the company, by virtue of the disposal and the issue of any further share capital in the company, ceases to be a public airport company.
- (4) The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of share capital or loan capital in a company where—
- (a) at the time of the disposal, the company is carrying on the business of operating an airport and is not a public airport company; and
  - (b) at the time when the authority acquired the share capital or loan capital, the company was carrying on the business of operating an airport, or was in the course of taking over that business from the authority.

#### *Repayment of grants and other receipts*

#### **Grants and advances to housing associations**

**67.**—(1) In the case of a payment which is a capital receipt by virtue of section 58(1)(c) or (d), the reserved part shall be 100 per cent. if the payment is made in respect of a grant, an advance or other financial assistance which—

- (a) was made or given by the authority to a housing association (within the meaning given to that expression in section 1 of the Housing Associations Act 1985(**64**)); and
  - (b) was to be applied towards expenditure for which the housing association received a grant under section 18 of the Housing Act 1996(**65**), section 50 of the Housing Act 1988(**66**), section 41(1) of the Housing Associations Act 1985 (**67**) or section 29(1) of the Housing Act 1974 (**68**).
- (2) In the case of a capital receipt which is received in respect of—
- (a) the disposal of an interest in land acquired by the authority under a mortgage made as security for an advance, or
  - (b) the assignment of a debt owed to the authority in connection with an advance,

the reserved part shall be 100 per cent. if the reserved part of a repayment of the principal of the advance would fall to be determined under paragraph (1).

#### **Payments in respect of transferred property and deemed borrowing**

**68.** The reserved part shall be 100 per cent. in the case of a sum which is a capital receipt by virtue of regulation 56, 57 or 58, and is an annual or other periodic payment calculated by reference to any amounts outstanding by way of principal of money borrowed by the authority.

#### **Payments for redemption of landlord's share**

**69.** The reserved part shall be 75 per cent. in the case of a sum which is a capital receipt by virtue of regulation 59.

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(64) 1985 c. 69.

(65) 1996 c. 52.

(66) 1988 c. 50.

(67) Section 41 was repealed by section 140(2) of, and Schedule 18 to, the Housing Act 1988.

(68) 1974 c. 44. Section 29 was repealed by section 3 of, and Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c. 71).

### **Payments in respect of disposal of premises transferred to grant-maintained school**

**70.**—(1) In this regulation, “relevant proceeds” means the proceeds of any disposal made by the governing body of a grant-maintained school (within the meaning given to that expression in regulation 60) with the consent of the Secretary of State under section 298(1) of the Education Act 1996<sup>(69)</sup>.

(2) Subject to paragraph (3), the reserved part shall be 100 per cent. in the case of a sum which is a capital receipt by virtue of regulation 60 (“a relevant sum”).

(3) In the case of a relevant sum, where—

- (a) the Secretary of State notifies the authority, before they receive the relevant sum, of the amount of the relevant proceeds in respect of which that sum is payable (“the proceeds”), and
- (b) treating the disposal from which the proceeds are derived as a disposal by the authority and the proceeds as a capital receipt of the authority, the amount which would be the reserved part of that capital receipt is less than the amount which, apart from this paragraph, would be the reserved part of the relevant sum,

the reserved part shall be that lesser amount.

### *Interests in land and other assets*

### **Assets held for the administration of justice or for the purposes of the police or civil defence**

**71.** The reserved part shall be 75 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received in respect of the disposal of an interest in any asset which, at any time on or after 23rd March 1989, has been held for the purposes of or in connection with—

- (a) the Central Criminal Court;
- (b) the police, probation or magistrates' court services; or
- (c) any functions of the authority conferred under section 2 of the Civil Defence Act 1948<sup>(70)</sup>.

### **Hostels and lodging houses**

**72.** In the case of a capital receipt which is received in respect of the disposal of an interest in a hostel (within the meaning given to that expression in section 622 of the Housing Act 1985) or a lodging-house (within the meaning given to that expression in section 56 of that Act), the reserved part shall be 75 per cent. if—

- (a) the hostel or lodging-house is held for the purposes of Part II of that Act (provision of housing accommodation);
- (b) the receipt is not a nil per cent. receipt; and
- (c) where the authority is a local authority in Wales, the reserved part of the receipt does not fall to be determined in accordance with regulation 78.

### **Crematoria**

**73.** The reserved part shall be 10 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 30th June

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<sup>(69)</sup> 1996 c. 56.

<sup>(70)</sup> 1948 c. 5.

1997 in respect of a disposal of a freehold or leasehold interest in land comprising a crematorium within the meaning given to that expression in section 2 of the Cremation Act 1902(71).

#### **Land used for the purposes of education**

74. The reserved part shall be 25 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of a freehold or leasehold interest in land where—

- (a) on 1st April 1993, the land was in use by the authority in whole or in part for the purposes of a school or an institution providing further education (within the meaning given to that expression in section 14 of the Further and Higher Education Act 1992(72)) or education for adults;
- (b) if, at the time of the disposal, the land has ceased to be used for such purposes, it has not, since ceasing to be so used, been in use under a planning permission granted for any other use for a period of more than five years; and
- (c) the land is not land to which section 74(1) (duty to keep Housing Revenue Account) applied immediately before the disposal.

#### **Agricultural holdings**

75.—(1) In this regulation—

- (a) the expressions “agricultural holding” and “contract for an agricultural tenancy” shall be construed in accordance with section 1 of the Agricultural Holdings Act 1986(73);
- (b) “relevant agricultural holding” means an agricultural holding in relation to which the landlord is not a smallholdings authority; and
- (c) “smallholdings estate” and “smallholdings authority” have the same meaning as in Part III of the Agriculture Act 1970 (smallholdings in England and Wales)(74).

(2) The reserved part shall be 10 per cent. in the case of a capital receipt, other than a nil per cent. receipt, which is received during the period beginning on 1st April 1997 and ending on 31st March 1998 in respect of a disposal of a freehold or leasehold interest in land where—

- (a) on 17th October 1994 the land was held by the authority, as a smallholdings authority, as part of their smallholdings estate, or constituted a relevant agricultural holding;
- (b) if, at the time of the disposal, the land has ceased to be held as part of the authority’s smallholdings estate, or, as the case may be, has ceased to constitute a relevant agricultural holding, it has not, at any time since 17th October 1994, been in use other than as an agricultural holding under a planning permission granted for a period of more than five years;
- (c) the land is not land to which section 74(1) applied immediately before the disposal; and
- (d) if, at the time of the authority’s decision to dispose of their interest in the land, the land was subject to a contract for an agricultural tenancy, the authority have offered to dispose of their interest to the tenant under the tenancy at a price not exceeding an amount determined in accordance with the formula—

$$\frac{3 \times (P1 - P2)}{4} + P2$$

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(71) 1902 c. 8.

(72) 1992 c. 13.

(73) 1986 c. 5.

(74) 1970 c. 40. See sections 37 and 38 of that Act.

where—

“P1” means the price which the authority would reasonably expect to be agreed for a sale of the interest on the open market subject to a surrender of the tenancy; and

“P2” means the price which the authority would reasonably expect to be agreed for a sale of the interest on the open market subject to the tenancy.

### *Special provisions for Wales*

#### **Disposal of land held for housing purposes**

76. The reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in land where—

- (a) the authority is a local authority in Wales;
- (b) the land is held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation); and
- (c) if there is a building situated on the land, the building does not, in whole or in part, comprise a dwelling (within the extended meaning given to that expression in regulation 22(1)).

#### **Disposal of shared ownership leases**

77. The reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in a dwelling where—

- (a) the authority is a local authority in Wales;
- (b) the dwelling was normally let, or available for letting, for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation); and
- (c) the authority make the disposal by granting a shared ownership lease (within the meaning given to that expression in section 622 of the Housing Act 1985), or on condition that the purchaser, for the purpose of repairing or improving the dwelling, will carry out significant works within a specified period.

#### **Other disposals of dwellings**

78.—(1) In this regulation—

“capital value”, in relation to a lease, has the same meaning as in Part VIII of these Regulations;

“dwelling” has the extended meaning which it has in regulation 22(1);

“relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985, section 22 of the Housing and Building Control Act 1984 or **section 104 of the Housing Act 1957 (75)**;

“relevant lease” means—

- (a) a secure tenancy within the meaning which that expression has in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants);
- (b) an introductory tenancy within the meaning which that expression has in Chapter 1 of Part V of the Housing Act 1996(76); or
- (c) any other lease, other than a shared ownership lease; and

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(75) 1957 c. 56. That Act was repealed by the Housing (Consequential Provisions) Act 1985.

(76) 1996 c. 52.

“shared ownership lease” has the same meaning as in regulation 22(1).

(2) Subject to paragraph (3), the reserved part shall be nil per cent. in the case of a capital receipt which is received in respect of a disposal of an interest in a dwelling where—

- (a) the authority is a local authority in Wales who make the disposal by—
  - (i) conveying the freehold interest in the dwelling;
  - (ii) granting a lease for a term of not less than 125 years;
  - (iii) granting a shared ownership lease; or
  - (iv) assigning their leasehold interest in the dwelling; and
- (b) where the interest disposed of is a lease, other than a shared ownership lease, the authority estimate that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by them within one year after the date of the disposal.

(3) Paragraph (2) shall not apply to a disposal (“the current disposal”) of an interest in a dwelling which has at any time been occupied under a relevant lease granted by the authority, unless—

- (a) since the last date on which the dwelling was so occupied, the authority have disposed of an interest in it under Part V of the Housing Act 1985 (the right to buy), or Chapter 1 of Part I of the Housing Act 1980 (the right to buy)<sup>(77)</sup> or, with a relevant consent, to a person who, when he acquired that interest, occupied, or intended to occupy, the dwelling as his only or principal home;
- (b) that disposal was made more than five years before the current disposal;
- (c) at any time within that period the authority acquired a further interest in the dwelling; and
- (d) the dwelling is a house (within the meaning which that expression has in section 44 of the Housing Act 1985).

## PART VIII

### CAPITAL RECEIPTS TO BE TREATED AS REDUCED

#### *Preliminary provisions*

#### **Meaning of authority**

**79.** In this Part, “authority”, in relation to a capital receipt or a disposal of an asset, means the local authority by whom the receipt is received or the disposal is made.

#### **Capital value of a lease**

**80.**—(1) In this Part, a reference to the capital value of a lease is a reference to the amount which, at the time a local authority dispose of the lease, the authority estimate will be the aggregate of—

- (a) the value of the consideration which has been or falls to be received by them for the disposal before or during the financial year in which they make the disposal; and
- (b) the value of the consideration which falls to be received by them for the disposal in any subsequent financial year.

(2) For each subsequent financial year referred to in paragraph (1)(b), the value of the consideration falling to be received in that year shall be determined by the formula—

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<sup>(77)</sup> 1980 c. 51. Part I was repealed by the Housing (Consequential Provisions) Act 1985.

$$x \left\{ 1 + \frac{r}{100} \right\}^n$$

where—

“x” is the value of the consideration which the authority estimate will be received by them in respect of the disposal in that financial year;

“r” is the percentage rate of discount prescribed for the financial year in which the authority make the disposal by regulations made by the Secretary of State for the purposes of section 49 (initial and subsequent cost of credit arrangements); and

“n” is the financial year concerned expressed as a year subsequent to the financial year in which the authority made the disposal (so that the first of the subsequent financial years is 1, the next financial year is 2, and so on).

(3) For the purposes of this regulation and the following provisions of this Part, in any case where the consideration in respect of a lease consists, in whole or in part of—

- (a) an undertaking to do or refrain from doing something at a future time (whether specified or not), or
- (b) a right to do or refrain from doing something at a future time,

that consideration shall be regarded as neither given nor received until the undertaking is performed or, as the case may be, the right is exercised.

### **Adjusting the amount by which a capital receipt shall be reduced**

**81.** Regulations 86 to 104 shall have effect subject to the provisions of regulations 82 and 83.

### **Capital receipts in relation to a single asset**

**82.**—(1) In this regulation—

“capital receipt” means a capital receipt which, by virtue of any provision of this Part, falls to be treated as reduced for the purposes of section 59 (the reserved part of capital receipts); and  
“the reduction”, in relation to a capital receipt, means the amount by which, apart from this regulation, the receipt would be treated as reduced in accordance with the provision concerned.

(2) Where a local authority receive more than one capital receipt in respect of their interest in a single asset—

- (a) the total amount by which those receipts shall be treated as reduced shall not exceed the reduction;
- (b) any of those receipts may be treated as reduced by an amount equal to the reduction or any lesser amount; and
- (c) where one of those receipts is treated as reduced by an amount which is less than the reduction, the other receipts, or any of them, shall be treated as reduced by a total amount equal to the balance of the reduction.

