
STATUTORY INSTRUMENTS

1997 No. 319

The Local Authorities (Capital Finance) Regulations 1997

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(1); 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—

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

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⁽²⁾;
 - (b) sections 46, 47 and 48 of the Police Act 1996⁽³⁾ (police grant and grants for capital expenditure and expenditure on safeguarding national security);
 - (c) section 20 of the Probation Service Act 1993⁽⁴⁾;
 - (d) section 63(6) of the Rent Act 1977⁽⁵⁾ (schemes for appointment of rent officers); or
 - (e) section 59 of the Justices of the Peace Act 1979⁽⁶⁾.

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⁽⁷⁾ 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.

(2) 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).

(3) 1996 c. 16.

(4) 1993 c. 47.

(5) 1977 c. 42.

(6) 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).

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

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).

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⁽⁸⁾, 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

⁽⁸⁾ 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).

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;
- (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)(**9**); or
- (b) the Residuary Body for Wales or Corff Gweddilliol Cymru(**10**).

(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)(**11**), 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)(**12**);

“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

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

(10) 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 \(C. 5\)](#)).

(11) 1996 c. 52. See section 175 of that Act.

(12) 1985 c. 68. See section 115 of that Act.

“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)(13).

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

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

- (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(14).

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(15).

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)(16).

(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(17);
- (b) article 9 of the Police and Magistrates' Courts Act 1994 (Commencement No. 5 and Transitional Provisions) Order 1994(18);
- (c) a combination scheme under the Fire Services Act 1947(19);
- (d) the Local Government Reorganisation (Wales) (Property etc.) Order 1996(20); or
- (e) article 15 of the National Park Authorities (England) Order 1996(21), or an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)(22) or an award under subsection (3) of that section.

(13) 1980 c. 65.

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

(15) 1972 c. 11.

(16) 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)).

(17) S.I. 1995/402.

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

(19) 1947 c. 41.

(20) S.I. 1996/532.

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

(22) 1995 c. 25.

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.

(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)(**23**).

(23) 1985 c. 68. See section 112 of the Act.

(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)(24).

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(25);
- (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

(24) 1996 c. 52.

(25) See the 1990 Regulations as amended by S.I. 1995/850.

- (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—

- (a) “new fire authority” means a fire authority constituted by a combination scheme under the Fire Services Act 1947⁽²⁶⁾ made in consequence of an order under Part II of the Local Government Act 1992 (local government changes for England)⁽²⁷⁾ 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⁽²⁸⁾; 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—

⁽²⁶⁾ 1947 c. 41.

⁽²⁷⁾ 1992 c. 19.

⁽²⁸⁾ 1994 c. 19.

“National Park authority” has the same meaning as in article 2 of the National Park Authorities (England) Order 1996⁽²⁹⁾;

“relevant agreement or award” means an agreement under section 76 of the Environment Act 1995 (agreements as to incidental matters)⁽³⁰⁾ 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

(29) S.I. 1996/1243. There are amendments which are not relevant to these Regulations.

(30) 1995 c. 25.

virtue of paragraph 4 (accommodation for homeless persons)(**31**) 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—

- (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(**32**),

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.

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

(32) See regulation 7 of the 1990 Regulations.

Reduction in the initial cost of certain leases

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

- (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⁽³³⁾; 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—

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

- (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
 - (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—
- (a) 70 per cent. of the amount which, apart from this regulation, would be the initial cost of the transaction; and
 - (b) 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—
- (a) the initial cost fell to be determined in accordance with section 49(1) and (2);
 - (b) no consideration was required to be given in the financial year in which the transaction was entered into; and
 - (c) 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—

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

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—
- (a) 70 per cent. of the amount which, apart from this regulation, would be the cost of the transaction at that time; and
 - (b) 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⁽³⁴⁾ or section 97 of the Highways Act 1980 (lighting of highways)⁽³⁵⁾; 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).

(34) 1875 c. 55.

(35) 1980 c. 66.

(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—

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

where—

“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⁽³⁶⁾.

(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⁽³⁷⁾; 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.

⁽³⁶⁾ 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.
⁽³⁷⁾ 1954 c. 56.