### **Notional capital receipts**

**83.** Where—

- (a) by virtue of any provision of this Part, a capital receipt received in respect of a disposal of an interest in an asset falls to be treated as reduced for the purposes of section 59,
- (b) before the capital receipt is received, the authority receive consideration not in money in respect of the same disposal or a disposal of another interest in the same asset, and

- (c) the notional capital receipt in relation to the consideration not in money is treated as reduced by virtue of regulation 106(1),

there shall be deducted from the amount by which, apart from this regulation, the capital receipt would be treated as reduced the amount by which the notional capital receipt is treated as reduced.

#### **Nature of disposal of interest in land**

**84.** For the purposes of this Part, a disposal of an interest in land meets the condition specified in this regulation if—

- (a) the authority make the disposal by conveying the freehold interest in the land, granting a lease for a term of not less than 125 years, or assigning their entire leasehold interest in the land; and
- (b) where the interest disposed of is a lease, the authority estimate that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by them within one year after the date of the disposal.

#### **Meaning of regeneration project**

**85.** For the purposes of this Part, “regeneration project” means any project for the carrying out of works or activities on any land where—

- (a) the land, or a building on the land, is vacant or unused or under-used or ineffectively used or contaminated or derelict; and
- (b) the works or activities are carried out in order to secure that the land or the building will be brought into effective use.

#### *Disposals of land in aid of regeneration*

#### **Capital receipts derived from disposals made to assist regeneration**

**86.—**(1) In this regulation—

“relevant land” means any land which—

- (a) before 1st April 1994, was situated within a ward which is named in the List of Wards in Areas of Need in England published in February 1997 by the Department of the Environment<sup>(78)</sup>, or within a ward which is not named in that publication, but has a boundary adjoining the boundary of a ward which is named in that publication; or
- (b) before 1st February 1997, was situated within a ward which is named in the List of Wards in Areas of Need in Wales published in February 1997 by the Welsh Office<sup>(79)</sup>; and

“relevant disposal” means a disposal which falls within any of the descriptions of disposal specified for the purposes of this regulation in regulations 87 to 92.

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with regulation 93.

(3) For the purposes of paragraph (2), capital receipts derived from a relevant disposal are specified where—

- (a) the authority decided to make the disposal not more than five years before the date of the disposal or, if earlier, the date on which the capital receipts are received; and

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<sup>(78)</sup> Copies of the publication can be obtained from Floor 5/F2—Eland House, Bressenden Place, London SW1E 5DU.

<sup>(79)</sup> Copies of the publication can be obtained from Planning Division, Welsh Office, Cathays Park, Cardiff CF1 3NQ.

- (b) at the time of that decision, the authority also decided to contribute towards the costs of undertaking a regeneration project on any relevant land situated within their area.

### **Disposal of unoccupied dwellings**

**87.**—(1) In this regulation—

- (a) “dwelling” has the extended meaning which it has in regulation 22(1); and
- (b) “relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985<sup>(80)</sup>.

(2) For the purposes of regulation 86, a disposal of an interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and—

- (a) there is situated on the land a dwelling which is unoccupied at the time of the disposal, and has normally been let, or available for letting, for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation);
- (b) the disposal is not made under Part V of the Housing Act 1985 (the right to buy), or, with a relevant consent, to a person who, when he acquires that interest, occupies, or intends to occupy, the dwelling as his only or principal home; and
- (c) the disposal is not a qualifying disposal for the purposes of section 135 or 136 of the Leasehold Reform, Housing and Urban Regeneration Act 1993<sup>(81)</sup>.

### **Disposal of industrial estates**

**88.**—(1) For the purposes of regulation 86, a disposal of an interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and—

- (a) there is situated on the land a building which has been built or adapted for use as separate units for industrial purposes;
- (b) immediately before the disposal, each unit is in use for industrial purposes by a person who makes payments to the authority in respect of a leasehold or lesser interest acquired by him in the unit, or is available for such use by any person who acquires such an interest from the authority; and
- (c) immediately before the disposal, the authority determine that the floor area of the relevant occupied units is not less than 65 per cent. of the total floor area of all units disposed of.

(2) For the purposes of paragraph (1)—

- (a) industrial purposes include the purpose of storing goods or equipment; and
- (b) in relation to a building which has been built or adapted for use as separate units for industrial purposes—
  - (i) the floor area of any unit shall be the gross internal area of the unit determined by the authority in accordance with the fourth edition of the Code of Measuring Practice published in October 1993 by Surveyors Holdings Limited under ISBN 0 85406 610 1<sup>(82)</sup>; and
  - (ii) “relevant occupied unit” means a unit which is in use for industrial purposes by virtue of a leasehold interest which was not granted in consideration of the payment of a premium.

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<sup>(80)</sup> 1985 c. 68.

<sup>(81)</sup> 1993 c. 28.

<sup>(82)</sup> Copies of the publication can be obtained from the offices of the Royal Institution of Chartered Surveyors at 12 Great George Street, London SW1P 3AD.

**Disposal of docks and harbours etc.**

**89.** For the purposes of regulation 86, a disposal of an interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and the land is used for the purposes of a dock, quay, harbour, wharf, basin or pier, or for the purposes of an office or warehouse in connection with the operation of a port, marina or inland waterway.

**Disposal of leisure facilities**

**90.** For the purposes of regulation 86, a disposal of an interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and the land is used for the purposes of a leisure centre or other indoor recreation, or a swimming pool, or a park, playing field (other than a school playing field) or other outdoor recreation.

**Disposal of shops and offices etc.**

**91.** For the purposes of regulation 86, a disposal of an interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and—

- (a) there are shops or offices situated on the land; and
- (b) immediately before the disposal, each shop and office is in use by a person other than the authority, or is available for use by any person other than the authority.

**Disposal of land for development**

**92.** For the purposes of regulation 86, a disposal of a relevant interest in land shall be a relevant disposal if the disposal meets the condition specified in regulation 84, and—

- (a) on 26th November 1996, the land had the benefit of a planning permission granted on or after 26th November 1994 for use as shops or offices or for any of the purposes mentioned in regulations 89 and 90;
- (b) the planning permission granted for the benefit of the land is for an unlimited period or a period of not less than five years;
- (c) there has not been situated on the land, at any time within a period of five years ending on the date of the disposal, any building built or adapted for use as separate units for industrial purposes; and
- (d) if, on the date of the disposal, the land is in use for any purpose other than use as shops or offices or a purpose mentioned in regulation 89 or 90, that use is authorised by a planning permission granted for a period of not more than five years.

**Amount of reduction of receipts derived from relevant disposals**

**93.—(1)** In this regulation—

- (a) “qualifying receipts” means capital receipts of a description specified in regulation 86(2); and
- (b) in relation to any qualifying receipts—
  - (i) “the relevant decision” means the decision to make the relevant disposal from which the receipts are derived; and
  - (ii) “the project” means the regeneration project in relation to which, at the same time as making the relevant decision, the authority made a decision such as is mentioned in regulation 86(3)(b).

(2) Subject to paragraph (4), in relation to any qualifying receipts, the amount of the reduction for the purposes of regulation 86(2) is the total value, determined by the authority, of the contribution which the authority have made, or have decided to make, towards the costs of undertaking the project by—

- (a) making a gift of land;
- (b) paying a contribution, grant or subsidy under any power conferred on the authority under any enactment; or
- (c) giving consideration for any benefit which the authority have received, or will receive, by virtue of the undertaking of the project.

(3) For the purposes of paragraph (2), the authority make a gift of land where they transfer an interest in land and either—

- (a) no consideration falls to be given for the transfer; or
- (b) the value of the consideration which falls to be given for the transfer is less than the price which the interest transferred would realise at the date of the valuation if sold by the authority on the open market.

(4) In relation to any qualifying receipts, the amount of the reduction for the purposes of regulation 86(2) shall be nil if the aggregate of—

- (a) the amount which, apart from this paragraph, would be the amount of the reduction under paragraph (2),
- (b) the value, estimated by the authority, of any contribution which any other local authority have made, or have decided to make, towards the costs of undertaking the project,
- (c) the value, estimated by the authority, of any contribution which a regulated company (within the meaning given to that expression in article 1(4) of the Local Authorities (Companies) Order 1995(83)) have made, or have decided to make, towards the costs of undertaking the project, and
- (d) the amount of any contribution, grant or subsidy which a Minister of the Crown, or a body to which such a Minister may pay sums out of moneys provided by Parliament, or a Community institution have agreed to pay towards the costs of the project,

is equal to or exceeds 50 per cent. of the authority's estimate of the total costs of the project.

*Capital receipts in respect of which repayments fall to be made to a public body*

### **Improvement of land out of moneys provided by Parliament**

**94.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where the authority—

- (a) have incurred expenditure on the reclamation, enhancement or laying out of the land; and
- (b) have met that expenditure wholly or partly out of moneys provided by Parliament on terms which require, or enable a Minister of the Crown to require, the payment of any sum to such a Minister on or by reference to the disposal.

(3) For the purposes of paragraph (1), in relation to any capital receipts of a description specified in paragraph (2), the amount of the reduction is the sum which appears to the authority to be payable to a Minister of the Crown in respect of those receipts.

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(83) [S.I. 1995/849](#). There are amendments which are not relevant to this regulation.

### **Improvement of land out of moneys provided by the Urban Regeneration Agency or the Welsh Development Agency**

**95.**—(1) In this regulation, “the Agency” means—

- (a) the Urban Regeneration Agency established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993<sup>(84)</sup> (“the 1993 Act”); or
- (b) the Welsh Development Agency established by section 1 of the Welsh Development Agency Act 1975<sup>(85)</sup> (“the 1975 Act”).

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in land are specified where the authority—

- (a) have, in respect of the land, incurred expenditure to which paragraph (4) applies; and
- (b) have met that expenditure wholly or partly out of moneys provided by the Agency on terms which require, or enable the Agency to require, the repayment or the recovery of any sum on or by reference to the disposal.

(4) This paragraph applies to expenditure which—

- (a) is incurred by a local authority in England, and is qualifying expenditure (within the meaning given to that expression in section 164(2) of the 1993 Act); or
- (b) is incurred by a local authority in Wales, and is relevant expenditure (within the meaning given to that expression in section 16(4) of the 1975 Act<sup>(86)</sup>).

(5) For the purposes of paragraph (2), in relation to any capital receipts of a description specified in paragraph (3), the amount of the reduction is the sum which appears to the authority to be payable to the Agency in respect of those receipts.

#### *Other disposals of interests in land*

### **Disposal of recently acquired interests in land**

**96.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 97(3), are specified where the disposal—

- (a) meets the condition specified in regulation 84; and
- (b) takes place not later than five years after the date on which the authority acquired the freehold interest or a leasehold interest in the land.

(3) For the purposes of paragraph (1), the amount of the reduction is the aggregate of—

- (a) the initial cost of any credit arrangement entered into by the authority for the purpose only of acquiring the interest disposed of;
- (b) the value of any consideration falling to be given for the acquisition of that interest, other than consideration under a credit arrangement; and
- (c) the administrative costs of acquiring that interest and making the disposal.

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<sup>(84)</sup> 1993 c. 28.

<sup>(85)</sup> 1975 c. 70.

<sup>(86)</sup> Section 16 was substituted by the [Derelict Land Act \(c. 42\)](#).

## Land in England—disposal of certain dwellings

97.—(1) For the purposes of this regulation—

“dwelling” has the extended meaning which it has in regulation 22(1);

“relevant consent” means a consent to a disposal of land given by the Secretary of State to local authorities generally under section 32 or 43 of the Housing Act 1985, section 22 of the Housing and Building Control Act 1984(87) or section 104 of the Housing Act 1957(88);

“relevant date”, in relation to a dwelling, means the date three years before the date on which a local authority make a disposal such as is mentioned in paragraph (3), or the first such disposal (if they make more than one in relation to the dwelling);

“relevant lease” means—

- (a) a secure tenancy within the meaning which that expression has in Part IV of the Housing Act 1985 (secure tenancies and rights of secure tenants);
- (b) an introductory tenancy within the meaning which that expression has in Chapter 1 of Part V of the Housing Act 1996(89); or
- (c) any other lease, other than a shared ownership lease; and

“shared ownership lease” has the same meaning as in regulation 22(1).

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (5).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling are specified where—

- (a) the authority are a local authority in England;
- (b) the disposal meets the condition specified in regulation 84, or the authority make the disposal by granting a shared ownership lease; and
- (c) paragraph (4) applies to the dwelling.

(4) This paragraph applies to a dwelling if—

- (a) the dwelling has not at any time been occupied under a relevant lease granted by the authority; or
- (b) the dwelling has been so occupied, and—
  - (i) since the last date on which it was so occupied, the authority have disposed of an interest in it under Part V of the Housing Act 1985 (the right to buy), or Chapter 1 of Part I of the Housing Act 1980 (the right to buy)(90) or, with a relevant consent, to a person who, when he acquired that interest, occupied, or intended to occupy, it as his only or principal home;
  - (ii) that disposal was made more than five years before the disposal from which the capital receipts are derived;
  - (iii) at any time within that period the authority acquired a further interest in the dwelling; and
  - (iv) the dwelling is a house (within the meaning which that expression has in section 44 of the Housing Act 1985).

(5) For the purposes of paragraph (2), the amount of the reduction is the aggregate of the following amounts—

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(87) 1984 c. 29. Section 22 was repealed by the Housing (Consequential Provisions) Act 1985 (c. 71).

(88) 1957 c. 56. That Act was repealed by the Housing (Consequential Provisions) Act 1985.

(89) 1996 c. 52.

(90) 1980 c. 51 Part I was repealed by the Housing (Consequential Provisions) Act 1985.

- (a) where the dwelling in relation to which a local authority make a disposal such as is mentioned in paragraph (3) (“the dwelling”) was acquired by the authority, the cost of the acquisition of the authority’s interest in the dwelling;
  - (b) where the dwelling was constructed by or for the authority, the cost of the construction;
  - (c) where the land on which the dwelling was constructed was acquired by the authority on or after the relevant date, the cost of the acquisition of the authority’s interest in the land;
  - (d) where the dwelling was provided by the conversion of a building or part of a building (“the building”) by or for the authority, the cost of the conversion and, if the building was acquired by the authority on or after the relevant date, the cost of the acquisition of the authority’s interest in the building;
  - (e) where, after the acquisition, construction or provision of the dwelling, the authority carried out works which amounted to the enhancement of the dwelling, the cost of the enhancement; and
  - (f) the administrative costs of making the disposal.
- (6) For the purposes of paragraph (5), the cost of—
- (a) the acquisition of an interest in the dwelling or in any land or any building,
  - (b) the construction or the enhancement of the dwelling, or
  - (c) the conversion of a building or part of a building,

is the aggregate of the initial cost of any credit arrangement entered into exclusively for the purpose of the acquisition, construction, enhancement or, as the case may be, conversion, and the value of any consideration falling to be given for the purpose concerned other than consideration under a credit arrangement.

### **Disposal of recently improved land**

**98.**—(1) In this regulation—

- (a) a reference to the enhancement of land does not include a reference to the reclamation or laying out of the land or the construction, preparation or replacement of roads, buildings or other structures; and
- (b) “relevant period”, in relation to any land, means the financial year in which a local authority make a disposal such as is mentioned in paragraph (3) (or the first such disposal, if they they make more than one in relation to the land), and the two financial years immediately preceding that year.

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in land, other than capital receipts of a description specified in regulation 97(3), are specified where—

- (a) the authority have, at any time during the relevant period, incurred expenditure on the enhancement of the land; and
- (b) the disposal meets the condition specified in regulation 84, or the authority make the disposal by granting a shared ownership lease (within the meaning given to that expression in regulation 22 (1)).

(4) For the purposes of paragraph (2), the amount of the reduction is the aggregate of—

- (a) the initial cost of any credit arrangement entered into by the authority during the relevant period for the purpose only of the enhancement of the land; and
- (b) the amount of any expenditure incurred by the authority for that purpose during the relevant period, other than expenditure under a credit arrangement.

## Disposal and replacement of land or buildings

99.—(1) In this regulation—

“new land” means land in which a local authority acquire an interest, or on which they carry out works, in accordance with a decision such as is mentioned in paragraph (4)(b);

“new works” means works carried out in accordance with such a decision, and includes works executed by any person in consideration of the disposal made by the authority in accordance with that decision;

“qualifying purpose”, in relation to the use of land, means a purpose specified in any of the categories of Schedule 1 to these Regulations, and “category” means one of those categories; and

“works” includes construction works and other works which are for the enhancement of any land or a building on any land.

(2) For the purposes of this regulation—

(a) a disposal made pursuant to a compulsory purchase order shall be treated as if made by virtue of a decision of the authority made at the same time as the decision mentioned in paragraph (4)(b); and

(b) land held for housing purposes is land held for the purposes of Part II of the Housing Act 1985 (provision of housing accommodation)(91), but not for any qualifying purpose.

(3) Capital receipts of a description specified in paragraph (4) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (6).

(4) For the purposes of paragraph (3), capital receipts derived from a disposal of an interest in land (“the land”) are specified where paragraph (5) applies to the disposal and—

(a) the authority decided to dispose of the land not more than five years before the date of the disposal or, if earlier, the date on which the capital receipts are received;

(b) at the time of that decision, the authority also decided to acquire a new interest in the land after the disposal, or an interest in any other land, or to carry out works on any land;

(c) if the new interest is a lease of part of the land, the initial cost of the lease is less than 50 per cent. of the amount which would be the initial cost of a lease on identical terms of the whole of the land; and

(d) the disposal meets the condition specified in regulation 84.

(5) This paragraph applies to a disposal of an interest in land if—

(a) at the time of the decision to make the disposal, the land was in use for a qualifying purpose and the authority decided to use the new land for the same qualifying purpose, or a different purpose within the same category as that which includes the same qualifying purpose;

(b) the disposal is made pursuant to a compulsory purchase order, and the land has been held for housing purposes for a period of at least two years ending on the date of the disposal (or, if earlier, the date on which the authority give up possession of the land pursuant to the order), and the authority have decided to use the new land for housing purposes; or

(c) there is situated on the land, at the time of the disposal, a defective dwelling within the meaning given to that expression in Part XVI of the Housing Act 1985 (assistance for owners of defective housing), and the authority have decided that the new land shall be held for housing purposes.

(6) For the purposes of paragraph (3), the amount of the reduction is, subject to paragraph (7), the aggregate of—

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(91) 1985 c. 68.

- (a) the initial cost of any credit arrangement entered into by the authority for the purpose only of acquiring the new land or carrying out the new works;
- (b) the value of any consideration falling to be given for such a purpose under any contract other than a credit arrangement; and
- (c) any other costs incurred by the authority in connection with the acquisition of the new land or the carrying out of the new works.

(7) For the purposes of paragraph (6)(b), the value of the consideration falling to be given under a contract shall be the amount which, if the contract were a lease, would be the capital cost of the contract determined in accordance with regulation 14.

### **Disposal of former new town assets**

**100.**—(1) In this regulation, “dwelling” and “new town corporation” have the same meaning as in section 172 (transfer of new town housing stock).

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling are specified where—

- (a) the authority acquired the interest from a new town corporation;
- (b) the new town corporation disposed of the interest pursuant to section 36 of the New Towns Act 1981 (functions of Commission)<sup>(92)</sup> or regulations made under section 172(1)<sup>(93)</sup>; and
- (c) the whole or part of the consideration falling to be given by the authority for the acquisition of the interest is required to be given on the disposal of the interest.

(4) For the purposes of paragraph (2), the amount of the reduction is an amount equal to the value of the consideration which falls to be given by the authority, as mentioned in paragraph (3)(c), on making the disposal from which the capital receipts are derived.

### **Disposal of former residuary body assets**

**101.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) the authority acquired the interest from a residuary body established by section 57 of the Local Government Act 1985<sup>(94)</sup>; and
- (b) the whole or part of the consideration falling to be given by the authority for the acquisition of that interest is required to be given when the authority dispose of the interest.

(3) For the purposes of paragraph (1), the amount of the reduction is an amount equal to the value of the consideration which falls to be given by the authority, as mentioned in paragraph (2)(b), on making the disposal from which the capital receipts are derived.

### **Disposal of land—compensation for planning decision**

**102.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

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<sup>(92)</sup> 1981 c. 64.

<sup>(93)</sup> See S.I. 1990/1700, S.I. 1990/2366 and S.I. 1991/1281.

<sup>(94)</sup> 1985 c. 51.

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) the interest was compulsorily acquired or sold as described in section 23(1)(a) of the Land Compensation Act 1961 (compensation where planning decision made after acquisition)<sup>(95)</sup>;
- (b) a planning decision (as mentioned in that section) has been made in relation to the land, or a planning permission (as mentioned in column 1 of the table in section 25(1) of that Act) has been granted, or is deemed to have been granted in relation to the land; and
- (c) by virtue of that planning decision or planning permission, a claim for compensation under section 23 of that Act, or under that section as applied by section 25(1) of that Act, has been duly made before the date on which any such capital receipt is received.

(3) For the purposes of paragraph (1), the amount of the reduction is the amount of compensation assessed in relation to the claim mentioned in paragraph (2)(c) or, where, at the time the capital receipt is received, that amount has not yet been assessed, the authority's estimate of the amount likely to be assessed in relation to the claim.

#### **Disposal of land—development of land by authority**

**103.**—(1) Capital receipts of a description specified in paragraph (2) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (3).

(2) For the purposes of paragraph (1), capital receipts derived from a disposal of an interest in land are specified where—

- (a) before making the disposal, the authority incurred expenditure on—
  - (i) obtaining planning permission for the development of the land, or taking any other steps required to facilitate such development;
  - (ii) preparing the land for development;
  - (iii) acquiring an interest, easement, servitude or right in or over the land or adjoining land for the purpose of facilitating the disposal of the interest; or
  - (iv) obtaining the release of a restrictive covenant affecting the land;
- (b) the total amount of capital receipts derived from the disposal exceeds the total amount of capital receipts that would have been derived from the disposal if the authority had not incurred that expenditure; and
- (c) the amount of that excess is not less than the amount of the expenditure.

(3) For the purposes of paragraph (1), the amount of the reduction is the aggregate of—

- (a) the amount of the expenditure incurred by the authority on any of the matters mentioned in paragraph (2) (a), other than so much of the expenditure in respect of which a contribution, grant or subsidy has been paid by a Minister of the Crown, or a body to which such a Minister may pay sums out of moneys provided by Parliament, or a Community institution; and
- (b) the administrative costs of making the disposal from which the capital receipts are derived.

#### **Disposals of dwellings in exchange for certain flats**

**104.**—(1) In this regulation—

“flat” has the same meaning as in section 183 of the Housing Act 1985<sup>(96)</sup> (“the 1985 Act”);

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<sup>(95)</sup> 1961 c. 33.

<sup>(96)</sup> 1985 c. 68.

“former tenant” means a person to whom a qualifying lease was granted, or a person who has succeeded to the lessee’s interest under a qualifying lease by virtue of a disposal of a description falling within paragraph (a), (b) or (c) of subsection (1) of section 160 of the 1985 Act (disposals exempt from requirement to repay discount);

“lending institution” means an institution which is an approved lending institution for the purposes of section 156 of the 1985 Act; and

“qualifying lease” means a lease of a flat granted by a local authority pursuant to Part V of the 1985 Act (the right to buy), or with the consent of the Secretary of State under section 32 or 43 of that Act and the benefit of a discount of not less than 44 per cent.

(2) Capital receipts of a description specified in paragraph (3) shall be treated for the purposes only of section 59 as reduced by an amount determined in accordance with paragraph (4).

(3) For the purposes of paragraph (2), capital receipts derived from a disposal of an interest in a dwelling to a former tenant are specified where—

- (a) immediately before the disposal, the former tenant occupied the flat demised by his qualifying lease (“the flat”) as his only or principal home;
- (b) the authority granted the qualifying lease not less than three years before the date of the disposal;
- (c) the authority make the disposal by conveying the freehold interest in the dwelling, granting a lease for a term of not less than 99 years, or assigning their entire leasehold interest in the dwelling;
- (d) if the interest disposed of is a lease, the authority estimate that not less than 90 per cent. of the capital value of the lease has been, or is to be, received by them within one year after the date of the disposal;
- (e) the consideration received by the authority for the disposal includes the assignment or surrender to them of the qualifying lease;
- (f) upon such assignment or surrender there is attributed, as part of the consideration for the disposal, an amount equal to the price paid on the grant of the qualifying lease; and
- (g) the authority is satisfied that any person wishing to buy the qualifying lease would be unlikely, for reasons which do not relate to the personal or financial status of that person, or the terms of that lease, or the condition of the flat or the building in which the flat is situated, to obtain from a lending institution an advance—
  - (i) secured by a mortgage of the qualifying lease for a term of twenty-five years, and
  - (ii) of an amount equal to 75 per cent. of the value of that lease determined not more than three months before the date of the disposal in accordance with paragraph (5).

(4) For the purposes of paragraph (2), the amount of the reduction is the aggregate of—

- (a) an amount equal to the price paid on the grant of the qualifying lease; and
- (b) the amount of any costs incurred by the authority in connection with the disposal and the surrender or assignment of the qualifying lease.

(5) For the purposes of paragraph (3)(g), the value of the qualifying lease shall be determined by an approved surveyor on the basis that it is the price which that lease would realise at the date of the valuation if sold on the open market by a willing vendor on the assumption that—

- (a) the vendor was selling with vacant possession;
- (b) the purchaser was purchasing the lease for the purposes of owner occupation; and
- (c) the criteria applied by lending institutions for the assessment of mortgage applications, so far as they relate to the number of storeys in the building in which a dwelling is situated or

the number of dwellings in the building which are occupied by owners, are not applicable to the flat or any other flat in the same building.

- (6) A surveyor is approved for the purposes of paragraph (5) if he has ability in, and experience of, the valuation of dwellings of the same kind, and in the same area, as the flat, and is—
- (a) a fellow or professional associate of the Royal Institution of Chartered Surveyors or of the Incorporated Society of Valuers and Auctioneers; or
  - (b) a person who satisfies such other requirement or requirements as may be prescribed by regulations made under section 13(7) of the Leasehold Reform, Housing and Urban Development Act 1993<sup>(97)</sup>.

## PART IX

### NOTIONAL CAPITAL RECEIPTS

#### *Preliminary provisions*

#### **Interpretation**

**105.** In this Part—

“the authority”, in relation to any non-monetary consideration, means the local authority by whom the consideration is received;

“non-monetary consideration” means any consideration such as is mentioned in section 61(1) (capital receipts not wholly in money paid to the authority); and

“notional capital receipt”, in relation to any non-monetary consideration, means the amount of the notional capital receipt determined in accordance with section 61(2).

#### **Notional capital receipts to be treated as reduced**

**106.**—(1) Subject to paragraph (2), where paragraph (3) applies to any consideration, the notional capital receipt in relation to that consideration shall be treated as reduced for the purposes of section 61(4) by an amount equal to the amount by which, if the consideration were in money paid to the authority, the capital receipt would be treated as reduced.

(2) Where—

- (a) paragraph (3) applies to any consideration,
- (b) at the same time as, or before, that consideration is received, the authority receive a capital receipt in respect of the same disposal or a disposal of another interest in the same asset, and
- (c) the capital receipt is treated as reduced,

there shall be deducted from the amount by which, apart from this paragraph, the notional capital receipt would be treated as reduced an amount equal to the amount by which the capital receipt is treated as reduced.

(3) This paragraph applies to non-monetary consideration received by a local authority where—

- (a) an amount falls to be set aside under section 61(4) in respect of the consideration; and

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<sup>(97)</sup> 1993 c. 28. See the Collective Enfranchisement and Tenants' Audit (Qualified Surveyors) Regulations 1994 (S.I. 1994/1263).

- (b) if the consideration were in money paid to the authority, it would be a capital receipt falling to be treated as reduced for the purposes of section 59 by virtue of any provision of Part VIII of these Regulations.

*Reserved part of notional capital receipts*

**Disposal of redundant land in exchange for vacant land**

**107.** In the case of non-monetary consideration received in respect of a disposal of an interest in land, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where—

- (a) the land has not been used for the purpose for which it was held by the authority at any time during the period beginning two years before the date of the disposal; and
- (b) the consideration consists of an interest in other land on which, immediately before the vesting of that interest in the authority, there are no buildings or other structures.

**Disposal of land to another local authority**

**108.** In the case of non-monetary consideration received in respect of a disposal of an interest in land (“the land”) to another local authority, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where—

- (a) the consideration consists of an interest in other land which the authority have decided to use for a purpose specified in any of the categories 2 to 10 of Schedule 1 to these Regulations, or for the purposes of the fire service, or for the purposes of Part II of the Housing Act 1985; and
- (b) at the time of that decision, the land—
- (i) was in use for a purpose specified in any of the categories 2 to 10 of that Schedule, or for the purposes of the fire service;
- (ii) was a defective dwelling within the meaning given to that expression in Part XVI of the Housing Act 1985 (assistance for owners of defective housing); or
- (iii) had not been used for the purpose for which it was held by the authority at any time during the period beginning two years before the date of that decision.

**Disposal of land in exchange for nomination rights**

**109.—(1)** In this regulation, “dwelling” has the extended meaning which it has in regulation 22(1).

(2) In the case of non-monetary consideration received in respect of a disposal of an area of land, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where the consideration consists of—

- (a) the grant of a right to nominate a person either to occupy a dwelling situated within that area, or to acquire the freehold of, or a leasehold interest in, such a dwelling; or
- (b) an undertaking to allow only persons of a particular description to occupy a dwelling situated within that area, or acquire the freehold of, or a leasehold interest in, such a dwelling.

### **Disposal of interest in land in exchange for works on the land**

**110.** In the case of non-monetary consideration received in respect of a disposal of an interest in land, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where—

- (a) the consideration consists of the carrying out of works for the enhancement of the land; and
- (b) the authority make the disposal by granting a leasehold or lesser interest which confers on the person who carries out the works a right to use the land after the completion of the works.

### **Disposal of land in exchange for right to use the land after enhancement**

**111.** In the case of non-monetary consideration received in respect of a disposal of an interest in land, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where—

- (a) the person to whom the disposal is made carries out works for the enhancement of the land; and
- (b) the consideration consists of, or includes, the grant of a leasehold or lesser interest which confers on the authority a right to use the land after the completion of the works.

### **Disposal of property under a private finance transaction**

**112.—(1)** In this regulation, “relevant arrangement” means a credit arrangement which—

- (a) is a private finance transaction for the purposes of Part IV of these Regulations; and
- (b) is entered into in reliance on a supplementary credit approval which applies for the purposes of the transaction and for no other purposes.

(2) In the case of non-monetary consideration received in respect of a disposal of an interest in any asset, investment or other property, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where—

- (a) the consideration is received by the authority under a relevant arrangement; and
- (b) the disposal is made under or in connection with that arrangement.

### **Disposal of lease in exchange for lessor’s promise to forbear**

**113.** In the case of non-monetary consideration received in respect of an assignment or a surrender of a leasehold interest in land, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where the consideration consists of a promise not to sue for the breach of a repairing covenant in the lease.

### **Disposal of assets in exchange for share or loan capital in a company**

**114.—(1)** Subject to paragraph (3), in the case of non-monetary consideration received in respect of a disposal to a company of an interest in a relevant asset, the amount falling to be set aside under section 61(4) in respect of the consideration shall be nil where the consideration consists of the issue of share capital or loan capital in the company.

(2) For the purposes of paragraph (1), an asset is a relevant asset if it is not a house, dwelling or other property of the authority to which section 74(1) (duty to keep Housing Revenue Account) applied immediately before the disposal, and if, at the time of disposal, expenditure on the acquisition of the asset would be expenditure for capital purposes.

(3) Paragraph (1) shall not apply where the company from which the non-monetary consideration is received is a regulated company within the meaning given to that expression in article 1(4) of the Local Authorities (Companies) Order 1995<sup>(98)</sup>, and the authority and the company are members of the same local authority group.

## **PART X**

### **THE CREDIT CEILING**

#### *Modifications of credit ceiling*

#### **Interpretation**

**115.** In this Part, “amount set aside” means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities.

#### **Credit ceiling on or after 1st April 1997**

**116.** At any time on or after 1st April 1997, a local authority’s credit ceiling shall be determined in accordance with paragraphs 11 to 14 of Schedule 3 to the Act, subject to the modifications prescribed for the purposes of paragraph 10 of that Schedule in the following provisions of this Part.

#### **Credit ceiling not reduced by certain minimum revenue provision**

**117.** A local authority’s credit ceiling shall not be reduced by the setting aside under section 63(1) (duty to set certain amounts aside as provision to meet credit liabilities) of any amount which, for the purposes of regulation 131, is determined by the authority under regulation 137 (use of amounts set aside to meet liabilities under credit arrangements where initial cost was nil).

#### **Credit ceiling increased by use of amount set aside to pay levy on disposals of housing**

**118.** Where a local authority apply an amount set aside to meet any liability in respect of any levy payable under section 136 of the Leasehold Reform, Housing and Urban Development Act 1993 (levy on disposals of dwelling-houses)<sup>(99)</sup>, the authority’s credit ceiling shall, at the same time, be increased by an amount equal to the amount so applied.

#### **Credit ceiling not increased by use of amount set aside to meet certain expenditure**

**119.—(1)** For the purposes of this regulation, a local authority are a relevant authority if—

- (a) on the date which is the relevant date for the current financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount; and
- (b) they have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.

(2) In paragraph (1), the reference to the relevant date shall be construed in accordance with section 64(4).

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<sup>(98)</sup> S.I. 1995/849. There are amendments which are not relevant to this regulation.

<sup>(99)</sup> 1993 c. 28.

(3) A relevant authority's credit ceiling shall not be increased by the use of credit approvals to any extent as mentioned in section 56(3)(a) in respect of any expenditure where, pursuant to section 64(1)(c), the authority apply an amount set aside to meet that expenditure.

### **Credit ceilings of combined and superseded fire authorities**

**120.**—(1) In this regulation, “new fire authority” means a fire authority constituted by a combination scheme under the Fire Services Act 1947(**100**) made in consequence of an order under Part II of the Local Government Act 1992(**101**) containing provision for giving effect to a structural change (within the meaning given to that expression in that Part).

(2) In relation to a new fire authority and the county council which is superseded as a fire authority by the new fire authority, in addition to the modifications made in regulations 117, 118 and 119, Schedule 3 to the Act is modified by the insertion of the following paragraphs(**102**)—

“**10G.**—(1) In this paragraph—

“combination scheme” means a combination scheme under the Fire Services Act 1947 made in consequence of an order under Part II of the Local Government Act 1992 containing provision for giving effect to a structural change (within the meaning given to that expression in that Part);

“the council”, in relation to a new fire authority, means the county council which is superseded as a fire authority by the new fire authority;

“excluded fire arrangement” means any credit arrangement which is of a description excluded by regulations made by the Secretary of State under paragraph 11(2)(**103**), and is transferred to a new fire authority under the provisions of a combination scheme;

“fire arrangement” means any credit arrangement, other than an excluded fire arrangement, which is transferred to a new fire authority under the provisions of a combination scheme;

“first year”, in relation to a new fire authority and the council in relation to that authority, means the financial year in which that authority is constituted; and

“new fire authority” means a fire authority constituted by a combination scheme.

(2) Where, in relation to a new fire authority, the fire services amount for the council on 31st March in the first year is a positive amount, the credit ceiling of the new fire authority on that day shall be increased by that amount, and the credit ceiling of the council on that day shall be reduced by the same amount.

(3) Where, in relation to a new fire authority, the fire services amount for the council on 31st March in the first year is a negative amount, the credit ceiling of the new fire authority on that day shall be reduced by that amount, and the credit ceiling of the council on that day shall be increased by the same amount.

(4) For the purposes of this paragraph—

(a) the fire services amount for the council for 31st March in any of the years 1991 to the first year shall be determined—

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(**100**) 1947 c. 41.

(**101**) 1992 c. 19.

(**102**) Schedule 3 to the Act was modified by the insertion of paragraphs 10A, 10B, 10C, and 10D, to take account of the establishment of new police authorities, and by the insertion of paragraphs 10E, and 10F to take account of the constitution of combined fire authorities. (See regulation 21 of, and Part II of Schedule 3 to, the 1990 Regulations as amended by S.I. 1995/850, S.I. 1995/1982 and S.I. 1996/568).

(**103**) See regulations 122 and 123 of these Regulations, and regulation 22 and 22A of the 1990 Regulations (regulation 22A was inserted by S.I. 1996/2539).

- (i) by adding to the fire services amount for the council for 31st March in the immediately preceding year the amount of the fire services increase for the council for the financial year in question; and
  - (ii) by subtracting from the resulting sum the amount of the fire services decrease for the council for that financial year; and
- (b) the fire services amount for the council for 31st March 1990 shall be nil.
- (5) For the purposes of sub-paragraph (4), the amount of the fire services increase for the council for any financial year is the amount by which their credit ceiling is increased in that year by the use of credit approvals to any extent as mentioned in section 56(3)(b) in respect of their fire arrangements.
- (6) For the purposes of sub-paragraph (4), the amount of the fire services decrease for the council for any financial year is the total of the following amounts—
- (a) 4 per cent. of the fire services amount for the council for 31st March in the financial year immediately preceding the financial year in question;
  - (b) the amount which is applied or charged by the council (as an amount of credit cover) as mentioned in paragraph (b) or (c) of section 50(3) in relation to any excluded fire arrangements; and
  - (c) in relation to any fire arrangements and any excluded fire arrangements, the amount set aside by the council from a revenue account or from the usable part of capital receipts as provision to meet credit liabilities being an amount over and above the aggregate of—
    - (i) the amount referred to in sub-paragraph (b); and
    - (ii) the amount which, in relation to such arrangements, the council are required so to set aside by virtue of any provision of this Act or any regulations made under this Act.”.

### **Credit ceilings of authorities for National Parks**

**121.**—(1) In this regulation,

“National Park authority” has the same meaning as in article 2 of the National Park Authorities (England) Order 1996<sup>(104)</sup>; and

“relevant council”, in relation to a National Park authority, means the council which, pursuant to paragraph 8 of Schedule 17 to the Local Government Act 1972, appointed the National Park Committee for the Park for which the authority is established.

(2) In relation to a National Park authority, the relevant council in relation to that authority, the Lake District Special Planning Board and the Peak Park Joint Planning Board, in addition to the modifications made in regulations 117, 118 and 119, Schedule 3 to the Act is modified by the insertion of the following paragraphs—

“**10H.**—(1) In paragraphs 10I and 10J—

“the Board” means the Lake District Special Planning Board or the Peak Park Joint Planning Board;

“excluded Park arrangement” means any credit arrangement which is of a description excluded by regulations made by the Secretary of State under paragraph 11(2)<sup>(105)</sup>, and vests in a National Park authority by virtue of a relevant agreement or award or

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<sup>(104)</sup>S.I. 1996/1243; amended by S.I. 1996/2546.

<sup>(105)</sup>See regulations 122 and 123 of these Regulations, and regulation 22 and 22A of the 1990 Regulations (regulation 22A was inserted by S.I. 1996/2539).

by virtue of article 15 of the National Park Authorities (England) Order 1996(106) (“the Order”);

“National Park authority” has the same meaning as in article 2 of the Order;

“Park arrangement” means any credit arrangement, other than an excluded Park arrangement, which vests in a National Park authority by virtue of a relevant agreement or award or by virtue of article 15 of the Order;

“relevant borrowing” means borrowed money which a National Park authority is liable to repay by virtue of a relevant agreement or award or by virtue of article 15 of the Order; and

“relevant council”, in relation to a National Park authority, means the council which, pursuant to paragraph 8 of Schedule 17 to the Local Government Act 1972, appointed the National Park Committee for the Park for which the authority is established;

and in this paragraph, “relevant agreement or award” means an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)(107) or an award under subsection (3) of that section.

**10I.**—(1) Where, in relation to a National Park authority, the specified amount for the relevant council on 31st March 1997 is a positive amount, the credit ceiling of the National Park authority on that day shall be increased by that amount, and the credit ceiling of the relevant council on that day shall be reduced by the same amount.

(2) Where, in relation to a National Park authority, the specified amount for the relevant council on 31st March 1997 is a negative amount, the credit ceiling of the National Park authority on that day shall be reduced by that amount, and the credit ceiling of the relevant council on that day shall be increased by the same amount.

(3) In relation to the National Park authority established for the Park for which a Board was established—

(a) where the specified amount for the Board on 31st March 1997 is a positive amount, the credit ceiling of the National Park authority on that day shall be increased by that amount; and

(b) where the specified amount for the Board on 31st March 1997 is a negative amount, the credit ceiling of the National Park authority on that day shall be reduced by that amount.

**10J.**—(1) For the purposes of paragraph 10I, in relation to a National Park authority—

(a) the specified amount for the relevant council or a Board on 31st March in any of the years 1991 to 1997 shall be determined—

(i) by adding to the specified amount for the council or the Board on 31st March in the immediately preceding year the specified increase for the council or the Board for the financial year in question; and

(ii) by subtracting from the resulting sum the specified decrease for the council or the Board for that financial year; and

(b) the specified amount for the relevant council or a Board on 31st March 1990 shall be nil.

(2) For the purpose of sub-paragraph (1), the specified increase for the relevant council or a Board for any financial year is the amount by which their credit ceiling is increased

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(106) S.I. 1996/1243; amended by S.I. 1996/2546.

(107) 1995 c. 25.

in that year by the use of credit approvals to any extent as mentioned in section 56(3) in respect of—

- (a) their Park arrangements; and
- (b) any expenditure for capital purposes which is defrayed out of relevant borrowing.

(3) For the purposes of sub-paragraph (1), the specified decrease for the relevant council or a Board for any financial year is the total of the following amounts—

- (a) four per cent. of the specified amount for the council or the Board for 31st March in the financial year immediately preceding the financial year in question;
- (b) the amount which is applied or charged by the council or the Board (as an amount of credit cover) as mentioned in paragraph (b) or (c) of section 50(3) in relation to any excluded Park arrangements; and
- (c) in relation to any Park arrangements and any excluded Park arrangements, the amount set aside by the council or the Board from a revenue account or from the usable part of capital receipts as provision to meet credit liabilities being an amount over and above the aggregate of—
  - (i) the amount referred to in sub-paragraph (b); and
  - (ii) the amount which, in relation to such arrangements, the council or the Board are required so to set aside by virtue of any provision of this Act or any regulations made under this Act..”

#### *Excluded credit arrangements*

#### **General exclusion for leases of land**

**122.**—(1) In this regulation, in relation to a credit arrangement which is a lease of land (a “lease”)

— “the authority” means the local authority who become the lessees under the lease; and

“relevant date” means the date on which the authority become the lessees under the lease.

(2) A lease shall be excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act if, on the relevant date, the authority estimate that in every financial year beginning after that date the value of the consideration falling to be given by them in respect of the lease will be not less than the amount which would fall to be paid by them if—

- (a) where they acquired the lease otherwise than by a grant, the lease had been granted on the relevant date for a period equal to the period of the lease which is unexpired on that date;
- (b) the only consideration falling to be given by them for the grant of the lease consisted of annual payments of rent; and
- (c) each such payment had been determined on the relevant date and on the open market.

(3) For the purposes of this regulation, in any case where the consideration in respect of a lease consists, in whole or in part of—

- (a) an undertaking to do or refrain from doing something at a future time (whether specified or not), or
- (b) a right to do or refrain from doing something at a future time,

that consideration shall not be regarded as having been given until the undertaking is performed or, as the case may be, the right is exercised.

### **Exclusion for private finance transactions**

**123.**—(1) A credit arrangement to which paragraph (2) applies shall be excluded for the purposes of paragraph 11(2) of Schedule 3 to the Act.

(2) This paragraph applies to a credit arrangement where—

- (a) the arrangement is a private finance transaction for the purposes of Part IV of these Regulations;
- (b) paragraph (3) applies to the local authority who enter into the arrangement; and
- (c) as authority to enter into the arrangement, the authority determine to use a supplementary credit approval which applies only for the purposes of the arrangement.

(3) This paragraph applies to a local authority whose credit ceiling, as determined under Part III of Schedule 3 to the Act, is nil or a negative amount at the beginning of the financial year in which the credit arrangement is entered into, and who have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.

## **PART XI**

### **THE ADJUSTED CREDIT CEILING**

#### **Adjusted credit ceiling**

**124.** At any time on or after 1st April 1997, a local authority's adjusted credit ceiling shall be their credit ceiling at that time, as determined under Part III of Schedule 3 to the Act, subject to the modifications prescribed for the purposes of Part IV of that Schedule in the following provisions of this Part.

#### **Basis of determination**

**125.** The starting point for determining a local authority's adjusted credit ceiling on 1st April 1997 shall be the amount which was the authority's adjusted credit ceiling on 31st March 1997.

#### **Amounts set aside—transferred property and deemed borrowing**

**126.** In determining their adjusted credit ceiling at any time, a local authority shall disregard any reduction in their credit ceiling which results from the setting aside under section 59(1) of the reserved part of a capital receipt where the sum received is a capital receipt by virtue of regulation 56, 57 or 58, and the reserved part is 100 per cent. by virtue of regulation 68.

#### **Amounts set aside—transferred debt of designated councils**

**127.** In determining their adjusted credit ceiling at any time, a local authority shall disregard any reduction in their credit ceiling which results from the setting aside under section 63(1) of any amount which, for the purposes of regulation 131, the authority are required to determine under regulation 135 (transferred debt of designated councils).

#### **Amounts set aside—advances to housing associations**

**128.** In determining their adjusted credit ceiling at any time, a local authority shall disregard any reduction in their credit ceiling which results from the setting aside under section 59(1) of the reserved part of a sum received which is a capital receipt by virtue of section 58(1) (c) or (d), and is paid in respect of an advance made by the authority on or before 30th September 1989—

- (a) to a housing association (within the meaning given to that expression in section 1 of the Housing Associations Act 1985(**108**)); and
- (b) for the purposes of expenditure in respect of which the association in question received a grant under section 50 of the Housing Act 1988(**109**), section 41(1) of the Housing Associations Act 1985(**110**) or section 29(1) of the Housing Act 1974(**111**).

#### **Amounts set aside—interests in a regulated company**

**129.** In determining their adjusted credit ceiling at any time, a local authority shall disregard any reduction in their credit ceiling which results from the setting aside of any amount which the authority determine to set aside as credit cover in accordance with article 14 of the Local Authorities (Companies) Order 1995(**112**).

## **PART XII**

### **MINIMUM REVENUE PROVISION**

#### *Preliminary provisions*

#### **Interpretation**

**130.** In this Part—

“the authority” means a local authority who are determining the amount of their minimum revenue provision;

“the current year” means any financial year for which a local authority are determining the amount of their minimum revenue provision;

“housing purposes” means purposes for which any expenditure incurred by a local authority and charged to a revenue account would be charged (as required under Part VI of the Act) to the authority’s Housing Revenue Account or Housing Repairs Account;

“the last year” means the financial year beginning one year before the beginning of the current year;

“relevant credit approval” means any supplementary credit approval other than one issued in respect of expenditure which is treated as expenditure for capital purposes by virtue only of directions under section 40(6) (capital purposes); and

“the year before the last year” means the financial year beginning two years before the beginning of the current year.

#### *The components of minimum revenue provision*

#### **Minimum revenue provision for financial years beginning after 31st March 1997**

**131.** Subject to regulation 138, for the financial year beginning on 1st April 1997 and every subsequent financial year of a local authority, the amount in respect of principal for the purposes of

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(108) 1985 c. 69.

(109) 1988 c. 50.

(110) Section 41 was repealed by section 140(2) of, Schedule 18 to, the Housing Act 1988.

(111) 1974 c. 44 Section 29 was repealed by section 3 of, and Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71).

(112) S.I. 1995/849; amended by S.I. 1996/621.

paragraph 15(1) of Schedule 3 to the Act shall be the aggregate of all amounts which the authority is required to determine under regulations 132 to 137.

#### **Percentage of the housing amount and non-housing amount**

**132.**—(1) If the authority are required (under Part VI of the Act) to keep a Housing Revenue Account for the current year, they shall determine the amount which is equal to the sum of two per cent. of their housing amount and four per cent. of their non-housing amount.

(2) In this Part, in relation to any such authority, except for the financial year beginning on 1st April 1997—

- (a) the housing amount is an amount determined in accordance with provisions of this Part referring to the authority’s housing component on the last day of the last year;
- (b) the housing component on the last day of the last year is an amount determined in accordance with provisions of this Part referring to components of the authority’s adjusted credit ceiling which are attributable to the exercise of housing functions;
- (c) the non-housing amount is an amount determined in accordance with provisions of this Part referring to the authority’s non-housing component on the last day of the last year; and
- (d) the non-housing component on the last day of the last year is an amount determined in accordance with provisions of this Part referring to components of the authority’s adjusted credit ceiling which are attributable to the exercise of functions other than housing functions.

#### **Percentage of the relevant amount**

**133.**—(1) If the authority are not required to keep a Housing Revenue Account for the current year, they shall determine the amount equal to four per cent. of their relevant amount.

(2) In this Part, except for the financial year beginning on 1st April 1997, the relevant amount of any such authority is an amount determined in accordance with provisions of this Part referring to components of the authority’s adjusted credit ceiling.

#### **Outstanding advances from a loans fund**

**134.**—(1) In this regulation—

“limited approval” means an approval given by the Secretary of State under paragraph 1(b) of Schedule 13 to the Local Government Act 1972(**113**) subject to a condition that the borrowing approved would be repaid within 10 years after the date of the approval; and

“relevant period”, in relation to an advance from a loans fund, means the period beginning on 1st April 1990 and ending on the last day of the financial year in which the money borrowed by virtue of the limited approval for the advance is due to be repaid.

(2) The authority shall determine the total amount, if any, which would fall to be repaid by them in the current year in respect of their advances from a loans fund, if they had been required to repay the principal of each such advance outstanding on 1st April 1990 before the end of the relevant period by equal annual instalments.

(3) For the purposes of paragraph (2), an advance from a loans fund is an advance which was—

- (a) made before 1st April 1990 from a loans fund established by the authority under paragraph 15 of Schedule 13 to the Local Government Act 1972;

- (b) made by virtue of a limited approval for a purpose or class of purpose for which the approval had been given; and
- (c) not fully repaid to the loans fund before 1st April 1990.

### **Transferred debt of designated councils**

**135.** If the authority are a designated council under an order made under section 66(1) or 67(3) of the Local Government Act 1985 (discharge of residuary functions)(**114**), they shall determine an amount equal to the total of any payments in respect of principal which fall to be made by them in the current year into a fund in relation to money which, by virtue of the order, is treated as their transferred debt.

### **Use of certain credit approvals**

**136.**—(1) In this regulation—

“credit approval” means any supplementary credit approval issued to the authority in respect of expenditure which is treated as expenditure for capital purposes by virtue only of directions under section 40(6); and

“relevant amount” means an amount equal to the extent to which a credit approval has, during any financial year before the current year, been used as mentioned in section 56(3).

(2) The authority shall determine the total amount which would fall to be repaid by them in the current year in respect of the credit approvals issued to them, if, in relation to each such approval, they had been required to repay each relevant amount by equal annual instalments before the end of the amortisation period specified in the approval.

### **Use of amounts set aside to meet liabilities under credit arrangements which had an initial cost of nil**

**137.**—(1) In this regulation, “amount set aside” has the same meaning as in Part XIII of these Regulations.

(2) The authority shall determine the total of all amounts set aside, if any, which were applied by them in the last year for the purpose described in section 64(1)(b) (use of amounts set aside to meet credit liabilities) in respect of relevant credit arrangements.

(3) For the purposes of paragraph (2), a credit arrangement is a relevant credit arrangement if its initial cost was nil and, at the time an amount set aside is applied to meet any liability of the authority in respect of it, it has not been varied as mentioned in section 51(1) (variation of credit arrangements).

### *Commutation of periodic payments*

### **Commutation adjustments to minimum revenue provision**

**138.**—(1) Subject to paragraph (2), where—

- (a) any debt of the authority to the Public Works Loan Commissioners was reduced or extinguished by a commuted payment (within the meaning which that expression has in section 157) paid by the Secretary of State to the Commissioners in the financial year beginning on 1st April 1992, or
- (b) the Secretary of State paid a commuted payment to the authority in that financial year,

the authority shall determine the amount in respect of principal for the purposes of paragraph 15(1) (a) of Schedule 3 to the Act in accordance with the following formula—

**P–A**

where—

“P” is the amount which would have been the amount in respect of principal for the current year if the determination under regulation 131 had not been subject to adjustment under this regulation; and

“A” is the amount of the authority’s commutation adjustment for the current year determined in accordance with Part II of Schedule 2 to these Regulations.

(2) For the purposes of paragraph (1), where amount “A” exceeds amount “P”, the amount in respect of principal for the purposes of paragraph 15(1)(a) of Schedule 3 to the Act shall be nil.

#### *The housing amount and non-housing amount*

#### **Basis of determination**

**139.**—(1) Where, for the purposes of this Part, the authority are required to have regard to the housing component of their adjusted credit ceiling on 31st March 1997, they shall have regard to the amount determined under paragraph 3(5) of Schedule 5 to the 1990 Regulations in relation to their housing amount for the financial year beginning on 1st April 1997.

(2) Where, for the purposes of this Part, the authority are required to have regard to the non-housing component of their adjusted credit ceiling on 31st March 1997, they shall have regard to the amount determined under paragraph 5(5) of Schedule 5 to the 1990 Regulations in relation to their non-housing amount for the financial year beginning on 1st April 1997.

#### **Housing and non-housing amounts for financial year beginning 1st April 1997**

**140.**—(1) The authority’s housing amount for the financial year beginning on 1st April 1997 shall be an amount equal to the housing amount for that year determined under paragraph 3(1) of Schedule 5 to the 1990 Regulations.

(2) The authority’s non-housing amount for the financial year beginning on 1st April 1997 shall be an amount equal to the non-housing amount for that year determined under paragraph 5(1) of Schedule 5 to the 1990 Regulations.

#### **Housing and non-housing amounts for subsequent financial years**

**141.** Subject to regulation 142, where the current year is the financial year beginning on 1st April 1998 or any subsequent financial year, the authority’s housing amount for the current year shall be equal to their housing component on the last day of the last year, and the authority’s non-housing amount for the current year shall be equal to their non-housing component on that day.

#### **General provisions affecting the determination of housing and non-housing amounts**

**142.**—(1) The housing amount and the non-housing amount of a local authority for any financial year may be nil, but not less than nil.

(2) Where—

(a) the current year is the financial year beginning on 1st April 1998 or any subsequent financial year, and

(b) on the last day of the last year the authority’s housing component is greater than nil and their non-housing component is less than nil,

the housing amount for the current year shall, subject to paragraph (1), be reduced by the amount by which the non-housing component is less than nil.

(3) Where—

- (a) the current year is the financial year beginning on 1st April 1998 or any subsequent financial year, and
- (b) on the last day of the last year the authority's non-housing component is greater than nil and their housing component is less than nil,

the non-housing amount for the current year shall, subject to paragraph (1), be reduced by the amount by which the housing component is less than nil.

*The housing component for subsequent financial years*

**Determining the housing component**

**143.**—(1) For the purposes of regulation 141, the authority shall determine the housing component on the last day of the last year by deducting their housing reduction in the last year from the aggregate of—

- (a) their housing component on the last day of the year before the last year;
- (b) their housing increase in the last year; and
- (c) the amount, if any, determined in accordance with regulation 146.

(2) The authority's housing component may, by virtue of paragraph (1), be nil or a negative amount.

**Determining the housing reduction**

**144.**—(1) In this regulation, “relevant amounts” means any amounts falling to be set aside—

- (a) under section 59(1) or 61(4) by virtue of the disposal of a house, dwelling or other property to which section 74(1) (duty to keep Housing Revenue Account) applied immediately before the disposal; or
- (b) in accordance with a determination under section 50(3)(c) or 60(2) referring to a credit arrangement which—
  - (i) is of a description excluded by regulations made by the Secretary of State under paragraph 11(2) of Schedule 3 to the Act; and
  - (ii) was entered into for housing purposes.

(2) For the purposes of regulation 143, the authority's housing reduction in the last year is the aggregate of—

- (a) if the authority's housing component on the last day of the year before the last year is a positive amount, two per cent. of that amount; and
- (b) the amount, if any, by which the authority's adjusted credit ceiling was reduced during the last year by the setting aside of relevant amounts as provision to meet credit liabilities.

**Determining the housing increase**

**145.** For the purposes of regulation 143, the authority's housing increase in the last year is the amount, if any, by which their adjusted credit ceiling was increased during that year by the use of relevant credit approvals to any extent as mentioned in section 56(3) in respect of—

- (a) any expenditure for housing purposes; or

- (b) any credit arrangement entered into for housing purposes.

#### **Increase in housing component where minimum revenue provision in the last year was nil**

**146.** For the purposes of regulation 143, where the authority's minimum revenue provision for the last year was nil by virtue of paragraph 15(2) of Schedule 3 to the Act, the authority shall determine the amount which they would have set aside in the last year, if their credit ceiling on the last day of the year before the last year had been greater than nil, by virtue of—

- (a) regulation 134, in respect of any advances made for the purpose of meeting expenditure which, if it had been incurred after 1st April 1990, would have been for housing purposes; and
- (b) regulation 136, in respect of the use of supplementary credit approvals to any extent as mentioned in section 56(3) in respect of—
  - (i) expenditure for housing purposes; and
  - (ii) credit arrangements entered into for housing purposes.

#### *The non-housing component for subsequent financial years*

#### **Determining the non-housing component**

**147.—(1)** For the purposes of regulation 141, the authority shall determine the non-housing component on the last day of the last year by deducting their non-housing reduction in the last year from the aggregate of—

- (a) their non-housing component on the last day of the year before the last year;
- (b) their non-housing increase in the last year; and
- (c) the amount, if any, determined in accordance with regulation 150.

(2) The authority's non-housing component may, by virtue of paragraph (1), be nil or a negative amount.

#### **Determining the non-housing reduction**

**148.—(1)** In order to determine their non-housing reduction for the last year, the authority shall determine—

- (a) the total amount ("amount A") by which their adjusted credit ceiling was reduced during the last year under paragraphs 12(1) and 14(1) of Schedule 3 to the Act;
- (b) the total amount ("amount B") by which their adjusted credit ceiling was reduced during that year by the setting aside of any amounts determined under regulations 134 and 136; and
- (c) the amount ("amount C") by which amount A exceeds amount B.

(2) For the purposes of regulation 147, the authority's non-housing reduction in the last year is the amount, if any, by which amount C exceeds the housing reduction determined in accordance with regulation 144.

#### **Determining the non-housing increase**

**149.—(1)** In order to determine their non-housing increase for the last year, the authority shall determine the total amount by which their adjusted credit ceiling was increased during the last year—

- (a) by the use of relevant credit approvals to any extent as mentioned in section 56(3);

- (b) under paragraph 14(2) of Schedule 3 to the Act; and
- (c) under regulation 118.

(2) For the purposes of regulation 147, the authority's non-housing increase in the last year is the amount determined in accordance with the formula

$$X - Y + Z$$

where—

- “X” means the total amount determined in accordance with paragraph (1);
- “Y” means the housing increase determined in accordance with regulation 145; and
- “Z” means the amount, if any, by which the housing reduction determined in accordance with regulation 144 exceeds the amount determined for amount C under regulation 148(1).

#### **Increase in non-housing component where minimum revenue provision in the last year was nil**

**150.** For the purposes of regulation 147, where the authority's minimum revenue provision for the last year was nil by virtue of paragraph 15(2) of Schedule 3 to the Act, the authority shall determine the amount which they would have set aside in the last year, if their credit ceiling on the last day of the year before the last year had been greater than nil, by virtue of—

- (a) regulation 134, in respect of any advances made for the purpose of meeting expenditure which, if it had been incurred after 1st April 1990, would have been for any purpose other than housing purposes; and
- (b) regulation 136, in respect of the use of supplementary credit approvals to any extent as mentioned in section 56(3) in respect of—
  - (i) expenditure for any purpose other than housing purposes; and
  - (ii) credit arrangements entered into for any purpose other than housing purposes.

#### *The relevant amount*

#### **Relevant amount for financial year beginning 1st April 1997**

**151.** The authority's relevant amount for the financial year beginning on 1st April 1997 shall be the amount determined to be the relevant amount for that year under paragraph 8 of Schedule 5 to the 1990 Regulations.

#### **Relevant amount for subsequent financial years**

**152.** Where the current year is the financial year beginning on 1st April 1998 or any subsequent financial year, the authority's relevant amount for the current year shall be an amount equal to their adjusted credit ceiling on the last day of the last year minus the amount, if any, determined by the authority under regulation 153.

#### **Adjustment for certain amounts set aside under separate provision**

- 153.** The authority shall determine the amount by which amount A exceeds amount B where—
- (a) amount A is the aggregate of—
    - (i) so much of the amount determined in accordance with paragraph 8(1)(a) of Schedule 3 to the Act as relates to advances which are advances from a loans fund within the meaning given to that expression in regulation 134; and

- (ii) so much of the amount of any supplementary credit approvals falling within section 54(5) as has been used by the authority as mentioned in section 56(3) in any financial year before the current year; and
- (b) amount B is the aggregate of—
  - (i) any amounts set aside by the authority in any financial year before the current year by virtue of regulation 134 and 136 or regulation 26(1)(b) and (c) of the 1990 Regulations; and
  - (ii) if, by virtue of paragraph 15(2) of Schedule 3 to the Act, the authority's minimum revenue provision for such a financial year is nil, the amounts which, by virtue of those regulations, the authority would have set aside in that year if their credit ceiling had been greater than nil.

## PART XIII

### USE OF AMOUNTS SET ASIDE TO MEET CREDIT LIABILITIES

#### Interpretation

**154.**—(1) In this Part—

“amount set aside” means any amount for the time being set aside by a local authority (whether voluntarily or pursuant to a requirement under Part IV of the Act) as provision to meet credit liabilities;

“Health Authority” means an authority established by order under section 8 of the National Health Authorities Act 1977 (Health Authorities)(**115**);

“relevant date” shall be construed in accordance with section 64(4);

“relevant expenditure”, in relation to the transfer of an amount set aside, means the expenditure which is to be met by the amount transferred; and

“Special Health Authority” means a body established by order under section 11 of the National Health Authorities Act 1977 (Special Health Authorities)(**116**).

(2) For the purposes of this Part, a local authority are a relevant authority if—

- (a) on the relevant date for any financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount; and
- (b) they have no money outstanding by way of borrowing other than disregarded borrowing within the meaning given to that expression in regulation 65.

#### Use of amounts set aside in respect of certain capital receipts

**155.** An amount set aside in respect of a capital receipt to which regulation 71 applies may be applied by a relevant authority under section 64(2)(a) to meet any expenditure for capital purposes which is incurred by the authority for the purposes of or in connection with—

- (a) the Central Criminal Court;
- (b) the police, probation or magistrates' court services; or

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**(115)** 1977 c. 49 Section 8 was substituted by section 1(1) of the Health Authorities Act 1995 (c. 17). Health Authorities were established in England by the Health Authorities (England) Establishment Order 1996 (S.I. 1996/624), and in Wales by the Health Authorities (Wales) Establishment Order 1996 (S.I. 1996/146).

**(116)** Section 11 was amended by section 2(1) of, and paragraphs 1 and 2 of Part I of Schedule 1 to, the Health Authorities Act 1995.

- (c) any functions of the authority conferred under section 2 of the Civil Defence Act 1948<sup>(117)</sup>.

#### **Use of amounts set aside—expenditure for capital purposes**

**156.**—(1) In this regulation, “excluded expenditure” means expenditure for capital purposes on the making of a grant, an advance or other financial assistance which—

- (a) is to a housing association (within the meaning given to that expression in section 1 of the Housing Associations Act 1985<sup>(118)</sup>); and
- (b) is towards expenditure for which the housing association receive or have received a grant under section 18 of the Housing Act 1996<sup>(119)</sup>, section 50 of the Housing Act 1988<sup>(120)</sup>, section 41(1) of the Housing Associations Act 1985<sup>(121)</sup> or section 29(1) of the Housing Act 1974<sup>(122)</sup>.

(2) An amount set aside, other than an amount set aside in respect of a capital receipt to which regulation 71 applies, may be applied by a relevant authority under section 64(2)(a) to meet any expenditure for capital purposes other than excluded expenditure.

#### **Use of amounts set aside—revenue expenditure**

**157.**—(1) Subject to the condition specified in paragraph (3), where paragraph (2) applies to a local authority, an amount set aside may be applied by the authority under section 64(2)(a) to meet any expenditure which, in accordance with section 41, is to be charged to a revenue account of the authority.

(2) This paragraph applies to a local authority if, on the relevant date for any financial year, their credit ceiling, as determined under Part III of Schedule 3 to the Act, is a negative amount and if—

- (a) any debt of the authority to the Public Works Loan Commissioners was reduced or extinguished by a commuted payment (within the meaning which that expression has in section 157) paid by the Secretary of State to the Commissioners in the financial year beginning on 1st April 1992; or
- (b) the Secretary of State paid a commuted payment to the authority in that financial year.

(3) In applying an amount set aside as mentioned in paragraph (1), a local authority shall ensure that the total amount so applied in any financial year does not exceed the amount of the authority’s commutation adjustment for that year determined in accordance with Part II of Schedule 2 to these Regulations.

#### **Transfer of amounts set aside**

**158.** Subject to the condition specified in regulation 159, an amount set aside may be transferred by a relevant authority under section 64(2)(b) in any of the following cases to a body specified for the case in question—

- (a) in the case of a relevant authority which is one of the councils specified in section 39 (1) (a) to (e) (application of Part IV of the Act) <sup>(123)</sup>, to a Health Authority or a Special Health Authority acting within the relevant authority’s area;

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<sup>(117)</sup> 1948 c. 5.

<sup>(118)</sup> 1985 c. 69.

<sup>(119)</sup> 1996 c. 52.

<sup>(120)</sup> 1988 c. 50.

<sup>(121)</sup> Section 41 was repealed by Section 140(2) of, and Schedule 18 to, the Housing Act 1988.

<sup>(122)</sup> 1974 c. 44. Section 29 was repealed by Section 3 of, and Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71).

<sup>(123)</sup> Section 39 was amended by paragraph 88 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19). There are other amendments not relevant to this regulation.

- (b) in the case of a relevant authority which is a county council, a district council, a county borough council or the Council of the Isles of Scilly, to the police authority whose police area as listed in Schedule 1 to the Police Act 1996<sup>(124)</sup> includes the relevant authority's area;
- (c) in the case of a relevant authority which is a non-metropolitan district council, to the county council for the district;
- (d) in the case of a relevant authority which is a metropolitan district council, to the fire and civil defence authority established by Part IV of the Local Government Act 1985<sup>(125)</sup> of which the relevant authority is a constituent council;
- (e) in the case of a relevant authority which is a London borough council or the Common Council of the City of London, to the London Fire and Civil Defence Authority established by Part IV of the Local Government Act 1985;
- (f) in the case of a relevant authority which is a county council, county borough council or non-metropolitan district council, to a combined fire authority constituted by a combination scheme under the Fire Services Act 1947<sup>(126)</sup> ("a combined fire authority") of which the relevant authority is a constituent council;
- (g) in the case of a relevant authority which is a combined fire authority, to a constituent council of the relevant authority;
- (h) in the case of a relevant authority which is a London borough council or the Common Council of the City of London or a metropolitan district council, to an authority established by order under section 10(1) of the Local Government Act 1985 ("a waste disposal authority") of which the relevant authority is a constituent council; and
- (i) in the case of a relevant authority which is a waste disposal authority, to a constituent council of the relevant authority.

#### **Conditions specified in relation to the transfer of amounts set aside**

**159.**—(1) In transferring an amount set aside to a body mentioned in regulation 158 ("the transferee"), and in respect of any amount so transferred, a relevant authority shall comply with the conditions specified in paragraphs (2) and (3).

(2) A relevant authority shall not, in any financial year ("the current year"), transfer an amount set aside unless they are satisfied that the relevant expenditure—

- (a) is expenditure for capital purposes;
- (b) in the case of an amount set aside in respect of a capital receipt to which regulation 71 applies, is for the purposes of or in connection with any of the matters mentioned in regulation 155;
- (c) is not excluded expenditure within the meaning given to that expression in regulation 156;
- (d) has been, or is to be, incurred in the current year or in the financial year immediately preceding or immediately following the current year; and
- (e) is in connection with the exercise by the transferee of functions which are substantially for the benefit of the whole or any part of the relevant authority's area.

(3) In relation to any transfer of an amount set aside—

- (a) where, at the time of the transfer, the relevant expenditure has not been incurred, the amount transferred by the relevant authority shall not exceed 50 per cent. of the transferee's estimate of that expenditure; and

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<sup>(124)</sup>1996 c. 16.

<sup>(125)</sup>1985 c. 51.

<sup>(126)</sup>1947 c. 41.

- (b) subject to paragraph (4), where, at the time of the transfer, the relevant expenditure has already been incurred, the amount transferred by the relevant authority shall not exceed 50 per cent. of the amount of that expenditure.

(4) For the purposes of paragraph (3) (b), in determining the amount of the relevant expenditure incurred, the relevant authority shall disregard any expenditure for which an amount set aside has already been transferred in reliance upon an estimate provided by the transferee.

## PART XIV

### SUPPLEMENTARY PROVISIONS

#### Interpretation of Part IV of the Act—references to loans and borrowing

**160.**—(1) Any reference in Part IV of the Act to a loan to or borrowing (or money borrowed) by a local authority (“the current authority”) includes a reference to a loan to or borrowing (or money borrowed) by another authority (“the original authority”) if the original authority’s liabilities in respect of the loan to or borrowing (or money borrowed) by them have become those of the current authority under or by virtue of—

- (a) an order made under section 23(3) or 84 of the London Government Act 1963 (transfer of land held for housing purposes)(**127**);
- (b) an order made under section 51(2), 58(2), 67(4) or 254(1) or (2)(a) or (d) of, or paragraph 7 of Schedule 10 to, the Local Government Act 1972(**128**) or regulations made under section 67(1) or (2) of that Act;
- (c) an order made under section 66(1) or 67(3) of the Local Government Act 1985 (discharge of residuary functions)(**129**);
- (d) section 25(6) of the Local Government Act 1985 (Northumbria Police Authority)(**130**);
- (e) the Local Government Changes for England (Property Transfer and Transitional Payments) Regulations 1995(**131**);
- (f) article 9 of the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order(**132**); or
- (g) the Local Government Reorganisation (Wales) (Property etc.) Order 1996(**133**).

(2) Any reference in Part IV of the Act to a loan to or borrowing (or money borrowed) by a local authority does not include a reference to a loan to or borrowing (or money borrowed) by that authority if their liabilities in respect of the loan or borrowing (or money borrowed) have become those of another authority by virtue of—

- (a) an order made under section 51(2), 58(2) or 67(4) of, or paragraph 7 of Schedule 10 to, the Local Government Act 1972 or regulations made under section 67(1) or (2) of that Act; or
- (b) article 9 of the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994.

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(127) 1963 c. 33.

(128) 1972 c. 70.

(129) 1985 c. 51.

(130) Section 25 was repealed by Section 93 of, and Part I of Schedule 9 to, the Police and Magistrates' Courts Act 1994 (c. 29).

(131) S.I. 1995/402; amended by S.I. 1995/1748.

(132) S.I. 1994/3262 (C. 83). There are amendments which are not relevant to this regulation.

(133) S.I. 1996/532.

### Approved investments

161. Regulation 1(2) of the Local Authorities (Capital Finance) (Approved Investments) Regulations 1990(134) shall be amended, in the definition of “relevant lender”, by the substitution of “paragraph 28, 29 or 30” for “paragraph 28 or 29”.

### Revocations

162. Subject to the savings mentioned in regulation 163—

- (a) regulation 15 of the Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1996(135) is revoked; and
- (b) the subordinate legislation specified in Schedule 3 to these Regulations shall be revoked on 1st April 1997 to the extent specified in the third column of that Schedule.

### Savings

163.—(1) Any provisions of the 1990 Regulations under which a local authority are required to determine any amount for any financial year ending before 1st April 1997 shall continue to have effect for the purpose only of the determination of all such amounts.

(2) The following provisions of the 1990 Regulations shall continue to have effect for the purpose only of the determination by a local authority of the amounts referred to in regulations 139, 140 and 151—

- (a) Parts II and III of Schedule 5; and
- (b) any other provision by reference to which the authority determine in accordance with those Parts of that Schedule the housing component and non-housing component of their adjusted credit ceiling on 31st March 1997, and their housing amount, non-housing amount and relevant amount for the financial year beginning on 1st April 1997.

(3) Where, for any financial year, a local authority have not yet made the calculation required by virtue of paragraph 7 of Schedule 6 to the 1990 Regulations, Part IV of that Schedule shall continue to have effect for the purpose only of the making of the necessary calculation.

Signed by authority of the Secretary of State for the Environment

12th February 1997

*David Curry*  
Minister of State,  
Department of the Environment

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Signed by authority of the Secretary of State for Wales

12th February 1997

*Gwilym Jones*  
Parliamentary Under-Secretary of State, Welsh  
Office

## SCHEDULE 1

Regulations 41, 42 and 99

### USE OF LAND FOR A SPECIFIED PURPOSE

In relation to a local authority's use of land, a purpose is specified in a category of this Schedule if it falls within any of the following categories, or if a dwelling is situated on the land and the purpose is use as a dwelling by a person employed for a purpose falling within any of the following categories except category 10—

1. the fire service or police service, the magistrates' courts services, the probation service, or the functions conferred on the authority under section 2 of the Civil Defence Act 1948**(136)**
2. a hostel for the homeless, or the social services functions of a local authority within the meaning given to that expression in the Local Authority Social Services Act 1970**(137)**;
3. a school, or an institution providing further education, or training, or education for adults;
4. an archive, a library, a museum or an art gallery;
5. a community hall, a conference centre, a theatre, a concert hall, a leisure centre or other indoor recreation, a swimming pool, or a pier;
6. a bus station, a vehicle depot, a garage, or a public park for cars, caravans, lorries or other vehicles;
7. an allotment, a smallholding, a cemetery, a playing field (other than a school playing field), a golf course, or a park or other public open space;
8. an industrial unit, a dog compound, a market, a public convenience, or the disposal of waste, or (except so far as falling within any other category) a workshop, a kitchen, a warehouse, or the storage of goods or equipment;
9. a town hall, or local authority offices (other than offices which fall within any other category);  
or
10. a house or other dwelling provided by a local authority for a person in their employment who is entitled to occupy it as a term of his employment (other than a dwelling falling within any of the preceding categories).

## SCHEDULE 2

Regulation 138

### MINIMUM REVENUE PROVISION SAVINGS AND COMMUTATION ADJUSTMENTS

#### PART 1

##### Interpretation

1. In this Schedule—

“the authority”, “the current year”, “the housing amount” and “the last year” have the same meanings as in Part XII of these Regulations;

“commuted payment” means a commuted payment**(138)** (within the meaning which that expression has in section 157) which, in the financial year beginning on 1st April 1992, was

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**(136)** 1948 c. 5.

**(137)** 1970 c. 42.

**(138)** 1947 c. 41.

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paid to the authority, or to the Public Works Loans Commissioners to reduce or extinguish any debt of the authority;

“periodic payment” means any annual or other periodic payment in relation to which a commuted payment was determined; and

“relevant debt” means—

- (a) the amount by which any debt of the authority to the Public Works Loan Commissioners was reduced by a commuted payment; or
- (b) where such a debt was extinguished by a commuted payment, the amount of the debt.

## PART 2

### Commutation Adjustments

2. The authority’s commutation adjustment for the current year shall be determined in accordance with the formula—

$$G - (M + I + IR)$$

where—

“G” is the aggregate of the following amounts—

- (a) where commuted payments were calculated by the Secretary of State on the basis of calculations of periodic payments contained in a notice given by the authority, the amount of periodic payments which, according to the notice, the authority would have received in the current year if no payments had been commuted; and
- (b) the total amount, if any, calculated by the authority for the current year in accordance with Part IV of Schedule 6 to the 1990 Regulations;

“I” is the amount of interest savings determined in accordance with paragraph 6;

“IR” is the amount in respect of interest determined in accordance with paragraph 9; and

“M” is the amount of the authority’s minimum revenue provision savings determined for the current year in accordance with Part 3 of this Schedule.

## PART 3

### Minimum Revenue Provision Savings

3. Subject to paragraph 5, where the authority’s adjusted credit ceiling on the last day of the last year was a negative amount, the authority’s minimum revenue provision savings for the current year shall be determined in accordance with the formula—

$$\left( \frac{[ACC + (D - MC)] \times 4}{100} \right) - H$$

where—

“ACC” is the authority’s adjusted credit ceiling on the last day of the last year;

“D” is the total amount of the authority’s relevant debts;

“H” is two per cent. of the amount, if any, by which the authority’s housing amount for the current year is reduced in consequence of—

- (a) the setting aside of any amount in accordance with section 63(2) in respect of a commuted payment; or

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(b) any reduction in the authority's credit ceiling by virtue of the making of a commuted payment to the Public Works Loan Commissioners<sup>(139)</sup>; and

"MC" is an amount equal to the aggregate of—

(a) the authority's minimum revenue provision savings determined in accordance with Part II of Schedule 6 to the 1990 Regulations<sup>(140)</sup> for the financial years beginning on the 1st April 1992, 1993, 1994, 1995 and 1996;

(b) where the current year is a financial year beginning after 31st March 1998, the authority's minimum revenue provision savings determined for the financial year ending on that date and for any other financial year ending before the beginning of the current year;

(c) the authority's commutation adjustments determined in accordance with Part III of Schedule 6 to the 1990 Regulations for the financial years beginning on 1st April 1992, 1993, 1994, 1995 and 1996; and

(d) where the current year is a financial year beginning after 31st March 1998, the authority's commutation adjustment determined for the financial year ending on that date and for any other financial year ending before the beginning of the current year.

4. Subject to paragraph 5, where the authority's adjusted credit ceiling on the last day of the last year was nil or a positive amount, the authority's minimum revenue provision savings for the current year shall be determined in accordance with the formula—

$$\left( \frac{[D - MC] \times 4}{100} \right) - H$$

where

"D", "H" and "MC" have the same meanings as in paragraph 3.

5. The authority's minimum revenue provision savings for the current year may be nil but shall not be a negative amount.

## PART 4

### INTEREST SAVINGS AND THE AMOUNT IN RESPECT OF INTEREST

6. Subject to paragraph 8, for the purposes of Part 2 of this Schedule, the amount of the authority's interest savings for the current year shall be determined in accordance with the formula—

$$(D - MC) \times \frac{DI}{D}$$

where—

"D" and "MC" have the same meanings as in paragraph 4; and

"DI" is the aggregate of the amounts calculated in accordance with paragraph 7.

7. In order to calculate item "DI" in the formula in paragraph 6, the authority shall calculate for each relevant debt an amount equal to the percentage of the debt which was chargeable by way of interest on the debt on the date on which the debt was reduced or extinguished by a commuted payment.

8. The authority's interest savings for the current year may be nil but shall not be a negative amount.

<sup>(139)</sup> See paragraph 14(1) of Schedule 3 to the Act and regulation 142.

<sup>(140)</sup> Schedule 6 to the 1990 Regulations was inserted by paragraph 2(h) of the Local Authorities (Capital Finance) (Amendment) Regulations 1993 (S.I. 1993/520).

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9. Subject to paragraph 10, for the purposes of Part 2 of this Schedule, the amount in respect of interest for the current year shall be determined in accordance with the formula—

$$(\text{S} - \text{T}) \times \text{R}$$

where—

“S” is the total amount set aside by the authority under section 63(2) as provision to meet credit liabilities in respect of any commuted payments paid to them under section 157(1)(a);

“T” is the total amount which, at any time before the beginning of the current year, has been applied by the authority under section 64(2) for the purpose mentioned in regulation 157(1); and

“R” is a rate of interest which is expressed as a percentage with no more than three decimal places, and is equal to 0.125 per cent. less than the arithmetical mean of the London Inter-Bank Bid rates of interest for three month deposits published during the last year, at monthly intervals, by The Stationery Office.

10. The amount in respect of interest for the current year may be nil but shall not be a negative amount.

### SCHEDULE 3

Regulation 162

#### SUBORDINATE LEGISLATION REVOKED

Year and Number	Title	Extent of revocation
1990/432	The Local Authorities (Capital Finance) Regulations 1990	All the Regulations
1990/1273	The Local Authorities (Capital Finance) (Amendment) Regulations 1990	All the Regulations
1991/500	The Local Authorities (Capital Finance) (Amendment) Regulations 1991	All the Regulations
1992/502	The Local Authorities (Capital Finance) (Amendment) Regulations 1992	All the Regulations
1992/1618	The Local Authorities (Capital Finance) (Amendment) (No. 2) Regulations 1992	All the Regulations
1992/2819	The Local Authorities (Capital Finance) (Amendment) (No. 3) Regulations 1992	All the Regulations
1992/3257	The Local Authorities (Capital Finance) (Amendment) (No. 4) Regulations 1992	All the Regulations
1993/520	The Local Authorities (Capital Finance) (Amendment) Regulations 1993	All the Regulations

Year and Number	Title	Extent of revocation
1993/2014	The Local Authorities (Capital Finance) (Amendment) (No. 2) Regulations 1993	All the Regulations
1993/3054	The Local Authorities (Capital Finance) (Amendment) (No. 3) Regulations 1993	All the Regulations
1994/553	The Local Authorities (Capital Finance) (Amendment) Regulations 1994	All the Regulations
1995/850	The Local Authorities (Capital Finance and Approved Investments) (Amendment) Regulations 1995	All the Regulations except regulation 13
1995/1526	The Local Authorities (Capital Finance) (Amendment) Regulations 1995	All the Regulations
1995/1982	The Local Authorities (Capital Finance and Approved Investments) (Amendment No. 2) Regulations 1995	All the Regulations except regulation 12
1996/568	The Local Authorities (Capital Finance) (Amendment) Regulations 1996	All the Regulations except regulations 15 and 16
1996/2121	The Local Authorities (Capital Finance) (Amendment No. 2) Regulations 1996	All the Regulations
1996/2539	The Local Authorities (Capital Finance) (Amendment No. 3) Regulations 1996	All the Regulations

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which are made under Part IV of the Local Government and Housing Act 1989 (“the Act”), consolidate with amendments the Local Authorities (Capital Finance) Regulations 1990 and subsequent amending instruments, and are concerned with the capital finance system for local authorities which has been in operation since 1st April 1990. The Regulations apply to England and Wales, and apart from regulations 120 and 121 (which provide for the adjustment of certain authorities' credit ceilings), and regulation 162 (which provides for the revocation of the 1990 Regulations as amended), come into force on 1st April 1997.

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Part II of the Regulations amends the definition of expenditure for capital purposes provided in section 40 of the Act. The main change made by the Regulations is that it is provided that all expenditure under a transaction which is entered into by a local authority for the purposes of the Private Finance Initiative and has the features specified in regulation 17 (a “private finance transaction”) shall be expenditure for capital purposes.

The main features of a private finance transaction are that—

- (a) the transaction is for the provision of land, other than land which is for use for housing purposes, or of any other asset (including works), and of services in relation to the authority’s use of the land or the asset;
- (b) the authority begin to pay fees by instalments after they have begun to use the land or the asset; and
- (c) the amount of fees payable depends on standards attained in the performance of the services or the extent, rate or intensity of use of the asset for its intended purpose.

Part IV of the Regulations makes provision in respect of credit arrangements, which under section 48(1) of the Act comprise any lease, any contract under which a local authority are to give the consideration which is due from them after they have received the consideration which is due to them, and any transaction of a description prescribed in regulations. Private finance transactions are prescribed in regulation 17. Regulations 18 to 25 specify descriptions of leases and contracts which are not to be credit arrangements.

Local authorities are required under Part IV of the Act to have available an amount of credit cover when they enter into or vary a credit arrangement. Such an amount may be obtained by using a credit approval or by setting aside an amount as provision for credit liabilities. Regulations 26 to 51 make special provision for calculating the amount required as credit cover in respect of leases and certain other transactions.

The main changes made by the Regulations in respect of the requirement for credit cover for credit arrangements are as follows—

- (1) A lease entered into under the provisions of a private finance transaction has a nil initial cost.
- (2) The lease of a dwelling-house which is for use as accommodation for homeless persons has a nil initial cost if the term of the lease does not exceed ten years.
- (3) Certain leases acquired by the National Park authorities established under the National Park Authorities (England) Order 1996 and by the councils which formerly exercised the functions of those authorities have a nil initial cost.
- (4) A private finance transaction which has the features specified in regulation 40 has a nil initial cost.
- (5) The initial cost of a private finance transaction is reduced if it is for the replacement or enhancement of a building and the provision of heating services or for the provision of a building and heating services.

Part V of the Regulations specifies contributions and subsidies (“specified capital grants”) which, under section 57 of the Act, are to result in the reduction or extinguishment of credit approvals issued to a local authority. Credit approvals, which are issued to local authorities under sections 53 and 54 of the Act, enable an authority to enter into or vary credit arrangements and not to charge expenditure to a revenue account. Changes are made by the Regulations to the contributions and subsidies which are to be specified capital grants. Different provision is made for local authorities in England and local authorities in Wales.

Parts VI, VII and VIII of the Regulations relate to capital receipts. Section 58 of the Act specifies sums which, when received by a local authority, are capital receipts. Part VI of the Regulations specifies further sums which are to be capital receipts and sums which are not to be capital receipts.

Section 59 of the Act requires a local authority to set aside part of a capital receipt (“the reserved part”) as provision to meet credit liabilities. Part VII of the Regulations specifies the percentage which is the reserved part in the case of different descriptions of capital receipts and disposals.

Part VIII of the Regulations provides for different descriptions of capital receipts to be treated as reduced for the purposes of determining the reserved part. The main changes made in this Part to the treatment of capital receipts are as follows—

(1) Regulations 86 to 93 make provision for treating as reduced certain capital receipts derived from disposals of land made to assist regeneration in areas of need.

(2) Regulations 94 and 95 make provision for treating as reduced certain capital receipts derived from disposals of land improved out of moneys provided by Parliament or the Urban Regeneration Agency.

Section 61 of the Act requires a local authority to set aside (as provision to meet credit liabilities) part of a capital receipt not wholly in money paid to them. Part IX of the Regulations makes further provision for determining the amount falling to be set aside in respect of notional capital receipts. Regulation 106 provides that notional capital receipts are to be treated in broadly the same way as capital receipts. Regulations 107 to 114 specify descriptions of non-monetary consideration in respect of which the amount falling to be set aside is to be nil.

Part X of the Regulations makes provision in respect of a local authority’s credit ceiling, which is one of the components of the aggregate credit limit and is determined, subject to prescribed modifications, in accordance with paragraphs 11 to 14 of Schedule 3 to the Act. Modifications are prescribed in regulations 115 to 121. By virtue of regulations 122 and 123, no account is to be taken of certain credit arrangements in determining the credit ceiling.

The main changes made by the Regulations in respect of credit ceilings are as follows—

(1) If a local authority fulfil specified conditions relating to the level of debt, their credit ceiling is not to be increased when they use a credit approval to meet expenditure out of amounts set aside to meet credit liabilities.

(2) The credit ceilings of the National Park authorities in England and of the councils which formerly exercised the functions of those authorities are modified.

Part XI of the Regulations makes provision for the adjustment of the credit ceiling for the purpose of determining the minimum amount to be set aside by a local authority from their revenue account or accounts as provision to meet credit liabilities (minimum revenue provision).

Part XII of the Regulations makes provision for determining a local authority’s minimum revenue provision. Regulation 138 and Schedule 2 to the Regulations provide for minimum revenue provision to be adjusted to take account of the commutation of periodic payments under section 157 of the Act. Regulations 139 to 150 make provision for determining the housing and non-housing amounts which are relevant to the determination of minimum revenue provision for local housing authorities. Regulations 151, 152 and 153 make provision for determining the relevant amount which is relevant to the determination of minimum revenue provision for other local authorities.

Part XIII of the Regulations makes provision for the use under section 64 of the Act of amounts set aside as provision to meet credit liabilities. Such amounts may be applied for specified purposes or transferred to specified bodies by local authorities which fulfil specified conditions relating to the level of debt. Different provision is made for different cases and different descriptions of authority. Regulation 159 specifies conditions with which an authority must comply in transferring such amounts.

Part XIV of the Regulations makes provision for supplementary matters, including the application of Part IV of the Act to borrowing by authorities where the liability for the borrowing has been transferred by statute from one authority to another.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*